HIGH COURT OF AZAD JAMMU & KASHMIR

[Shariat Appellate Bench]

Criminal Revision No. 115/2025.
Date of Institution 17.03.2025.
Date of decision 19.05.2025.

Mst. Afija Mukhtar alias Afia D/o Muhammad Mukhtar R/o Kutli Chikar district Jehlum Valley.

(Petitioner-accused)

Versus

1. State through Advocate General of Azad Jammu and Kashmir, Muzaffarabad.
2. Muhammad Altaf S/o Mir Hussain R/o Kutli Chikar district Jehlum Valley.

(Respondents)

CRIMINAL REVISION PETITION

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

PRESENT:
M/s Manzoor Hussain Raja and Asia Khokhar, Advocates for the Petitioner/accused.
Syed Faisal Gillani, Asst.A.G for the State.
Sajid Maqbool, Akhlaq Saghir and Adnan Ahmed Pirzada, Advocates for the complainant/respondent No.2.

O R D E R:

1. The revision petition at hand has been directed against the order passed by District Court of Criminal Jurisdiction Jehlum Valley dated 04.03.2025, whereby bail application of the accused-petitioner was rejected.

2. Brief facts forming background of the instant revision petition are that a case bearing FIR No.64/2024 under sections, 337, 341, 324, APC was registered against the accused/petitioner and

others, on the complaint of Muhammad Altaf, complainant, on 14.09.2024 at 12:15 AM, at Police Station Chikar. During investigation in the case, victim Bilal Hussain was died, hence, Sections 302, 34 APC and Section 15(2) of AJK Arms Act, 2016 were also added. After registration of the case, the petitioner moved for bail before District Court of Criminal Jurisdiction, Jehlum Valley on 24.02.2025. The learned court below after hearing arguments of the parties, rejected the bail application vide impugned order dated 04.03.2025, hence, this revision petition.

3. Manzoor Hussain Raja, the learned counsel for the accused-petitioner contended that neither any specific role has been attributed to the accused-petitioner nor she is required for further investigation and recovery to the police, hence, the learned court below fell in error while rejecting the bail application of the accused/petitioner. The learned counsel vehemently contended that the court below has failed to appreciate the relevant law and facts of the case and arrived at wrong conclusion by disallowing bail application of the accused-petitioner. The learned counsel pointed out that number of dents have been found in this case thus, the case against the petitioner prima-facie falls in the ambit of further inquiry and she is entitled for concession of bail. The learned counsel staunchly contended that keeping the accused-petitioner behind the bars for an indefinite period would not serve any useful purpose. The learned counsel finally prayed that the impugned order may be set aside and accused/petitioner may be released on bail. In support of his

arguments, the learned counsel placed reliance on following case laws:-

i. 2010 SCR 402.
ii. 2018 P.Cr.L.J 629.
iii. 2018 P.Cr.L.J 636.
iv. 2003 P.Cr.L.J 756.

4. In reply, Sajid Maqbool, the learned counsel for the complainant/respondent No.2, vehemently contended that the impugned order has been passed quite in accordance with law which needs no indulgency by this Court. He further contended that the accused-petitioner is fully connected with the alleged crime, her role in is very much clear, hence she is not entitled for bail. The learned counsel defended the impugned order on all four corners and prayed for dismissal of the revision petition.

5. Syed Faisal Gillani, A.A.G supported the arguments of the learned counsel for the complainant/respondent and contended that the accused-petitioner is involved in a heinous offence of murder thus, she is not entitled for bail. He also prayed for dismissal of the revision petition.

6. I have heard the learned counsel for the parties at considerable length and perused the record with due care.

7. No cavil to the proposition that grant of bail to the accused under Section 497(2) Cr.P.C is granted as a right if ex-facie it appears to the Court that there are no reasonable grounds for believing that the accused has committed the offence alleged against him or there are sufficient grounds for further inquiry into the guilt.

8. Trite that in bailable offences, the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but mere concession. Section 497, Cr.P.C denotes two categories of non-bailable offences (i) offences punishable with death and imprisonment of life or imprisonment for 10 years, and (ii) offences punishable imprisonment for less than 10 years. The principle drawn from this provision of law is that non-bailable offences falling in the second category (offences punishable imprisonment for less than 10 years) to grant of bail is a rule and refusal is an exception. So, the bail will be declined in extraordinary and in exceptional cases:

(a) where there is likelihood of the abscondence of the accused;
(b) where there is apprehension of he accused tempering with the prosecution evidence;
(c) where there is danger of the offences being repeated if the accused release on bail; and
(d) where the accused is previous convict.

