

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Present: Omar Sial, J

Criminal Bail Application No. 461 of 2022
Criminal Misc. Appl. Nos. 98 and 107 of 2022.

| DATE | ORDER WITH SIGNATURE OF JUDGES |
|-------------|---------------------------------------|
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For hearing of case.

14th June, 2022

Mian Taj Muhammad Keerio, Advocate for applicant in Crl.B.A. No.461 of 2022 and for respondents in Crl. Misc. Appln. Nos.98 & 107 of 2022.

Mr. Jehangir Khan Manji, Advocate for applicant in Crl. Misc. Application Nos.98 & 107 of 2022 and for complainant in Crl.B.A. No.461 of 2022.

Mr. Talib Ali Memon, APG.

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1. Background to the cases

Mir Hassan Khusk at 10:00 p.m. on 12.04.2021 went to the Ghora Bari police station in Thatta and reported an incident which had occurred at 10:00 a.m. earlier that day. He recorded that he was a farmer and that he had an enmity with one Haji Sahib Khan Khusk. Earlier that day, he along with his son Ghulam Rasool alias Nooro, were on their way back from a funeral on a motorcycle. On another motorcycle they were accompanied by Muhammad Hanif and Abdul Aziz. The two motorcycles were intercepted by an Alto car, which forced them to stop. 5 persons disembarked from the Alto car. They were identified a (i) Dawood s/o Haji Khan Khusk (ii) Hashim s/o Haji Khan Khusk (iii) Noor Hasan s/o Hussain Khusk (iv) Mohammad Ameen s/o Yaqoob Khusk and (v) Hamzo s/o Soomar Khusk. All the aforesaid persons, except Dawood, were armed with pistols. Upon the instigation of Dawood, all his armed companions opened fire on the complainant's son Ghulam Rasool alias Nooro. Bullets fired by the armed persons hit Ghulam Rasool on his right armpit region (fire attributed to Hashim Khusk), right side of the abdomen region (fire attributed to Noor Hassan), elbow (fire attributed to Muhammad Ameen) and in the region between his right knee and thigh (fire attributed to Hamzo). Ghulam Rasool died on the way to the hospital. F.I.R. No. 14 of 2021 was registered under sections 302, 341, 109 and 114 P.P.C.

2. All the accused applied for post arrest bail before the learned Additional Sessions Judge, Thatta. Learned trial judge admitted Haji Sahib Dino, Dawood Khan, Muhammad Ameen and Noor Hassan to bail vide his orders dated 18.05.2021 and 4.01.2022. The bail application of Hamzo was however declined by the learned judge on 22.02.2022.

3. Before this Court, Hamzo has sought post arrest bail (through Criminal Bail Application No. 461 of 2022) whereas the complainant party has sought cancellation of bail granted to the other accused (Criminal Misc. Appl. Nos. 98 and 107, both of the year 2022).

4. All the captioned applications are so connected that they will all be disposed of through this common order. As the primary ground urged by the learned counsel for applicant Hamzo is that he too deserves the concession of bail on grounds of consistency as the remaining accused, with similar roles have been granted bail, it would be appropriate if the applications seeking cancellation of bail are dealt with first.

5. **Cancellation of bails**

In granting bail to the accused Haji Sahib Dino and Dawood Khan, the learned trial judge was swayed by the fact that Haji Sahib Dino was admittedly not present on the scene whereas the role of Dawood was confirmed to instigation as the F.I.R. in itself shows that he was not even armed when the incident took place. The primary reason for bail being granted to accused Muhammad Amin and Noor Hassan was that the police had found only two empties from the scene of the incident and that the two empties were opined by the ballistics expert to have been fired from the weapons, the recovery of which was attributed to accused Hamzo and Hashim.

