

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

MUHAMMAD RAFIQUE---Petitioner

Versus

The STATE and others---Respondents

Crl. P. No. 301 of 2022, decided on 22nd June, 2022.

(Against the order of Lahore High Court, Lahore, dated 21.02.2022, passed in Crl. Misc. No.68979-B of 2021).

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

---S. 497(2)---Bail---Cross-version FIRs---Further inquiry---Scope and meaning of "cross-version" in a bail matter.

Mere existence of a cross-version is not a valid ground for holding the case one of further inquiry to grant bail under Section 497(2), Cr.P.C., unless it is supported by the material available on record of the case and on tentative assessment of that material, the court either finds it prima facie true or remains unable to determine even tentatively which one of the two versions is prima facie true. It is in the latter situation where the court remains unable to determine even tentatively, which one of the parties is aggressor and which one is aggressed upon, that the case against both parties falls within the scope of further inquiry under Section 497(2), Cr.P.C. The determination of "the aggressor and the aggressed upon", whether tentatively at bail stage or finally on conclusion of trial, is relevant to decide culpability of a party for the occurrence as this determination consequently decide which one of the parties was assailant and which one acted in self-defence. When a court cannot decide even tentatively, at bail stage, such culpability of a party on the basis of material on record of the case, it leaves this matter for determination on conclusion of the trial after recording the prosecution evidence and the defence evidence, if produced, and gives the benefit of the requisite further inquiry to both parties by granting them bail under Section 497(2), Cr.P.C. If the courts start considering every case involving a cross-version as one of further inquiry without any tentative assessment of the worth of the cross-version, it can encourage an accused to concoct a false or fabricated cross-version so as to bring his case within the ambit of further inquiry and thereby get bail. That is why the courts are to make a tentative assessment of the material, if any, available on record of the case in support of the cross-version at bail stage and should not readily accept it as a valid ground to treat the case one of further inquiry under Section 497(2), Cr.P.C.

Usman v. State 1975 SCMR 391; Nasir v. State 1992 SCMR 501; Arif v. Amil 2005 SCMR 1402; Hameed v. Zahid 2011 SCMR 606; Liaqat v. State 2013 SCMR 1527 and Abbas v. State 2017 SCMR 1730 ref.

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

---Ss. 497(5) & 497(2)---Penal Code (XLV of 1860), Ss. 302, 324, 337-F(v), 337-F(i), 337-A(i), 337-A(ii), 341, 148 & 149---Constitution of Pakistan, Art. 185(3)---Murderous assault---Bail, cancellation of---Cross-version prima facie not true---Cross-version pleaded in the present case by the accused and his co-accused was prima facie found not to be true on the basis of the tentative assessment of the material available on record---Cross-version of accused party that the complainant party had abducted the accused was not supported by any cogent material available on record of the case---Accused and his co-accused had gone over to the place of the complainant party and the occurrence had admittedly taken place there---Further, the version of the complainant party was supported by the statements of the injured witnesses and other witnesses recorded under Section 161, Cr.P.C. as well as by the medical evidence and recoveries of the alleged weapons of offence---Tentative assessment of the said and other material available on record of the case prima facie showed that it was the accused party that were the aggressor---Version of the complainant party thus prima facie appeared to be true---Fire shot that proved fatal for the deceased was attributed to the accused and the incriminating material available on record of the case provided reasonable grounds for believing that accused had committed the offence of Qatl-i-amd punishable under section 302, P.P.C., which fell within the prohibitory clause of Section 497(1), and there were no sufficient grounds for further inquiry into his guilt as envisaged by Section 497(2), Cr.P.C.---High Court had erred in law while placing reliance upon the cross-version of the accused party for holding the case against accused to be one of further inquiry, without referring to any material available on

record of the case supporting it---Petition for leave to appeal was converted into appeal and allowed, and bail granted to accused by the High Court was cancelled.

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

---S. 497(5) ---Constitution of Pakistan, Art. 185(3)---Bail granted by the High Court---Grounds upon which the Supreme Court may set-aside such bail granting order---Although the Supreme Court ordinarily refrains from interfering with bail granting orders of the High Courts, it does not shy away to perform its constitutional obligation to set the matter right for the safe administration of criminal justice when a High Court has made such an order in derogation of some settled principle of law, or when the order is found to be perverse or arbitrary.

Gulzar v. Murtaza PLD 1970 SC 335; Bashiran v. Nisar PLD 1990 SC 83; Riaz v. State 2001 SCMR 1779; Nazir v. Ismail 2004 SCMR 1160; State v. Khalid 2006 SCMR 1265; Ehsan v. State 2007 SCMR 482; Ilyas v. Shahid PLD 2009 SC 146 and Sidra v. State 2020 SCMR 2089 ref.

Mushtaq Ahmad Mohal, Advocate Supreme Court (Video link - Lahore Registry) for Petitioner.

Ch. M. Sarwar Sandhu, Addl. P.G., Shabbir, S.I. for the State.

Rana M. Shahid Mehmood, Advocate Supreme Court along with Respondent No.2 (Muhammad Farooq) (Video link - Lahore Registry).

