

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Criminal Appeal No. 55 of 2019
(Filed on 22.8.2019)

Nazir Khan s/o Ghulam Ali caste Rajpoot r/o
Kachi Tehsil Saray-e-Alamgir District Gujrat.
..... APPELLANT

VERSUS

1. Raja Arif,
2. Raja Nasir,
3. Raja Aamir,
4. Tariq, sons of Inayat Khan,
5. Rizwan s/o Raja Tariq,
6. Ali Shah s/o Tariq,
7. Kamran s/o Tariq, caste Rajput r/o Kachi,
Tehsil and District Bhimber.
..... RESPONDENTS
8. State through Advocate General.
.... PROFORMA RESPONDENT

(On appeal from the judgment of the Shariat Appellate
Bench of the High Court dated 28.6.2019 in Writ Cri.
Revision Petition No. 110 of 2018))

FOR THE APPELLANT: Ch. Shakeel Zaman,
Advocate.

FOR THE RESPONDENTS: Ch. Yasir Mehmood,
Advocate and Raja Saadat
Ali Kayani, Additional
Advocate General.

Date of hearing: 24.2.2020.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by arises out of the judgment dated 28.6.2019 passed by the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court in criminal revision petition No. 110 of 2018.

2. The brief facts forming the background of the captioned appeal are that Nazir Kahn, complainant-appellant, herein, lodged a verbal report at Police Station Ali Bagi on 5.6.2018 at 1:00 a.m. against respondents, herein. It was stated that during playing volley ball, a fight between Ghulam Murtaza and Raja Imran s/o Raja Tariq took place 4/5 days before, on account of which people of Kachi assembled for compromise and they arrived at the shop of Baba Walayat Khan. The complainant along with his son Ghulam Mustafa also arrived at the said shop at about 22:15. a.m. when accused Raja Arif, Raja Nasir, Raja Qamer, Raja Aamir,

Tariq s/o Inayat Khan, Raja Imran alias Mani, Rizwan sons of Raja Tariq, Ali Shah, Kamran and Karan sons of Tariq came there armed with Dandas, iron pipe and clips, whereas Raja Arif was armed with 30-bore pistol. The accused launched attack upon the complainant and his son. Accused, Qamar gave danda blow at his head and the remaining accused hit blows on his legs and other parts of body. Accused, Mani inflicted stick injuries at the back of Ghulam Murtaza and he fell down and the other accused inflicted injuries on his body. The incident was stated to be witnessed by the sons of Ghulam Murtaza, Ghulam Mustafa and Baba Walayat Khan other than the complainant. It was stated that all the accused with common intention launched attack on the complainant and his son with rods, pipes and pistol and caused them serious injuries. On this report, a case under sections 337-A, 337-F, 147, 148, 149, APC was registered. After registration of the case, the accused respondents applied for pre-arrest bail

before the District Court of Criminal Jurisdiction Bhimber, which was allowed vide order dated 28.6.2018 other than Qamar and Imran alias Mani. Appellant, herein, against the said order filed a revision petition before the Shariat Appellate Bench of the High Court on 17.7.2018. The learned Shariat Appellate Bench of the High Court vide impugned order dated 28.6.2019 has dismissed the revision petition.

3. Ch. Shakeel Zaman, the learned Advocate appearing for the appellant argued with vehemence that judgment passed by the learned District Court of Criminal Jurisdiction Bhimber dated 26.8.2018 as well as that of the learned Shariat Appellate Bench of the High Court dated 28.6.2019 is arbitrary, perverse and against the settled principles governing the bail matters. The learned Advocate further argued that in case of pre-arrest bail, an applicant has to show that case against him is registered with mala-fide intention and with ulterior motive. The learned Advocate further argued that the

applicant also has to show that he being arrested for humiliation and in case he is arrested then he will suffer irreparable loss to his person. Nothing is brought on the record on behalf of the applicant/accused and the Courts below have granted the bail in routine submitted the learned Advocate.

4. Ch. Yasir Mehmood the learned Advocate appearing for the respondents argued that the learned trial Court has exercised its discretion while attending all the circumstances and evidence brought on record by the prosecution, therefore, discretion exercised cannot be interfered with by this Court until and unless it is shown that the same has been exercised in an illegal fashion. The learned Advocate next argued that there is no allegation against the respondents for misusing of concession of bail, therefore, after extending the bail, they have a right to remain on liberty until & unless the same is misused.

5. Raja Saadat Ali Kayani the learned Additional Advocate General has adopted the arguments advanced by the learned counsel for the appellant.

6. We have heard the learned Advocates representing the parties and have gone through the record of the case. The facts of the case have sufficiently been incorporated in the orders passed by the Courts below; hence, need not to be reiterated for the sake of brevity suffice it to observe that after having been registered a case against the respondents under sections 337-A, 337-F, 147, 148 and 149, APC, they have applied for bail before arrest before the District Court of Criminal Jurisdiction Bhimber on 9.6.2018. After hearing the parties, vide judgment dated 28.6.2018 the learned District Court of Criminal Jurisdiction Bhimber has confirmed the bail to the extent of respondents and recalled the order to the extent of two accused namely Qamar and Imran alias Mani. The order was challenged by the complainant

through a revision petition before the learned Shariat Appellate Bench of the Azad Jammu and Kashmir High Court on 17.7.2018 and the revision has been rejected through the impugned judgment dated 28.6.2019. We have no quarrel with the submission made by Ch. Shakeel Zaman, the learned Advocate for the appellant, herein, that bail before arrest cannot be granted in routine and for grant of the same the applicant has to plead and show that case against him is has been registered with mala-fide and with ulterior motive. It is also settled principle governing the pre-arrest bail that the accused has also to show that in case of arrest he would be humiliated and Police has become inimical to the petitioner on behest of the complainant. Until and unless mala-fide of the prosecution is shown, ordinarily bail before arrest cannot be granted in routine, however, the grounds on the basis of which after arrest bail can be granted can be made basis for grant of pre-arrest bail as well. If the case is of such

nature which requires further inquiry then pre-arrest bail can also be extended to an accused. In the present case, the allegation levelled against the respondents, herein, as per record and wisdom of the Courts below requires investigation and probe. They have not been attributed any serious role except coming on spot along with the main accused, who have been refused bail. It is well settled law that bail cannot be withheld as a punishment. Reference can be made to the cases reported as *Murad Khan vs. Fazal-e-Subhan and another* (PLD 1983 SC 82) and *Fazad Dad vs. The State* (PLD 1987 Sh. C (AJ&K) 10).

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed.

JUDGE

CHIEF JUSTICE.

Mirpur.
24.2.2020

