

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Sayyed Mazahar Ali Akbar Naqvi and**Syed Hasan Azhar Rizvi, JJ****MUHAMMAD ATIF---Petitioner****Versus****The STATE and another---Respondents**

Crl.P. No. 298 of 2023, decided on 31st October, 2023.

(Against the order of Lahore High Court, Lahore, dated 16.03.2023, passed in Crl. Misc. No.3167-B of 2023).

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

---S. 497---Constitution of Pakistan, Articles 4, 9, 10A, 25 & 185(3)---Bail---Rule of consistency---Benchmark for applying the rule of consistency in granting bail to an accused stated.

The rule of consistency applied in bail matters is premised on the fundamental right to equality before the law guaranteed under Article 25 of the Constitution of Pakistan. This right to equality before the law ensures that persons similarly placed in similar circumstances are to be treated in the same manner. In other words, among equals the law should be equally administered; the like should be treated alike. Article 25 of the Constitution does not prohibit different treatment to persons who are not similarly placed or who are not in similar circumstances. To claim equality before the law an accused person must therefore show that he and his coaccused who has been granted bail are similarly placed in similar circumstances. In other words, he must show that the prosecution case, as a whole, against him is at par with that against his co-accused who has been granted bail, and not distinguishable in any substantial aspect. The rule of consistency is also pillared on Articles 4 and 10A of the Constitution ensuring that level playing field and fairness is maintained in adjudicating cases of co-accused. The right to liberty under Article 9 of the Constitution has to be extended fairly and without discrimination to an applicant seeking bail. The rule of consistency in bail matters is fundamental to ensuring fairness, reducing arbitrary decision-making, and maintaining public confidence in the criminal justice system. It's a key aspect of the rule of law, ensuring that all individuals are treated equally under the law.

Fida Hussain v. State PLD 2002 SC 46; Abdul Jalil v. N.W.F.P. Forest Development Corporation 2010 SCMR 1933 and Tariq Nawaz v. Government of Pakistan 2001 PLC (C.S.) 57 ref.

The rule of consistency in bail matters is attracted and applied after the grant of bail to a co-accused. Grant of bail by a court considers several factors like the contents of the FIR, the incriminating material collected by the police during investigation, the past history of the accused, etc. The grounds which form the basis for the grant of bail to a co-accused is thus the benchmark for grant of bail to the accused under the rule of consistency. The benchmark for applying the rule of consistency is not only the role attributed to the accused in the FIR but also the material collected in the investigation. Therefore, the court has to assess whether the role of the accused in the FIR, examined in the background of the material collected by the Police is the same as that of the co-accused, who has been granted bail. It is this congruence in the case of the co-accused and the accused that attracts the rule of consistency.

To decide upon the applicability of the rule of consistency for granting bail under Section 497(2), Cr.P.C., the courts have to examine the whole material available on the record of the case. Without doing so, it cannot be determined whether the accused who claims the benefit of this rule and his co-accused who has been granted bail are similarly placed in similar circumstances.

Shahid Farooq v. State 2011 SCMR 1619 ref.

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

---S. 497(1)---Constitution of Pakistan, Art. 185(3)---Bail---Offences falling within the prohibitory clause of Section 497(1), Cr.P.C.---In the offences that fall within the prohibitory clause of Section 497(1), Cr.P.C., the post-arrest bail is granted on three grounds: (i) under the first proviso to Section 497(1), Cr.P.C., on the ground of the accused being a minor, or a woman, or a sick or infirm person; (ii) under the third proviso to Section 497(1), Cr.P.C., on the ground of delay in the conclusion of the trial beyond the period prescribed for no fault of the accused; and (iii) under Section 497(2), Cr.P.C., on the ground that there are no reasonable grounds for

believing that the accused has committed the offence, but rather there are sufficient grounds for further inquiry into his guilt.

Raza Bukhari v. State PLD 2022 SC 743 ref.

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

---S. 497(1)---Constitution of Pakistan, Art. 185(3)---Bail---Whether or not there exist any "reasonable grounds" for believing that the accused has committed the alleged offence---For the determination of the question under Section 497(2), Cr.P.C., as to whether or not there exist any "reasonable grounds" for believing that the accused has committed the alleged offence, the courts have to appraise although tentatively the whole material available on the record of the case---This question cannot be determined by merely examining the contents of the FIR---Essentially, it is the tentative assessment of the evidence collected in the investigation both for and against the accused that is determinative of the said question.

Manzoor v. State PLD 1972 SC 81 and Khalid Gillani v. State PLD 1978 SC 256 ref.

