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IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Ahmed Ali M.Sheikh**
Mr. Justice Mohammad Karim Khan Agha

Cr. Acctt. Appeal No. 10/2013

Ghulam Shabbir Mahar

V

The State

Date of hearing	02.03.2016
Date of order	14.04.2016
Appellant	Through Mr. Muhammad Farooq, advocate
Respondent	Through Noor Muhammad Dayo, ADPG, NAB

ORDER

MOHAMMAD KARIM KHAN AGHA, J:- The appellant in the above appeal filed on 24.09.2013 has assailed the judgment dated 16.09.2013 passed by Accountability Court No.1, Sindh, Karachi (the impugned judgment) whereby the appellant was convicted under Section 10(a) of the National Accountability Ordinance, 1999 (NAO) and sentenced to suffer R.I for ten years and to pay a fine of Rs.4.00 million and was also disqualified for a period of ten years from seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any province as required u/s 15(a) of the NAO and also prohibited to apply for or to be granted or allowed any financial facility in the form of any loan or advances from any bank or financial institution in the public sector for a period of ten years.

2. As per order sheets it appears that the appeal was admitted for regular hearing on 03.10.2013. Thereafter on 20.11.2013 the appellant filed an application under section 426 Cr.P.C. for the suspension of his sentence and to allow

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him to be released on bail pending the final disposal of his appeal.

3. As per orders sheets the appellant attempted to have his appeal and application heard and decided by this Court. Generally each time this matter came up for hearing before this Court for one reason or another the matter was not able to be heard. From the order sheets it would appear that from 03.10.2013 till date on only one occasion was the appellant not in a position to proceed with the matter and generally pressed for hearing and for short dates. On 09.07.2015 learned counsel for the appellant had even moved an urgent application which was allowed however again the matter could not proceed due to no fault of the appellant on the next four fixed dates.

4. Order sheet dated 17.2.2016 indicates that one of the issues in this case is whether the reference which led to the appellant's conviction could have been filed by any official of the National Accountability Bureau (NAB) as opposed to the Chairman NAB. This question according to counsel for both the appellant and NAB however was yet to be determined by the Hon'ble Supreme Court and both of them were unaware when this question would be fixed for hearing by the Hon'ble Supreme Court.

5. According to learned counsel for both the appellant and NAB if it was found by the Hon'ble Supreme Court that the person on behalf of NAB who had filed the original reference which led to the conviction of the appellant had no lawful authority to sign and file the reference then the appeal would automatically be allowed. As such the matter was adjourned to 02.03.2016 to see if there had been any further developments on the resolution of this issue. Even on 02.03.2016 learned counsel for the appellant and ADPGA NAB informed that this issue was still pending before the Hon'ble Supreme Court.

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6. Learned counsel for the appellant submitted that as the appellant was in jail, under the circumstances, the fairest course would be to hear his section 426 Cr.P.C. application as there was insufficient time to fully hear his appeal which in his submission as reflected in the diary sheets would continue to be the case in the foreseeable future and that the appellant under these circumstances would continue to rot in jail despite the fact that as of today he had already served a substantial part of his sentence.

7. The main grounds as set out in the application u/s 426 Cr.P.C. are as under:

1. That the petitioner was arrested on 25.05.2011 and since then he has remained in custody.

2. That there is every likelihood that the appeal filed by the petitioner is likely to be allowed not only on the facts but on the legal grounds.

3. That the learned judge failed to appreciate facts as well as law involved in the instant case on account of the zeal to convict the appellant, being his first case for judgment wherein the entire evidence was recorded by his learned predecessor.

4. That the learned judge has relied upon the Notification and believed that to be obiter dictum of the Supreme Court.

5. That the learned judge has not only heard the appellant counsel on the so called Notification but he did not even make the said Notification as part of the record.

6. That on account of the heavy load of cases, there is every likelihood that the hearing of the appeal shall take quite some time.

