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THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

out of *CA* *12018*
Crl.P.L.A. No. *695* /2018

Chandio
Abbir Ahmed Ahmed Chandio
Large Ghaibi Dero District Kambar,
Mas, Jagir No.2, Qambar Ali Khan,
Kambar Shahadad Kot **PETITIONER**

VERSUS

State.
Raiz Ahmed
Karamullah Khan Chandio
Chandio
Chandio House Gul Colony,
Mika Mehar **RESPONDENTS**

**NAL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 185
F THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF
TAN 1973 AGAINST THE ORDER DATED 29-06-2018 PASSED
ISIVION BENCH OF THE HIGH COURT OF SINDH BENCH AT
IAR IN CRIMINAL MISCELLANEOUS APPLICATION NO.
/2018:**

The following questions of law arise out of the Impugned Order for
consideration by this Honorable Court.

QUESTIONS:

1. Whether the Impugned Order of the High Court of Sindh Sukkar
Bench is sustainable in law and on facts and is in consonance with
the principles laid down by the August Supreme Court of Pakistan?

Whether the Order of the learned judge Anti Terrorism Naushehro
Feroze granting bail before arrest to the Petitioner was open to

any exception or liable to interference under **Section 497 (5) Cr.PC?**

- C.** Whether co-accused assigned the affective role having absolutely no relationship or connection with the Petitioner could have been instigated by him to open fires at the deceased persons?
- D.** Whether the role assigned to the Petitioner in the FIR lodged with an inordinate delay of sixteen (16) hours was not outrageously absurd fabricated and reflective of the Petitioner false and malicious implication?
- E.** Whether the interse enmity of five co accused/alleged perpetrators and proven enmity with the deceased and complainant party, could conceivably require any instigation from the Petitioner who had no previous litigation with the complainant party?
- F.** Whether the Petitioner's consistent plea of absence from the spot and his complete innocence had not been proved during the investigation?
- G.** Whether the Petitioner's unimpeachable and irrefutable alibi had not been established and accepted by the investigating officer?
- H.** Whether beside the respectables who had supported the Petitioner's presence at Hyderabad and village Soba Khan Chandio hundreds of miles away from the spot from the previous night of occurrence i.e. 16-08-2018 till the evening of 17-01-2018 had not sufficiently falsified the tainted ocular account of the Petitioners presence in the vehicle exhorting co-accused at the spot at 9: 00 am on 17-01-2018 in the vicinity village Mehar?
- I.** Whether the audios, videos, facebook and other medias of social network besides print and electronic media clearly showing the

Petitioner at the helipad receiving the former CM Sindh and Chairman PPP on the morning of 17-01-2018 and later present on the stage of the public meeting with them was not sufficient proof of his presence elsewhere falsifying the content of the FIR to his extent?

- J.** Whether the CDR of the Petitioner's cell phone unequivocally establishing his positioning at the aforesaid places and distancing him from physical participating in the alleged occurrence had not been established?
- K.** Whether such evidence of highest quality including the one emerging from the modern technology left any doubt of the Petitioner's false and malicious persecutory involvement in the case?
- L.** Whether the investigation in the light of such quality evidence coming before it had not justifiably found the Petitioner innocent in the case?
- M.** Whether the independent persons from the place of incident shopkeepers and hotel owners examined by the investigation officer having not uttered a single word regarding presence of the Petitioner or his abetting/instigating other accused persons for commission of the offence was not rightly considered as exculpatory to the Petitioner's involvement in the case by the IO?
- N.** Whether the cross case lodged by Mst. Durr Bibi regarding the murder of her husband Ghulam Qadir (deceased) through FIR No 21/2018 at the very PS excluding the Petitioner's involvement in any manner whatsoever did not prove his complete innocence from the entire episode?
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- O. Whether the case of Petitioner which had even surpassed the stage of further inquiry under Section 497 (2) Cr. PC and fallen in the realm of complete deficient evidence warranting his release under Section 169 Cr. PC at the very investigation stage could the learned High Court cancel his bail under Section 497 (5) Cr. PC?
- P. Whether the High Court could exercise jurisdiction under Section 497 (5) Cr. PC when the Petitioner had been released in exercise of jurisdiction under Section 169 Cr. PC by the investigation officers?
- Q. Whether even otherwise could there be a better case of further inquiry for the grant of bail under Section 497 (2) Cr. PC and the Learned High Court with utmost respect had not erred in holding otherwise?
- R. Whether the malafide of complainant and the political antagious is not conspicuously ascertainable when the Petitioner having absolutely no concern with occurrence has been bracketed in the case out of the blue?
- S. Whether the principle laid down in the case of **Miran Buksh Versus The State** reported as **PLD [1989] SC 347** and the case of **Muhammad Ramzan Versus Zafarullah and another** reported as **[1986] SCMR 1380** has not been completely overlooked by the High Court while re-calling the order granting bail before arrest to the Petitioner?
- T. Whether the plea of alibi having been established through reliable authentic evidence during the course of investigation was not a good ground for the grant of pre arrest bail?