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

---S. 497(2)---Penal Code (XLV of 1860), Ss. 302, 148 & 149---Constitution of Pakistan, Art. 185(3)---Qatl-i-amd, rioting armed with deadly weapons, unlawful assembly---Bail, refusal of---Rule of consistency not applicable---Courts below have granted the post-arrest bail to the two co-accused persons under Section 497(2), Cr.P.C. after making a tentative assessment of the evidence collected in the investigation both for and against them---Tentative assessment of that evidence has led them to the finding that there are no reasonable grounds for believing that the said co-accused have committed the offence of murder of the complainant's son, but rather there are sufficient grounds for further inquiry into their guilt---Material collected in the investigation in the case of two co-accused shows that they were not present on the scene of the crime---This is not so in the case of the petitioner/accused---Therefore, material collected in the investigation against the present petitioner is different from that collected against them---Ground on which they have been granted bail is not available to the petitioner---Case against the petitioner is therefore not at par with that against those co-accused persons but rather is distinguishable in a substantial aspect---Allegation made against the petitioner of being present on the spot and having made fires on the deceased sons of the complainant by his firearm is not only supported by the statements of the eye-witnesses but also corroborated by the recovery of the weapon of offence effected from him in the investigation---There is, as such, sufficient incriminating material available on the record of the case to connect the petitioner with the commission of the alleged offence, and his case does not come within the scope of the provisions of Section 497(2), Cr.P.C., nor does the rule of consistency apply to him---High Court had rightly refused post-arrest bail to the petitioner---Petition for leave to leave was dismissed, leave was refused and petitioner was refused bail.

Barrister Usman G. Rashid Cheema, Advocate Supreme Court for Petitioner.

Ch. Muhammad Sarwar Sidhu, APG, Punjab, along with Asghar Ali, Investigating Officer for the State.

Mudassar Khalid Abbasi, Advocate Supreme Court for the Complainant.

Date of hearing: 31st October, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks leave to appeal against an order of the Lahore High Court, dated 16.03.2023, whereby the post-arrest bail has been declined to him in case FIR No. 209/2021 registered at Police Station, Jinnah Road, District Gujranwala, for the offences punishable under Sections 302, 148 and 149 of the Pakistan Penal Code ("P.P.C.").

2. Briefly, as per the crime report (FIR), the allegation against the petitioner is that on 3 April 2021 at about 09:00 a.m., he and other accused persons, namely, Umar Farooq, Zain, Goga, Farooq, Khalid and one unknown person, committed the murder of Zain Ahmad, aged 20/21 years, and Qais Ahmad, aged 15/16 years, the sons of the complainant. In the investigation, the accused Farooq and Khalid were found not present on the spot at the time of occurrence. On this ground, they have been admitted to post-arrest bail by the courts below.

3. The learned counsel for the petitioner has argued that the role attributed to the present petitioner in the FIR is similar to that of the accused, Khalid and Farooq, who have been granted post-arrest bail; therefore, the petitioner is also entitled to the concession of bail on the basis of rule of consistency. On the other hand, the

learned counsel for the State and the complainant have submitted that the rule of consistency does not apply to the petitioner as his case is distinguishable from that of those accused persons. Both sides have also relied upon several cases in support of their respective contentions.

4. We have considered the arguments of the learned counsel for the parties, read the cases cited by them and examined the record of the case.

5. From the respective contentions of the parties, the question of law that has arisen for our consideration is: what is the benchmark for applying the rule of consistency in granting bail to an accused? In other words, what is that has to be compared between the case of the accused and the co-accused in order to determine consistency for the purpose of determining the applicability of the rule of consistency in granting bail under Section 497(2) of the Code of Criminal Procedure ("Cr.P.C."); whether it is merely the role attributed to the accused and the co-accused in the FIR? or whether the role has to be assessed by compositely considering the FIR and the material collected during investigation by the Police?

6. The rule of consistency applied in bail matters is premised on the fundamental right to equality before the law guaranteed under Article 25 of the Constitution of Pakistan.¹ This right to equality before the law ensures that persons similarly placed in similar circumstances are to be treated in the same manner. In other words, among equals the law should be equally administered; the like should be treated alike.² Article 25 of the Constitution does not prohibit different treatment to persons who are not similarly placed or who are not in similar circumstances. To claim equality before the law an accused person must therefore show that he and his co-accused who has been granted bail are similarly placed in similar circumstances. In other words, he must show that the prosecution case, as a whole, against him is at par with that against his co-accused who has been granted bail, and not distinguishable in any substantial aspect. The rule of consistency is also pillared on Articles 4 and 10A of the Constitution ensuring that level playing field and fairness is maintained in adjudicating cases of co-accused. The right to liberty under Article 9 of the Constitution has to be extended fairly and without discrimination to an applicant seeking bail. The rule of consistency in bail matters is fundamental to ensuring fairness, reducing arbitrary decision-making, and maintaining public confidence in the criminal justice system. It's a key aspect of the rule of law, ensuring that all individuals are treated equally under the law.

