

Cr. B.A. No. 402 OF 2009

28.05.2009

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Learned counsel for the State submits that this is an extremely serious case, whereby the applicant/accused has committed murder and dacoity, which offence carries the death penalty. He further submits that it may prejudice the prosecution case if bail is granted at this stage. He has submitted that the best course for this Court would be to refer this case back to the learned trial Court with the direction to complete the case within stipulated period.





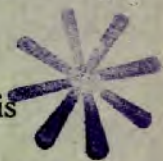
I have heard learned counsel for the applicant as well as the learned State Counsel, reviewed the documents on file and have also carefully examined the legal authorities.

Firstly, I would like to mention that no doubt this is a very serious case and in such cases bail is rarely granted, especially where there appears to be strong linkage of the accused with the crime. However, it is the obligation of the State to prove its case against the accused beyond any reasonable doubt and until that time, the accused is presumed to be innocent. In rejecting the first bail application by order dated 13.06.2008, this Court made the following observations.

“The expeditious trial is the right of every accused and this is shocking that for the last about five years only the complainant has been examined and record shows that he was examined on 14.02.2007 and Mr. Siddiqui informed the Court that thereafter, no PW was examined, which is apparently shocking.”

In essence, it is shocking that there is undue delay in the trial of the case and it has not been concluded within a period of six months as directed by this Court vide order dated 13.06.2008. Nearly a year has passed yet the trial has not been completed. This is in violation of the Court order dated 13.06.2008. I have reviewed the case diaries provided by the counsel for the applicant, which indicate that since the passing of order dated 13.06.2008, the case before the trial Court was fixed for hearing on 15 dates. However, nearly on all these occasions the case has not proceeded due to no fault of accused. Out of 14 prosecution witnesses, only 4 witnesses have been examined. Under the old law, an accused could be granted statutory bail if the trial had not been concluded within two years, provided that delay in conclusion of trial was not on account of any fault of accused. Such a provision has now been excluded and it seems that in the absence of this provision, the prosecution have little incentive to proceed with the cases expeditiously. The accused is in jail for the last six years and I see little prospect that the trial could be concluded in the near future, even if this Court were to give further directions.





The Constitution of Pakistan provides that no person should be deprived of his liberty unless in accordance with law. The law, however, should be effective. If a person is detained under the law then he should be tried and dealt with expeditiously. To detain some one for over six years, as in this case, is an abuse of process of law by the prosecution, whose obligation is to ensure that the trial is expeditious. I place reliance on numerous case-law cited by learned counsel for the applicant specially the case of HIDAYATULLAH v. STATE (2007 YLR 1311), wherein it has been held as under:

“S. 497---Penal Code (XLV of 1860), Ss-302, 337-H(ii), 148, 149, 114 & 34—Bail, grant of —Accused was behind the bars for the last about four years but case had not proceeded despite direction of High Court to the Trial Court that trial be concluded within ninety days—Delay in prosecution of the case though no more was available as statutory right of accused but grant of bail on the ground of inordinate delay in conclusion of trial had always been considered---Expeditious and fair trial was the right of every accused---Purpose of trial was not to punish accused without trial---Inordinate delay, if not explained, would amount to abuse of process of law even in cases of capital punishment--Where directions of the Superior Courts were not complied with without any justifiable reason, same could furnish a valid ground for grant of bail---Order of the High Court having not been complied with and the accused in counter case having got bail, accused was also entitled for concession of bail on the ground of hardship---Accused was admitted to bail, in circumstances.”

From the above authorities, it is clear that bail has been granted in hardship cases even in the cases where the offences were of serious nature.

Based on the facts and circumstances of this case and undue delay in trial due to no fault of accused, I hereby admit the applicant/accused on bail on his furnishing surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand) and PR bond in the like amount to the satisfaction of the trial Court.

Notwithstanding the above order, this should have no reflection in prosecution case on merits.

This bail application stands disposed of.

