

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Shariat Appellate Jurisdiction]

PRESENT:

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

Cri. Review Petition No.6 of 2018

(Filed on 12.11.2018)

Abdul Ghafoor s/o Muhammad Latif, Caste Jatt, r/o
Puniam Chaksawari, Tehsil and District Mirpur.

..... PETITIONER

v e r s u s

1. Mudassar Liaqat s/o Liaqat Ali, caste Mughal, r/o
Kalyal Bainsi, Tehsil and District Mirpur.

.... RESPONDENT

2. The State through Advocate-General, Azad Jammu
and Kashmir.

.... PROFORMA RESPONDENT

[In the matter of review of the judgment of this Court
dated 23.10.2018 in Cri. Appeal No.22 of 2018]

FOR THE PETITIONER:

Ch. Muhammad Younas
Arvi, advocate.

FOR THE RESPONDENT:

Ch. Muhammad Ashraf
Ayaz, advocate.

Date of hearing: 30.1.2019

JUDGMENT:

Raja Saeed Akram Khan, J.—The review of the judgment passed by this Court on 23.10.2018, whereby an appeal filed by the accused-respondent, herein, has been accepted and he has been released on bail, has been sought by the petitioner, herein, through the instant petition.

2. The facts of the case in short are that the accused-respondent was booked in a case, in the offences falling under sections 15(2) of Arms and Ammunition Act, 1965, 34 and 302/109 APC, registered at Police Station Chaksawari. After being arrested, he moved an application for grant of post-arrest bail before the Additional District Court of Criminal Jurisdiction Mirpur, which, after hearing, was rejected through order dated 17.04.2018. Against the said order, the accused-respondent filed a revision petition before the Shariat Appellate Bench of the High Court, which was also dismissed through the judgment dated 16.05.2018. The judgment dated 16.5.2018 was challenged by the accused-respondent through an appeal before this Court, which has been accepted and he has been extended the concession of bail.

3. Mr. Muhammad Younas Arvi, advocate, counsel for the petitioner, raised the sole ground that while handing down the judgment under review, this Court has not taken into consideration that in the bail matters, only tentative assessment of the record is to be made and deeper appreciation of evidence is not warranted, whereas this Court has gone into depth of the case and the findings recorded by this Court on merits of the case will affect the prosecution case adversely.

4. On the other hand, Ch. Muhammad Ashraf Ayaz, advocate, counsel for the respondent, who put his appearance at this preliminary stage, supported the judgment under review while submitting that the same is perfectly legal, which is not open for interference by this Court. He submitted that once bail has been granted, very strong or overwhelming circumstances are required for recalling the same. The learned counsel added that the scope of criminal review is much narrower than in civil matters. He referred to and relied upon the case reported as *Muhammad Javed vs. Muhammad Khalid & 3 others* [2018 SCR 642].

5. We have heard the learned counsel for the parties at some length and gone through the judgment under review, along with the other record made available.

6. The counsel for the petitioner has raised the single ground in support of the review petition that deeper appreciation of the evidence has been made by this Court, while handing down the judgment under review, therefore, the case of the prosecution may be affected adversely. It may be stated that the Court, while handing down the judgment under review, was fully conscious of the fact that a bird-eye view can only be made while dealing with the bail matters. The Court in para 7 of the judgment under review, has observed as under:-

"7. It is cardinal principle of law that while disposing of a bail application, the Court has to form the opinion while making tentative assessment of the material brought on record, i.e., allegation levelled in the FIR, statements recorded under section 161, Cr.P.C., medico legal report, if any etc., and the deeper appreciation of evidence at bail stage is not warranted under law. The authenticity of the evidence shall be determined at the time of conclusion of the trial, however, while making the tentative assessment of the contents of the FIR and the material brought on record in shape of recovery of a mobile

phone and the statements recorded under section 161, Cr.P.C, it appears that the accused was not nominated in the FIR. He was arrested during the course of investigation on the recovery of mobile phone having installed the SIM card, which according to the prosecution was used at the time of occurrence and thereafter to instigate and facilitate the main accused. The prosecution has heavily relied upon the computerized calls data through which it is established that at the time of occurrence and thereafter, the accused continuously remained in contact with the principal accused. In our view, merely a telephonic contact with an offender is not a conclusive proof to hold that the same was made for the purpose or in furtherance of any common object or common intention; even abetment. During the investigation it revealed that the SIM card installed in the mobile phone recovered from the accused-appellant is not registered in the name of the accused. Furthermore, from the cursory examination of the statements recoded under section 161, Cr.P.C., it appears that none of the witnesses has attributed any role towards the accused-appellant, which prima facie makes the case one of further inquiry to the extent of the accused-appellant as from the whole prosecution story except the recovery of mobile phone no other material is available on record from which it can be ascertained that the accused-appellant is involved in the commission of the offence, which is punishable with death or life imprisonment. The accused appellant is behind the bars for more than six months and is not required for further investigation. Moreover, the bail cannot be withheld as a punishment if otherwise the accused is entitled for bail. Even otherwise, the bail is not an

acquittal, it is only a change of custody. Thus, in our view the accused-appellant is entitled to the concession of bail.”

It may also be observed here that any finding recorded while deciding the bail matters is always tentative in nature and the trial Court is not supposed to take any influence from such finding and is under obligation to decide the case on its own merits.

Even otherwise, the scope of criminal review is very limited, as compared to the civil matters. Review cannot be allowed to reopen the case. We have failed to find out any substance in support of the arguments established by the counsel for the petitioner, resultantly the review petition is dismissed being devoid of any force. At this juncture, we reiterate that the trial Court will not take influence from the findings recorded by this Court in the judgment under review.

JUDGE

CHIEF JUSTICE

Mirpur