

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr. Misc. Application No.444-D/2024
In Cr.Misc.BA No.177-D/2024

Mustafa alias Kakai
Versus
The State etc.

JUDGMENT

For petitioner: Muhammad Asif Nawaz,
Advocate.

For respondents: Mr. Inamullah Khan Kundi, Asstt:
A.G.

Mr. Saif-ur-Rehman Khan,
Advocate for respondent No.2.

Date of hearing: 18.10.2024.

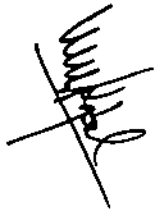
Dr. Khurshid Iqbal J.-

1. By its Order dated 26.04.2024, this Court has granted bail to the applicant Mustafa in a murder case FIR # 661, registered on 11.08.2023, in police station Cantt. DI Khan. As per the order, the release of the applicant is subject to production of bail bonds in sum of Rs. 4,00,000/00 with two sureties each in like amount to the satisfaction of the trial Court. During the last about 06 months of the bail order, the applicant has been unable to get himself released from judicial lock up due to the heavy bail amount. As a matter of course, the applicant couldn't be set at liberty until he furnishes the bail bonds to the tune of the amount already fixed or is reduced. The applicant seeks reduction of the bail amount through this application.

2. As the matter was taken up for hearing of Mr. Asif Nawaz, learned counsel for the applicant, Mr. Saif-ur-Rahman, advocate, turned up as counsel for the respondent/complainant

Shah Nawaz, in response to pre-filing notice. Mr. Inamullah Kundi, learned A.A.G., also came to the rostrum, accepting the notice. Hence, all the learned counsels were heard at length and the record perused.

3. This court has perused the contents of the application closely and carefully. The applicant contends that despite his having put utmost efforts during the last 06 months of the bail order, he failed to produce sureties to the satisfaction of the trial court, notably as regards the amount of the bail fixed in his bail order. He claims to be an indigent labourer, belonging to a poor family. He contends that the very factum of his failure, especially owing to his lack of financial resources, suggests that the amount fixed in his bail order is harsh, excessive, and unreasonable. It militates against the very purpose of the bail, which is ensuring of his presence only at the trial, he maintains. He implores that his continued languishing behind the bars characterizes his punishment rather than the endurance of his presumption of innocence, as a substantial component of his right to a fair trial. He prays for consideration of his financial status as a means of reduction of the bail amount. During arguments, his counsel relied on certain case law which this court will consider later in this opinion.



4. Learned private counsel of the respondent/complainant assisted by the learned A.A.G. opposed the application but mainly on what they called conduct of the applicant. They stated that the applicant submitted bail bonds before a Judicial Magistrate instead of the trial court in compliance with the bail order and produced unreliable sureties. Learned counsel for the applicant, while admitting, stated that the applicant surrendered to the lawful authorities thereafter and preferred to go behind the bars for the mistake. He maintained that some extraneous elements intervened and they betrayed the applicant and his father by producing unreliable sureties. He further maintained that the applicant has now knocked the door of this court for reduction of the bail amount.

5. There could be no denial from the fact that despite direction of the courts for reliability of the sureties, evil elements do operate in our district courts in a bid to exploit poor litigants for illegal gains and mislead the courts. At times, efficient judicial officers and alert members of the bars do succeed in bringing those elements to justice. So, this court is of the view that if at all, the applicant has already surrendered himself and he should not be indefinitely punished for that event.

6. Coming now to the legal aspect, section 498 of the Criminal Procedure Code, 1898 (Cr.P.C.) deals with the matter, which reads as under:

498. Power to direct admission to bail or reduction of bond. - The amount of every bond executed under this Chapter [XXXIX] shall be fixed with due regard to the circumstances of case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not direct that any person be admitted to bail, or that the bail required by a police or a Magistrate be reduced.

