

**HIGH COURT OF AZAD JAMMU AND KASHMIR**  
**(Shariat Appellate Bench)**

Cr. Revision petition 59/2023.  
Date of Institution: 04.04.2023.  
Date of decision 10.05.2023.

Jameel Ahmed S/o Nazir Ahmed R/o Nihala Tehsil Samahni District  
Bhimber presently confined in judicial lock up Bhimber.

....Accused-Petitioner

**Versus**

1. The State through Additional Advocate General Mirpur.
2. Muhammad Afzal S/o Ch. Muhammad Ameen caste Jat R/o  
Chahi Tehsil Samahni District Bhimber.

.....Respondents

**CRIMINAL REVISION PETITION**

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

**PRESENT:**

Ch. Nasrullah, Advocate for the Accused-Petitioner.  
Abdul Razzaq Chaudhary, Advocate for the complainant.  
A.A.G for the State.

**ORDER:-**

The titled revision petition has been directed against  
the order dated 30.03.2023 passed by Additional District Court of  
Criminal Jurisdiction, Samahni, whereby bail application of the  
accused-petitioner was rejected.

2. Brief facts of the case are that on the report of  
complainant/respondent No.2, a case bearing FIR No.231/2022  
under Sections 302/435, 147, 148, 149, 109, APC and 15(2) of  
Arms Act was registered against the accused-petitioner and other  
co-accused at Police Station Chowki Samahni on 11.12.2022. After

registration of the case, accused-petitioner was apprehended by the police after refusal of pre-arrest bail application of the accused-petitioner. After that, the accused-petitioner moved for bail before the learned Additional District Court of Criminal Jurisdiction Samahni on 25.03.2023. The said court after hearing arguments of the parties, rejected the bail application of the accused-petitioner vide impugned order dated 30.03.2023, hence, instant revision petition.

3. Chaudhary Nasrullah, learned counsel for the accused-petitioner contends that a false case has been registered against the accused-petitioner while he did not commit any offence. The erudite advocate vehemently contends that after investigation, an incomplete challan had already been submitted before the court of competent jurisdiction to the extent of petition; thus, he is no more required for further investigation. Learned counsel staunchly contends that the petitioner has not committed any incident, as he went to the place of occurrence to rescue the parties, whereas, the impugned FIR has been lodged on the basis of political avenge. He zealously contends that only the allegation of 'lalakara' has been leveled against the accused-petitioner, while on other specific role has been alleged against the accused petitioner, thus, he is entitled for the concession of bail under the circumstances. Learned counsel maintains that it is

a settled principle of law that bail cannot be withheld as a punishment. He forcefully argues that the instant matter needs further probe/ inquiry and where the matter falls in the category of further inquiry, the accused can be granted the concession of bail. Learned counsel finally beseeches acceptance of the instant revision petition by setting at naught the impugned order, consequently petitioner's release on bail. In support of his submissions, learned counsel refers to and relies upon the following case laws:-

- i. 2014 YLR 200.
- ii. 2014 P Cr.LJ. 658.
- iii. PLD 1991 AJ&K 39.
- iv. 2005 SCR 29.
- v. 2014 SCMR 27.
- vi. 2017 MLD 836.

4. On the other hand, Abdul Razzaq Chaudhary, learned counsel for the complainant takes up the cudgels for the impugned order by contended that the accused-petitioner is involved in a heinous offence, his role of raising 'lalkara' is very clear on the face of record and he has been clearly nominated in the FIR. Learned counsel vigorously contends that the accused-petitioner alongwith other co-accused is involved in a heinous offence and is not entitled for any concession like bail, and the accused-party also threatens the complainant as well as to the deceased party. Learned counsel defends the impugned order on all counts and prays for dismissal of the revision petition. In

support of his submissions, learned counsel placed reliance upon the following case laws:-

- i. PLJ 2007 Sh.C. (AJ&K) 108.
- ii. 1994 SCR 212.

5. Learned Assistant Advocate General appearing on behalf of the State opposed the submissions made by the learned counsel for the accused-petitioner and vigorously contended that the accused-petitioner is involved in heinous offences, hence, he is not entitled for bail, therefore, the revision petition may be dismissed. The learned A.A.G defended the impugned order on all counts.

6. I have taken stock of the arguments advanced by learned Counsel for the parties and gone through the record of the case with due care.

