**SUPREME COURT OF AZAD JAMMU AND KASHMIR**
(Appellate Jurisdiction)

**PRESENT**
Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

Criminal Appeal No. 17 of 2015
(Filed on 10.09.2015)

Muhammad Azeem s/o Sahibdad, Caste Gujar, r/o Doongi Rayaan, Tehsil and District Kotli.

…. APPELLANT

VERSUS

1. Muhammad Rafique s/o Allah Ditta,
2. Muhammad Nazir s/o Muhammad Lal, Caste Gujjar, r/o Donngi Rayaan, Tehsil and District Kotli.

…. RESPONDENTS

3. Advocate-General, AJ&K.

.... PROFORMA RESPONDENT

(On appeal from the order of the Shariat Court dated 06.08.2015 in Criminal Revision No. 188/2015)

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FOR THE APPELLANT: Ch. Muhammad Ilyas, Advocate.

FOR THE RESPONDENTS: Raja Imtiaz Ahmed, Advocate.

FOR THE STATE: Raja Saadat Ali Kiani, Addl. Advocate-General.

Date of hearing: 23.01.2017

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, J.—** The captioned appeal has been filed against the order of the learned Shariat Court dated 06.08.2015, whereby the accused-respondents have been extended the concession of bail.

2. The facts of the case are that on the report of the complainant, Muhammad Azeem, a case for commission of the offences under sections 34, 109, 302, 324, 334, 337 and 504, APC read with section 13, Act 20 of 1965 was registered at Police Station Khuiratta against the accused-respondents and the

other co-accused on 24.10.2014. The accused-respondents and the other co-accused except Mst. Razia Bibi were apprehended. After necessary investigation, a challan was presented in the Additional District Court of Criminal Jurisdiction, Kotli on 29.12.2014. Meanwhile, Muhammad Rafique, Muhammad Nazir (accused-respondents) herein and Muhammad Zubair, accused filed an application for grant of bail on 02.01.2015. The application was disallowed by the trial Court vide order dated 30.04.2015. Against the order dated 30.04.2015 a revision petition was preferred before the Shariat Court. The learned Shariat Court vide impugned order dated 06.08.2015 extended concession of bail in favour of the accused-respondents herein. However the revision petition to the extent of Muhammad Zubair, accused was dismissed. Now, the complainant-appellant has filed the instant appeal for recalling the concession of bail granted by the Shariat Court.

3. Ch Muhammad Ilyas Advocate, the learned counsel for the complainant-appellant after brief

statement of facts submitted that the accused-respondents have been given undue benefit of bail. According to the prosecution case the accused are charged with the commission of the offence of murder. There is sufficient evidence to connect them with the commission of non-available offences. The learned Shariat Court has failed to properly appreciate the material brought on record to connect the accused with the commission of alleged offences. The accused-respondent No.1 has misused the concession of bail as he has got registered a false case against the complainant-party and the prosecution witnesses due to the animosity. In fact Muhammad Rafique, respondent No.1 is principal accused who due to litigation has planned for murder of the victim, thus, he does not deserve for concession of bail. He further submitted that if at all the impugned bail granting order is being upheld by this Court, then for the ends of justice a direction to the trial Court for expeditious disposal of the case may be issued.

4. Mr. Saadat Ali Kiyani, the learned Additional Advocate-General forcefully supported the version of the complainant-appellant and submitted that while accepting the appeal the bail granting order may be recalled and the accused-respondents may be sent behind the bars.

5. Conversely, Raja Imtiaz Ahmed, Advocate, the learned counsel for the accused-respondents forcefully defended the impugned judgment and submitted that according to the prosecution story neither the accused were armed with firearm weapons at the time of occurrence nor any injury is attributed to them. According to the prosecution's own version, there is an established animosity between the parties and the accused-respondents' false implication is merely based upon the enmity as they have not committed any offence. The learned Shariat Court has passed the speaking order after proper appreciation of the material brought on record. The prosecution has failed to bring on record or collect any evidence to satisfy the Court that the accused have committed any non-bailable offence.

The complainant-appellant has failed to make out any valid ground for cancellation of bail. Once bail is granted by a Court of competent jurisdiction, the same can only be recalled if the order is found arbitrary, perverse, capricious or in violation of the principle of law. He further argued that according to the enunciated principle of law the criteria for cancellation and grant of bail are quite different. The appellant has failed to point out any of such reasons calling for interference in the impugned judgment. So far as the appellant's request for expeditious disposal of the case is concerned, the accused have no objection, therefore, this appeal having no force is liable to be dismissed.

6. We have considered the arguments of the learned counsel for the parties and also examined the record made available. According to the prosecution's own story the injury which caused death of the victim is not attributed to any one of the accused-respondents. None of them is alleged or attributed to carry a firearm weapon or cause fatal injury to the victim. The learned Shariat Court has tentatively

assessed the material brought on record and conclusion drawn in the impugned judgment neither is against the record nor arbitrary or perverse. The counsel for the accused-respondents has rightly argued that the appellant has failed to make out any valid ground for cancellation of bail. The discretion exercised by the learned Shariat Court does not suffer from any legal infirmity calling for interference by this Court. In this state of affairs, counsel for the appellant very wisely opted for a direction to the trial Court for expeditious disposal of the case.

7. A perusal of the record reveals that final report under section 173 Cr.P.C, was filed in the trial Court on 16.12.14 and since then the parties are facing trial. The expeditious disposal of the case is legal right of every party and is also in the interest of justice. As almost two years time has already been consumed in trial of the case, thus, in this state of affairs, the trial Court is directed to expedite the proceedings of the case and after completion of the required statutory proceedings finally dispose of the

case within a period of six months from the communication of this order.

The appeal stands disposed of in the manner indicated hereinabove.

Mirpur,
__.01.2017 J U D G E CHIEF JUSTICE