Date of hearing: 22nd June, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner (complainant) seeks leave to appeal against the order dated 21.02.2022 of the Lahore High Court, whereby post arrest bail was granted to respondent No.2 (accused Muhammad Farooq) in case FIR No.498/2020 dated 09.08.2020 registered at Police Station, Saddar Hafizabad, for offences punishable under Sections 302, 324, 337 F(v), 337 F(i), 337-A(i), 337 A(ii), 341, 148 and 149, P.P.C. The petitioner seeks cancellation of the same through the present petition.

2. Briefly stated, as per the crime report the allegation against respondent No.2 is that he along with other co-accused launched a murderous attack on the complainant party by going over to their place, where he made a fire shot which hit Atiq-ur-Rehman on his head and proved fatal. On the other side, respondent No.2 and his co-accused presented a cross-version of the occurrence during investigation that the complainant party had abducted the accused Hussain, and they had gone to the place of the complainant party to rescue him. Though the Police found the cross-version false, the High Court has granted the relief of post arrest bail to respondent No.2 on the basis thereof, with the observation that "it will be determined by the learned trial court after recording of evidence that as to who was aggressor and who was aggressed upon and at present the case of the prosecution against the petitioner is one of further inquiry".

3. We have heard the learned counsel for the parties and examined the record of the case.

4. The well-settled principle of law as to the effect of a cross-version of the occurrence involved in a case, at bail stage, is that mere existence of a cross-version is not a valid ground for holding the case one of further inquiry to grant bail under Section 497(2), Cr.P.C.,¹ unless it is supported by the material available on record of the case and on tentative assessment of that material, the court either finds it prima facie true or remains unable to determine even tentatively which one of the two versions is prima facie true. It is in the latter situation where the court remains unable to determine even tentatively, which one of the parties is aggressor and which one is aggressed upon, that the case against both parties falls within the scope of further inquiry under Section 497(2), Cr.P.C.² The determination of "the aggressor and the aggressed upon", whether tentatively at bail stage or finally on conclusion of trial, is relevant to decide culpability of a party for the occurrence as this determination consequently decide which one of the parties was assailant and which one acted in self-defence. When a court cannot decide even tentatively, at bail stage, such culpability of a party on the basis of material on record of the case, it leaves this matter for determination on conclusion of the trial after recording the prosecution evidence and the defence evidence, if produced, and gives the benefit of the requisite further inquiry to both parties by granting them bail under section 497(2), Cr.P.C. If the courts start considering every case involving a cross-version as one of further inquiry without any tentative assessment of the worth of the cross-version, it can encourage an accused to concoct a false or fabricated cross-version so as to bring his case within

the ambit of further inquiry and thereby get bail.³ That is why the courts are to make a tentative assessment of the material, if any, available on record of the case in support of the cross-version at bail stage and should not readily accept it as a valid ground to treat the case one of further inquiry under Section 497(2), Cr.P.C.

5. The cross-version pleaded in the present case by the accused party (respondent No.2 and his co-accused), when examined in the light of the above principle, is *prima facie* found not to be true on the basis of the tentative assessment of the material available on record of the case. Their version that the complainant party had abducted the accused Hussain is not supported by any cogent material available on record of the case. The petitioner and his co-accused had gone over to the place of the complainant party and the occurrence had admittedly taken place there. Further, the version of the complainant party is supported by the statements of the injured witnesses and other witnesses recorded under Section 161, Cr.P.C. as well as by the medical evidence and recoveries of the alleged weapons of offence. The tentative assessment of the said and other material available on record of the case *prima facie* shows that it is the accused party that were the aggressor. The version of the complainant party thus *prima facie* appears to be true. The shot that proved fatal for the deceased is attributed to respondent No.2 and the incriminating material available on record of the case provides reasonable grounds for believing that respondent No.2 has committed the offence of Qatl-i-amd punishable under Section 302, P.P.C., which falls within the prohibitory clause of Section 497(1), and there are no sufficient grounds for further inquiry into his guilt as envisaged by Section 497(2), Cr.P.C. The High Court has erred in law while placing reliance upon the cross-version of the accused party for holding the case against respondent No.2 to be one of further inquiry, without referring to any material available on record of the case supporting it.

6. Although this Court ordinarily refrains from interfering with bail granting orders of the High Courts, it does not shy away to perform its constitutional obligation to set the matter right for the safe administration of criminal justice when a High Court has made such an order in derogation of some settled principle of law, or when the order is found to be perverse or arbitrary.⁴ In the present case, while allowing the bail petition of respondent No.2 and making the impugned order the High Court has acted against the above said settled principle of law, and its finding recorded on the basis of an unsubstantiated cross-version is perverse, that is, against the weight of the material available on record of the case. Therefore, we convert this petition into appeal and allow the same: the impugned bail granting order is set aside and the bail petition of respondent No.2 is dismissed. Respondent No.2 shall surrender before the trial court.

7. Needless to mention that the observations made and findings recorded in this order are of tentative nature, which shall have no effect upon final determination of the case by the trial court on conclusion of the trial.

MWA/M-50/SC Bail cancelled.