7. That the undersigned craves permission to advance further arguments at the time of hearing of the appeal."

8. Learned counsel for the appellant additionally submitted that it was a hardship case and since the appellant had already served a substantial part of his sentence he was entitled to be released on bail and his sentence may be

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suspended pending final disposal of his appeal. In support of his contentions he placed reliance on the following cases:

1. Himesh Khan v. NAB & others 2015 SCMR 1092

2. Syed Ali Nawaz Shah & others v. The State Cr.Acct. Appeal No.09/2015.

3. Inayatullah Ansari & others v. The State. Cr. Accountability Appeal No.09/2013.

4. Cr. Petitions No.109-K, 118, 121-122-K of 2007 and Jail Petitions No.299 and 347 of 2007.

5. Peer Mukaram-ul-Haq v. NAB & others 2006 SCMR 1225.

6. Khan Muhammad Mahar v. The State 2003 SCMR 22.

7. Mirza Asfaq Ahmed & others v. The State & another 2013 YLR 328.

8. Saeedullah Soomro & another v. The State through NAB 2004 SCMR 660.

9. Amjad Ali Khan v. The State & 2 others 2007 YLR 208.

10. Al-Jehad Trust & another v. Federation of Pakistan & others PLD 2011 SC 811.

11. The State v. Fazal Ahmed & others SBLR 2013 Sindh 489.

9. On the other hand, ADPGA on behalf of the NAB submitted firstly that it would be preferable to hear this appeal and finally dispose of this matter rather than firstly hearing the application u/s 426 Cr.P.C. However if this Court was minded to hear the 426 Cr.P.C. application first then in his submission section 426 Cr.P.C. was not applicable. According to learned counsel the appellant had not served out a substantial portion of his sentence and the appellant did not have a strong prima facie case on merits. He fully supported the impugned judgment which according to him had been correctly decided in all respects. He did not however

object to the maintainability of the application under S.426 Cr.PC

10. We have carefully perused the record, considered the relevant law, the submissions of learned counsel at the bar and the case law cited by them.

11. We have observed from the order sheets that the appellant has made considerable efforts to have his appeal and application u/s 426 Cr.P.C. heard by this Court however generally due to no fault of his own it has not been possible for this Court to hear the appeal.

12. We note that the appeal was filed on 24.09.2013 (almost two and half years ago) and in large part it has not been heard due to either a paucity of time or the huge work load faced by this Court. This however is not the fault of the appellant. In all likelihood it is unlikely that the appeal would be taken up and heard and decided in the near future. Ideally it would be preferable to hear the appeal first however under these circumstances in our view it would not be fair to avoid hearing the section 426 Cr.P.C. application prior to the appeal being heard as it may result in the appellant having served the sentence before his appeal was even taken up. This in our view would defeat the ends of justice since if the appeal was taken up today and the appellant was acquitted it would mean that by not hearing either the application u/s 426 Cr.P.C. or the appeal the appellant would have unnecessarily served time in jail which he should not have served and more importantly such precious time, perhaps spent with his family, would not be recoverable. It may also be that the Hon'ble Supreme Court may decide that the reference filed against the appellant was filed without lawful authority in which case it is likely that his appeal may automatically be allowed. In any event we do not consider that it would be fair on the appellant to await the decision of the Hon'ble Supreme Court whilst the appellant remains in jail which could also go against him.

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13. We are of the view that Article 4, 10-A of the Constitution and the concept of access to justice which includes the right to an expeditious trial would also include the right to have an appeal heard expeditiously. Thus in the event an appeal is not heard expeditiously due to no fault of the appellant we are of the view that under article 4, 10-A and the aforementioned concept of access to justice if an appeal was not taken up within a reasonable time and during this period the appellant remained in jail then the appellant would have the right to have any section 426 Cr.P.C. application which he had filed heard before his appeal which could be determined later.

14. In terms of undue delay in hearing an Appeal S.426 Cr.PC provides a safety value to ensure that the appeal cannot be kept pending for years on end while the accused remains in jail by providing for the suspension of the sentence and grant of bail on account of statutory delay which in large part is reflective of statutory bail which is available under S.497 Cr.Pc prior to conviction.

15. In fact sections 497 Cr.PC and 426 Cr.PC in so far as they refer to statutory bail are very similar and the rationale behind them appears to be the same. Namely, an accused/convict cannot be kept in jail on account of no fault of his own due to a failure of the State either to hear and decide his trial expeditiously or hear his appeal against conviction expeditiously. The above two concepts at both trial stage and appellate stage in respect of bail tend to be highly logical especially as in effect an appeal is a continuation of the trial. The principles which guide applications for bail under S.497 Cr.PC are therefore to a large extent useful guidelines in determining cases under S.426 CR.PC as was held in **Peer Mukaram ul Haq V NAB (2006 SCMR 1225 relevant P.1230).**

