

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No.214 of 2023

| Date | Order with signature of Judge |
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1. For order on office objection at 'A'
2. For hearing of main case
3. For hearing of MA No.13162/2023

30.11.2023

Mr. Kazim Hussain Mahesar advocate for the applicant
Mr. Abrar Ali Khichi, Additional PG
Ms. Zakia Sultana advocate for respondent No.2

Through this Criminal Revision Application, applicants have called in question the legality of the order dated 27.10.2023 passed by learned VIII-Additional Sessions Judge Malir Karachi on the application filed by the complainant under Section 497(5) Cr.P.C., wherein the bail earlier granted to the applicants was recalled.

2. Learned counsel contends that the learned trial Court has passed the impugned order without applying judicial mind as well as without proper justification and reasoning and principles as outlined in Section 497(5) Cr.P.C.; that the impugned order under revision reflects non-reading, misreading and mis-appreciation of material available on record; that the applicants are innocent and have falsely been implicated in the case by the complainant with malafide intention and ulterior motives to harass, humiliate and disgrace them, though they have nothing to do with the alleged offense and even their presence at the spot has not been brought on record. Learned counsel states that the reasoning assigned by the trial Court while canceling the confirmed bail of the applicants is not sufficient to attract Section 497(5) Cr.P.C. He prayed for setting aside the impugned order.

3. Ms. Zakia Sultana, learned counsel has sought permission to argue the case on behalf of a private respondent. Permission is accorded. She supports the impugned order dated 27.10.2023 with the narration that after confirmation of bail, the applicants have misused the concession of bail by assaulting the respondent along with the lady folks, which factum is confirmed by the Registrar of this Court in his report dated 30.11.2023 in respect of directions issued by this Court for watching the video clips. Learned counsel further submits that the impugned does not suffer from any illegality as well as infirmity and, hence is not liable to be set aside. She further contended that the contents of the FIR are very much clear that the applicants came along with ladies and caused assault upon the

respondent, such MLC is available on record. She prayed for the dismissal of the instant criminal revision application.

4. I have the learned counsel for the parties and perused the material available on record as well as arguments put forward by the learned Additional PG, who has not supported the impugned order on the premise that there is no role of the applicants in causing assault upon the respondent.

5. A tentative assessment of the record reflects that the alleged incident took place on 14.9.2023 and was reported on 21.9.2023 after approximately seven (07) days delay. The learned counsel trial Court admitted the applicants to interim pre-arrest bail vide order dated 22.9.2023 and confirmed their bail vide order dated 26.9.2023 based on the material as well as the legal position of the case that all the sections applied in the FIR were/are bailable except Section 506-B PPC and did not fall within the prohibition contained in Section 497(1) Cr.P.C., however, their confirmed bail was recalled by the trial Court vide order dated 27.10.2023 on the premise that accused had beaten the respondent and dispossessed her from the disputed shop, thus, misused the concession of bail, in terms of law laid down by the Supreme Court in the case of *Samilullah v. Laiq Zada* [2020 SCMR 1115] and relied upon the video clips and photographs as well as MLC. The learned trial Court also opined that the applicants attempted to put pressure upon respondent No.1 to withdraw the case.

6. At this stage, learned counsel for the applicants has emphasized that the basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise. He asserted that the principle of law is that every accused is innocent until his guilt is proved and it is also a well-settled principle of law that the law is not to be stretched in favor of the prosecution, but the benefit of the doubt should go to the accused even at the bail stage. He next argued that consideration for cancellation of bail is quite distinct from the consideration for grant of bail.

7. From the aforesaid factual position of the case coupled with the report submitted by the learned Registrar of this Court, which prima facie suggests that male members were not seen fighting in the video as produced by the parties. Primarily, in bail matters it is the discretion of every Court to grant bail when the offenses do not fall within the prohibition contained in Section 497(1) Cr.P.C., but such discretion could not be arbitrary, fanciful or perverse, however, in the present case the applicants have not been seen fighting with the respondent and no injury

has been attributed on their part, thus, the applicability of Section 337-A, 504, 509, 506 PPC is yet to be thrashed out by the trial Court whether applicable or otherwise.

8. The contention of the learned counsel for the applicant that the case of the applicants squarely falls within the ambit of Section 497(2) Cr.P.C. is concerned, the said provision reveals the intent of the legislature disclosing precondition to establishing the word 'guilt' against whom an accusation is leveled has to be established based on reasonable ground, however, if there exists any possibility to have a second view of the material available on record then the case advanced against whom the allegations are leveled is entitled to the relief in the spirit of Section 497(2) Cr.P.C. On the aforesaid principle, I am supported by the view of the Supreme Court in the case of Muhammad Tanveer v. The State [PLD 2017 SC 733].

9. 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 granting 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 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 circumstances would be required for cancellation thereof.

10. For the foregoing reasons, I do not see any occasion for the trial Court to cancel the bail granted to the applicants.

11. Under the circumstances, the instant criminal revision application is allowed and the impugned order dated 27.10.2023 passed by the learned VIII-Additional Sessions Judge Malir Karachi in Criminal Misc. Application No.45 of 2023 [Re: Mst. Sughra versus Allah Dino Shah & others] is set aside and the applicants shall remain on bail in the aforesaid crime. However, it is made clear that if the applicants misuse the concession of bail, the learned trial Court shall take prompt action by canceling their bail without reference. Meanwhile, the trial Court is directed to expedite the case and decide the same within two months positively and a compliance report shall be made through the MIT-II of

this Court. The observations recorded hereinabove are tentative and shall not prejudice the case of either party at the trial.

12. This criminal revision application stands disposed of.

JUDGE

Zahid/*

