

The State Through Advocate General, N.W.F.P.  
Versus

Zubair and 4-Others

PLD 1986 Supreme Court 173

*Present: Aslam Riaz Hussain, Muhammad Afzal Zullah  
and Mian Burahanuddin Khan, JJ.*

By

**Qaiser Javed Mian**

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- S.497/498 – Penal code (XLV of 1860), Ss. 302, 307, 148 & 149 – Bail – Second or subsequent bail application by same accused heard and dealt with by a Judge of High Court other than the one who had heard previous bail application – Violation of salutary and well-established principle – When a bail application of one or more accused is heard by a Single Judge of High Court, it is he alone who should also hear all subsequent bail applications filed by same or other accused in the same case or the cross-case.

- S.497/498 – Successive bail applications – Subsequent bail applications must be placed before same Judge who had dealt with first bail application – Counsel must disclose fact of having filed previous application and to state result thereof.
- Subsequent bail application must be placed for disposal before the same learned Judge who had dealt with the first bail application and also that the counsel must disclose the fact of having filed a previous application to state the result thereof.

- If at the relevant time the first Judge is holding Court at a Bench other than the one where the first bail application was filed, it can always be transferred to that Judge, wherever he is sitting. There would, of course, be cases where it is absolutely impossible to place the second or the subsequent bail application of the same accused, or in the same case. In such cases, the Chief Justice of the concerned High Court, may order that it be fixed for disposal before any other Judge of that Court.

- The second or the subsequent bail application to the same Court shall lie only on a fresh ground, namely a ground which did not exist at the time when the first application was made. If a ground was available to the accused at the time when the first bail application was filed and was not taken or was not pressed, it cannot be considered as a fresh and made the basis of any subsequent bail application. The mere fact that the Judge who had rejected the first bail application with the observation that as far as the remaining petitioners are concerned no case had been made out for their release on bail, does not mean that the application had not been disposed of on merits. It must be assumed that he had considered all the pleas or grounds raised by the applicant's counsel before him and that the same had not found favour with him. The notion that each contention raised before the Court in a bail application must be dealt with separately or repelled by recording elaborate reasoning, is totally misconceived.

- S.497/498 – Bail – Subsequent bail application – Second or subsequent bail application by same accused in same case heard or dealt with by a Judge other than the one who had heard previous bail application, held, would tantamount to embark on a review of order of Judge who had earlier dealt or decided first bail application – Practice disapproved by Supreme Court.

- In the light of the above discussion it is not possible for us to uphold the impugned judgment. Petition for leave to appeal is accordingly converted into appeal and allowed and the bail granted by the learned Judge on 27th of July, 1985, to respondents Nos.1 to 5 is consequently cancelled. They shall surrender to lawful custody in pursuance of this order failing which they shall be taken into custody and put under arrest by the law enforcing agency.