## ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

## CR. BAIL APPLICATION NO.2148/2024

Date Order with signature of Judge

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For hearing of bail application.

## 07.10.2024

Mr. Munir Ahmed Gilal advocate for applicant.

Mr. Shoaib Safdar Ghumman, APG.

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**SALAHUDDIN PANHWAR, J**: I have heard and duly considered the arguments presented by the learned counsel for the Applicant as well as the learned APG. I have also meticulously examined the record.

2. By an order dated 10.09.2024, the Trial Court cancelled the bail granted by the High Court in Criminal Bail Application No.568/2021, initially granted by order dated 04.05.2021, on the grounds of misuse of the bail concession and subsequently remanded the applicant into custody. The relevant portion of the Trial Court's order is reproduced here for reference:

"Heard. The learned counsel has alleged that the applicant/accused may be granted bail as she was not feeling well, however, he was confronted with the record of applicant/accused wherein she was found habitual of remaining absent and then subsequently, filing condonation application and even appearing on late. This shows that the applicant/accused is not punctual and misused the concession of bail, therefore under these circumstances he is not entitled for release on bail due to her misconduct and repeated violation of bond. The application is dismissed accordingly."

3. A perusal of the above reflects that the learned Trial Judge, without providing proper reasoning or justification for remanding the Applicant into custody, passed an order that appears to be unduly harsh and made in a hurried manner. Such a practice is not in accordance with established legal principles and cannot be

appreciated, particularly when the applicant being a woman, was granted bail on both merits and medical ground. The order remanding the applicant to custody effectively amounts to the **cancellation of bail** previously granted by this Court.

- 4. The considerations for cancelling bail are fundamentally different from those for granting or refusing bail under Section 497 of the Cr.P.C. Once bail is granted by a competent court, strong and exceptional reasons are required for its cancellation. It must be demonstrated that the bail order is patently illegal, erroneous, or factually incorrect, leading to a miscarriage of justice. Bail orders should only be recalled in rare and exceptional circumstances, and doing so should be discouraged, particularly when the trial is already in progress.
- 5. To cancel a bail, the prosecution must not rely on mere allegations but provide substantive proof supporting its case. The criteria for granting and cancelling bail differ; with the latter requiring evidence that the original order is clearly perverse, grossly illegal, or in violation of the principles governing the bail.
- 6. A notice of application for bail cancellation must be properly served on the accused, not his/her counsel, and must allow sufficient time for the accused to respond. Failure to serve notice directly on the person released on bail is procedurally improper. If bail is cancelled without proper notice, High Court has the jurisdiction to recall such orders under Section 561-A Cr.P.C.
- 7. The underlying principle is that once the concession of bail is granted by a court of competent jurisdiction, very strong and

exceptional grounds are required to interfere with such a concession. The accused, having been granted bail, enjoys liberty as a result of this concession. Any decision that interferes with this bail would essentially amount to curtailing the accused's freedom prior to the conclusion of the trial, which is a fundamental right enshrined in the Constitution. This principle is supported by the authoritative judgment of the Apex Court of Pakistan in **Sharif Khan v. The State** and another ( 2021 SCMR 87). The impugned order passed by the Trial Court is in clear violation of well-established legal principles.

8. For the reasons elaborated above, the impugned order is hereby set aside. The applicant is granted post-arrest bail on the same surety that remains in effect, as the remand order does not indicate any forfeiture of the surety. The applicant shall be released on bail by the jail authorities upon the execution of a personal bond. Accordingly, the Criminal Bail Application filed by the Applicant is disposed of in these terms.

JUDGE