7. In a 2020 case, the Supreme Court directed that High Court to decide afresh a similar matter pertained to exemption from deposit of certain cash amount in addition to a surety bond (*Saeed Zaman v. The State and another*, 2020 SCMR 1855). The petitioner in that case implicated in a huge financial scam, was allowed bail subject to deposit of Rs. 5.16 million, the embezzled amount, and a bond in the sum of Rs. 1,00,000/- with one surety. The petitioner, having failed to arrange the cash money, sought exemption but the High Court declined his plea. The Court interpreted the words "thinks sufficient" regarding the sum of money in the bail bond used in section 499, Cr.P.C., observing that the court ordering bail should set "conscionable amount [in the bond], regard having to the facts and circumstances of each case with a view to ensure future attendance" of the accused person (para. 4). Two points, however, are worth mentioning here: firstly, the High Court

Amir

directed the petitioner to deposit cash (disputed) money of which he was aggrieved. Secondly, the Court directed the High Court to consider the issue of cash money again. The principle that Supreme Court laid down was that bail is an interlocutory arrangement aimed at ensuring physical appearance of an accused person at the trial and that the statutory provision requires the amount of bail should be just; being in conformity with one's conscience.


8. In *Rana Muhammad Siddique*, the High Court reduced the amount of bail to Rs. 100,000/- already fixed by the trial court while granting exemption for deposit of certain embezzled amount in cash. The High Court ruled that the deposit of the cash amount was, keeping in view the status of the petitioner, "harsh, excessive and unreasonable" (*Rana Muhammad Siddique v. The State and another*, 1994 PCr.LJ 118 [Lahore]; para. 5). Reference may also be made to *Abdul Jabbar* and *Khurram Ghani*, where Rs.5,00,000/- for each accused were fixed as bail amount by the trial courts. In both the cases, the High Court reduced the amounts of bail. In the former, the Court observed that once bail is granted and an accused person is found to have been unable despite his efforts to furnish surety in the sum of the amount fixed in the order, the amount could be reduced keeping in view the facts and circumstances of the case so that the accused should not suffer for the reasons beyond his control. The Court emphasized that once bail has been allowed, the liberty of an individual shouldn't be curtailed for the reason of his/her inability to arrange surety in compliance with the bail order (*Abdul Jabbar v. The State*, 1998 PCr.LJ 1465 [Karachi]). In the latter case, the Court observed that fixation of bail bond amount is not only dependent on the role of the accused, but also on the facts and circumstances of the case (*Khurram Ghani v. The State*, PLD 2010 Karachi 200).

Muhammad

9. The 2021 *Maqbool Ahmad* may be called a recent case. In that case, the High Court, like the one in hand, considered reduction of bail from Rs. 2,00,000/- to Rs. 50,000/- on an

application under section 426, Cr.P.C., in a criminal appeal (*Maqbool Ahmad v. The State*, 2021 MLD 1038). The Court, in addition to the 1994 Lahore and the 2020 Supreme Court cases referred to above, discussed the history of prohibition of excessive bail amount in the UK (since the English Bill of Rights, 1689) and the US (since the Eight Constitution Amendment, 1791). It follows that fixation of excessive bail money in those countries have been prohibited since long. The Court also referred to the Indian law contained in section 440(1) of the 1973 Criminal Procedure Code (comparable to section 498 of our Cr.P.C), which provides that the bail amount "shall be fixed with due regard to the circumstances of the case and shall not be excessive." The Court reproduced a certain portion of the Indian Supreme Court judgment in *Moti Ram and others v. State of Madhya Pradesh* (AIR 1978SC 1594) in which excessive bail was seen in the perspective of social justice. Citing from Encyclopaedia Britannica, the Court held that "[t]he right to a reasonable bail is now considered to be closely related to the right to fair trial" (par. 16). Para. 17 of the order is of great significance, which is reproduced as under:

"17. In light of the jurisprudence discussed above, the right a reasonable bail inter alia means that-

 (i) the court should fix the amount of the bond having due regard to the circumstances of the case, including the nature of the offence charged, the weight of evidence against him, the financial capacity of the accused and his character/criminal history;

(ii) the amount of the bail bond should not be excessive, harsh or unreasonable but should be such as in the judgment of the court would ensure presence of the accused;

(iii) if there are more than one accused in a case, the court may stipulate different amounts for their bail bonds because each one of them stands before the bar of justice as an individual; and

(iv) in a case where the Government's only interest is in preventing flight the court must

set the bail at a sum designed to ensure that goal.”

10. Consequent upon the above discussion, this court has reached to the conclusion that the applicant's bail bond need to be reduced so as to enable him to seek his release without further detention in the instant case. Resultantly, the bail bond is reduced to Rs.2,00,000/- which he shall present before the trial court.

11. These are the detailed reasons of the short order of even date.

office
29/10/2024.

Announced.
DI: 18.10.2024.
Imran/

JUDGE