

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Misc. Application No. S-245 of 2024

Applicant : Gul Hassan son of Tagyal Bangulani,
Through Mr. Athar Abbas Solangi, Advocate

Respondents : Muneer Ahmed & others
Through Mr. Safdar Ali Ghouri, advocate.

The State : Through Mr. Nazir Ahmed Banghwar, DPG

Date of hearing : 10-07-2025
Date of order : 17-07-2025

ORDER

KHALID HUSSAIN SHAHANI, J.—This is an application filed by the complainant, Gul Hassan, under Section 497(5) of the Code of Criminal Procedure, 1898, seeking the cancellation of pre-arrest bail granted to respondents No. 01 to 04 by the learned Additional Sessions Judge-II, Jacobabad, through three separate orders dated June 27, 2024, in bail applications No. 368/2024, No. 209/2024, and No. 228/2024.

2. The brief facts of the prosecution case, as per FIR No. 07/2024 lodged on February 21, 2024, at Police Station Mubarakpur, District Jacobabad, by the applicant Gul Hassan, are that the complainant's family had a long-standing dispute with the Jahangeer Bangulani party, stemming from the murder of Jahangeer's son, Majid, in 2016, in which the complainant's father and brother were implicated before being released on bail after a compromise with the actual killers. The complainant alleged that on February 21, 2024, at about 4:30 p.m, while he along with his brothers Sajad Ali, Javed Ali, and Irshad Ali were present at the land of Muhammad Ayob Bangulani, respondents Muneer Ahmed, Muhammad Shareef, Aijaz Ahmed, Aftab Ahmed, and Fakhurdin arrived on two motorcycles. It

is alleged that accused Muneer Ahmed challenged Sajad Ali, claiming he had killed his nephew Majid Ali, and then fired a pistol shot that hit Sajad Ali on the left mid-axillary region. Accused Muhammad Shareef also allegedly fired a pistol shot that hit Sajad Ali on his back, and accused Aftab Ahmed fired a pistol shot that hit Sajad Ali on his left arm. The complainant and his brothers raised cries, whereupon the accused persons allegedly threatened them with murder if they raised their voices, before fleeing the scene. Sajad Ali succumbed to his injuries on the spot. The FIR further alleged that the murder was committed by Muneer Ahmed, Aftab Ahmed, and Muhammad Shareef, on the abetment of Jahangeer, and that all accused issued murderous threats. Following investigation, a final report under Section 173 Cr.P.C. was submitted on May 21, 2024, showing respondent No. 01 (Muneer Ahmed) in column No. 02, while respondents No. 02, 03, and 04 were shown as accused on interim bail. However, the concerned Magistrate did not concur with the police opinion regarding respondent No. 01 and took cognizance of the offence against all accused persons, including respondent No. 01, vide order dated June 27, 2024. Subsequently, the respondents approached the court of learned Sessions Judge, Jacobabad, for pre-arrest bail, which was granted by the learned Additional Sessions Judge-II, Jacobabad, through three separate orders on June 27, 2024.

3. The learned advocate for the complainant/applicant, in seeking the cancellation of the pre-arrest bail, vehemently contended that the learned Additional Sessions Judge-II, Jacobabad, erred in granting bail to the respondents. He submitted that all four respondents are clearly nominated in the FIR with specific roles, including direct firing at the deceased, abetment, and rioting while armed with deadly weapons. He emphasized that the application of Section 149 PPC in the FIR makes all respondents collectively guilty of

the offence. It was further argued that the offence, being punishable with capital punishment, falls squarely within the prohibitory clause of Section 497(1) Cr.P.C., thus warranting a stricter approach to bail. The learned counsel highlighted that the witnesses also implicated respondents No. 01 to 04 in their statements recorded under Section 161 Cr.P.C. He asserted that the bail granting orders are perverse and were passed in gross disregard of the established principles governing the grant of bail, particularly pre-arrest bail. A significant point raised was that none of the respondents had alleged any mala fide or ulterior motives on the part of the complainant/applicant, which, according to the learned counsel, should have been sufficient ground to decline bail irrespective of the merits of the case or the roles attributed to the respondents during the commission of the offence. It was further argued that while the learned trial judge observed that only a tentative assessment should be made at the bail stage, he delved too deeply into the appreciation of evidence, even allowing bail to a person (respondent No. 01) who adopted a plea of alibi. The learned counsel specifically pointed out that the trial judge, in confirming bail for respondent No. 01, erroneously relied upon his name being placed in column No. 02 of the charge sheet, failing to appreciate that the learned Magistrate had, on the very same day, disagreed with the investigating officer's opinion and joined him in the case. Furthermore, it was submitted that bail before arrest in a capital offence is an extraordinary relief that should not have been extended to respondent No. 01, who was armed with a pistol and allegedly fired upon the deceased on a vital part of his body. Lastly, the learned advocate for the complainant contended that the learned judge, while confirming interim pre-arrest bail of respondents No. 02 and 03, failed to appreciate the fact that these respondents allegedly repeated the offence by threatening the