7. The rule of consistency in bail matters is attracted and applied after the grant of bail to a co-accused. Grant of bail by a court considers several factors like the contents of the FIR, the incriminating material collected by the police during investigation, the past history of the accused, etc. The grounds which form the basis for the grant of bail to a co-accused is thus the benchmark for grant of bail to the accused under the rule of consistency. Therefore, the court has to assess whether the role of the accused in the FIR, examined in the background of the material collected by the Police is the same as that of the co-accused, who has been granted bail. It is this congruence in the case of the co-accused and the accused that attracts the rule of consistency.

8. The offence of Qatl-i -Amd (intentional murder) involved in the present case, being punishable with death or imprisonment for life under Section 302, P.P.C., falls within the prohibitory clause of Section 497(1), Cr.P.C. In the offences that fall within the prohibitory clause of Section 497(1), Cr.P.C., the post-arrest bail is granted on three grounds: (i) under the first proviso to Section 497(1), Cr.P.C., on the ground of the accused being a minor, or a woman, or a sick or infirm person; (ii) under the third proviso to Section 497(1), Cr.P.C., on the ground of delay in the conclusion of the trial beyond the period prescribed for no fault of the accused; and (iii) under Section 497(2), Cr.P.C., on the ground that there are no reasonable grounds for believing that the accused has committed the offence, but rather there are sufficient grounds for further inquiry into his guilt.³ The accused, Farooq and Khalid, have been granted bail on the third ground, i.e., under Section 497(2), Cr.P.C.

9. For the determination of the question under Section 497(2), Cr.P.C., as to whether or not there exist any "reasonable grounds" for believing that the accused has committed the alleged offence, the courts have to appraise although tentatively the whole material available on the record of the case.⁴ This question cannot be determined by merely examining the contents of the FIR. Essentially, it is the tentative assessment of the evidence collected in the investigation both for and against the accused that is determinative of the said question.⁵ Likewise, to decide upon the applicability of the rule of consistency for granting bail under Section 497(2), Cr.P.C., the courts have to examine the whole material available on the record of the case.⁶ Without

doing so, it cannot be determined whether the accused who claims the benefit of this rule and his co-accused who has been granted bail are similarly placed in similar circumstances. We have, therefore, no doubt in our minds in holding that the benchmark for applying the rule of consistency is not only the role attributed to the accused in the FIR but also the material collected in the investigation. The petitioner's stance to only look at the role attributed to him in the FIR and to those of his co-accused, Farooq and Khalid, who have been granted bail under Section 497(2), Cr.P.C. for determining the applicability of the rule of consistency is not legally tenable.

10. The cases referred to by the learned counsel for the petitioner have distinguished facts and circumstances. In *Fazal*,⁷ the bail to the co-accused had been granted on the ground of delay in the conclusion of the trial, which ground was also available to the petitioner; hence, he was granted bail by this Court on the same ground on the rule of consistency. In *Abdus Sattar*,⁸ the co-accused had been granted bail because the role attributed to him attracted the offence of causing grievous hurt punishable under the erstwhile Section 325, P.P.C., which offence did not fall within the prohibitory clause of Section 497(1), Cr.P.C., and the petitioner who was granted bail by this Court had also been alleged to have committed the said offence. The offence of murder punishable under the erstwhile Section 302, P.P.C., was not attributed to either of them. Similar were the facts in *Abid*.⁹

11. In the present case, the courts below have granted the post-arrest bail to the accused, Farooq and Khalid, under Section 497(2), Cr.P.C. after making a tentative assessment of the evidence collected in the investigation both for and against them. The tentative assessment of that evidence has led them to the finding that there are no reasonable grounds for believing that the said accused have committed the offence of murder of the complainant's son, but rather there are sufficient grounds for further inquiry into their guilt. The material collected in the investigation in the case of Farooq and Khalid shows that they were not present on the scene of the crime. This is not so in the case of the petitioner. Therefore, material collected in the investigation against the present petitioner is different from that collected against them. The ground on which they have been granted bail is not available to the petitioner. The case against the petitioner is therefore not at par with that against those accused persons but rather is distinguishable in a substantial aspect. The allegation made against the petitioner of being present on the spot and having made fires on the deceased sons of the complainant by his firearm is not only supported by the statements of the eye-witnesses but also corroborated by the recovery of the weapon of offence effected from him in the investigation. There is, as such, sufficient incriminating material available on the record of the case to connect the petitioner with the commission of the alleged offence, and his case does not come within the scope of the provisions of Section 497(2), Cr.P.C., nor does the rule of consistency apply to him.

12. For the above reasons, we find no legal fault in the order of the High Court declining post-arrest bail to the petitioner. The petition is found meritless. It is, therefore, dismissed and the leave to appeal is declined. However, it is clarified that the observations and findings made in this order, as well as in the orders of the courts below in the bail declining orders passed on the applications of the petitioner, or in the bail granting orders passed on the applications of the accused, Farooq and Khalid, are tentative, which shall have no effect upon the final determination of the case by the trial court on conclusion of the trial.

MWA/M-57/SC Bail refused.