

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

PRESENT:

Raja Saeed Akram Khan, ACJ.
Raza Ali Khan, J.

Criminal appeal No.58 of 2019
(PLA filed on 21.06.2019)

Muhammad Ayub son of Muhammad Shafi, r/o
Pala-hil-Khurd, Tehsil Charhoi, District Kotli.

....ACCUSED-APPELLANT

VERSUS

1. Manzoor Khan son of Bagh Hussain,
caste Khokhar, r/o Figosh, Tehsil and
District Kotli.
2. The State through Advocate-General.
3. Police Station (Anticorruption),
Muzaffarabad.

....RESPONDENTS

4. Sulman Khan son of Bashir Ahmed, r/o
Palhitar Gujjar Town Mohallah Mang
Peeran, District Kotli.
5. Naseem Akhtar w/o Suleman Khan,

6. Gulshan Zaiba w/o Makhan Din, r/o Palhitar.
7. Abdul Razzaq son of Shah Muhammad, caste Bhati, r/o Bang Khurti, Tehsil and District Kotli.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 14.04.2019 in criminal revision No.78 of 2018)

FOR THE APPELLANT: Ch. Muhammad Ashraf Ayaz, Advocate.

FOR THE COMPLAINANT: Mr. Kamran Taj, Advocate.

FOR THE STATE: Raja Saadat Ali Kiani, AAG.

Date of hearing: 17.06.2021

JUDGMENT:

Raja Saeed Akram Khan, C.J.— The instant appeal by leave of the Court has been directed against the judgment of the Shariat Appellate Bench of the High Court (High Court) dated 14.06.2019, whereby the revision

petition filed by respondent No.1, herein, has been accepted to the extent of the appellant.

2. The summary of the facts necessary for disposal of this appeal are that on the complaint of the complainant a case in the offence under sections 109, 419, 420, 464, 467, 468 and 471, APC, read with section 5(2), Prevention of Corruption Act, was registered at Police Station Anti-Corruption, Muzaffarabad, on 03.06.2016. The appellant was not nominated in the F.I.R, however, during investigation it was found that the appellant along with some others is also involved in the commission of offence, whereupon, the appellant and others applied for bail before arrest which was extended to him and later on, confirmed by he learned Sessions Judge, Kotli. The complainant feeling dissatisfied filed a revision petition before the High Court. The learned High Court accepted the revision

petition to the extent of the appellant and recalled the bail granted to the appellant by the learned Sessions Judge, Kotli. Now the appellant through the instant appeal by leave of the Court has challenged the validity and correctness of the judgment of the High Court.

3. Ch. Muhammad Ashraf Ayaz, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case. The Court of competent jurisdiction after tentative assessment of the material available on record extended the concession of bail before arrest to the appellant which has been recalled by the High Court without any justification. There is no allegation against the appellant for misuse of the concession of bail, moreover, he was fully cooperating with the investigating agency. He added that the appellant has been roped in the case on the statement of the accused,

nominated in the FIR, which is not warranted under law. He contended that the signatures of the appellant affixed on the alleged forged documents are fake and the appellant denied the genuineness of the same. He drew the attention of the Court towards the judgment of the Service Tribunal as well as this Court available on record and submitted that on account of allegation levelled against the appellant in the present matter the department initiated disciplinary proceedings against him and thereafter awarded him the major penalty of compulsory retirement and on appeal the learned Service Tribunal set aside the said order and this Court upheld the judgment of the Service Tribunal. Thus, when the Court after scrutinizing the record reached the conclusion that the appellant is not involved in the commission of tempering the record, then there was no occasion to send him behind the bars on

the same allegation. The learned High Court without appreciating the record recalled the bail granting order passed by the Court of competent jurisdiction and failed to adhere to the relevant law on the subject. He support of the arguments he placed reliance on *Muhammad Inam Ali v. The State and another* [2011 P.Cr.LJ 323], *Nazar Muhammad and 2 others v. The State* [2012 P.Cr.LJ 430], *Liaqat Ali and 11 others v. The State and another* [2014 P.Cr.L.J 538], *Muhammad Azher v. The State and another* [2014 MLD 799], *Muhammad Aqeel alias Tapla v. The State* [2014 MLD 316], *Sardar Sameer Asmat v. The State* [2016 P.Cr.LJ 1151], *Fazal Haque and another v. The State and another* [2016 MLD 1225], *Mohammad Rasheed v. Mohammad Israr and 4 others* [2018 SCR 397], *Kh. Azam Rasool and 26 others v. Raja Sajjad Ahmed Khan Advocate*

and others [2018 SCR 35] and *Waqas Habib v. Khalid Mehmood and another* [2020 SCR 396].

