

IN THE HIGH COURT OF SINDH AT KARACHI

CRL. MISCELLANEOUS APPL: NO. OF 2022

XXXXXXXXXXXXXXXXXXXX

Muslim, Adult,

Holding CNIC No. XXXXXXXXXXXXXXXXXXXX

R/O House No. XXXXXXXXXXXXXXXXXXXX

2nd Floor Portion, MACI,

Mahmoodabad No.6, Karachi.....Applicant/Complainant

VERSUS

1. XXXXXXXXXXXXXXXXXXXX

Presently confined in Central Jail

Karachi.

2. The State.....Respondents

FIR NO:XXXXXXX

U/S: 337-F(VI) PPC.

Registered by:

P.S: Baloch Colony

District South, Karachi.

**APPLICATION UNDER SECTION 497 (5) OF CRIMINAL
PROCEDURE CODE 1989.**

It is respectfully prayed on behalf of the Complainant that this Hon'ble Court may be pleased to set aside the Order dated 07-07-2022 (Hereinafter called "*Impugned Order*") in Bail Application No. XXXXXXXX passed by the Xth Additional District & Sessions Judge Karachi, South (*The State VS XXXXXXXX*) wherein the bail was

granted to the Accused without sighting the actual facts of the case. Therefore, this Hon'ble Court may be pleased to cancel the Bail Application of the Accused Person on consideration of the following grounds:-

(The copy of Bail and certified copy of the Impugned Order dated 07-07-2022 is attached herewith as Annexure "A")

FACTS OF FIR

"That on 05-01-2022, the Complainant namely XXXXXXXXXXXXXXXXXXXX Resident Of R/O House No. XXXXXXXXXXXXXXXXXXXX, XXXXXXX, Karachi lodged the Complaint Stated at P.S Balouch Colony District South, Karachi, at about 10:30pm. According to the contents of FIR the Complainant permanently residing at the above mentioned address, I do my own business, my mother also lives with me, on property matters some cases are pending before the court against my brother namely XXXXXXX. Today my brother came to my home around 22:30 hours when I was taking my mother to the hospital, he just enter into my house and started fighting with me, he was using abusive and filthy language against me when I tried to forbade him about his language he got annoyed and started beating me and because of that I was badly injured, my face my nose and my left shoulder was badly hit I got many internal and external injuries on my body and I was bleeding and grievously harmed by my brother. I lodge complaint against my brother that he has grievously harmed my body so I am badly injured and bleeding therefore I request to take immediate action against him".

A medical letter for medical examination and treatment was given to the Complainant and in final medical report Section (337AI/337AII/337F/VI) PPC were applied.

(The Copy of FIR/challan along with translation is attached herewith as Annexure "B")

Hence, this Cancellation of Bail Application on the following grounds:-

GROUNDS

- (a) That the Complainant is a law abiding and peace loving citizen of Pakistan not ever been indulged in any sort of criminal or immoral activity whatsoever in nature.
- (b) That the impugned Order is passed in haste by the Lrnd. Xth ADJ (South) Karachi, which Order is against the principles of natural justice, by not considering the harmony of society, by not using the judicious mind and by not considering the circumstances or facts and criminal record of the Accused. Hence the impugned Order date 07-07-2022 is liable to be set aside in the interest of justice.
- (c) That the Bail after arrest has been granted to the Accused by the Lrnd. Xth ADJ Karachi (South) without properly hearing the Counsel of the Complainant. The Bail Application was filed on 4-07-2022, the Complainant and his Counsel were not informed about such proceedings. No such Bail Application notice/summons or any intimation was given to the Complainant or his Counsel. Through the Portal of the Hon'ble High Court Complainant comes to know about such proceedings. On 7-06-2022, on the last working day before Eid ul Zuha when Sr. Counsel of the Complainant appears before the Lrnd. Court and prayed for adjournment to take some time to prepare his arguments but it was declined by the Lrnd. Xth ADJ Karachi (South) and same day the Lrnd. Court passed the *Impugned Order*.
- (d) That while granting the *Impugned Order*; the Lrnd. Xth ADJ Karachi (South) has wrongly made the ground of acceptance of Medical Certificate which is issued on the Application of Accused when he was a Proclaimed

Offender/Fugitive in law. Under the status of Proclaimed Offender he is not the ordinary citizen of the country until he surrenders before the Court. The Accused was present in the court when his pre-arrest bail was argued, he knowingly fled from the premises of Court, when his bail was dismissed.

