

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.769 of 2021

**Noman Marwat,**  
applicant through:

Syed Ali Ahmed Zaidi, advocate

**Irfan Ahmed Ali Zai,**  
respondent No.2 through:

Mr. Altaf Lund, advocate for alongwith  
respondent No.2

The State,  
through:

Ms. Seema Zaidi, DPG alongwith  
ASI/IO Zafar Iqbal, PS Malir Cantt.

**Date of hearing:**

**31.12.2021**

## ORDER

**Adnan-ul-Karim Memon, J.** The applicant Noman Marwat has called in question the order dated 15.11.2021 passed by the learned IVth Additional Sessions Judge Malir, Karachi, whereby the learned Judge dismissed the application of the applicant filed under section 497(5) Cr.PC on the premise that no ground existed for cancellation of bail of the respondent. An excerpt of the order dated 15.11.2021 is reproduced as under:

*“Nevertheless, there is nothing on record showing that the respondent/accused has misused the concession of bail in any manner. The grounds urged in memo of application without any tangible material regarding misuse of concession of bail, cannot form basis for recalling of bail granting order. No exceptional circumstances have been put forth by the applicant/complainant, warranting recalling of the bail order. For the foregoing reasons and seeking guidance from above referred case law, I am of the humble view that no case for recalling of pre-arrest bail granted to the respondent/accused has been made out, therefore, the criminal miscellaneous application in hand is dismissed.”*

2. Syed Ali Ahmed Zaidi, learned counsel for the applicant, has mainly contended that the respondent was required to fulfill terms of a compromise reached between the parties in Court; but the same commitment has not been fulfilled by him, thus he is not entitled to concession of bail in Section 489-F case. An excerpt of the compromise application is reproduced as under:

*“We both the undersigned advocate on behalf of the both parties do hereby, state that the complainant have no objection for the confirmation of instant bail application. As both the parties have compromised with each others, settled their issues and the accused is agreed to pay the outstanding subject amount to the complainant and the complainant have no objection if the accused may acquitted from charge.”*

3. The case of the applicant is that on 19.01.2021, he lodged FIR No.25/2021 at P.S Malir Cantt, with the allegations against the respondent that he issued cheque No.126860416 dated 20.12.2020, amounting to Rs.14,00,000/- in favor of the

applicant; and on presentation, in the bank, the same was dishonored; due to insufficient funds in the bank account of drawer. Respondent-accused succeeded in obtaining bail before arrest from the learned trial court, based on his undertaking and subsequently resiled from his commitment.

4. The instant application has been filed by the applicant/complainant on the ground that pre-arrest bail was granted to the respondent/accused on account of consensus reached between the parties; and, no objection was recorded by the complainant/applicant, however, after confirmation of bail, the respondent/accused did not return the amount and thus violated terms of undertaking given in the Court, therefore, pre-arrest bail granted to the respondent is liable to be recalled.

5. I have heard both parties and perused record and case-law cited at the bar.

6. In principle, the offense under section 489-F PPC is punishable with imprisonment of three years, thus, does not fall within the prohibitory clause of section 497 Cr. P.C; and, the grounds for cancellation of bail are altogether different from the grant of bail; and once pre-arrest bail is confirmed, the exceptional and extraordinary grounds, as well as strong reasons, are required to recall the bail order granted earlier to the accused. The principles enunciated, governing for grant of bail and cancellation whereof has been set at naught by the Honorable Supreme court in the case of Sharif Khan V/S The State and another, **2021 SCMR 87**. The consideration for the grant of bail and cancellation whereof is altogether different. Primarily, once the bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

7. To deprive a person of liberty is the most serious step to be taken. However, there is no legal compulsion to cancel the bail of the accused, who allegedly has committed a crime punishable with death, imprisonment for life, or imprisonment for ten years. The Honorable Supreme Court in the case of Sami Ullah and another v. Lai Zada and others **2020 SCMR 1115** handed down the same principles which are reproduced as under:-

- i) *If the bail granting order is patently illegal, erroneous, factually incorrect, and has resulted in miscarriage of justice*
- ii) *That the accused has misused the concession of bail in any manner.*
- iii) *That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.*
- iv) *That there is the likelihood of absconion of the accused beyond the jurisdiction of the court.*

- v) *That the accused has attempted to interfere with the smooth course of the investigation.*
- vi) *That accused misused his liberty while indulging in a similar offense.*
- vii) *That some fresh facts and material have been collected during the investigation which tends to establish the guilt of the accused.*

8. The Hon'ble Supreme Court in the recent case of Abdul Majid Afridi v. The State and Abdul Latif Afridi vide order dated 08.11.2021 in Criminal petition No.632/2021 has reiterated the parameters set forth by the Hon'ble Supreme Court in earlier petitions as discussed supra. When I confronted learned counsel for the applicant with the above-said guidelines, he only insisted that since the terms of compromise have been violated, therefore, the cancellation of bail of the respondent is made out. I do not agree with this assertion of the learned counsel for the applicant for the simple reason that order passed by the learned IVth Additional Sessions Judge Malir Karachi is within the parameters set forth by the Hon'ble Supreme Court and the learned Juge has touched the merits of the case to the effect that there is nothing on record showing that the respondent-accused had misused the concession of bail in any manner and the grounds raised in the memo of application, without any tangible material, regarding misuse of concession of bail, cannot form the basis for recalling of the bail granting order.

9. This being the position of the case, prima-facie, the respondent-accused has not violated the parameters set forth by the Honorable Supreme Court, thus no case for the indulgence of this Court is made out at this stage.

10. For what has been discussed above, I do not find any merit in this Criminal Miscellaneous Application, which is accordingly dismissed.

11. These are the reasons for my short order dated 31.12.2021, whereby I have dismissed the instant Criminal Miscellaneous Application.

**JUDGE**