

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

PRESENT:

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

Criminal Revision No.13 of 2018
Criminal Misc. No.35 of 2018
(Filed on 08.11.2018)

Farak Ali Abbasi s/o Abdul Saboor Abbasi r/o
Khun Bandi, Tehsil & District Muzaffarabad.

.....PETITIONER

VERSUS

1. Taimoor Ahmed s/o Naseer Ahmed Awan
r/o Khun Bandi, Tehsil & District
Muzaffarabad.
2. The State through Advocate-General,
Muzaffarabad.
3. SHO Police Station, Garhi Dupatta.

.....RESPONDENTS

(On appeal from the judgment of the Shariat
Appellate Bench of the High Court dated
29.10.2018 in revision petition
No.166 of 2017)

FOR THE PETITIONER: Kh. M. Maqbool
War, Advocate.

FOR RESPONDENT NO.1: Raja Ishaq Ahmed,
Advocate.

FOR THE STATE: Sardar Karam Dad
Khan, Advocate-
General

Date of hearing: 13.02.2019

JUDGMENT:

Raja Saeed Akram Khan, J.– The captioned revision petition has been filed against the judgment passed by the Shariat Appellate Bench of the High Court (High Court) on 29.10.2018, whereby while accepting the revision petition filed by the complainant-respondent No.1, herein, the concession of bail granted to the accused-petitioner has been recalled.

2. The precise facts of the case are that the complainant-respondent, Taimoor Ahmed, filed a written report at Police Station Ghari Dupatta, Muzaffarabad alleging the

commission of cognizable offence against the accused-petitioner. It was stated in the report that the complainant is permanent resident of village Khun Bandi and student of Matric. On 13.05.2017, in absence of the complainant, the accused, Farak Ali Abbasi (petitioner, herein) came at his house, took away along with him the pigeons and also chipped the pigeons' eggs. The complainant was informed by his relative regarding the stated incident. When the complainant queried the accused-petitioner, he started beating him with kicks and fists which resulted into damaging the urinary bladder of the complainant. On medical checkup, it was disclosed by the Medical Officer that one of the veins of urinary bladder is damaged. The complainant also undergone the operation of appendicitis, therefore, the legal action against the accused be taken.

3. On this report, a case in the offence under section 334, APC, was registered against the petitioner, herein. The accused-petitioner moved an application for pre-arrest bail before District Court of Criminal Jurisdiction, Muzaffarabad, which was entrusted to the Additional District Court of Criminal Jurisdiction, Muzaffarabad for disposal. Initially the ad-interim bail was granted to the accused and thereafter the same was confirmed vide order dated 08.09.2017. Feeling aggrieved, the complainant-respondent, filed a revision petition before the High Court. The learned High Court after necessary proceedings vide impugned judgment dated 29.10.2018, while accepting the revision petition recalled the concession of bail granted to the accused-petitioner by the Additional District Court of Criminal Jurisdiction, Muzaffarabad, hence, this revision petition.

4. Kh. Muhammad Maqbool War, Advocate, the learned counsel for the accused-petitioner argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that a false and concocted case has been registered against the petitioner after a delay of 83 days and no plausible explanation has been furnished for such a long delay. He added that from the medical record it is evident that the injury was caused to the complainant on 12.05.2017, due to falling from the tree and on the same day, he was got admitted in the hospital, whereas, in the FIR, a different story has been narrated that an occurrence took place on 13.05.2017, in the daytime, in the result of which the injury was caused to the complainant. He further added that according to the medical report the operation of the appendicitis of the

complainant was made which has no nexus with the alleged occurrence. He submitted that the case against the accused is full of doubt but the learned High Court has failed to appreciate the record and exercise the discretion in an arbitrary manner. He further contended that the learned High Court also failed to adhere to the settled principle of law that once bail has been granted by the Court of competent jurisdiction there must be strong reasons for recalling the same. He added that the learned Additional District Court of Criminal Jurisdiction rightly extended the concession of bail to the accused while observing that the case against the accused is one of further inquiry, but the learned High Court without assigning any reasoned recalled the concession of bail. He contended that the father of the complainant is involved in the business of narcotics and a number of cases

are registered against him. The accused party always prohibited him from carrying on such an illegal business due to which he has got registered a false case against the petitioner. He also contended that the petitioner after confirmation of pre-arrest bail was proceeded to the territory of Pakistan for employment and when he came to know about the cancellation of bail, he immediately approached the Court and surrendered before law. He lastly submitted that *challan* has been presented in the trial Court and the trial is in progress, therefore, at this stage the accused-petitioner is not required for further investigation. Thus, in such state of affairs, bail recalling order passed by the High Court is bad in law which is liable to be vacated.

