IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, C.J.
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 01 OF 2025

(Against the judgment dated 06.12.2024, passed by the Shariat Appellate Bench of the High Court in Cr. Revision No. 122 of 2024).

Muhammad Jahangir Akbar,

…Appellant(s)

VERSUS

Muhammad Asif and another.

…Respondents

Appearances:

For the Appellant(s):	Raja Inam-Ullah Khan, Advocate.
For respondents No. 1:	Mr. Jahanzeb Khan, Advocate.
For the State:	Mr. Ahmed Saad Khan, Asstt. Advocate-General
Date of hearing:	17.11.2025.

JUDGMENT:

***Raza Ali Khan, J*:-** This direct appeal assails the judgment of the Shariat Appellate Bench of the High Court (*hereinafter referred 'the High Court'*), whereby the appellant's revision petition was dismissed.

2. The factual matrix reflects that, on the appellant Muhammad Jahangir's application, FIR No. 151/2024 was lodged at Police Station Dadyal on June 20, 2024, under sections 148, 149, 337-AF, 147, 324 and 341 APC. It's alleged that, at about 4:15 p.m. on the same day, the complainant's son, Asim Jahangir, accompanied by his friend Tayyab, was returning from *Bhaili Urs* when Naeem intercepted their passage and subjected them to verbal abuse. The complainant, upon hearing the commotion, witnessed Naeem, Asif, Adnan, Waseem and Sheraz, aided by certain female companions, encircling Hassan and Tayyab and opening firm upon Hassan Jahangir, causing injuries to his forehead, arm and right hand. It's further alleged that Asif, Naeem, Waseem and Sheraz were armed with a 12-bore rifle and a 30-bore pistol and continued firing. The respondent, Muhammad Asif, subsequently sought pre-arrest bail before the Additional District Court of Criminal Jurisdiction, Dadyal, which was granted through the impugned order dated July 29, 2024. The appellant's revision petition before the High Court met the same fate and was dismissed vide order dated December 06, 2024.

3. Raja Inam-Ullah Khan, the learned counsel for the appellant, contended that the Additional District Criminal Court, Dadyal, committed a patent misdirection in law in holding that the allegations against respondent No. 1 attracted the doctrine of *further inquiry*. He argued that, in matters of pre-arrest bail, the Court must initially ascertain (i) whether any mala fides exist on the part of the police or the complainant; (ii), whether the prosecution is tainted with ulterior motives; and, (iii) whether the FIR has been engineered merely to malign the accused. He maintained that none of these jurisdictional thresholds even *prima facie* discernible from the record. Instead, the Court below granted protection on the touchstone of *further inquiry*, a consideration germane only to post-arrest bail, not anticipatory relief. He further asserted that the High Court's concurrence with this misdirection is legally untenable and analytically unsustainable. Consequently, both impugned orders, being contrary to the parameters delineated by the apex courts, warrant interference, and the concession of pre-arrest bail to respondent No. 1 is liable to be rescinded. Reliance has been placed on the judgment of this Court reported as *[2015 SCR 865]*.

4. Conversely, Mr. Jahanzeb Khan, the leared counsel for the respondent, relying on *1992 SCR 379* and *2016 SCR 1264*, submitted that if a tentative appraisal of the FIR, statements under section 161 Cr.P.C., the medico-legal report and ancillary material brings the case within the ambit of *further inquiry*, the accused becomes entitled to the concession of bail. He argued that the trial

has already commenced, thereby eliminating any investigative necessity for the respondent's custodial presence. He maintained that once bail is granted by a court of competent jurisdiction, its recall requires exceptional and compelling circumstances, which are absent here. He, thus, therefore, that the appeal be dismissed.

5. Mr. Ahmed Saad Khan, the learned Assistant Advocate-General, aligned himself with the appellant's submissions and asserted that the respondent is specifically nominated in the FIR with a defined attribution of aerial firing. He contended that, in such circumstances, the concession of bail is unwarranted and merits recall.