That the Bail Cancellation Application can be moved in any of the following grounds:

- (i) If bail granting order is patently illegal, erroneous, factual incorrect, and has resulted in miscarriage of justice.*
- (ii) Some fresh facts or material has been collected by police during investigation which may trend to established or point out guilt of Accused.*
- (iii) Accused misuses his liberty by indulging in similar criminal activities.*
- (iv) Accused interferes with course of investigation.*
- (v) Accused intents to temper with prosecution evidence. (2000 P.Cr.L.J 1574.*
- (vi) Accused threatens witnesses or indulge in similar activity which would hamper smooth investigation and there is likelihood of his fleeing from the country.*
- (vii) Accused makes himself scares by going underground or becoming unavailable to investigation agency.*

(e) That the Lrnd. Xth ADJ (South) Karachi failed to consider that the grounds and facts of the matter on which the Pre-Arrest Bail Application No. XXXXXXXX filed by the Accused in the above matter was dismissed on 13-01-2022 by the Lrnd. ADJ III District South at Karachi.

(f) That the Lrnd. Xth ADJ failed to consider that after the dismissal of the said Pre-arrest Bail Application by the Hon'ble Court of III ADJ South, Karachi; the Accused neither challenged the said order nor approach the proper forum but he chosen to remain fugitive from law.

(The Copy Pre-Arrest Bail Order dated 13-01-2022 is attached herewith as Annexure "C")

(g) The Lrnd. Xth ADJ did not acknowledge the very fact of the submission of the Complainant before the Medical Board, that the accused is Proclaimed offender, thus has no right under the law to request for the setup of Board, until he submits before the law. Despite the fact that the Complainant has three times appeared before the Court which Lrnd. ADJ has also acknowledged in the *Impugned Order*.

(The Copy of Application submitted in medical Board is attached herewith as Annexure "D")

(h) The Lrnd. Xth ADJ has self-evidently avoided to write in its order the status of the accused being proclaimed offender, despite the fact, the same is mentioned by Magistrate II (South), Karachi, in its order dated 21-06-2022 by rejecting the Bail Application No. XXXXXXXX which Order was on record of the Bail Application by the Accused.

(The Copy of Bail Order dated 21-06-2022 by IInd Magistrate is attached herewith as Annexure "E")

(i) The Lrnd. Xth ADJ has self-evidently avoided to the fact as mentioned in Order of the Magistrate II (South) that accused has attempted to murder one of the eye witness of this case, and the FIR No. XXXXXXXX at the P.S Brigade (East) is lodged against the Accused.

(The Copy of FIR No. XXXXXXXX at P.S Brigade and Statement 161 is attached herewith as Annexure "F")

- (j) That the Lrnd. Xth ADJ failed to consider that from the records of the matter no denial has come for the presence and specific role in the offence on part of the Accused that he did not injured the Complainant or he was not present at the place of incident *CCTV footages* and the *injured pictures* of the Complainant are the part of the investigation.
- (k) That the Accused in CCTV footages is showing to have the specific role. The CCTV footages has been brought in the Order dated 21-06-2022 by Lrnd. Magistrate II (South) and the same was argued Complainant's Counsel. The Lrnd. ADJ South has not mentioned even in the *Impugned Order*.
- (l) That the Lrnd. Xth ADJ has given an undue weight to the fact that the Accused and Complainant are real brothers and having several civil disputes which are pending before the court which fact is separate and has no connection with the crime scene.
- (m) That the Lrnd. Xth ADJ has failed to consider that disputes over the property or pendency of civil litigation would not entitled to the Accused to cause injuries or to take criminal actions against the rival party. The injuries which caused to Complainant by the Accused were on eyes, face, forehead which are the vital parts of the body and the Medical Certificate shows that displaced fracture seen on neck and head of left arm/shoulder.