4. On the other hand, Raja Ishtiaq Ahmed, Advocate, while appearing on behalf of the complainant strongly controverted the

arguments advanced by the learned counsel for the accused-petitioner. He submitted that the impugned judgment is in accordance with law and interference by this Court is not warranted under law. He contended that the occurrence is admitted and the variation in the dates have been made due to the influence used by the accused party as one of the close relatives of the accused is serving in the police department. To meet the delay caused in lodging the FIR, the learned counsel contended that after the occurrence the complainant party moved pillar to post for registration of the case and after becoming unsuccessful they approached the Justice of Peace by filing application under section 22-A, Cr.P.C., therefore, in such scenario, the delay is not intentional. He maintained that the accused committed a heinous offence; in the result of the injury inflicted by the accused the testicle

of the complainant was removed by the doctors. The case of the petitioner falls within the prohibitory clause; moreover, after getting the concession of bail the accused remained fugitive from law and even not appeared before the High Court when the bail was recalled, thus, the learned High Court after taking into consideration all the aspects of the case has rightly recalled the bail granting order and has not committed any illegality.

5. Sardar Karam Dad Khan, Advocate-General, also adopted the arguments advanced by the learned counsel for the complainant and prayed for acceptance of the revision petition.

6. We have heard the arguments and gone through the record made available along with the impugned judgment. In the case in hand, admittedly, FIR was registered after a

lapse of 83 days and the explanation offered by the complainant in this regard is that the complainant immediately approached the police for registration of the case but the same was not registered, whereupon, he approached the Justice of Peace by filing application under section 22-A, Cr.P.C. and during the pendency of said application the police registered the case. The explanation offered by the complainant is not satisfactory as the occurrence allegedly took place on 13.05.2017, whereas, the application under section 22-A, Cr.P.C. according to the record was filed on 01.08.2017 and no reason whatsoever has been assigned for filing the same after such a long delay. Moreover, according to the story narrated in the FIR, the occurrence took place on 13.05.2017, in the daytime, whereas, the medical report shows that the complainant was got admitted in the

hospital on 12.05.2017 (a day prior to the alleged occurrence), due to the injury caused to him by falling from the tree. In such a situation, *prima facie* the case against the petitioner is doubtful and under law the benefit of doubt, if any arising in a case, must go to the accused even at bail stage. Reference may be made to a case reported as *Farzana Begum and other v. Sohail Umer and another* [2017 SCR 420], wherein, it has been held that:-

“The record shows that the investigation of the case was once completed, but on the request of the complainant party, the matter was reinvestigated by SSP Mirpur. During investigation both the investigating officers concurred that at the time of occurrence the accused was empty handed. In this way, this aspect of the case *prima facie* makes the case doubtful and it is settled principle of law that benefit of slightest doubt must be

extended to the accused even at
bail stage ”

After going through the record, in our estimation, the matter requires further probe, which makes the case as one of further inquiry, moreover, the element of mala-fide in view of the submission made by the counsel for the petitioner that the father of the complainant is involved in the business of narcotics and a number of cases are registered against him and the accused party always prohibited him from carrying on such an illegal business due to which he has got registered a false case against the petitioner, cannot be ruled out, which is also one of a good *prima facie* grounds for grant of pre-arrest bail. Similarly, the possibility of false implication, in view of the circumstances of the case as well as medico legal report which clearly shows that at the time of occurrence the alleged

victim got admitted in the hospital, also cannot be ruled out. It may be observed here that mere heinousness of the alleged allegation cannot be made foundation to refuse the concession of bail if the accused has otherwise qualified himself for grant of bail before arrest. The learned Additional District Court of Criminal Jurisdiction after taking into account the parameters determined by law for bail before arrest has rightly exercised the discretion in favour of the accused. The counsel for the complainant has taken the plea that the variation in the dates has been made due to the influence used by the accused party but nothing is available on record in support of this version. Even otherwise, at this stage, when the evidence has not been produced, no opinion can be formed in this regard and this aspect shall be considered by the trial Court at the conclusion of the trial. Admittedly, the trial

is in progress and statement of one witness has been recorded, therefore, at this stage by sending the accused behind the bars no useful purpose can be achieved. It is settled principle of law that once bail has been granted by the Court of competent jurisdiction, strong reasons are required for its cancellation. In the instant case, in view of the material available on record, the learned High Court wrongly interfered with the discretion judiciously exercised by the learned Additional District Court of Criminal Jurisdiction, thus, the impugned judgment being bad in law is liable to be set aside.

In view of the above, this revision petition is accepted and while setting aside the impugned judgment of the High Court the order of this Court dated 12.11.2018, whereby the accused-petitioner was enlarged on bail

subject to furnishing of personal surety bond
of Rs.1,00,000/-, is hereby confirmed.

Muzaffarabad,
.02.2019

JUDGE

JUDGE