7. It is right of the individuals to be dealt with in accordance with law. Thus, deprivation of liberty rationally amounts punishment subject to it may require presence of the accused.

8. In the corridor of Criminal Justice system every person is supposed to be innocent unless proven guilty. On this supposition of law an accused person acquires the status of favourite child of law.

9. In the case in hand no specific role or active involvement of the accused is oozing from record.

10. In the FIR, role of the accused portrayed by the prosecution is that he rushed towards the victim and provoked the real culprits to shoot down the victim.

11. While in Police Report (challan) prosecution version is totally different and alien to the plea taken in the FIR.

12. Albeit, at bail stage only tentative assessment of record is permissible and deeper scrutiny of the same cannot be made. But, after all in order to arrive at some conclusion a bird's eye view of the record can help to draw a tentative opinion.

13. In the incomplete challan dated 24.03.2023, the accused Jameel has been shown innocent. Evidence is yet to be recorded, each and every slightest dent found in the case of prosecution is to be resolved in favour of the accused.

14. The petitioner has made out a case for the purpose of granting bail but although mere plea of (lalkara) ipso facto always not be considered as sole ground to admit the bail of the accused but it carries weight alongwith other dents found in the prosecution's case.

15. As every criminal case has its own footing and factual matrix, thus precedents are not always helpful to rescue or detain an accused.

16. As per law, benefit of all favourable circumstances would be extended to the accused, if doubt comes across the case in shape of border line.

17. Principle of Islamic Jurisprudence is beacon of light in this regard which postulates that it is better to acquit ten guilty persons than to convict a single innocent person.

18. Facts of one criminal case rarely coincide with facts of the other one, thus, references of the other cases at random without having nexus or similarity of fact cannot be regarded as help mate of the person seeking bail on this yardstick.

19. Major contradiction pertaining to the role of the accused in FIR and investigation officers version in challan brings the case of the petitioner within the ambit of further inquiry in view of Section 497(2) Cr.P.C.

20. Law of bail having a long history and deep roots in English and American law, speaks release of accused from state's custody to that of persons known as sureties on conditions which are not static but are growing all the time molding itself with the exigencies of time, refers to man's natural right which he inherits on birth leading to consideration of fundamental rights which are based on concept of freedom, justice and fair play, in criminal law too every person is innocent until his guilt is proved.<sup>1</sup>

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<sup>1</sup> PLD 1996 SC 1

21. Grant of bail in non bailable offences falling in second category punishable with imprisonment for less than ten years is a rule and refusal an exception. Bail in cases falling in second category will be declined only in extra ordinary and in exceptional cases e.g. (i) where there is likelihood of abscondence of accused (ii) where there is apprehension of the accused tampering with the prosecution's evidence (iii) where there is danger of the offence being repeated of the accused is released on bail (iv) where accused is previous convict.<sup>2</sup>

22. Hon'ble Supreme Court of Pakistan in **PLD 1995 SC 34** has laid down following principles which divide non bailable offences into two categories:-

- (i) offences punishable with death, imprisonment for life or imprisonment for ten years.
- (ii) offences punishable with imprisonment for less than ten years.

23. Conscious of this court is attracted as ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent person for his unjustified incarceration at any stage of the case as there is a sky high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then no kind of compensation would be sufficient enough to repair the wrong

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<sup>2</sup> 2008 YLR 2717

caused by him due to his incarceration.<sup>3</sup> If power of arrest is exercised arbitrarily and is motivated by ulterior motives or collateral purpose not conceived by law and not in the interest of justice, such exercise of the State's police powers shall be deemed mala fide and is liable to be judicially reviewed.<sup>4</sup>

24. In light of what has been stated above, instant revision petition is accepted and the bail in F.I.R No.231/22, for the offences under sections 302/435, 109, 147, 148, 149 APC and 15(2) of Arms Act is allowed to the accused-petitioner. He will be released from the custody on furnishing bail bond in sum of Rs.5,00,000/- (Five Lac rupees) with one surety in the like amount to the satisfaction of any Magistrate 1<sup>st</sup> Class Mirpur or the trial Court. If the needful is done, he shall be released forthwith provided not required in any other case or offence.

*Circuit Mirpur,*  
10.05.2023.

**JUDGE**

**Approved for reporting**

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<sup>3</sup> PLD 2017 SC 733

<sup>4</sup> PLD 2022 Islamabad 371