**(The Copy of Medical Certificate is attached herewith as
Annexure "G")**

- (n) That the Lrnd. Xth ADJ failed to consider that the Complainant was appeared before the MLO for which Medico Legal Certificate was issued on 02-01-2022, the above injuries have been confirmed by the MLO for the medical certificate is also available on record.

- (o) That the Lrnd. Xth ADJ failed to consider that the facts and grounds which have been given by the Learned Magistrate II South, Karachi while disposing of the Bail Application No. 21 of 2022 in the criminal Case No. 768/2022 pending before the Court of IInd Magistrate South, Karachi.
- (p) That the Learned Trial Court failed to consider that there is no delay of lodging the FIR as the Complainant reported the matter with Police Station (Baloch Colony) on 01-01-2022, vide entry no. 35 at about 23:50 hours whereas as the incident took place at 22:30 hours. The Complainant also obtained the police letter for the medical examination and treatment on the same day; after appearing before the MLO the Medical Certificate was issued and FIR was lodged on 05-01-2022.
- (q) That the Lrnd. Xth ADJ Karachi (South) failed to consider that the Accused has also tried to temper the evidences of the above case. He is also involved in serious nature of crime bearing No. XXXXXXXXU/S 324/34 PPC of P.S Brigade Karachi (East) wherein, he has been arrested to have attempted murder on Shehzad S/O Muhammad Idrees who is the cited witness in this matter. The Accused has filed the Bail Application No. 2999/2022 in the said matter on 04-07-2022 which has been dismissed on 6th July, 2022.

**(The Copy of Bail Order dated 6-07-2022 is attached
herewith as Annexure "I")**

- (r) That the Lrnd. ADJ X Karachi, South did not use the judicious mind while disposing of the Bail Application No. XXXXXXXXhe only relied on the suspension of medical certificate M.L.C No. 44/2022 dated 02-01-2022 issued by the MLO which has been suspended by the Special Medical Board through the letter No. XXXXXXXXXXXX____/ dated 18-06-2022.

- (s) That the Lrnd. Xth ADJ Karachi (South) failed to consider that the issuance of letter of re-examination by the Office of Medical Superintendent Services Hospital and Surgeon Karachi was void *abi initio* as the matter was pending before the Court of Learned II Magistrate South at Karachi and without bringing this letter before the Court and its direction the medical re-examination is illegal and against the procedural laws.
- (t) That the Lrnd. Xth ADJ Karachi (South) failed to consider that the Accused has been arrested in another FIR No. XXXXXX/2022, P.S Brigade (District East) and now confined in jail. The Lrnd. Xth ADJ has over looked the fact that the NIC of the Accused was blocked by the Hon'ble Court of IInd Magistrate (South) Karachi on 09-04-2022. Being fugitive in law/Proclaimed offender and his NIC was blocked; he was not entitled to file such application for medical re-examination of Complainant without surrendering before the Hon'ble Court.
- (u) That the Lrnd. Xth ADJ Karachi (South) failed to consider that the concerned I.O of the above matter has neither brought the letter of suspension of Medical Certificate to the Court of IInd Magistrate South Karachi where the trial of Accused is pending nor has supplied the copy of said letter to the Complainant. The concerned IO directly submitted the said letter before the Court of X ADJ South, Karachi wherein the Bail Application No. XXXXXX has proceeded.
- (v) That no such Court Notices/Summons of the Bail Application No. XXXXXX were received by the Complainant or his Counsel. The Lrnd ADJ Xth South did not provide any opportunity to the Complainant's Counsel to prepare the arguments and fairly hear him.

(w) That the Lrnd. Xth ADJ Karachi (South) failed to consider that the Medical Board is factually incorrect to say that the Complainant has not appeared before the said Medical Board. The Complainant has three times appeared before the said medical board and plead that the Accused was declared as proclaimed offender on 09-04-2022 by the Lrnd. Trial court. The Accused has never been appeared before the Board therefore the Complainant filed an application before said Medical Board to suspend this application till the Accused appears before the Medical Board.