> "It is well-entrenched legal proposition that powers conferred upon section 426, Cr.P.C. are not controlled by the provisions of section 496 and 497, Cr.P.C. **but the principles enunciated therein can be taken into**

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consideration while granting or refusing bail. If any authority is required reference can be made to Bashir Ahmed v. Zulfiqar PLD 1992 SC 463." (bold added)

16. Pursuant to the above discussion we have decided in the interests of justice to take up the appellants S.426 application before hearing his Appeal. We also note that statutory bail was not the main ground plead by the appellant (presumably because at the time when he filed his S.426 application two years had not expired before his appeal was taken up) in his S.426 application but was raised by learned counsel for the appellant at the bar. We are of the view however based on the facts and circumstances of the case and in the interest of justice that it would be appropriate to also consider if the appellant qualifies on statutory grounds for relief under S.426 Cr.P.C.

17. It would however not be out of place to observe that even if the appellant's application under S.426 was successful this would not give him a free hand to thereafter avoid proceeding with the Appeal. It would be incumbent on the State/NAB or other concerned authority to file urgent applications for hearing of the appeal on a regular basis i.e. at least quarterly and if the appellant was not in a position to proceed on such fixed dates it would be for the Court to determine whether under the circumstances the order in his favour in respect of his S.426 application should be recalled/cancelled.

18. At this stage it would be useful to set out section 426 Cr.P.C. which provides as under:

> "426. Suspension of sentence pending appeal. Release of appellant on bail. (1) Pending any appeal by a convicted person, the Appellant Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(1A) **An Appellant Court shall, except where it is of the opinion that the delay in the decision of appeal has been occasioned by an act or omission of the appellant or any other person acting on his behalf, order a convicted person to be released on bail who has been sentenced---**

(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction.

(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction.

(c) to imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years of his conviction.

Provided that the provision of the foregoing paragraph shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Appellant Court, is a hardened desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(2A) Subject to provisions of section 382-A when any person other than a person accused of a non-bailable offence is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail, for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(2-B) Where a High Court is satisfied that a convicted person has been granted special leave to appeal to the Supreme Court against any sentence which it has imposed or maintained it may, if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if the

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said person is in confinement, that he be released on bail.

(3) When the appellant is ultimately sentenced to imprisonment or imprisonment for life the time during which he is so released shall be excluded in computing the term for which he is so sentenced." (bold added)

19. At the outset it is made clear that we have not gone into the merits of the case which will be dealt with at the time when the Appeal is heard and decided as is the settled law when dealing with applications under S.426 as was held by the Hon'ble Supreme Court in **Allah Ditta V State** (PLD 2002 SC 845 at P.848 as set out below)

"After having a careful scrutiny of the entire record and authorities referred to in the above reproduced order we are not persuaded to agree with Sardar Muhammad Latif Khan Khoso learned Advocate Supreme Court for petitioner that it was mandatory, obligatory and bounden duty of the learned High Court to have examined the case on merits and should have dilated upon the contentions as agitated in-depth while deciding application under section 426, Cr.P.C. for the simple reason that it is well-entrenched legal position that appraisal of evidence in-depth is neither warranted nor desirable while dilating upon and deciding such application. A Court should confine itself to the judgment assailed before it. A thorough scrutiny of evidence and its evaluation should be made while adjudicating upon the appeal as it would be opportune moment for doing so and not while deciding the application moved under section 426, Cr.P.C. as it would be a premature stage. A conviction cannot be set aside while exercising jurisdiction as conferred under section 426, Cr.P.C. on the ground with reference to evidence and merits of the case which certainly require a thorough probe and deeper scrutiny of evidence which should be avoided."

20. We note that some of the authorities which have been cited by the appellant relate to bail on medical grounds (**Peer Mukaram-ul-Haq v. NAB & others 2006 SCMR 1225**) and the power of non NAB officials to sign references (**Shahid Orakzai V. Federation of Pakistan) PLD 2011 SC 798**) however these cases are not strictly relevant to the arguments raised at the bar as no medical evidence was adduced in

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support of the appellant in this regard and the question as to whether any other person other than the Chairman NAB could sign the reference is, as we have already mentioned in this order, pending before the Hon'ble Supreme Court.