- U. Whether the Learned High Court has not completely ignored the principle laid down in the case of *Khalid Javeid Gillan Versus The State* reported as **PLD [1978] SC 256** re-affirmed by this Honorable Court in *Zaigham Ashraf Versus The State and others* reported as **[2016] SCMR 18** while observing to the contrary impugned order that bail cannot be granted on the plea of alibi?
- V. Whether the Judgment of this Honorable Court *Muhammad Azam Versus Khalid Javaid Gillan* reported as **NLR [1980] SC (J) 457** has not been overlooked by the High Court which judgment was binding under **Article 189 of the Constitution of the Islamic Republic of Pakistan 1973**?
- W. Whether the CDR in respect of the Petitioner's cell phone adversely commented upon by the Learned High Court is not contrary to the provision of **Article 164 of the Qanoon-e-Shahadat Order 1984**?
- X. Whether the police opinion is irrelevant while considering the question of grant of bail and whether the Learned High Court has not ignored that the basis of Criminal prosecution is the very phase of investigation?
- Y. Whether the complainant in the face of denial by the persecution could file Petition for cancellation of a bail which itself shows the venom of the complainant and establishes the malafide induction of the Petitioner in the case?
- Z. Whether the Order granting bail could be termed as injudicious, perverse, foolish, arbitrary, whimsical, capricious, based on misreading/non-reading of evidence or shocking and unconsonable so as to warrant interference by the High Court?

- AA.** Whether the Petitioner's exclusion as accused and his release in the light of deficient evidence against him in terms of Section 169 Cr. PC was open to any exception?
- BB.** Whether grave miscarriage of justice has not occasioned through the Impugned Order of the learned High Court which directs arrest of the Petitioner who would suffer irreparable loss in life contrary to his Fundamental Right guaranteed by the law and the Constitution?
- CC.** Whether accepting the police investigation qua Sardar Khan Chandio who was placed in column No 2 of the Challan and rejecting as against Petitioner who has been completely exonerated under **Section 169 Cr. PC** is not inconsistent and discriminatory by the High Court?
- DD.** Whether there being two versions of the occurrence emanating out of FIR No **20 & 21** dated **18-01-2018** between the actual warring factions involved in so many cases to the complete exclusion of the Petitioner, did it not make it a case of further inquiry?
- EE.** Whether the loaded criminal record of the deceased persons the complainant and the eye witnesses does not reflect their criminal antecedents proving their deep seated animosities and the witnesses proverbial disregard for truth?
- FF.** Whether the petitioner an elected member of district assembly and his brother ex-MPA and contesting the general elections scheduled for 25th July 2018, with clean antecedents and nobility of blood would not be stigmatized and put to colossal sufferance in case of petitioner's arrest impairing the inviolability of dignity and right of life guaranteed by articles 14 & 9 of the constitution?

Hence; this Criminal Petition for Leave to Appeal arises out from the following:

FACTS:

