

**HIGH COURT OF AZAD JAMMU & KASHMIR**

**[Shariat Appellate Bench]**

Criminal Revision No. 85/2023.

Date of Institution 15.05.2023.

Date of decision 29.08.2023.

1. Abdul Ghafoor S/o Mahmood.
2. Hammad S/o Gulfraz caste Malik R/o Nakota Kathar Tehsil Dudyal District Mirpur.

(Petitioners)

**Versus**

1. State through Zohaib S/o Muhammad Bashir caste Malik R/o Kathar Dudyal. (Complainant).
2. Additional Advocate General Mirpur.

(Non-petitioners)

**CRIMINAL REVISION PETITION**

Before:- **Justice Syed Shahid Bahar, J.**

**PRESENT:**

M/s Ibrar Hussain, Bakhtawar Kiani and Muhammad Arif Raza, Advocates for the petitioners/accused.

Ali Zaman Raja, Advocate for the complainant.

A.A.G for the State.

**ORDER:**

The instant revision petition impugns the order passed by Additional District Court of Criminal Jurisdiction, Dudyal dated 08.05.2023, whereby bail application of the accused-petitioners was rejected.

2. Terse facts of the revision petition in hand are that on the application of complainant Zohaib, a case bearing FIR No.315/2022 under Sections 302, 341, 147,148,149, 337A and

109, of the Azad Penal Code, 1860 (APC) was registered against the accused-petitioners at Police Station Dudyal on 08.12.2022. After registration of the case, investigation was initiated. The accused/petitioners were taken into custody by the police in the aforesaid case. After arrest, the accused-petitioners moved bail application before Additional District Court of Criminal Jurisdiction, Dudyal. The said court after hearing arguments of the parties, rejected the bail application vide order dated 13.02.2023. After submission of challan, petitioners filed another bail application before Additional District Court of Criminal Jurisdiction, Dudyal. The learned court below after hearing arguments of the parties vide impugned order dated 08.05.2023, **dismissed** their bail application, hence, the instant revision petition.

3. Messrs Ibrar Hussain, Bakhtawar Kiani and Arif Raza, the learned counsel for the accused-petitioners contend that the impugned order regarding rejection of bail of accused-petitioners is at odds with the law and facts, hence, the same is liable to be set-aside; inter alia, contend that the investigation in the instant case was completed and challan has duly been submitted before the court of competent jurisdiction, hence, accused-petitioners are no more required for further investigation by the police; in addition to that, contend that the court below has failed to apply

its judicial mind while passing the impugned order i.e. rejecting the bail of the accused-petitioners; furthermore, contend vigorously that the matter of the accused-petitioners falls in the ambit of further inquiry; therewithal, contend staunchly that investigation of the case has been completed by the police and challan of the case is subjudice before the trial Court, hence, the bail of the accused cannot be withheld as a matter of punishment; moreover, out of four accused, two accused have been enlarged on bail. In winding up their arguments, learned counsel ask for emancipation of their clients on bail via acceptance of the instant revision petition; consequently, annulling the order impugned herein. To vindicate their stance, the learned counsel place reliance upon the case-law titled **[Niaz Ali Shah vs. The State]**<sup>1</sup>

4. Conversely, Mr. Ali Zaman Raja, the learned counsel for the complainant/respondent vehemently contends that the accused-petitioners are involved in heinous offence i.e. murder, hence, they are not entitled for any concession i.e. bail; besides, vigorously contends that the role of the accused-petitioners is clear and prima-facie they cannot be set free from the allegations leveled against them in the impugned FIR which is also supported by the statements of the witnesses and other incriminating

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<sup>1</sup> . 2015 P.Cr.LJ 766.

material placed on record, whereas, the offences attributed against them are non-bailable and falls in the prohibitory clause of Section 497, of the Code of Criminal Procedure, 1898 (Act V of 1898 Cr.P.C); finally, the learned counsel prays for dismissal of the instant revision petition.

5. The learned A.A.G contends that the accused-petitioners are involved in a heinous offence; they are not entitled for concession of bail; thus, bail of the accused petitioners has rightly been declined by the learned court below. The learned A.A.G defends the impugned order on all counts and prays for dismissal of the revision petition in hand.

6. *Pro and contra arguments have been heard at length besides the record has been taken stock of.*

7. It is noteworthy to state that at bail stage, deeper appreciation of record cannot be made and only a tentative assessment is permissible.<sup>2</sup> Credibility, scrutiny and truthfulness of the witnesses is to be adjudged by the trial Court at the time of the appreciation of evidence after the conclusion of trial. This Court while deciding bail application has to look into the FIR, the statements recorded under Section 161, Cr.P.C of witnesses and other incriminating material brought by the prosecution including the recoveries etc.

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<sup>2</sup>. Junaid Ahmed v. State [2023 YLR 1740]; Muhammad Sarfraz Ansari v. State [PLD 2021 SC 738]; Saifullah v. State [2019 SCMR 1458]; Hayatullah v. Lal Badshah [PLD 2009 Peshawar 28] and Yar Muhammad v. State [2004 YLR 2230].