21. There are also a plethora of authorities for the proposition that where shorter sentences are imposed then the Courts may take a more liberal approach in the exercise of relief under Section 426 Cr.PC. For example, **Abdul Hameed V Mohammed Abdullah (1999 SCMR 2589), Syed Ali Nawaz Shah & others v. The State, Cr.Acct. Appeal No.09/2015, Inayatullah Ansari & others v. The State, Cr. Accountability Appeal No.09/2013, Cr. Petitions No.109-K, 118, 121-122-K of 2007 and Jail Petitions No.299 and 347 of 2007, Saeedullah Soomro & another v. The State through NAB (2004 SCMR 660).**

22. In these cases however all the accused were sentenced to less than 7 years. In the instant case the appellant has been sentenced for a term of 10 years out of the maximum sentence of 14 years for the serious offense of corruption and as such the above referred authorities are distinguishable in the instant case. In our view a sentence of 10 years cannot be regarded as a short sentence especially in the context of the maximum sentence only being 14 years. As such in our view this is not a sufficient ground in this case to justify relief under S.426 Cr.P.C.

23. However this does not rule out the inapplicability of S.426 in this case where the accused was sentenced to 10 years since in **Peer Makaram's case (Supra)** it was held that even in cases where life imprisonment had been handed down S.426 could be pressed into service in exceptional situations

> "We are conscious of the fact that in heinous offences where sentence of life imprisonment or 14 years' R.I. has been awarded the question of suspension of sentence does not arise subject to certain exceptions but it must not be lost sight of that in proper case even the bail can be granted where the sentence of death or life imprisonment has been awarded."

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24. There is also considerable authority for the proposition that if a convict has undergone a substantial part of his sentence then he would be entitled for relief under S.426 Cr.PC. In the case of **Makhdoom Javed Hashmi V State** (2008 SCMR 165) the Hon'ble Supreme Court held as under at P.170

> "The other argument of Mr. Arshad Ali Chaudhry, Advocate Supreme Court/Advocate-on-Record for the State that, in case of suspension of sentence, the object of filing the appeal would be defeated, is equally devoid of any substance. **A convict who has already undergone almost half of his sentence may seek suspension of sentence in the interest of justice keeping in view the facts and circumstances of a particular case such as Adnan A. Khawaja (supra).** It is also mentioned here that if ultimately the appeal of the petitioner is dismissed by the Appellate Court the provisions of subsection (3) of section 426, Cr.P.C. would come in operation and the period of suspension of sentence shall stand excluded and he would have to undergo the sentence awarded to him by the Court." (bold added)

25. We note from the jail roll that as of today the Appellant has undergone at least 6 years and 3 months of his 10 year sentence. Although there appears to be no hard and fast rule as what would amount to a substantial part of his sentence common sense would tend to dictate that it should at least be half of the sentence. In this case therefore it may well be considered that the Appellant has undergone a substantial part of his sentence and would be entitled to suspension of sentence and bail on that count alone.

26. With regard to statutory delay being a ground for bail and suspension of sentence the rationale behind the law was well set out in the case of **Abdul Aziz V State** (1995 P.Cr.LJ 490) at P.491 in the following terms:

> "4. Section 426, Cr.P.C. was added to the Code of Criminal Procedure, 1898, by the Law Reforms Ordinance of 1972. Prior to this addition by the Law Reforms Ordinance, 1972, an inordinate

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delay in investigation, inquiry or trial of an accused person used to be considered per se as a ground for the grant of bail. The leading case on the subject was the case of Gushtasab Khan v. Crown reported in P L D 1956 FC 117 wherein Mr. Justice A. R. Cornelius the then Chief Justice of the Federal Court considered a delay of four years as sufficient ground for the grant of bail. However, subsequently, in the case of Riasat Ali v. Ghulam Muhammad reported in P L D 1968 SC 353. Mr. Justice Sajjad Ahmad was of the view that even a delay of six months can be sufficient ground for the grant of bail.

5. Be that as it may, no fixed period in the matter of delay was available, and therefore, there was no guideline for the superior Courts in this context, and decision had to be delivered on case to case basis.

6. It was in this background that subsection (1-A) was added to section 426, Cr.P.C. of 1898 by the Law Reform Ordinance, 1972.

The reason d'etre of this addition being that the prevailing uncertainly in this area should be brought to an end, and therefore, a classification of offences period wise was created by virtue of subsection (1-A), clauses (a), (b) and (c).

Subsection (1-A) of section 426, Cr.P.C. lays down a general principle by providing that "an Appellate Court shall, unless for reasons to be recorded in writing it otherwise directs, order a convicted person to be released on bail..."

