

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Misc. Appln. No.S-588 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA-8081/2023.
2. For orders on office objections.
3. For orders on MA-8082/2023.
4. For hearing of main case.

18.08.2023.

Mr. Mashooque Ali Mahar, Advocate for applicant.

ORDER

ARSHAD HUSSAIN KHAN, J.- The applicant / complainant through the captioned bail application under Section 497 (5) Cr.P.C seeks cancellation of bail granted to respondents 1 & 2 by learned IVth Additional Sessions Judge, Hyderabad in Cr. Bail Application No.2047 of 2023 (Re-Muhammad Usama Shaikh & another v. The State), arising out of Crime No.111 of 2023 registered at Police Station Hali Road, Hyderabad, under Sections 337-A (ii) & 337-F(i) PPC vide order dated 03.08.2023.

2. The facts of the case are already stated in the memo of this application, therefore, there is no need to reproduce the same to save precious time of the Court.

3. Learned Counsel for the applicant contends that the respondents / accused after granting bail by the trial Court on 03.08.2023 are misusing the concession of bail by issuing threats to the applicant / complainant. He further submits that the respondents / accused were nominated in the promptly lodged FIR with specific roles. He next submits that the medical evidence duly corroborates the contention of the complainant and the learned trial Court without considering the record has granted bail to the accused. Hence, he prays that bail of the accused may be recalled.

4. I have heard the learned counsel for the applicant and have gone through the material available on record.

5. Record reflects that after registration of case the accused moved an application for grant of pre-arrest bail before IVth Additional Sessions Judge, Hyderabad, who granted ad-interim pre-arrest bail to them on 24.07.2023 and later on their interim pre-arrest bail was confirmed vide order dated 03.08.2023. I have also gone through the impugned order which reflects that the pre-arrest bail was granted to private respondents to the effect that FIR was delayed without plausible explanation and there were general allegations against the accused and further there was a dispute over money between the parties, as disclosed in the memo of FIR as well as trial Court's order. Hence, the case of the accused / respondents falls within the ambit of Section 497(2) Cr.P.C. It is settled that the principle for granting bail and those for cancellation of bail is altogether different. The strong and cogent reasons are required for recalling of bail granting order. For instance if the bail granting order is perverse or disregard to the settled principle regulating grant of bail. The learned Counsel for the applicant / complainant is unable to put forth any of the above settled principle governing the cancellation of bail. The Honorable Supreme Court in the case of MUHAMMAD AZHAR v. DILAWAR (2009 SCMR 1202) has observed as under:-

"6. It needs no reiteration that considerations for the grant of bail are quite distinct from the consideration for cancellation of bail. Once bail has been granted by a competent Court of law strong and exceptional grounds are required for cancelling the same, as held by this Court on a number of occasions. It is to be seen as to whether order granting bail is patently, illegal, erroneous, factually incorrect and has resulted in miscarriage of justice. Considering the case of the respondent for grant of bail on the above touchstone, we are of the view that learned High Court has rightly reached the conclusion

and no exception can be taken to it. The respondent is on bail since 26-1-2009 and he is not shown to have misused the concession of bail. He is entitled to remain on bail "

6. In my tentative assessment, the grounds for cancellation of bail as agitated by learned Counsel for the complainant could only be thrashed out at the time of recording evidence of the parties. Since the trial is yet to begin thus no fruitful result will come out to recall the pre-arrest bail order dated 03.08.2023.

7. In view of the above, the order passed by the trial Court is not needed to be interfered with. In such circumstances, the instant application for cancellation of bail is dismissed in limini.

JUDGE

Shahid