

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Misc. Application No. 738 of 2023

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Date	Order with signature of Judge
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1. For orders on office objection at A
2. For hearing of main case

**16.11.2023**

Mr. Adnan Ahmed advocate for the applicant  
Mr. Khalid Rasheed advocate for respondent No.1  
Mr. Siraj Ali Khan Addl.PG

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Through this Criminal Miscellaneous Application under Section 497 (5) Cr. P.C. the applicant Muhammad Atif Faiz has assailed the legality of the order dated 05.09.2023 passed by the learned Ist Model Criminal Trial Court / ADJ Karachi East in Criminal Bail Application No. 4589 of 2023 vide order dated 05.09.2023, whereby the respondent No.1 was granted bail under Section 497 Cr. P.C. in FIR No. 287/2023, under Section 302/34 PPC, Police Station Mubina Town on the premise that the instant FIR was lodged without explaining the reasons for silence of the complainant. Further, there existed a business relationship between respondent No.1 and the applicant. Further, the offense does not fall within the ambit of the prohibitory clause under Section 497 CRPC. An excerpt of the order dated 05.09.2023 is reproduced as under:-

**“As above mentioned, the whole case of prosecution is based upon CDR recorded and authenticity of CDR would only be determined at the time of evidence as investigation is yet not concluded. The robbed mobile phone of the deceased was also not recovered from the possession of present applicant/accused even there is no any record was found which would show that deceased has contacted the accused at the time of alleged incident. Under these circumstances, I am of the view that case of the applicant/accused requires further inquiry hence the instant bail application is hereby allowed subject to furnishing solvent surety of Rs. 200,000/- and P.R bond of like amount. It is pertinent to mention here that this order is based on tentative assessment of material available on record and does not affect the disposal of case on merits.”**

2. Learned counsel for the applicant submits that the impugned order is perverse and full of errors on the premise that there was no ground available with the respondent accused to ask for post-arrest bail in the murder case and the trial Court committed grave illegality in allowing the bail to the respondent accused. He further submitted that CDR and the statement of the bykia rider are supportive evidence that ought not to have been brushed aside. He next contended that the respondent accused was arrested on 11.07.2023 upon collection of evidence, learned counsel emphasized that the mobile phone used by the respondent accused explicitly showed his involvement in the commission of the crime; and that the applicant has sufficient evidence against the respondent accused and on his release he will temper with the evidence. He prayed for

cancellation of bail granted to the respondent accused by trial Court vide order dated 05.09.2023.

3. I have heard learned counsel for the parties and have also perused the material available on record.

4. The principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for canceling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect, and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail which was already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are *pari materia* with the principles that apply to setting aside the order of acquittal. Once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

5. In the present case, the applicant has complained that respondent No.1 was arrested by police on 11.07.2023, and after completion of the Investigation Interim challan was submitted by the police on 10.08.2023 which is still pending for preliminary proceedings, however the learned Ist Additional Sessions Judge Karachi East, has granted bail to the respondent No.1 in a premature stage, knowing the fact that charge against the respondent No.1 was/is not heinous.

6. The trial Court has granted bail to the private respondent on the premise that the FIR was lodged against an unknown accused but subsequently during the investigation the Investigating Officer had shown his arrest in the case on the ground that he was available near place of the incident. Prima facie no recovery has been made from the possession of the applicant though he remained in police custody for a considerable time and even the record does not show that the private respondent has misused the concession of bail as no material has been placed on record on the aforesaid plea taken by the learned counsel for the applicant/complainant. Besides the trial Court has narrated the facts that there was/is a civil transaction between the parties as such the bail was granted to the respondent. The reasons assigned by the learned trial Court are sufficient to discard the point of view of the applicant for the simple reason the respondent No.1 has not misused the concession of bail with effect from the date he has been granted bail by the trial Court .

7. For the foregoing reasons, no occasion has been found by this Court for interfering with the lawful exercising of the jurisdiction in the

matter of bail by the learned Ist Model Criminal Trial Court / Ist Additional District & Sessions Judge Karachi East.

8. Under the circumstances, instant Criminal Miscellaneous Application is dismissed as being devoid of merit, along with pending applications.

JUDGE