4. On the other hand, Mr. Kamran Taj, Advocate, the learned counsel for the complainant strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the appellant after recalling the bail by the High Court did not surrender before the police, hence, being fugitive from law the appellant is not entitled to any relief. He submitted that the appellant is involved in the case and for proper investigation his arrest/confinement was required but the trial Court without assigning any reason confirmed the pre-arrest bail, however, the learned High Court rightly recalled the order of the trial Court. He referred to and relied upon the case law reported as *Rangbaz v. The State* 2002 SCR 544.

5. Raja Saadat Ali Kiani, AAG, adopted the arguments advanced by the learned counsel for the complainant and submitted that the appellant in his statement before the police has admitted that he affixed the signatures on the forged documents, therefore, the argument of the learned counsel for the appellant in this regard has no substance.

6. We have heard the arguments and examined the available record. The cursory examination of the record shows that the allegation of forgery in the revenue record has been levelled against the appellant. The appellant applied for pre-arrest bail which was later on, confirmed by the Court of competent jurisdiction and the learned High Court recalled the bail granting order. Under law after cancellation of bail by the High Court the appellant should have surrendered before the police and thereafter, he could file appeal,

whereas, in the instant case he filed appeal without his surrendering to the police. There is a series of judgments on the point that, in such like cases, relief can only be extended to an accused, who at first surrenders himself before the police. The learned counsel for the complainant in this regard rightly relied upon the case law reported as *Rangbaz v. The State* [2002 SCR 544], wherein, it has been held that:-

“7. Now the question arises whether the appellant without his surrender to the police could file appeal before this Court and is entitled to be heard on merits of his bail. It may be mentioned that an appeal against the order of the Shariat Court is filed under section 25 of the Islami Tazirati Qawanin Nifaz Act, 1974. As said earlier this appeal was filed under the provisions of the Islami Tazirati Qawanin Nifaz Act and the bail of the accused-

appellant was cancelled on merits by the Shariat Court, therefore, it was required that the appellant could file his appeal after his surrender to the police only. A reference may be made to a case reported as Muhammad Akram vs. The State [1993 SCR 300] wherein a similar situation arose. The bail was cancelled by the Shariat Court of Azad Jammu and Kashmir and the accused Muhammad Akram did not surrender but filed an appeal before this Court and also filed an application for anticipatory bail. This Court while resolving the proposition made following observations: -

‘The petitioner has filed an appeal in this Court which will be heard after the long recess. Meanwhile the petitioner has filed an application for interim bail. When this application came up for hearing today I asked the learned counsel for the petitioner to show whether, in light of the pronouncements of this Court, the plea made by an

accused person who has not surrendered after cancellation his bail can be heard. Ch. Muhammad Taj, the learned counsel for the complainant, relied on a case titled Tariq Mehmood and another vs. The State in which this Court observed as follows:-

'Appellants are absent. Their bail was cancelled by the Shariat Court but they have not surrendered. It is well settled that in such circumstances the plea for grant of bail cannot be heard. The appeal is, therefore, dismissed.'."

In the light of the settled principle of law, discussed in the referred report, the appellant could file appeal against the bail cancellation order before this Court after his surrender to the police, but he failed to adopt the procedure provided under law; hence, he is not entitled to the prayed relief. The learned counsel for the appellants mainly stressed that the appellant is

not involved in the case, however, at this stage while dealing with the bail matter we cannot form any opinion in respect of the involvement or innocence of the appellant, he may place his point of view before the investigating agency during the investigation. In view of the peculiar facts of the case, we do not intend to consider the merits of the case; the learned counsel for the appellant has also referred to a number of case law on the point of the legitimacy of the statement of a co-accused, benefit of doubt and the principle which requires to be considered at the time of deciding the bail matters, however, in view of the special circumstances of the instant case, discussed hereinabove, the same are not applicable, hence, no need to be discussed.

On the basis of the above stated reason the appeal of the appellant was dismissed and he was handed over to the

custody of police vide short order dated
17.06.2021.

CHIEF JUSTICE

JUDGE

Mirpur,
21.06.2021

Nazia Bibi v. The State & others

ORDER:-

The judgment has been signed. The same shall be announced by the Addl. Registrar after notifying the learned counsel for the parties.

Mirpur,
23.01.2020

JUDGE

JUDGE