6. The learned counsel for the complainant while arguing the cancellation of bail applications has cited **Muhammad Baqir vs The State and another (2022 SCMR 363)**; **Syed Hamad Raza vs The State and others (2022 SCMR 640)**; **Jahanzeb Khan vs Umer Zahid and another (2022 SCMR**

726); Mst. Asia Qaleem and others vs Alamzeb and another (2021 SCMR 302) – all are cases where the Honorable Supreme Court of Pakistan had cancelled bails for reasons highlighted in the respective orders. To the contrary the learned counsel for the accused has placed reliance on **Samiullah and another vs Laiq Zada and another (2020 SCMR 1115); Commissioner Inland Revenue, Legal Division, RTO III, Karachi vs Yasmeen Bano and 3 others (2020 SCMR 1120); Sharif Khan vs The State and another (2021 SCMR 87); Khalid Mehmood and another vs Muhammad Kashif Rasool (2013 SCMR 1415); Abdul Majid Afridi vs The State and another (2022 SCMR 676); Chaudhry Nadeem Sultan vs The State (2022 SCMR 663)** and a few other judgments where bail had been granted by the Honorable Supreme Court of Pakistan or in which applications seeking cancellation of bail were dismissed. Primarily the arguments of the learned counsel for both parties have revolved around the situations in which bail can be cancelled as highlighted in the case of **Samiullah (supra)**. Obviously, while one counsel argued that the conditions to cancel bail were not fulfilled; the other was of the view that they were. The learned APG, also relied upon the citations given by the learned counsel for the complainant in support of his stance that bail should be cancelled. I have heard all the counsels and the learned APG and with their able assistance have also perused the record.

7. The case law regarding grounds on which bail can be cancelled are summed up by the Honorable Supreme Court in the case of **Samiullah (supra)**. It has been held in this case that bail may be cancelled on any one or more of the following grounds:

- i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into 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 likelihood of absconsion of the accused beyond the jurisdiction of court.
- v) That the accused has attempted to interfere with the smooth course of investigation.
- vi) That accused misused his liberty while indulging into similar offence.
- vii) That some fresh facts and material have been collected during the course of investigation which tends to establish guilt of the accused.

8. The learned APG as well as the counsel of the complainant have not agitated grounds at serial numbers (ii) to (vii) above; however, have strongly argued that the bails granted earlier are liable to be cancelled on the basis that the bail granting orders are patently illegal, erroneous, factually incorrect and have resulted into miscarriage of justice. In support of their argument they have submitted that common intention was not taken into account by the learned trial court as well as the fact that the incident took place on a highway and as the inspection of the place of incident was made one day later, the fact that only two empties were collected does not in any manner mean that the remaining accused were not liable for the murder of Ghulam Rasool. The learned counsel for the accused respondents has argued that the incident of such a nature did not take place and that because of the enmity which existed between the parties, the complainant has thrown the net wide. In support of his argument he highlighted that the F.I.R. was delayed by about 12 hours for no apparent reason and thus the delay gave time to the complainant to shape up his false story.

9. In the case of **Tariq Bashir and 5 others vs The State (PLD 1995 SC 34)** it was held by the Honorable Supreme Court of Pakistan that:

“The consideration for the grant of bail and for cancellation of the same are altogether different. Once the bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof. To deprive a person on post arrest bail of the liberty is

a most serious step to be taken. There is no legal compulsion to cancel the bail of the accused who allegedly has committed crime punishable with death, imprisonment for life or imprisonment for ten years”.

10. It has also been observed by the Honorable Supreme Court (in Criminal Petition No. 1228 of 202 viz **Sharif Khan vs The State**; Order dated 26.11.2020), in what appears to be still an unreported case, that even though the bail granting order may not be very convincing, the superior court may refrain from interfering with that order. Reference was made to the case of **Shahid Ashraf vs Muhammad Naqi Butt and 2 others (1976 SCMR 360)**. The apex court also reiterate the principle that once bail has been granted by a court of competent jurisdiction then very strong and exceptional grounds would be required to hamper with the concession made.