8. The record shows that a case under FIR No.315/2022 was registered against the accused-petitioners and other co-accused at Police Station Dudyal on the complaint of complainant/respondent. After investigation of the case, challan for the offences under Sections 302, 341, 147, 148, 149, 337A, 109, APC and 15(2)A, Arms Act was presented before the Court of Criminal Jurisdiction Dudyal on 08.12.2022 against the accused-petitioners. The record shows that the allegation of causing injuries to the victim/deceased as well as complainant with the club (گولہ) by the accused-petitioners has been levelled. Specific role has been attributed against the accused-petitioners in the alleged FIR by the complainant and they were the members of the unlawful assembly who hurled attack upon the complainant party having common object; hence, prima-facie the police record and other documents support the complainant's version. Even otherwise, offences alleged against the accused-petitioners fall within the periphery of "prohibitory clause"<sup>3</sup> i.e. Section 497(1) of the Cr.P.C and in such cases, the bar contained in Section 497(1) would be attracted without regard to the power of the Court trying the case.<sup>4</sup> Ample incriminating material is available on record to prima-facie connect with crime imputed to them and in

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<sup>3</sup> . Offences which fall within the prohibitory clause are those which are punishable with death, imprisonment for life or imprisonment upto 10 years.

<sup>4</sup> . Muhammad Shafi Mansoori v. The State [2001 P.Cr.LJ 588].

the instant case the offences charged against accused come under prohibitory clause, therefore, bail is refused.

9. As far as the claim of the learned counsel for the accused-petitioners that challan of the case has been presented before the competent court, hence, the bail of the accused-petitioner cannot be withheld/stopped as a matter of punishment is concerned, in this regard it is to be noted that mere submission of challan before the court of competent jurisdiction is no ground for allowing bail to the accused-petitioner.<sup>5</sup> The act and offence of accused-petitioners prima-facie does not allow me to release them on bail.

10. As far as the submission proffered by the learned counsel representing petitioners regarding rule of consistency is concerned, suffice it to say that the 'rule of consistency' or in other words, the *doctrine of parity* in criminal cases including bail matters encapsulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also on the principle that 'like cases should be treated alike'; but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence. It is to be kept in mind that rule of consistency is not an absolute

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<sup>5</sup> . Subedar Major (retd.) Zulfiqar Ali Shah v. Abid Shah [2018 P.Cr.LJ 270]

rule,<sup>6</sup> as grant of bail to one co-accused does not justify grant of bail to a person who is otherwise not entitled for bail.<sup>7</sup> Moreover, the role of accused-petitioners was different from the role of the other co-accused who were released on bail, hence, rule of consistency is not attracted in the case of accused-petitioners, as the said rule is not applied *stricto sensu* when there are more than one accused, particularly when the case of the accused is not at par with that of his co-accused who had been admitted to bail.<sup>8</sup>

11. Sufficient material is available on record to connect the accused-petitioners with the commission of the offence, hence, in this view of the matter, the accused-petitioners are not entitled for concession of bail. The learned court below has rightly passed the impugned order and did not commit any illegality, irregularity or perversity while passing the same. Therefore, the bail rejection order is hereby maintained.

12. The case law referred to and relied upon by the learned counsel for the accused-petitioners i.e. Niaz Ali Shah v. The State<sup>9</sup> has no relevancy with the case as in Niaz Ali's case (*ibid*), the accused-petitioner though was armed with a weapon but was merely a silent spectator and did not use the same;

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<sup>6</sup> . Qamar Bughio v. The State [1993 P.Cr.LJ 2135].

<sup>7</sup> . Muhammad Azim v. The State [PLD 1988 SC 84], per Afzal Zullah, J.

<sup>8</sup> . Asif Ayub v. The State [2010 SCMR 1735] and Jehanzeb alias Bhoobi v. State [2002 SCMR 1380].

<sup>9</sup> . 2015 P.Cr.LJ 766.

whereas, in the instant case, allegation of causing injuries to the victim besides complainant has been leveled, moreover specific rule is attributed against accused-petitioners as has been discussed in para No.8 of the order in hand; therefore, in this backdrop, Niaz Ali's case (ibid) is distinguishable from the instant one. Even otherwise in criminal matters, each case has its own peculiar facts and circumstances and the same has to be decided on its own facts, hence, reliance on **Niaz Ali's case** (ibid) does not pass muster.

13. For the foregoing reasons, I do not see any substance in this petition, thus, the revision petition fails, which is accordingly dismissed.

14. It needs not to emphasize that the supra observations are tentative in nature for the disposal of the instant bail application and the same shall not influence the trial Court while deciding the case on merits.

Revision petition stands dismissed. File shall be kept in archive.

Muzaffarabad,  
29.08.2023.

**JUDGE**

*Note:- Judgment is written and duly signed. Deputy Registrar Circuit Mirpur is directed to intimate the parties or their counsel after due notices.*

**JUDGE**

**Approved for reporting**

**JUDGE**