5. We have heard the counsel for the parties and examined the available record. The respondent's counsel first argued that, once bail is granted by a court of competent jurisdiction, its recall requires extraordinary circumstances. The principle is uncontroversial, however, the Court cannot remain oblivious where illegality surfaces. It's a settled doctrine that a bail-granting order is liable to cancellation if it's perverse, illegal or tainted by an abuse of discretion. A perverse order is one that stands in stark contradiction to the material on record. Where a Court granting bail disregards relevant incriminatory material or relies upon considerations wholly extraneous to the bail inquiry, the reviewing Court is fully justified in annulling such relief. This proposition stands fortified by the judgment of this Court in *M. Altaf*

Kiani v. M. Iqbal and others[1], wherein it was held as follows:

> "Furthermore, no doubt that it has been settled by this Court through its numerous pronouncements that the Courts should rarely and in exceptional circumstances interfere with the bail granting orders, however, one thing which has to be kept in mind is that in the cases where the Court of first instance through a well-reasoned order has refused the concession of bail to the accused in non-bailable cases, then the Court of appeal while reversing such order cannot simply ignore the reasoning which prevailed with the Court of first instance while refusing the concession of bail. There is no cavil that the discretion should be exercised liberally in favour of the accused but not to such an extent to render the provision of section 497(i), Cr.P.C. as redundant. It is settled principle of law that a bail granting order can be cancelled if the same is found perverse, illegal and parlance. A perverse order is defined as an order which is inter-alia entirely against the evidence available on record. It is always to be kept in mind that in cases where the Court while granting bail ignores the relevant material indicating prima-facie involvement of the accused in the commission of crime or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, then the Court reviewing such orders would be justified in cancelling the bail."

6. It is now a firmly entrenched principle of criminal jurisprudence that jurisdiction under Section 498 Cr.P.C. is extraordinary, discretionary and to be exercised sparingly. Pre-arrest bail is a protective measure of exceptional character, available only where malafides, political vendetta, abuse of process of demonstratable doubt about the alleged offence is established. Absent

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[1] Criminal Appeal No. 10 of 2021, filed on 13.08.2021.

such stringent predicates, invoking section 498 constitutes an impermissible intrusion in the statutory investigative domain of police.

7. It's manifest from the record that the appellant was never taken into custody; instead, he sought pre-arrest bail from the competent Court, which was subsequently affirmed both by the trial Court and the High Court. The FIR explicitly asserts that the appellant, along with others, encircled the victim, abused him and was armed with a 12-bore rifle. Although no direct attribution of a targeted shot is alleged, his presence at the scene and his active participation in the occurrence stand *prima facie* established. He has never been arrested nor subjected to investigative process, and if placed under lawful scrutiny, recovery of the weapon and further elucidation of the facts remains plausible. This significant aspect escaped consideration by the Courts below. This Court, in *M. Azam v. Munir Ahmed and another*[2], while declining bail, held that where an accused is assigned an active and facilitative role in the FIR, prima-facie reasonable grounds exists for believing his involvement in a serious offence. The relevant excerpt reads: -

> "It is also worth mentioning here that if from the cursory perusal of the record, it shows that the role attributed to the accused is an active role in the commission of offence of murder or clearly amounts to facilitate the commission of offence of murder, it can safely be gathered that prima-facie there are reasonable grounds for believing that the accused-respondent No. 1 has been guilty of an offence punishable with death or

[2] Criminal Appeal No. 23 of 2022, decided on 22.02.2023

imprisonment for life or imprisonment for 10 years.”.

8. The respondent’s reliance on *1992 SCR 379* and *2016 SCR 1264* is misconceived, as both relate to post-arrest bail, whereas the present matter concerns pre-arrest protections. Hence, the cited precedents bear no relevance.

9. The observations made herein are tentative and shall not prejudice the proceedings before the trial Court. In view of the above, this appeal stands accepted and the order of the High Court is set-aside.

These are the detailed reasons for our short order dated 17.11.2025 which reads: -

“After hearing the learned counsel for the parties, we accept the appeal filed by the appellant and recall the orders passed by the Courts below. The respondent shall be taken into custody and handed over to concerned SSP for further legal process. Detail reasons shall follow.”

JUDGE **CHIEF JUSTICE**

Mirpur,
18.11.2025.