11. As also mentioned above, the learned trial judge, while granting bail to the accused Haji Sahib Dino and Dawood Khan, was of the opinion that Haji Sahib Dino was not present on the scene whereas the role of Dawood was confirmed to instigation as the F.I.R. in itself shows that he was not even armed when the incident took place. The primary reason for bail being granted to accused Muhammad Amin and Noor Hassan was that the police had found only two empties from the scene of the incident and that the two empties were opined by the ballistics expert to have been fired from the weapons, the recovery of which was attributed to accused Hamzo and Hashim. Common intention will have to be determined after evidence is led at trial. As far as the learned counsel’s argument is concerned that two empties were found because the place of incident was a thoroughfare, even though that may be the case, yet, in light of the principles enunciated above by the Honorable Supreme Court of Pakistan, I am of the view that this argument will not suffice for the purposes of cancelling or recalling a bail that has been granted. I also find nothing “patently illegal, erroneous or factually incorrect” in the bail granting orders.

12. In view of the above observations, applications seeking cancellation of bail are dismissed.

13. Post arrest bail application filed by accused applicant Hamzo

It is well settled that considerations for cancellation of bail are very different to those for the grant or dismissal of bail.

14. While arguing for the applicant, learned counsel, apart from the ground of consistency, has also raised the following grounds: F.I.R. is delayed by 10 hours; that a murderous enmity is admitted hence the net has been widened; that the incident was unseen; that the medical does not reconcile with the ocular version because it is not clear as to whether the complainant or the police brought the dead body to the hospital; that the son of accused Muhammad Ameen was previously murdered by the complainant party; that what was the trajectory of the fire is not clear as the medical report suggests that the bullet was fired from a height whereas the prosecution witness give a different account; that none of the companions of the deceased received any injury; that from the medical report it appears that the injuries were all caused by one person; that the F.I.R. alleges 4 injuries to the deceased whereas the medical report reveals he was inflicted 5 shots; that an injury on the ankle of the deceased was not revealed by the complainant; that inquest report is undated and is vague; that the sketch of the incident is not accurate as the positions of the witnesses or the accused is not shown; that recovery is doubtful; that injury is on non-vital part. Fire was not repeated even according to the prosecution.

15. To the contrary, learned A.P.G. who is assisted by the learned counsel for the complainant has argued that the name of the applicant is mentioned in the F.I.R.; that the empty recovered matched the weapon recovered from the applicant; that rule of consistency is not available; that the medical supports the ocular version; the remaining grounds raised are of deeper appreciation. Learned counsel for the complainant has argued that delay in lodging the F.I.R. was caused because the father of the deceased was in a state shock.

16. I have heard the counsels and the learned A.P.G.

I tend to agree with the observation of the learned trial court that even if the other accused nominated as having opened fire on the deceased have been granted bail, applicant accused Hamzo is not entitled to the concession on grounds of consistency as the crime weapon has been recovered from him and one of the empties recovered by the police from the place of incident has been opined by the ballistics expert to have been fired from that weapon. Prima facie it appears that has the police falsely implicated the accused in the case and that in effect no recovery had been made from any of the accused, there was nothing stopping the police from deploying the same tactic for the remaining accused said to have fired upon the deceased. There is an element of delay in the lodging the F.I.R.; however, I am not satisfied at this preliminary stage that the delay was caused so that the complainant, who is the father of the deceased, to make up a story. It will be the learned trial court which will have to determine after evidence is led as to the true reasons as to why the delay took place and what was its impact on the prosecution case. I am also not satisfied with the learned counsel's argument that even according to the F.I.R. the shot fired by the applicant accused Hamzo hit the deceased on his thigh and hence it hit him on a non-vital part of his body. Even if this was the case, the mere fact that the applicant accused Hamzo allegedly also took part in shooting at the deceased and four fires were shot, in the circumstances of the case, would suggest that he intended to cause the death of the deceased. It will be the learned trial court which will decide this issue finally; however, I am not inclined to give the applicant accused Hamzo any concession on this ground. The remaining grounds urged by the learned counsel for the applicant accused Hamzo are indeed ones that require a deeper appreciation of evidence. I do not find the grounds raised by the learned counsel to be sufficient to grant the concession of bail to applicant accused Hamzo. His bail application is therefore dismissed.

17. Conclusion

In view of the above observations all applications seeking cancellation of bail as well as grant of bail stand dismissed.

JUDGE