complainant and his witnesses and, four days after the murder (on February 25, 2024), attacked the complainant party, injuring him, leading to the registration of a separate FIR (Crime No. 08/2024) under Sections 324, 427, 506/2, 337-A(i), 337-F(i) PPC. In support of his contentions, the learned advocate for the complainant relied upon the case laws cited at 2005 SCMR 1544, 2016 P.Cr.L.J 883, 2013 P.Cr.L.J 1264, and 2000 P.Cr.L.J 422.

4. Conversely, the learned advocate for the accused respondents strongly opposed the application for cancellation of bail. He submitted that the bail granted by the learned Additional Sessions Judge-II was a well-reasoned order, based on a careful tentative assessment of the material available before the trial court. He contended that the complainant had failed to bring forth any fresh grounds for cancellation of bail, such as misuse of the concession of bail, tampering with evidence, or abscondence. It was argued that the accused persons have been regularly attending the trial proceedings and cooperating with the investigation. Specifically for respondent No. 01, Muneer Ahmed, it was submitted that he had successfully established a plea of alibi before the trial court, presenting his passport, visa, and other relevant travelling documents demonstrating his presence in Saudi Arabia for Umrah purposes at the time of the alleged incident. For the other accused respondents, it was argued that their involvement, if any, required further inquiry and that the allegations against them were either general or lacked specific corroboration at the bail stage. The learned counsel emphasized that the grant of bail is the rule and its refusal an exception, and that once bail has been granted by a competent court, its cancellation requires much stronger grounds than those required for its refusal in the first instance. He further highlighted that the subsequent FIR (Crime No. 08/2024) against respondents

No. 02 and 03 was a counter-blast, and the injuries sustained were not serious enough to warrant cancellation of bail in a murder case. In support of his submissions, the learned advocate for the accused relied upon the case laws cited at PLD 1989 Supreme Court 347 and 2021 CLC 444.

5. This Court has given anxious consideration to the arguments advanced by the learned counsel for both sides and has carefully perused the record.

6. Section 497(5) of the Code of Criminal Procedure, 1898, empowers a High Court or a Court of Session to direct that any person who has been released on bail under this section be arrested and committed to custody. This power is generally exercised when there are supervening circumstances that render the continuation of bail undesirable, such as the accused tampering with evidence, threatening witnesses, absconding, or otherwise misusing the concession of bail. The principle underlying Section 497(5) is that once bail has been granted, it should not be lightly cancelled unless there are compelling reasons, as the liberty of an individual, once granted, is a cherished right. The threshold for cancellation of bail is significantly higher than that for its initial refusal.

7. In the present case, while it is undeniable that the private respondents are named in the FIR with specific roles, which would ordinarily warrant a deeper scrutiny at the initial bail stage, there is no complaint or credible material to suggest that the accused persons have, subsequent to the grant of bail, misused the concession of pre-arrest bail. The essence of a bail cancellation application under Section 497(5) Cr.P.C. hinges on such misuse or fresh grounds emerging after the grant of bail. The bail granting order concerning accused Muneer Ahmed clearly indicates that he presented his passport, visa, and other travelling documents,

establishing his presence in Saudi Arabia for Umrah purposes at the time of the incident, a strong plea of alibi which was considered by the trial court. Furthermore, for the remaining accused, there appear to be other contingent reasons, which were evidently considered by the learned trial court while granting them bail, that do not, at this stage, meet the high standard required for cancellation. The subsequent FIR (Crime No. 08/2024) against some of the accused, while noted, does not, in the absence of a conclusive finding on its veracity and nexus to the current case, automatically lead to the cancellation of bail in the primary murder case, especially when no misuse of bail itself is alleged in relation to the current proceedings. The learned counsel for the applicant has primarily reiterated the grounds that were available before the trial court at the time of granting bail, rather than bringing forth new, compelling circumstances warranting cancellation.

8. In light of the foregoing, and finding no fresh or compelling grounds indicating misuse of the bail concession or other supervening circumstances that would necessitate the cancellation of bail, this Court is not inclined to interfere with the discretion exercised by the learned Additional Sessions Judge-II, Jacobabad. Accordingly, the application for cancellation of bail stands dismissed.

J U D G E

Asghar Altaf/P.A