

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

**PRESENT**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.

Cri. Appeal No. 05 of 2016  
(Filed on 14.04.2016)

Muhammad Shafi son of Noor Zaman, caste  
Mughal resident of village Kapa-Butt, Tehsil and  
District Muzaffarabad.

.... APPELLANT

**VERSUS**

1. Syed Waseem Shah son of Syed Miskeen  
Shah, resident of Charwaya, Tehsil and  
District Muzaffarabad.

..... RESPONDENT

2. The State of Azad Jammu & Kashmir through  
Advocate General, Muzaffarabad having his  
office at Bank Road, Muzaffarabad.

.... PROFORMA RESPONDENT

(On appeal from the order of the Shariat Court  
dated 29.02.2016 in Revision Petition No.390/2015)

FOR THE APPELLANT: Mr. Tahir Aziz  
Khan, Advocate.

FOR THE RESPONDENT: Kh. Ataullah Chak,  
Advocate.

FOR THE STATE: Raja Ikhlaq Hussain  
Kiani, Addl.  
Advocate-General.

Date of hearing: 08.03.2017

**JUDGMENT:**

*Ch. Muhammad Ibrahim Zia, C.J.* – This appeal has been preferred against the order of the Shariat Court dated 29.02.2016, through which the respondent, herein, has been released on bail.

2. A case in the offences under sections 147, 148, 149 and 302 APC was registered at Police Station, Civil Secretariat, Muzaffarabad on 07.06.2014. The respondent, herein, was apprehended by the Police and after completion of investigation the Challan was presented before the Additional District Court of criminal jurisdiction,

Muzaffarabad. After being arrested, the respondent moved an application for bail before the trial Court. The learned trial Court rejected the application vide order dated 27.09.2014. He filed a revision petition before the Shariat Court on 01.10.2014. The learned Shariat Court vide judgment dated 28.11.2014 remanded the case for decision afresh. On remand of the case, the learned trial Court vide order dated 12.12.2014 rejected the application. The respondent approached the Shariat Court for bail but failed. After some development in the case, he filed second application for bail before the trial Court which was rejected on 31.10.2015, however, on filing of revision petition by the respondent, the learned Shariat Court released him on bail vide impugned judgment, hence this appeal.

3. Mr. Tahir Aziz Khan, Advocate, counsel for the complainant-appellant argued

the case at length while stating the details of the prosecution story as incorporated in the report under section 173, Cr.P.C. submitted that the accused-respondent's fully involvement in the commission of offence is established. The trial Court on the basis of proper appreciation declined to grant the concession of bail to the accused but the learned Shariat Court through the impugned judgment has enlarged the accused on bail in violation of law. The main reason advanced in the impugned judgment that one of the eye witnesses has been declared hostile and the two other have been abandoned by the prosecution which makes no difference because despite excluding the abovementioned witnesses, 4 more eye witnesses of the occurrence are available to establish the commission of offence by the accused. Thus, the reason advanced in the impugned judgment is not consistent with the record and principle of

law. Same like the other ground advanced that the accused being diabetic, is entitled for bail, does not find support from the record, therefore, while recalling the impugned judgment the concession of bail extended to the accused may be withdrawn for the ends of justice.

4. Raja Akhlaq Hussain Kiani, Additional Advocate-General, supported the assertions made by the counsel for the complainant-appellant.

5. Kh. Attaullah Chak, Advocate, counsel for the accused-respondent strenuously opposed the view expressed by the counsel for the complainant on the ground that according to the prosecution own story except the mere presence of the accused no other role/act is attributed to him regarding the commission of the offence. He submitted that it is not the question that how many eye witnesses are available in the case

rather the question of declaring hostile and abandoning the eye witnesses makes the case of the prosecution doubtful. According to the celebrated principle of law that even a slightest doubt in the prosecution case can be a valid ground for grant of concession of bail. He further argued that according to the settled principle of law the grounds for cancellation of bail as compared to grant of bail are quite different. Mere possibility of drawing another conclusion or inference cannot to be a valid ground rather there should be a clear violation of law or perversity of the judgment/order. The appellant failed to point out any such valid ground for recalling the concession of bail. Even otherwise, the evidence of the most of the prosecution witnesses has been recorded and the case may be finally concluded within a short span of time, therefore, this appeal merits dismissal.

5. In the light of the advanced arguments of the parties, we have gone through the record made available. The counsel for the accused has rightly argued that once the bail is granted by a Court of competent jurisdiction for recalling the same mere possibility of drawing another opinion cannot be a reason rather there should be some clear violation of law or perversity in the impugned order. At this stage, deep appreciation of evidence is avoided so that the case of the either party may not be adversely affected at the time of final adjudication by the trial Court. No doubt, in ordinary course of law becoming of hostile or abandoning the eye witnesses of the incident may to some extent creates dent in the prosecution case, hence in the light of the given facts and circumstances of the case it cannot be said that the impugned order passed by the Shariat Court is perverse, therefore, no ground for interference by this

Court is made out by the appellant, however, as stated at bar and also appears from the available record that the statements of most of the prosecution witnesses have already been recorded and only few remains to be examined, thus, in this state of affairs, in our considered view the purpose of justice can be best served by expeditious disposal of the case by the trial Court on merit. Therefore, the trial Court is directed to take necessary steps and after completion of the required proceedings finally decide the case on merit within a period of 4 months from the communication of this order.

This appeal stands disposed of in the above stated terms.

**CHIEF JUSTICE**  
Muzaffarabad.  
\_\_\_03.2017.

**JUDGE**

Date of announcement: 08-03-2017