

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Misc. Application No. S-108 of 2017

DATE OF HEARING

ORDER WITH SIGNATURE OF HONOURABLE JUDGE

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Mr. Shahbaz Ali M. Brohi, advocate for applicant.

Mr. Ali Azhar Tunio, advocate along with respondents No. 1 to 3.

Mr. Khadim Hussain Khooharo, Addl. P.G., for the State.

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Date of Hearing & Order: 27-08-2018

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ORDER

ZAFAR AHMED RAJPUT, J.- Through the instant Criminal Misc. Application under sub-section (5) of section 497, Cr. P.C., applicant/complainant Mst. Mehnaz alias Shehnaz w/o Shahdadkot Maher seeks cancellation of pre-arrest bail granted to respondents/accused No.1 to 3, namely, (1) Abdul Jabbar s/o Ahmed Solangi (2) Ali Ahmed s/o Ghulam Muhammad Soomro and (3) Nawab Ali s/o. Fajar Khan Pathan by the Court of III-Additional Sessions Judge, Shikarpur, vide order dated 01.4.2017 passed in Crl. Bail Application No.188 of 2017, arisen out of Crime No.09/2016 registered at Police Station Abad Milani, under Sections 302, 324, 395, 147, 148, 149, PPC. Earlier to this application, the applicant/ complainant filed criminal miscellaneous application No.290 of 2017 for the cancellation of bail of respondents No.1 to 3, which was dismissed by the learned III-Additional Sessions Judge, Shikarpur vide order, dated 30.5.2017.

2. Facts, in brief, leading to the present application are that, on 31.12.2016, applicant recorded the afore-mentioned F.I.R, stating therein that deceased Abdul Ghani was her son and cousin of Mohammad Nawaz, the latter had filed a petition against S.H.O. Ghulam Kamber and others before the Sessions Judge, Shikarpur, on which the said S.H.O. was annoyed. It is further stated that on 13.01.2015, she along with her deceased son rided on one motorcycle, while

Leemon alias Paryal s/o Hazari, Irfan Ahmed s/o Shahzado and Abdul Jabbar s/o Pinjal on another motorcycle were proceeding from Village Mohammad Bagh to their village, when they reached near Lahi Band at about 3.00 p.m., accused S.H.O. Ghulam Kamber, Munshi Abdul Jabbar Solangi, PC Ali Ahmed, PC Nawab Ali, PC Asghar Ali and PC Nadeem Ahmed, duly armed with weapons, fired on his deceased son, who fell down from the motorcycle, while accused Munshi Abdul Jabbar fired upon Leemon alias Paryal, which hit on his right leg. Later, they took the injured to the hospital, but Abdul Ghani succumbed to injuries on the way.

3. Learned Counsel for the applicant has mainly contended that that there are reasonable grounds to believe that the respondents have committed the offence, as alleged in the F.I.R. and the P.Ws have fully supported the case against the respondents, but the learned trial Court without considering the evidence collected by the I.O during the course of investigation has granted pre-arrest bail to respondents, who were nominated in the FIR with the specific role, hence their bail is liable to be cancelled.

4. On the other hand, learned Counsel for the respondents has maintained that Abdul Ghani, the son of complainant, died in a police encounter and such F.I.R. bearing No.01/2015 has already been recorded at P.S Abad Milani, Shikarpur. He has further contended that even the main allegation of causing murder of son of the complainant has been levelled against the then S.H.O., namely, Ghulam Kamber, who has already expired on 20.2.2016, while the allegation against respondent Abdul Jabbar is of causing fire on Leemon alias Paryal, while Leemon alias Paryal has been convicted by the trial Court in aforementioned crime. He added that earlier police submitted a summary for disposal of the case under "B" class, but the concerned Judicial Magistrate ignoring the recommendation of the investigating officer took the cognizance of



the offence and against that the respondents have already maintained C. P. No.227/2016, which is still pending adjudication. He has maintained that after obtaining bail, respondents No. 1 to 3 did not misuse the same, hence no ground is available for the cancellation of their bail.

5. The learned Addl. Prosecutor General, while opposing this application, has contended that at the one hand the applicant is pursuing this application for cancellation of the bail, while on the other hand she is avoiding to appear before the trial Court for recording of her evidence, as such, the trial could not be concluded. He has also maintained that the present F.I.R. has been lodged by the complainant after recording of the F.I.R. by the S.H.O. Ghulam Kamber bearing Crime No.01/2015 in respect of attack made by the son of the complainant and his companions upon the police party during performance of their official duty. He added that as many as 18 cases are registered against the family members of the complainant. He has also contended that there is no illegality in the impugned order, which is liable to be maintained by this Court


6. Heard the learned Counsel for the parties and perused the material available on record.

7. Principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for cancelling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are *pari materia* with the principles which apply to setting aside the order of acquittal. Once bail is granted by a Court of

competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

8. In the instant case, it appears that the respondents were admitted to ad-interim pre-arrest bail by the learned Sessions Judge, Shikarpur, vide order dated 07.3.2017 and thereafter, learned III-Additional Sessions Judge, Shikarpur confirmed the interim pre-arrest bail granted to the respondents, vide order dated 01.4.2017, and since then the respondents are on bail. However, the complainant has not asserted in her application if they have misused the concession of bail. The only ground raised in this application for the cancellation of bail is that there was sufficient evidence against the respondents, but the learned trial Court admitted the respondents to pre-arrest bail. In this regard, it may be observed that for the same incident, which took place on 13.1.2015, there are two versions; one recorded by the police on 13.1.2015, at 1750 hours in FIR bearing No.01/2015; and, the other logged by the present applicant on 31.12.2016 i.e. after 23 months of the alleged incident. It is also an admitted position that in Crime No.01/2015 accused Leemon, who is PW in present F.I.R., has been convicted by the trial Court. Further, the applicant has levelled specific allegation of causing death of her son against S.H.O/S.I.P Ghulam Kamber, who has now expired.

9. For the foregoing facts and reasons, no occasion has been found by this Court for interfering with the lawful exercising of the jurisdiction in the matter of bail granted by the learned trial Court. Under the circumstances, this Criminal Misc. Application for cancellation of bail is dismissed being devoid of merit.


27/08/2018
JUDGE