

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Application No.S-508 of 2024
Cr. Misc. Application No.S-512 of 2024
Cr. Misc. Application No.S-517 of 2024

Mr. Achar Khan Gabol, Advocate for applicant in all matters.

Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of hearing: **10-02-2025**

Date of decision: **27-02-2025**

ORDER

RIAZAT ALI SAHAR, J- The listed Crl. Misc. Applications are filed by applicant/complainant Jaffar Ali Mirani in a same crime No.169 of 2024, registered at P.S, A-section, Ghotki for offences under sections 452, 114, 382, 436, 427, 147, 148 & 149 PPC seeking cancellation of pre-arrest and post-arrest bail granted to the private respondents by trial Court vide orders dated dated 06.05.2024 and 15.08.2024, respectively, which orders have been assigned by the applicant through these applications.

2. The facts leading to the present case are that on 01-05-2024, the complainant/applicant lodged an FIR regarding an incident that allegedly took place on 26-04-2024. The complainant stated that due to matrimonial affairs, the accused had longstanding animosity against him. On the day of the occurrence, the private respondents/accused, in association with their co-accused, armed themselves with pistols and Kalashnikovs (KKs) and, in furtherance of their common object, trespassed into the complainant's house. Once inside, they allegedly committed rioting and theft, unlawfully taking away dowry articles belonging to the complainant's daughter, including 02 tolas of gold ornaments and cash amounting to Rs. 200,000/-. It is further alleged that the accused had made preparations for causing death, hurt, or wrongful restraint to the complainant party. Upon the instigation of accused Ameer Ali, the remaining co-accused physically assaulted the complainant by kicking and punching him, set household articles on fire, and caused damage to the property.

3. The learned counsel for the applicant/complainant submitted that the private respondents have been nominated in the FIR with a clear motive for the commission of the offence and a specific role attributed to them. It is alleged that they unlawfully trespassed into the complainant's house, committed theft of dowry articles belonging to the complainant's daughter, including two tolas of gold ornaments and cash amounting to Rs. 200,000/-, and physically assaulted the complainant party by inflicting kicks and fist blows. In view of these serious allegations, the learned counsel contended that the private respondents are not entitled to the concession of bail. Lastly, he prayed for the cancellation of both pre-arrest and post-arrest bail granted to the respondents/accused by the trial court.

4. On the contrary, the learned counsel appearing on behalf of the private respondents/accused contended that the impugned orders do not suffer from any legal infirmity, as there is an inordinate delay of four days in the lodgment of the FIR, with no plausible explanation provided for such delay. He further argued that all the sections applied in the FIR are bailable in nature, except sections 430, 452, and 382 of the PPC, which also do not fall within the prohibitory clause of section 497 Cr.P.C. In light of these circumstances, he submitted that no case is made out for the cancellation of bail.

5. The learned Deputy Prosecutor General for the State has supported the impugned orders of the trial court, contending that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Moreover, he argued that the applicant has failed to set forth any circumstances warranting the cancellation of bail.

6. I have considered the arguments advanced at bar and perused the impugned order. Section 497(5) Cr.P.C cannot sparingly be used unless there are strong circumstances warranting cancellation of the bail, whereby the scope of cancellation of bail under **section 497(5) Cr.P.C.** has been elucidated in ***Sami Ullah and another v. Laiq Zada and another* [2020 SCMR 1115]** as follows:

“5....Bare perusal of provision of section 497(5), Cr.P.C. it do not demonstrate any specific ground to press into the pretense of said provision of law, however, superior courts of the country from time to time have enunciated certain principles governing cancellation of bail and those are in field with unanimous concurrence since considerable time. Those are enumerated as under:-

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 absconson 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 has been collected during the course of investigation which tends to establish guilt of the accused.”

Not a single ground has been agitated by the applicant for the cancellation of bail. There is no allegation of misuse of concession of bail by the respondents/accused. Moreover, all the sections applied in FIR are bailable except some sections, which also do not fall within the prohibitory clause of section 497 Cr.P.C.

7. Having regard to the above facts and circumstances, no case has been made out by the applicant for interference in the impugned orders. Consequently, the instant criminal miscellaneous applications merit no consideration and are hereby dismissed. *Office to place a signed copy of this order in captioned connected matters.*

J U D G E

AHMAD