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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Crl. Misc. Application No.S-38 of 2017

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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11.08.2017.

1. For orders on office objections.
2. For Katcha Peshi.

Applicant : Attaullah Khoso, through Mr. Abdul Rasheed Soomro, Advocate.

Respondents : Asghar Ali Khoso, through Mr. Farooq Ali Bhutto, Advocate.

Mr. Sardar Ali Shah, Deputy Prosecutor General.

Date of hearing : 11.08.2017.

Date of Order : 11.08.2017.

**ORDER**

Through this Criminal miscellaneous application, the applicant seeks cancellation of bail granted to the respondent by District & Sessions Judge, Larkana through order dated 04.3.2017 in Crime No.59/2007 registered under Sections 302, 147, 149, PPC at Police Station Rehmatpur, Larkana.

2. Learned Counsel for the applicant has contended that respondent had participated in the commission of the crime and had fired from his pistol with common intention causing death of Khan Mohammad, brother of applicant, whereas he remained an absconder, therefore, was not entitled to the concession of bail. He has further contended that forensic report was positive, whereas acquittal of other co-accused was hardly a ground for concession of bail to respondent. In support of his contention he has relied upon the cases reported as *Jan Muhammad v. The State* (1978 SCMR 287), *Atlas Khan v. Mazamullah Khan* (1979 P.Cr.L.J 2044), *Nowshad Khan v. Irshad Khan* (2009 YLR 2123), *Muhammad Ali v. The State* (2009 MLD 1106), *Gul Babrai Khan v. Rehmatullah Khan* (2010

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P.Cr.L.J 1330), *Rafiullah v. The State* (2011 P.Cr.L.J 1942), *Nasir Khan v. Waseel Gul* (2011 SCMR 710), *Neel Shah v. The State* (2011 YLR 1611), and *Bazir v. The State* (2014 P.Cr.L.J 1526).

3. On the other hand, learned Deputy Prosecutor General has supported the case of applicant on the grounds that respondent was an absconder and against the acquittal of co-accused an appeal has been filed, which is reserved for judgment and, therefore, respondent was not entitled to the concession of bail.

4. Learned Counsel for the respondent has contended that there is no illegality in the impugned order, whereas after a threadbare examination of prosecution's evidence, co-accused has been acquitted, therefore, impugned order is correct in law. Insofar as abscondence is concerned, learned Counsel has contended that since 2006 the respondent was working at Karachi therefore, had no knowledge regarding registration of the F.I.R. In support of his contention he has relied upon the case of *Nasir Khan v. Waseel Gul* (2011 SCMR 710) and *Fateh Khan v. The State* (2011 P.Cr.L.J 1924).

5. I have heard both the learned Counsel as well as learned DPG and perused the record.

6. Insofar as the ground for seeking cancellation of bail of respondent being an absconder is concerned, it may be observed that it is now settled law that mere abscondence is no ground for denial of bail to an accused if otherwise he is found entitled for such concession. It may be true that a person absconding after an occurrence and declared as a proclaimed offender may lose his claim to exercise of discretion in his favor by a court of law on the basis of propriety but at the same time it is equally true that an accused person the case against whom call for further inquiry is to be admitted to bail as a matter of right. It goes without saying that whenever a

question of propriety is confronted with a question of right the latter must prevail. [See ***Muhammad Aslam v The State and others*** (2016 SCMR 1520)]. Similar view has been expressed in the cases of ***Ibrahim v Hayat Gul and others*** (1985 SCMR 382), ***Muhammad Sadiq v. Sadiq and others*** (PLD 1985 SC 182), ***Qamar alias Mitho v. The State and others*** (PLD 2012 SC 222) and ***Ehsanullah v. The State*** (2012 SCMR 1137). Moreover, it is an admitted position that the co-accused after recording of prosecution evidence has been acquitted by the learned trial Court and such judgment is though pending in appeal, but at-least for consideration of a bail application it cannot be discarded merely for the fact that an appeal has been filed. In fact it goes without saying this at-least it is a ground for further inquiry into the guilt of the accused. It is also noted that the learned trial Court has considered such plea of the applicant and has given a very cogent and reasonable finding for granting bail. Again it goes without saying that per settled law the grounds for granting bail and its cancellation are always different. Once the Court of competent jurisdiction has granted bail to an accused, then ordinarily this Court should not indulge into an exercise to interfere with the discretion of the trial Court unless very cogent and reasonable grounds exists for cancellation of bail. The learned trial Court has been pleased to observe as follows:

*"I have given my anxious consideration to the arguments of respective parties and perused the record, which reveals that arguments raised by the learned counsel for the applicant appears to be more weighty in comparison to the arguments advanced by the learned counsel for the state/complainant, the FIR shows that applicant Asghar Ali being armed with pistol alongwith four co-accused namely (1) Riaz Hussain, (2) Suhno, (3) Mumtaz and (4) Ali Asghar being armed with pistols allegedly participated in the occurrence to the extent that he (applicant) alongwith co-accused fired at deceased Muhammad @ Habibullah from his pistol which hit him. Besides four other accused who were also assigned same role of causing firearm injuries from their pistols at deceased which also hit him. No specific injury is attributed to the present applicant Asghar. Moreover, it has been also brought from the record that empty bullets said to have been recovered from the vardat during the course of investigation did not tally with ocular account. The perusal of record further shows that the co-accused who had been assigned a similar role had been tried and ultimately acquitted by the learned*

VII-Additional Sessions Judge, Larkana vide judgment dated 29.12.2011.

9. No doubt applicant had remained as absconder as pointed by the learned State Counsel but mere on that ground bail cannot be declined to him if otherwise he is found to be entitled to the concession of bail on merits. In this regard, I respectfully placed reliance on case law reported in 2012 YLR (page1076)."

7. From the above, it is clearly spelt out that there appears to be no ground for the applicant to pursue any further, the cancellation of bail. The Hon'ble Supreme Court in the case reported as **Chairman NAB through PGA NAB Islamabad v. Muhammad Khalid (2016 SCMR 676)** has been pleased to observe as under:

"6. It has been ruled by this Court with a considered view that considerations for grant of bail and its cancellation are different. Once a Court of competent jurisdiction by exercising its powers which are discretionary in nature has issued a favourable order in respect of a person accused in an offence, this Court is always slow to interfere unless it finds that the order granting bail was against the record, perverse or unreasonable."

8. In view of hereinabove facts and circumstances of this case, I am of the view that no case has been made out on behalf of the applicant to interfere with the impugned order dated 04.3.2017 whereby respondent has been granted bail and accordingly instant criminal miscellaneous application was dismissed by means of a short order dated 11.8.2017 and above are the reasons thereof. However, before parting it may be observed that if appeal against acquittal of Co-accused is allowed, then the applicant is at liberty to approach the trial court once again for seeking cancellation of bail on such ground which shall be dealt with by the trial court in accordance with law.

  
JUDGE  
16.8.2017