

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Shariat Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Criminal Revision No.11 of 2018
(Filed on 04.09.2018)

Ehtisham Hussain S/o Ghulam Hussain, Caste Jaat, R/o
Danna Tehsil & District Kotli Azad Kashmir.

.....PETITIONER

VERSUS

1. Atif Hussain S/o Altaf Hussain, Caste Jaat, R/o
Danna Tehsil & District Kotli.
2. State through Police Station City Kotli, through
Advocate-General, having office at Supreme Court
Building Muzaffarabad Azad Kashmir.

.....RESPONDENTS

[On revision from the order of the Shariat Appellate Bench
of the High Court dated 06.07.2018 in Cr. Revision Petition
No.316 of 2017]

FOR THE PETITIONER:

Mr. Saqib Javed,
Advocate.

FOR THE STATE:

Sardar Karam
Dad Khan,
Advocate-General

FOR ACCUSED-RESPONDENT:

Ch. Amjid Ali,
Advocate.

Date of hearing: 06.02.2019.

JUDGMENT:

Raja Saeed Akram Khan, J.- The supra titled criminal revision petition has been filed against the order of the learned Shariat Appellate Bench of the High Court (*High Court*) dated 06.07.2018, whereby the revision petition filed by the complainant-petitioner, herein, has been dismissed.

2. Necessary facts for disposal of the instant revision petition are that the petitioner, herein, filed a written report at Police Station City Kotli, against Atif, respondent No.1, herein, along with Asim and Muneeb, stating therein, that on 03.03.2017, the complainant was coming back to his home from Doongi, on his Motorcycle. The accused-respondent No.1, herein, along with the other co-accused, who were boarded on a Mehran Car No.714, chased him and when he reached Danna Karoot at 05:30 pm, the accused hit his motorcycle from back by his car due to which he fell down from the Motorcycle. Thereafter, all the said accused stepped out of the car

and started to hit him with sticks on the legs and other parts of his body, due to which he got injured. The accused also raised *lalkara* that they would not spare the complaint alive on that day. On hue and cry, Abdul Khaliq s/o Sakhi Muhammad and Naveed s/o Muhammad Ishaq caste Jaat, R/o Danna and many others came at the spot. On seeing the witnesses and others the accused/respondent along with other co-accused fled away from the place of occurrence. The motive behind the occurrence as stated was previous enmity. On the said report FIR No.61/17 in the offences under sections 34, 324/337, APC was registered against the accused and other co-accused at Police Station City Kotli. After registration of the case, the accused/respondent along with the co-accused approached the Additional District Criminal Court Kolti for availing the concession of pre-arrest bail on 04.03.2017. Initially, the trial Court granted the interim bail in favour of respondent No.1 and after hearing the learned counsel for the parties, the pre-arrest bail

application to the extent of respondent No.1, herein, was accepted while confirming his pre-arrest bail, whereas, rejected the application to the extent of other accused. Against the said order of the trial Court the complainant-petitioner, herein approached the High Court by filing a revision petition, which has been dismissed through the impugned order dated 06.07.2018, hence this revision petition.

3. Mr. Saqib Javed, Advocate, the learned counsel for the complainant-petitioner submitted that both the Courts below have not taken into account that the principles of bail before arrest and after arrest are quite different. He added that the learned Additional District Criminal Court fell in error of law while not taking into account that in absence of the element of illegal harassment and ulterior motive, the bail before arrest cannot be granted. He added that respondent No.1 was duly nominated in the FIR, wherein a specific role was attributed to him, therefore, no question arises to

bring the case of the accused within the purview of further inquiry. All these important aspects of the case remained escaped the notice of the learned High Court, therefore, while accepting the revision petition, the pre-arrest bail granted to the accused-respondent may be recalled.

4. On the other hand, Ch. Amjid Ali, Advocate, the learned counsel for the accused-respondent submitted that the trial Court rightly extended the concession of pre-arrest bail in favour of the accused-respondent after evaluating the material available on record, which has been endorsed by the learned High Court, hence, the interference by this Court is not warranted under law. He added that it is settled principle of law that once the bail is granted, the same cannot be recalled unless some extraordinary circumstances are available. He added that the medico-legal report clearly speaks that the case of the accused-respondent falls within the purview of section 337-

F(1), which is bailable offence. The learned trial Court has rightly observed that to the extent of section 324, APC, the case comes within the purview of further inquiry. He requested for dismissal of the revision petition.

5. Sardar Karam Dad Khan, the learned Advocate-General while supporting the arguments of the complainant-petitioner requested for cancellation of the bail granted to the accused.

6. We have heard the learned counsel for the parties as well as the learned Advocate-General and gone through the impugned order along with the other material made available. The allegation levelled against the accused-respondent is that he along with the other accused attacked the complainant-petitioner. He inflicted blows with stick (*Danda*) on the legs and other parts of the body of the complainant due to which he got injured. There is no denial that the injuries

attributed to the accused-respondent comes within the purview of section 337-F(1), APC which is bailable offence. The applicability of section 324 APC, will be determined at the conclusion of the trial. Even the Court has ample power to add or delete any section on the strength of the material available on record during the trial. Both the Courts below have rightly taken into consideration the material produced by the prosecution. The element of mala-fide and illegal harassment cannot be ruled out as the enmity between the parties also comes on the record. In such state of affairs, the trial Court has committed no illegality while bringing the case of the accused-respondent within the purview of further inquiry. The learned High Court has rightly endorsed the findings recorded by the learned trial Court. This Court has held in many cases that the grounds for cancellation of bail are quite different as compared to grant of bail. Once a bail is granted by a Court of competent jurisdiction, it can only be

recalled by this Court if it appears to be perverse, arbitrary and without any reason or in violation of law. No eventuality is available in the case in hand. The challan has already been presented before the Court of competent jurisdiction, therefore, at this stage the cancellation of the bail will serve no useful purpose, therefore, we do not intend to interfere in the findings recorded by the Courts below.

Resultantly, this revision petition being devoid of any force is hereby dismissed.

JUDGE

JUDGE

Muzaffarabad.
08.02.2019.