9. In connection with the first category (offences punishable with death and imprisonment of life or imprisonment of 10 years), the provisions of Section 497, Cr.P.C are not punitive in nature. There is no concept of punishment before the judgment in the criminal law of the land. The question of grant or refusal of bail is to be determined judiciously, having regard to the facts and circumstances of each case. Where the prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime falling in first category, the court must refuse bail. On the other hand, where the accused satisfies the court that there are not any reasonable

ground to believe that he is guilty of such offence, then the Court must release him on bail. For arriving at the conclusion as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or with ten years' imprisonment, the Court will not conduct a preliminary trial/inquiry but will only make tentative assessment, i.e. will look at the material collected by the police for and against the accused and be prima facie satisfied that some tangible evidence can be offered which, if left un-rebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So, the Court will not minutely examine the merits of the case or plea of defence at that stage.[1]

10. So far as the facts of the case at hand are concerned, the complainant already have introduced two different stories against the accused, one narrated in the police case in FIR while some how different angle has been portrayed in the complaint. Although direct allegation of causing death to the deceased by knife blowing is attributed to the petitioner but no direct evidence is available in this regard. The complainant and the prosecution have relied upon circumstantial evidence, which has been otherwise taken into consideration in a way that if the bulk of the evidence is recorded as per stance of the prosecution and complainant there is no chance of maximum sentence.

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[1]. PLD 1995 Supreme Court 34 (Tariq Bashir and 5 others vs. The State)

11. The offence of intentional murder / قتل عمد punishable under Section 302, PPC alleged against the petitioner falls within the prohibitory clause of Section 497(1), Code of Criminal Procedure, 1898 (Cr.P.C) but being a woman the petitioner's case is covered by the 1st proviso of Section 497, Cr.P.C. The said proviso empowers the Court to grant bail in the offences of the prohibitory clause of Section 497 (1) Cr.P.C alleged against the accused under the age of 16 years, woman accused and sick and infirm accused, equal to its power and first part of the Section 497(i), Cr.P.C. It means that in case of woman accused as mentioned in the 1st proviso to Section 497 (1), Cr.P.C, irrespective of the category of the offence, the bail is to be granted as a rule and its refusal only an exception in the same manner as its grant or refusal in the offence that do not fall within prohibitory clause of section 497, Cr.P.C. The exceptions that justified refusal of bail are also well settled by the superior courts of law.[2] Hence, she is also entitled to be released on bail on "statutory ground" incorporated in Section 497(1), Cr.P.C as well.

12. Squeezed principle drawn from the ratio of the judgemade law is that exceptions in connection with the Section 497(1), Cr.P.C that can justify refusal of bail simply are that likelihood of the accused if release on bail (a) if he absconds to escape trial (b) if he tries to tamper with prosecution evidence or influence the prosecution witnesses to disturb the Court of justice (c) if he repeats the offences.

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[2]. 2009 SCMR 1488 + PLD 2017 SC 733.

13. So far as the case at hand is concerned, the petitioner who is a woman and as per tentative assessment of the record, alongwith findings of the Court below I am of the opinion that petitioner is entitled to be benefited of Section 497(1) Cr.P.C in a way to enlarge her on bail. In this regard I am fortified to follow the ratio expounded by the Supreme Court of Pakistan in the case titled "Mst. Ghazala vs. The State **[2023 SCMR 887].**"

14. After giving thoughtful consideration to the arguments advanced by both the learned for the parties, I am of the view that keeping in view the social fabric of our society in AJ&K there is no likelihood that a female accused if released on bail after securing sufficient surety would abscond to escape trial or for that matter tamper with the prosecution evidence or influence the prosecution witnesses to destruct the trial or repeat the offence. Case of the petitioner does not fall in any of 3 exceptions mentioned above that may deprive bail to her.

15. **It is trite that in criminal dispensation of justice system the accused is treated as favorite child of law but ipso facto it does not mean that law favor him to take refuge from the charge or facilitate him save his/her skin from the charge to leveled, but the said doctrine takes breath from the concept of burden of proof resting upon the shoulder of the prosecution, thus, in this sense as the accused is not burdened with liability to prove her innocence, only the prosecution is bound to prove its case beyond any shadow of doubt against accused. That is why the law favour the accused for**

taking benefit of loopholes and dents of the case brought against him. In this perspective of the matter, the wisdom of law is bail not jail. Mere apprehension qua anticipated absconsion of accused is not a valid ground for refusal of bail in every case as a routine, as every criminal case has its own footing, facts and circumstances.

(Emphasize supplied)

16. **Trial is not in progress and impliedly in pause**. Petitioner is continuously behind the bars since 01.10.2024, thus, benefit of Section 497(1)(a), Cr.P.C is liable to be extended in her favour coupled with other factors, like 2 versions, one portrayed by prosecution and other one by complainant in his complaint which drags the case in the realm of further inquiry in view of section 497(2) Cr.P.C. It is useful to reproduce verbatim of Section 497 Cr.P.C as under:

> **" 497. When bail may be taken in case of non-bailalbe offence.-** (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:
>
> Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.
>
> Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released:
>
> [Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail.

(a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or

(b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded.

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.]

(3) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(5) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ”

17. Epitome of the above discussion is that in light of the reasons mentioned above, I find that the impugned order passed by the court below does not match with the settled principle of law, thus, the same is hereby set-aside. Revision petition at hand is **accepted** and petitioner is **admitted** to bail subject to furnishing bail bond in sum of Rs.1,000,000/- (Ten Lac rupees) with two sureties in the like amount to the satisfaction of the trial Court. However, the prosecution, complainant is at liberty to move for cancellation of bail if the

petitioner misuses it or abscond to escape trial or influence the prosecution witnesses to disturb the Court of justice.

Revision petition stands **accepted**.

Muzaffarabad,
19.05.2025. **JUDGE**

(Approved for reporting)

JUDGE