

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Misc. No.420 of 2023

Date	Order with signature of Judge
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For hearing of main case

24.07.2023

Mr. Khalid Hussain, Advocate for applicant.

Mr. Zafar Ahmed Khan, Addl. P.G.

1. Through instant Cr. Misc. Application, the applicant/complainant sought indulgence of this Court to cancel the bail granted to the respondent No. 1 & 2 (“accused”) vide impugned orders dated 20.04.2023 & 08.05.2023 passed by learned VIIIth Additional District Judge, Karachi East in FIR No.187/2023, under Section 377/109/34 PPC, P.S. Gulshan-e-Iqbal, Karachi.
2. The allegation against the accused is that on 20.03.2023, they had committed sodomy with Muhammad Ammar Agha.
3. Learned counsel for the applicant/complainant assisted by learned Addl. P.G. contended that the applicant alleged offences with which accused have been charged are neither bailable nor compoundable, but the learned trial Court granted the bail to the accused who has committed the offence which is not only against the nature but also against the society. They further contended that in an epoch when the offence of like nature are the order of the day, the accused be dealt with iron hands and be punished according to law. While concluding their submissions, they contended that the alleged

offence is not bailable which is a sufficient ground for cancellation of bail granted to the accused vide impugned order.

4. None present for the respondent No.1 & 2/accused. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. While granting bail or otherwise, the Court is required to consider the following facts¹:-

a). Whether there is or is not a reasonable ground for believing that the accused has committed the offence with which he is charged?

b). Whether the case requires further enquiry into the guilt of commission of non-bailable offence within the scope of section 497(2), Cr.P.C.?

c). Whether the accused is minor, woman, sick or infirm person?

d). The nature and gravity of the charge.

e). The severity or degree of the punishment which might follow in the circumstances of the case on conviction.

f). The danger of the accused absconding if he is released on bail.

g). The danger of witnesses being tampered with.

h). The danger of the alleged offence being continued or repeated.

i). The character, the means and standing of the accused.

j). An opportunity to the accused to prepare his defence.

k). The accused has already been in jail for a considerable period and the trial is not likely to conclude in near future at least.

l). Bail should never be withheld as a punishment.”

5. Reverting to the merit of the case at hand, the essence of the impugned order is reproduced hereunder:-

“4. On scanning the material available on record, it appears that there is delay of above one month in

¹ Per Rahmat Hussain Jafferri J. in The State v. Rafiq Ahmad Channa (2010 SCMR 580)

lodging of FIR. The prosecution has not offered plausible explanation for such delay. The complainant is not the eye witness of the alleged incident. The medical evidence does not support the prosecution version as apparent from medico legal report. Hence the allegation against applicant/accused requires worth consideration at trial and bail cannot be withheld in these circumstances.

5. It is gleaned from appraisal of the foregoing that the learned trial Court based its edict on the ground that the FIR was lodged after the delay of one month; the medical evidence does not support the prosecution version; the bail cannot be withheld as matter of punishment. It is clear that the grounds for grant of bail and that of cancellation of bail granted by a competent Court are totally different. Strong and cogent reasons are required for the recall of the same, for instance, if the bail granting order is perverse or in disregard of settled principles regulating the grant of bail or which was based on no material/evidence or the accused after grant of bail has misused the concession to extended to the accused. The Hon'ble Supreme Court also held in State v. Khalid Sharif 2006 SCMR 1265 and Ehsan Akbar v. State 2007 SCMR 482 that considerations for cancellation of bail are different from the considerations for the grant of bail. The bail can be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for grant of bail or it is patently illegal erroneous, factually incorrect and has resulted in miscarriage of justice.

6. The learned counsel appearing for the applicant/complainant is unable to put forth any of the above settled principles governing the cancellation of bail. Similarly no such other circumstance is

pointed out which may help him in support of his case. Resultantly, the instant Cr. Misc. Application is dismissed.

JUDGE

Aadil Arab