

PLD 1989 Supreme Court 585

Present: Muhammad Afzal Zullah,
Javid Iqbal, Usman Ali Shah and Naimuddin, JJ

MUHAMMAD ISMAIL--Appellant

versus

MUHAMMAD RAFIQUE and another--Respondents

Criminal Appeal No.20 of 1989, decided on 2nd May, 1989.

(From the judgment/order of the Lahore High Court dated 28-2-1989 in Miscellaneous No.451-B of 1989).

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

---S. 497--Penal Code (XLV of 1860), 5.302--Constitution of Pakistan (1973), Art-185(3)--Leave to appeal was granted to examine question whether it was an established practice of the superior Courts, not to grant or cancel bail in a murder case, when its trial was to commence within a short time and the date had been fixed.

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

---S. 497--Penal Code (XLV of 1860), S.302--Constitution of Pakistan (1973), Art.185(3)--Leave to appeal was granted to examine question whether dismissal of the earlier bail application of accused on merits by the same Judge of High Court would not be a bar to the grant of bail on a subsequent application; mainly on the ground that another Investigating Officer found the accused innocent and whether for purposes of 5.497(2), Cr.P.C. and for other similar considerations the view of the subsequent police investigator or the earlier opinion expressed by a Judge of High Court on merit, would prevail.

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

---S. 497--Penal Code (XLV of 1860), 5.302--Murder--Grant of bail when case is fixed for hearing--Practice of the superior Courts is that when a murder case is fixed for hearing, ordinarily the bail applications are not decided on merits and matter is often left to the discretion of the trial Judge and this. practice is directly relatable to the "question of prejudice".

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

---S. 497--Penal Code (XLV of 1860), S.302--Cancellation of bail--Trial was to commence within a fortnight--Cancellation of bail at such a stage, held, would not be proper.

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

--S. 497(2)--Penal Code (XLV of 1860), S.302--Bail, grant of--When the Court finds that two essential conditions contained in 5.497(2), Cr.P. C. are satisfied the accused shall become entitled as of right to bail--When an accused person becomes entitled as of right to bail under S.497(2), Cr.P.C., bail cannot be withheld on the ground of practice; because, the latter is relatable to exercise of discretion while the former is relatable to the exercise and grant of right.

(f) Constitution of Pakistan (1973)--

---Art. 185--Criminal Procedure Code (V of 1898), S.497--Penal Code (XLV of 1860), S.302--Bail, grant of--Appeal to Supreme Court--Supreme Court declined to interfere with the impugned order because leave had not been granted on the point now urged by appellant and matter being of bail Supreme Court would not extend the leave granting order with observations that if order of the High Court was set aside on merits that would disturb the practice of the Court as ordinarily tentative opinion expressed by the High Court in bail matters on the merits of

the cases, is not disturbed and comments of Supreme Court made with regard to merits would not, prejudice the case of petitioner during the trial.

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

---S. 497--Penal Code (XLV of 1860), 5.302--Constitution of Pakistan (1973), Art.185--Bail, grant of--Appeal to Supreme Court dismissed with the observation that nothing held, said, or observed by the High Court on merits, should in any case influence the opinion of trial Court or the course of trial in any manner whatsoever.

Malik A.R.Arshad, Advocate Supreme Court and S.Abul Asim Jaffary, Advocate-on-Record (absent) for Appellant.

S.M. Nazim, Advocate for Respondent No.1.

M.Nawaz Abbasi, Asstt. A.-G. withi Rao M.Yousuf Khan, Advocate-on-Record for Respondent No.2.

Date of hearing: 2nd May, 1989.