(x) That the Lrnd. ADJ (south) has mentioned in the Impugned Order that Application before the Medical Board was filed by the Complainant but did not given the weightage which clearly shows that the Complainant was appeared before the Medical Board and pleaded that such right is only vested with Accused if he surrenders himself before the law as he is proclaimed offender and his NIC is also blocked by the Lrnd. Trial Court. The Complainant is ready to re-examine by this Board subject to the appearance of the Applicant and under the directions of the Court of IInd Magistrate Karachi (South).

(y) That the Lrnd. Xth ADJ Karachi (South) failed to consider that the Accused is also involved in another serious nature of crime bearing No. XXXXXXU/S 324/34 PPC of P.S Brigade Karachi (East) with the same parties which attempted to murder on Shehzad S/O Muhammad Idrees who is the cited witness in this matter and if the Bail granted to Accused is not cancelled/recalled so there is a serious apprehension that the Accused may repeat such heinous crime.

(z) That the Lrned. ADJ Xth Karachi, South failed to consider that the averments and contentions of Complainant and his Counsel. He did not consider the material facts of the case and granted the bail to Accused by relying only on the suspension Medical Certificate by the Medical Board which is not

sustainable in law as the trial of this matter is pending before the Lrnd. Trial Court and at the time of filing the application of suspension of Medical Certificate the Accused was declared as Proclaimed Offender by the said Court.

- (aa) That due the acts of the Accused the Complainant and his family is suffering from serious mental agony, depression and torture.
- (bb) That in case of not cancelling the Bail of Accused, he will repeat his practice to cause mental and physical torture to the Complainant and his family.
- (cc) That the other grounds shall be argued at the time of hearing of this cancellation of Bail Application.

PRAYER

It is therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- A) To cancel the Bail **Order Dated 07-07-2022 In Bail Application No. XXXXXXXX Passed By the Xth Additional District & Sessions Judge Karachi, South (The State Vs XXXXXXXX).**
- B) To declare that the suspension of Medical Certificate is void ibi initio.
- C) Any other relief which this Hon'ble Court may deems fit and proper under the circumstances and facts of the case.

Karachi;

Dated: 22-07-2022

Applicant/Complainant

Adv. For Applicant/Complainant

VERIFICATION

I, XXXXXXXXXXXXXXXXXXXX, Muslim, Adult, holding CNIC No. XXXXXXXXXXXXXXXXXXXX, Resident of House No. XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX. Karachi; Applicant/Complainant, do hereby state on oath that the contents of the CANCELLATION OF BAIL U/S 497(5) CRPC are true and correct to the best of my knowledge and belief.

COMMISSIONER OF TAKING OATH

IN THE HIGH COURT OF SINDH AT KARACHI

CRL. MISCELLANEOUS APPL: NO. OF 2022

Zaheer Ahmed.....Applicant/Complainant

VERSUS

XXXXXXX & another.....Respondents

**AFFIDAVT IN SUPPORT OF APPLICATION UNDER SECTION
497 (5) OF CRIMINAL PROCEDURE CODE 1989.**

I, XXXXXXXXXXXXXXXXXXXX, Muslim, Adult, holding CNIC No.
XXXXXXXXXXXXXXXXXXXX, Resident of House
No.XXXXXXXXXXXXXXXXXX,XXXXXXXXXXXXXXXXXXXX.

Karachi do hereby state on oath as under:

1. That I say that I am the Complainant and deponent of this affidavit, as such I am fully conversant with the facts of this case as well as the accompanying application.
2. That I say that the accompanying application **UNDER SECTION 497 (5) OF CRIMINAL PROCEDURE CODE 1989** has been filled and drafted under my instruction and the contents whereof are true and correct and may be treated as part and parcel of this affidavit for the sake of brevity.
3. That Unless the Applicant/Complainant is granted this Application as prayed for in the accompanying application **UNDER SECTION 497 (5) OF CRIMINAL PROCEDURE CODE 1989** the Applicant/Complainant shall seriously be prejudiced and it would

cause of mental agony and distress to the Applicant/Complainant and his family.

4. That, the Complainant shall be seriously prejudiced and would also suffer irreparably, if the accompanying application is not granted.
5. That whatever stated above is true and correct to the best of my knowledge and belief.

Karachi;

Date: 22-07-2022

DEPONENT