1. That the facts of the Prosecution case, as set out in the FIR, are the complainant Pervaiz Ahmed (Applicant) lodged FIR alleging therein that Muhktar Ahmed is his brother, whereas Karamullah Khan Chandio is his father, who was Chairman of UC Baledi. One Sardar Khan Chandio S/o Shabbir Ahmed since long used to issue threat to his brother Mukhtar Ahmed Khan Tehmandar in respect of his collusion against him with the help of other Tamandars. He asked him to stop or to face consequence along-with Tanamdar Council and other family members such threats were conveyed through different people at different times. On 17-01-2018 in the morning complainant along with his father Karamullah Khan, brother Mukhtar Ahmed Khan and Qail Hussain Member District Council cousin Aijaz Ahmed and Manzoor Ahmed were standing outside there Otaq situated at road leading from police station towards Fareedabad when at 9:00 am, to vehicle viz one white Corolla No BFZ-428 and another white Land Cruiser came and stopped out of which six armed persons identified as (1) Ali Gohar Chandio with KK, (2) Ghulam Murtaza Chandio with Repeater, (3) Sikandar Khan Chandio with Repeater, (4) Zulfiqar Chandio with Repeater, (5) Ghulam Qadir alias Qadu Chandio with Repeater and one accused Burhan Chandio was sitting in Land Cruiser and retracted down glass window of the car and instigated other accused that these people in-spite of many warnings tried to insurrect against Sardar Khan therefore teaching them a lesson and make them example for others and kill them, on such

instigation of Burhan Khan and at the instance of Sardar Khan, and other accused opened fires and creating terror among the people and the accused Ghulam Qadir alias Qadu made fire of his repeater upon father Karamullah which hit him on his belly, his father grappled accused Ghulam Qadir during which other accused, namely, Ali Gohar with KK and Ghulam Murtaza with Repeater fired in order to rescue Ghulam Qadir and one KK fire hit father Karamullah on right side of chest and other KK and repeater fire hit Qadu and both of them fell down, thereafter accused Murtaza fired with his repeater with intention to murder upon brother Mukhtar Ahmed which hit him on left side of chest and accused Ali Gohar fired with his KK which also hit Muhktar Ahmed on his face and fell down while screaming thereafter the accused Sikandar fired directly with his repeater with his intention to murder his brother Qabil Hussain which hit him on his right side Buttock who also fell down while screaming. Thereafter, all accused fired indiscriminately and raised slogans that whoever will revolt against Sardar he will also meet the same fate and went away in their vehicles towards western sides. Then complainant party saw brother Muhtar Ahmed who sustained fire arm injuries on his face and chest and father Karamullah sustained fire arm injuries on his belly and chest and brother Qabil Hussain fire arm injury on his Buttock who they shifted to Taluka hospital, Mehar where father Karamullah and brother Muhktar Ahmed succumbed to injuries and brother Qabil Hussain was referred to Larkana by doctors. After proceedings at hospital, complainant party buried the dead bodies and the evening received information regarding death of Qabil Hussain at Larkana, whose dead body was shifted to Taluka hospital, Mehar and after its post mortem, complainant came at PS and lodges the FIR that accused in collusion with each other duly armed spread panic and terror

and fired indiscriminately at the instance of Sardar Khan and on the instigation of Burhan Khan and had murdered Mukhtar, Qabil Hussain and Karamullah and terrorized common man who shut their shops and ran away.

2. That the Petitioner joined the investigation and pleaded innocence. He produced witnesses in proof of his alibi as he had gone to Hyderabad on the preceding night of occurrence i.e. 16-01-2018 and stayed in the house of Mukhtar Chandio. On the following day the Petitioner along-with hundreds of others received the Former CM Sindh and Chairman PPP at the helipad of Village Soba Khan Chandio followed by public meeting attended by thousands of persons. The Petitioner was on the stage with the said Chairman and ex-CM. After the public meeting he participated in the lunch and stayed till the evening. All the events were covered by the electronic and print media, and uploaded on the facebook and other social networks. Besides witnesses such modern devices techniques were produced before the IO. The IO also examined independent people surrounding the place of occurrence and none of the hotel vendor, shopkeeper said a word about the Petitioner's presence, in the vehicle or the instigation alleged in the FIR. The IO also collected the CDR of the Petitioner's cellphone which too established his presence hundreds of miles away from the spot. On the basis of such irrefutable and unimpeachable evidence the Petitioner was released under **Section 169 Cr. PC** finding the prosecution evidence absolutely deficient.
3. That since the Petitioner had already filed the application for pre-arrest bail before joining investigation and was granted interim anticipatory bail vide Order dated **29-01-2018** passed

by Anti-Terrorism Court Naushehro Feroze the same was confirmed on **24-02-2018**.

4. That Pervaiz Ahmed complainant moved **Criminal Miscellaneous Application No D/187/2018** under **Section 497 (5) Cr. PC** for the cancellation of the Petitioner's bail. The Learned Division Bench of the High Court of Sindh at Sukkur vide Order dated **29-06-2018** accepted the Petition and set-aside the Order of Judge Anti-Terrorism Court Naushehro Feroze. This Order was passed in the absence of Petitioner's Counsel whose application for adjournment was turned down.

