

2001 P Cr. L J 1461

[Peshawar]

Before Ijaz-ul-Hassan, J

USMAN --- Petitioner

versus

MUHAMMAD AZAM and another---Respondents

Criminal Miscellaneous No.40 of 2001, decided on 20th April, 2001.

(a) Criminal Procedure Code (V of 1898)---

---S. 497(1) & (5)---Grant and cancellation of bail ---Considerations--Consideration for. the grant of bail and for cancellation of bail was absolutely different---Once an accused had been released on bail, his liberty could not be interfered with lightly.

(b) Criminal Procedure Code (V of 1898)---

---S. 497(5)---Penal Code (XLV of 1860), S.302---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.22---Bail, cancellation of---Grounds given by the Court for granting bail to the accused were cogent and convincing which did not call for interference---No extraordinary circumstances had been pointed out which could constitute an impediment in the way of granting bail to the accused---Order of Court below granting bail to the accused being flawless, could not be interfered with.

Abdul Haque v. The State PLD 1996 SC 1; Muhammad Sharif v. Shafqat Hussain and another 1999 SCMR 338; Liaqat Ali v. The State 2000 SCMR 1438 and Imran v. The State 1998 PCr.LJ 1022 ref.

Khalid Rehman Qureshi for Petitioner.

Haji Muhammad Iqbal for Respondent No. 1.

Mazhar Akram Awan for the State.

Date of hearing: 20th April, 2001.

JUDGMENT

Muhammad Azam respondent was admitted to pre-arrest bail on 23-12-2000 by learned Sessions Judge, Haripur which was subsequently confirmed by him vide order, dated 2-2-2001. Feeling aggrieved, Usman Khan father of Abdur Rehman deceased, has filed instant application under

section 497(5), Cr.P.C. seeking cancellation of bail granted to the respondent per the impugned order.

2. Precisely narrated the facts, relevant for the purpose of this order are, that on 18-12-2000 at about 23-45 hours respondent Muhammad Azam left his house to see his Karyana shop in Mohallah Aziz Abad, Noor Colony, Haripur. On reaching the shop he noticed three persons coming from the roadside. On reaching near the shop of the respondent, they threw torch light on the locks of the shop and moved ahead. After sometime the respondent noticed a person standing near an electric pole erected near the shop of the respondent. After sometime the respondent heard the sound of breaking of the locks of his shop. Immediately, thereafter the respondent came down from the roof top of his shop and shouted as to who they are. Two of the unknown persons succeeded to run away whereas one of them having something in his hand, turned his face towards the respondent. The respondent apprehending danger at the hands of the said person fired four, shots at him with his pistol with which the former was hit and fell on the ground. On raising hue and cry the inhabitants of the locality were attracted to the spot. They asked the name of the injured person but he did not disclose his identity. The injured expired thereafter.

3. Muhammad Azam reported the matter to the police and resultantly a case under section 302, P.P.C. read with section 22, Offences Against Property (Enforcement of Hudood) Ordinance, 1979 was registered vide F.I.R. No.1100, dated 19-12-2000.

4. Mr. Khalid Rehman Qureshi, Advocate appearing on behalf of the petitioner, attempted to argue that there was sufficient material on record connecting the accused-respondent with the guilt and as such the learned Sessions Judge had no justifiable reason to confirm ad interim bail of the accused-respondent. The plea of self-defence raised by accused-respondent, the learned counsel, added, should have been left to be decided at the trial, to determine bona fides of the accused-respondent. To substantiate the pleas, reliance was placed on Abdul Haque v. The State and another PLD 1996 SC 1; Muhammad Sharif v. Shafqat Hussain and another 1999 SCMR 338 and Liaqat Ali v. The State 2000 SCMR 1438. The learned counsel also reiterated that mere submission of challan in Court, by itself, cannot be considered a good ground to refuse an application for cancellation of bail. In this connection, he relied on a case titled Imran v. The State reported in 1998 PCr.LJ 1022.

5. Conversely Mr. Mazhar Akram, Advocate for State assisted by Haji Muhammad Iqbal, Advocate for the respondent defended the impugned order and maintained that keeping in view the facts and circumstances of the case and in the absence of any motive or previous enmity between the accused respondent and the deceased, the learned Sessions Judge was quite justified to confirm anticipatory bail of the accused-respondent and the impugned order warrants no interference. They contended that a broken lock from the spot and a Wrench in the hand of the deceased were recovered which tend to suggest that the deceased living at a distance of 10/15 miles from the scene of occurrence had come to the spot with sole object to commit theft and he was fired at in the exercise of right of private defence. He relied on Ali Muhammad v. Ali Muhammad and another PLD -1996 SC 274. The learned counsel also contended that challan against the accused-respondent has already been submitted in Court on 26-2-2001 and the next date for hearing has been fixed and at this juncture the bail granted to the accused-respondent cannot be recalled.

6. It is settled proposition of law that consideration for the grant of bail and the consideration for the cancellation of bail are absolutely different. Once an accused person has been released on bail, his liberty cannot be interfered with lightly. In this case learned counsel for the complainant has not been able to convince me that the bail granting order is violative of the legal norms and has resulted in miscarriage of justice. No extraordinary circumstance has been pointed out by the learned counsel as may constitute an impediment in the way of granting bail to the accused-respondent. The grounds given for grant of bail by the learned Sessions Judge are cogent and convincing and hardly calls for interference of this Court. Without adverting to the merits of the case lest it may not prejudice the case of any of the parties at the trial. I feel that the impugned order is flawless and warrants no interference. The application fails which is hereby dismissed.

H.B.T./267/P

Application dismissed