

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc: Application No.239 of 2020

Date	Order with signature of Judge
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Altaf Nazim

vs.

The State and another

Direction

1. For orders as to maintainability of Cr. Misc. Application
(As per order dated 06.8.2020.

24.08.2020

Mr. Amel Khan Kasi, Advocate for the applicant.

NAZAR AKBAR, J.- This Criminal Miscellaneous Application is directed against the order dated **04.6.2020** passed by this Court in Criminal Bail Application No.191/2020, whereby interim bail earlier granted to Respondent No.2 in Crime No.56/2020 registered under Section 489-F PPC was confirmed.

2. This Criminal Miscellaneous Application was filed on **30.6.2020** and the office, amongst others, has raised an objection that how this Criminal Miscellaneous Application is maintainable when the impugned order was passed by this Court in Criminal Bail Application No.191/2020. On **06.8.2020** when this case was listed for the first time, this question was even raised by this Court. However, the learned counsel ignoring the question of maintainability started arguing his case as if this Criminal Miscellaneous Application was maintainable. He started his arguments for cancellation of bail granted by this Court on **04.6.2020** with a false statement in the face of the Court that on **04.6.2020** he has handed over copies of case law to the Court Associate which has not been mentioned by me in the said order. He has made this false statement without realizing that on **04.6.2020** the learned counsel has sought adjournment on the ground that he intends to bring the case law on the next date. He

has not made single statement to argue the case. He had no answer to the preposition that the maximum punishment under **Section 489-F** is only three years and arrest and detention of accused in cases like this would only be humiliation at the hands of the complainant who may fail to get the applicant convicted at the end of the day. The order dated **04.6.2020** is reproduced below:-

*Mr. Malik Altaf Javed, Advocate a/w applicant/accused.
Mr. Amel Khan Kasi, Advocate for the complainant.
Ms. Seema Zaidi, Additional P.G.*

*Learned counsel for the complainant submits that he intends to rely on the case laws but he has not placed on record copy of any case law nor he has even pointed out any case law. Since the maximum punishment in Section 489-F PPC is three years, therefore, the interim pre-arrest bail earlier granted to the applicant by this Court by order dated **14.02.2020** is hereby confirmed on same terms and conditions.*

There is no concept of review in criminal cases and, therefore, under whatever circumstances an order passed by this Court in criminal case cannot be recalled by this Court even in the name of seeking cancellation of bail. Learned counsel for the applicant is unaware of the basic legal preposition that once the bail is granted by this Court, the aggrieved complainant has right to seek cancellation of bail by filing a petition before the Hon'ble Supreme Court for canceling/recalling the bail order. The counsel, who had no case to argue on **04.6.2020**, instead of going to Hon'ble Supreme Court, has filed this Criminal Miscellaneous Application and he has neither replied office objection nor uttered a single sentence on the question of maintainability.

3. Today the learned counsel for the applicant while relying on the case of Sami Ullah and others vs. Laiq Zada and another (**2020 SCMR 1115**) has failed to appreciate that in the cited case a bail before arrest was granted by the Additional Sessions Judge, the said order of bail before arrest was challenged before the Lahore High

Court under **Section 497(5)** of the Cr.P.C and the Lahore High Court has recalled the impugned order of bail before arrest. Then the Hon'ble Supreme Court has set aside order of cancellation of bail by High Court and granted bail to the Petitioner. In view of such facts, the cited judgment is totally out of context and has no nexus with the facts of the case of the instant applicant.

4. Beside the above, the contents of the instant Criminal Miscellaneous Application, particularly grounds “D” and “E”, are in the nature of an allegation against the Court which even otherwise is uncalled for and tantamount to contempt of Court, however, I am restraining myself from issuing contempt of Court notice to the learned counsel for the applicant and ignoring his incompetence to file the instant Criminal Miscellaneous Application instead of filing petition before the Hon'ble Supreme Court, if at all, his client was aggrieved by order dated **04.6.2020**. I am showing this leniency only because Mr. Amel Khan Kasi, Advocate is appearing on behalf of M/s. Mohsin Tayebaly & Company, a most respectable and senior firm of lawyers and request Mr. Arshad Tayebaly that he should not mark/ assign cases of M/s. Mohsin Tayebaly & Company to Mr. Amel Khan Kasi, Advocate when listed before me (NAZAR AKBAR), otherwise I will be constrained to pass an order that cases of M/s. Mohsin Tayebaly & Company may not be listed before this bench.

5. Consequently the instant Criminal Miscellaneous Application is dismissed.

JUDGE

Ayaz Gul