Hence; this Criminal Petition for Leave to Appeal inter-alia on the following:

GROUND

- A.** That the Impugned Order of the High Court of Sindh Sukkar Bench is not sustainable in law and on facts and is not in consonance with the principles laid down by the August Supreme Court of Pakistan.
- B.** That the Order of the learned Judge Anti-Terrorism Naushehro Feroze granting bail before arrest to the Petitioner was not open to any exception or liable to interference under **Section 497 (5) Cr.PC**.
- C.** That the co-accused assigned the effective roles having absolutely no relationship or connection with the Petitioner cannot be instigated by him to open fires at the deceased persons.

- D.** That the role assigned to the Petitioner in the FIR lodged with an inordinate delay of sixteen (16) hours was outrageously absurd fabricated and reflective of the Petitioner's false and malicious implication.
- E.** That the interse enmity of five co accused/alleged perpetrators and proven enmity with the deceased and complainant party do not conceivably require any instigation from the Petitioner who had no previous litigation with the complainant party.
- F.** That the Petitioner's consistent plea of absence from the spot and his complete innocence had been proved during the investigation.
- G.** That Petitioner's unimpeachable and irrefutable alibi had been established and accepted by the investigating officer.
- H.** That besides the respectables who had supported the Petitioner's presence at Hyderabad and village Soba Khan Chandio hundreds of miles away from the spot from the previous night of occurrence i.e. 16-08-2018 till the evening of 17-08-2018 had sufficiently falsified the tainted ocular account of the Petitioner's presence in the vehicle exhorting co-accused at the spot at 9: 00 am on 17-08-2018 in the vicinity of village Mehar.
- I.** That the audios, videos, facebook and other medias of social network besides print and electronic media clearly showing the Petitioner at the helipad receiving the former CM Sindh and Chairman PPP on the morning of 17-02-2018 and later present on the stage of the public meeting with them was

sufficient proof of his presence elsewhere falsifying the content of the FIR to his extent.

- J.** That the CDR of the Petitioner's cell phone unequivocally established his positioning at the aforesaid places and distained him from physical participating in the alleged occurrence had been established.
- K.** That the Impugned Order of the learned Division Bench of the High Court of Sindh Sukkur Bench is not sustainable as it failed to consider that such evidence of highest quality including the one emerging from the modern technology left no doubt of the Petitioner's false and malicious persecutory involvement in the case.
- L.** That the investigation in the light of such evidence coming before it had justifiably found the Petitioner innocent in the case.
- M.** That the independent person from the place of incident shopkeeper's and hotel owner's examined by investigating officer having not uttered a single word regarding presence of the Petitioner or his abetting/instigating other accused persons for commission of the offence was rightly considered as exculpatory to the Petitioner involvement in the case by the IO.
- N.** That the cross case lodged by Mst. Durr Bibi regarding the murder of her husband Ghulam Qadir (deceased) through FIR No 21/2018 at the very PS excluding the Petitioners involvement in any manner whatsoever and did prove his complete innocence from the entire episode.

- O. That the case of Petitioner had even surpassed the stage of further inquiry under Section 497 (2) Cr. PC and fallen in the realm of complete deficient evidence warranting his release under Section 169 Cr. PC at the very investigation stage the learned High Court could not cancel his bail under Section 497 (5) Cr.PC.
- P. That the High Court could not exercise jurisdiction under Section 497 (5) Cr. PC when the Petitioner had been released in exercise of jurisdiction under Section 169 Cr.PC by the investigation officers.
- Q. That even otherwise there could not be a better case of further inquiry for the grant of bail under Section 497 (2) Cr. PC and the Learned High Court with utmost respect had erred in holding otherwise.
- R. That the malafide of complainant and the political antagonists is conspicuously ascertainable when the Petitioner having absolutely no concern with occurrence has been bracketed in the case out of the blue.
- S. That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as the same is against the principles laid down in the case of ***Miran Buksh Versus the State*** reported as **PLD [1989] SC 347** and the case ***Muhammad Ramzan Versus Zafarullah and another*** reported as **[1986] SCMR 1380** as the same have been completely overlooked by the High Court while re-calling the order granting bail before arrest to the Petitioner.

