

P L D 1999 Lahore 516

Before Mian .VazirAkhtar, J

ASGHAR ALI ---Petitioner

versus

ABDUL SHAKOOR and 2 others---Respondents

Criminal Miscellaneous No. 1755-BC of 1999, decided on 4th June, 1999.

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

--Ss. 497(5) & 439---Cancellation of bail---Court originally granting bail may not necessarily be moved first---No hard and fast rule exists for moving the same Court for cancellation of bail under S.497(5), Cr.P.C. which had originally granted bail---Where cancellation of bail is sought on the ground of misuse of liberty by suborning the prosecution witnesses or committing other offences, then according to general practice, the same Court may be moved first which had originally granted bail---Such rule of practice may be deviated from keeping in view the facts and circumstances of the case---High Court also enjoys ample powers under S.439, Cr.P.C. to revise a bail order passed by lower Court and set it aside in appropriate cases.

Zia-ul-Hassan v. The State PLD 1984 SC 192; Sajid Iqbal v. Mukhtar Ahmad and 2 others 1998 PCr.LJ 299; Muhammad Usman alias Chan Mahi v. The State 1999.MLD 671; Mst. Barkat Bibi v. Gulzar and another 1979 SCMR 65; Nazir v. Amir Din and another 1971 SCMR 637 and Ijaz Ahmad v. The State 1974 SCMR 166 ref.

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

---S. 497(5)---Cancellation of bail---Strong and exceptional grounds have to be made out to justify cancellation of bail.

Syed Amanullah Shah v. The State and another PLD 1996 SC 241; Razi Khan v. Muhammad Mushtaq and another 1996 SCMR 984 and Mazhar Mehmood v. Basit and another 1997 SCMR 915 ref.

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

---S. 497(5)---Penal Code (XLV of 1860), S.302/34---Cancellation of bail---

Trial Court was wrong in observing that delay of only about one month had. occasioned due to the adjournments obtained by the accused which was contrary to record---Trial Court also in utter disregard of the rule laid down by Supreme Court in the case of Abdur Rashid v. The State 1998 SCMR 897, had granted bail to accused illegally on the basis of erroneous mathematical calculation--Trial Court had further failed to consider the cumulative effect of the adjournments obtained by the accused due to which delay had been occasioned in conclusion of the trial---Accused, therefore, were not legally entitled to claim bail on the ground of delay under the third proviso to S.497(1), Cr.P.C.---Trial Court after wrongly granting bail to one accused had also allowed bail to other accused applying the rule of consistency---Since one accused had been granted bail by Trial Court in a fanciful and arbitrary manner, the rule of consistency also required cancellation of bail allowed to other accused---Bail allowed to both the accused was cancelled accordingly.

Abdur Rashid v. The State 1998 SCMR 897; Abdus Sattar v. Muhammad Yaqub and another 1970 SCMR 786; Mirza Khan v. Lal Khan and others 1976 PCr.LJ 324; Muhammad Nasir Butt v. The State 1991 PCr.LJ 13; Syed Amanullah Shah v. The State and another PLD 1996 SC 241; Razi Khan v. Muhammad Mushtaq and another 1996 SCMR 984; Mazhar Mehmood v. Basit and another 1997 SCMR 915; Zia-ul-Hassan v. The State PLD 1984 SC 192; Sajid Iqbal v. Mukhtar Ahmad and 2 others 1998 PCr.LJ 299; Muhammad Usman alias Chan Mahi v. The State 1999 MLD 671; Mst. Barkat Bibi v. Gulzar and another 1979 SCMR 65; Nazir v. Amir Din and another 1971 SCMR 637 and Ijaz Ahmad v. The State 1974 SCMR 166 ref.

Muhammad Afzal Wahla for Petitioner.

Nazir Ahmad Ghazi for Respondents Nos. 1 and 2.

Shahid Mobeen, A.A.-G. assisted by Miss Sofia Riaz for the State.