

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

Mst. GHAZALA---Petitioner

Versus

The STATE and another---Respondents

Criminal Petition No. 54 of 2023, decided on 22nd February, 2023.

(Against the judgment of the Peshawar High Court, Peshawar dated 19.12.2022, passed in Bail Petition No.3875-P of 2022)

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

----S. 497(1), first proviso---Female accused---Offence falling within prohibitory clause of section 497, Cr.P.C.-
--Bail---Principles of law regulating the discretion of courts, under section 497(1), Cr.P.C., in the matter of granting post arrest bail to a women accused stated.

First proviso to section 497(1), Cr.P.C. makes the power of the court to grant bail in the offences of prohibitory clause of section 497(1) alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, equal to its power under the first part of section 497(1), Cr.P.C. It means that in cases of women accused etc. as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of section 497(1), Cr.P.C. The exceptions that justify the refusal of bail are the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence.

Tahira Batool v. State PLD 2022 SC 764; Tariq Bashir v. State PLD 1995 SC 34; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488; Muhammad Tanveer v. State PLD 2017 SC 733 and Iftikhar Ahmad v. State PLD 2021 SC 799 ref.

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

----Ss. 497(1) & 497(2)---Bail---Grant of bail under section 497(1) and under section 497(2), Cr.P.C.---
Distinction explained.

Grant of bail to the accused under section 497(2), Cr.P.C., is granted as of right if it appears to the court that there are no reasonable grounds for believing that the accused has committed the offence alleged against him rather there are sufficient grounds for further inquiry into his guilt. For the purpose of deciding the prayer for grant of bail in exercise of the discretionary power of the court under section 497(1), Cr.P.C., the availability of a sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration.

Syed Rifaqat Hussain Shah, Advocate Supreme Court/Advocate-on-Record for Petitioner.

Arshad H. Yousafzai, Advocate Supreme Court for the Complainant.

Zahid Yousaf Qureshi, Additional A.G., Faqir Gul, DSP and Sabr Ali, I.O. for the State.

Date of hearing: 22nd February, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.- The petitioner seeks leave to appeal against an order of the Peshawar High Court, dated 19.12.2022, ("impugned order") whereby the High Court while dismissing the bail application of the petitioner has denied to her the post arrest bail in case FIR No.968 registered at Police Station Sher Garh, District Mardan, for the offences under sections 302, 325, 200, 201, 182, 109 and 34 of the Pakistan Penal Code, 1860 ("P.P.C.") and the offence under section 15 of the Khyber Pakhtunkhwa Arms Act, 2013.

2. Briefly stated, the allegation against the petitioner is that she in connivance with the co-accused, Imran Ullah, has caused death of her husband, Muhammad Arif.

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

4. No doubt, the offence of Qatl-i-amd (intentional murder) punishable under section 302, P.P.C. alleged against the petitioner falls within the prohibitory clause of section 497(1) of the Code of Criminal Procedure, 1898

("Cr.P.C.") but being a women, the petitioner's case is covered by the first proviso to section 497(1), Cr.P.C. The said proviso, as held in Tahira Batool case,¹ makes the power of the court to grant bail in the offences of prohibitory clause of section 497(1) alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, equal to its power under the first part of section 497(1), Cr.P.C. It means that in cases of women accused etc. as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of section 497(1), Cr.P.C. The exceptions that justify the refusal of bail are also well settled by several judgments of this Court.² They are the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence.

5. That being the legal position, we have asked the learned Additional Advocate General and the learned counsel for the complainant to show how the petitioner's case falls in any of the said three well-established exceptions. They, however, could not explain and satisfy the Court as to which one of the said exceptions is attracted to the petitioner's case. Their only response was that there is a sufficient incriminating material available on record of the case to connect the petitioner with the commission of the alleged offence. We are afraid, the response is misconceived. The Court is not considering the grant of bail to the petitioner under section 497(2), Cr.P.C., under which the bail is granted to an accused as of right if it appears to the court that there are no reasonable grounds for believing that the accused has committed the offence alleged against him rather there are sufficient grounds for further inquiry into his guilt. For the purpose of deciding the prayer for grant of bail in exercise of the discretionary power of the court under section 497(1), Cr.P.C., the availability of a sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration.

6. In view of the facts and circumstances of the case, we do not find that there is a likelihood that the petitioner if released on bail, after securing sufficient sureties, would abscond to escape trial, or tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice, or repeat the offence. Her case, thus, does not fall within any of the three well-established exceptions that may have justified refusing bail to her.

7. For the above reasons, we find that the High Court has passed the impugned order while disregarding the settled principles of law regulating the discretion of the courts in regard to the grant of bail to women accused. The present petition is, therefore, converted into appeal and the same is allowed. The bail application of the petitioner is accepted and she is admitted to bail subject to her furnishing bail bond in the sum of Rs.100,000/- with two sureties in the like amount to the satisfaction of the trial court.

8. Needless to mention that this concession of bail may be cancelled by the trial court in the exercise of its power under section 497(5), Cr.P.C. if the petitioner misuses it in any manner, including the causing of delay or otherwise hindering the expeditious conclusion of the trial.

MWA/G-2/SC Bail granted.