- T. That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that the plea of alibi having been established through unreliable authentic evidence during the course of investigation was good ground for the grant of pre arrest bail.
- U. That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as the same is against the principles laid down in the case of ***Khalid Javaid Gillan Versus The State*** reported as **PLD [1978] SC 256** re-affirmed by this Honorable Court in ***Zaigham Ashraf Versus The State and others*** reported as **[2016] SCMR 18** while observing to the contrary in the impugned order that bail cannot be granted on the plea of alibi.
- V. That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as the same is against the law laid down by this Honorable Court in its judgment ***Muhammad Azam Versus Khalid Javaid Gillan*** reported as **NLR [1980] SC (J) 457** and the same has been overlooked by the High Court which judgment was binding under **Article 189 of the Constitution of the Islamic Republic of Pakistan 1973**.
- W. That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as the CDR in respect of the Petitioner cell phone adversely commented upon by the Learned High Court is contrary to the provision of **Article 164 of the Qanoon-e-Shahadat Order 1984**.

- X.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that the police opinion is relevant while considering the question of grant of bail and the Learned High Court has ignored that the basis of Criminal prosecution is the very phase of investigation.
- Y.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that the complainant in the face of denial by the persecution could not file Petition for cancellation of a bail which itself shows the venom of the complainant and establishes the malafide induction of the Petitioner in the case.
- Z.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that the Order granting bail could not be termed as injudicious, perverse, foolish, arbitrary, whimsical, capricious, based on misreading/non-reading of evidence or shocking and unconscionable able so as to warrant interference by the High Court.
- AA.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that the Petitioner's exclusion as accused and his release in the light of deficient evidence against him in terms of Section 169 Cr. PC was not open to any exception.

- BB.** That the grave miscarriage of justice has occasioned through the Impugned Order of the learned High Court which directs arrest of the Petitioner who would suffer irreparable loss in life contrary to his Fundamental Rights guaranteed by the law and the Constitution.
- CC.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that by accepting the police investigation qua Sardar Khan Chandio who was placed in column No 2 of the Challan and rejecting as against Petitioner who has been completely exonerated under **Section 169 Cr. PC** is inconsistent and discriminatory by the High Court.
- DD.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that two versions of the occurrence emanating out of FIR No **20 & 21** dated **18-01-2018** between the actual warring factions involved in so many cases to the complete exclusion of the Petitioner, which clearly made out it a case of further inquiry.
- EE.** That the Impugned Judgment of the learned Division Bench of the Sindh High Court Sukkhar Bench cannot be sustained as it failed to consider that the loaded criminal record of the

deceased persons the complainant and the eye witnesses reflected their criminal antecedents proving their deep seated animosities and the witnesses proverbial disregard for truth.

- FF.** That the Impugned Judgment of the learned division bench cannot be sustained as the petitioner an elected member of a district assembly and his brother Ex-MPA and contesting the general elections scheduled for 25th July 2018, with clean antecedents and nobility of blood would be stigmatized and put to colossal sufferance in the case of petitioner's arrest impairing the inviolability of dignity and right of life guaranteed by articles 14 & 9 of the constitution.
- GG.** That the petitioner is a respectable citizen of Pakistan, belongs to a noble and reputed family and there is every apprehension of his arrest which will cause unjust harassment and humiliation to the petitioner.
- HH.** That the petitioner is ready to join investigation as and when required.
- II.** That there is no chance of petitioner's abscondance or tempering with prosecution story if enlarged on bail.
- JJ.** That the petitioner is ready to submit solvent surety bond to the entire satisfaction of this Honorable Court.

PRAYER:

It is therefore respectfully prayed that by accepting instant petition against the Impugned Order dated 29-06-2018 passed by a Division Bench of the High Court of Sindh Bench at Sukkur in Criminal Miscellaneous Application No D/187/2018 may graciously be set-aside and bail of the Petitioner may very kindly be restored in consequence.

DRAWN BY:

SARDAR MUHAMMAD LATIF KHAN KHOSA
Sr. Advocate
Supreme Court of Pakistan

FILED BY:

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CERTIFICATE:

Certified that this is the first Cr.PLA against the Impugned Judgment before this Honorable Court and no other Petition is pending against the Impugned Judgment.

Islamabad

Dated: July 2, 2018

Ch.AKHTER ALI
Advocate-On-Record
Supreme Court of Pakistan