There is no reason why the benefit of subsection (1-A) of section 426, Cr.P.C. which was added by the Law Reforms Ordinance, 1972 should be withheld from a convicted person whose appeal has not been heard according to the classification given in clauses (a), (b) and (c) of subsection (1-A) of section 426, Cr.P.C. that is why it has been laid down that "unless for reasons to be recorded in writing it otherwise directs", where for example the convict has himself occasioned the delay, thus by his conduct he himself would be depriving himself of the benefit created by the Law-makers.

However, the principle remains that whatever benefit has been created by the Law-makers must be given to the accused as a matter of right and not as a matter of discretion." (bold added)

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27. With regard to statutory delay which in our view would appear to be the main ground to justify relief under S.426 (1A) © we observe that the grant of this relief is not exceptional so long as the necessary pre conditions are fulfilled. In this respect reliance is placed on **Mazhar V the State 1997** (MLD Lahore 2881) which endorsed the position that this relief was as of right and which held as under at P.2883.

> **"It is a settled principle of law as laid down in Safair v. The State (1996 PCr.LJ. 1506) that section 426 (1-A), Cr.P.C. creates a right in favour of accused to be enforced, which cannot be ordinarily denied to him without any fault on his part for non-disposal of his appeal within the statutory period.** Under section 426(1-A), Cr.P.C. an Appellate Court shall, unless for reason to be recorded in writing it otherwise directs, order a convicted person to be released on bail who has been sentenced to imprisonment for life or imprisonment exceeding 7 years and whose appeal has not been decided within a period of two years of his conviction. **The contention raised by the learned counsel for the complainant that they had acted in a cruel manner in damaging the vision of eyes of Bakhtiar Ahmed and crippling him, also cannot be considered at this stage because it relates to the merits of the case.** Since the appeal has been pending hearing for more than three years and has not been fixed so far for final hearing, this petition is accepted, the sentences of the appellants/petitioners are suspended and they are released on bail subject to their furnishing bail bonds in the sum of Rs. 2,00,000/- (Rupees two hundred thousand) each with two sureties in the like amount each to the satisfaction of the Deputy Registrar of this Court." (bold added)

28. Likewise in the case of **Ghulam Mustafa V State** (PLD 2011 Kar 389) despite all the accused being lifers they were extended the benefit of statutory bail under S.426 and it was held at P.389 as under:

> "Before the suspension of sentence and to grant bail, the legislature has imposed an obligation and responsibility upon the court to first ascertain and examined the cause of delay. A convicted person may be released by the court on bail, **except where it is of the opinion that the delay in the decision of appeal has been occasioned by an act or omission of the applicant or any other**

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person on his behalf. This statutory right is subject to the fulfillment of the criteria and decisive factor prescribed under clause (a) to (c) of subsection (1A) of section 426, Cr.P.C. which is germane to the particular period of sentence and time specified for decision of appeal in which it has not been decided by the court. According to the condition laid down in the provision, it is also to be examined essentially whether the person applied for bail is not previously convicted offender for an offence punishable with death or imprisonment for life or a person who in the opinion of appellate court is hardened desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life." (bold added)

29. Even in the recent case of **Hamesh Khan V NAB** (2015 SCMR 1092) an exceedingly long period of incarceration prior to the completion of the trial due to no fault of the accused was highly deprecated by the Hon'ble Supreme Court when considering statutory bail at P.1095 in the following terms

"11. **The contention of the learned Senior Advocate Supreme Court for the Bank of Punjab that the petitioner even after such a long delay in the conclusion of the trial cannot be let free on bail because application of section 497, Cr.P.C. with its 3rd proviso relating to grant of bail on ground of statutory delay is inapplicable and not attracted at all to his case, in our view, is not of paramount consideration.**

12. Pakistan is a welfare State where liberty of individual has been guaranteed by the Constitution beside the fact that speedy trial is inalienable right of every accused person, therefore, even if the provision of section 497, Cr.P.C. in ordinary course is not applicable, the broader principle of the same can be pressed into service in hardship cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period. This principle may be vigorously pressed into service in cases of this nature if the objects and purposes of mandatory provision of section 16 of the National Accountability Ordinance, 1999 is kept in view, which is reproduced below:-

"S. 16 (a) Notwithstanding anything contained in any other law for the time being in force an accused shall be prosecuted for an offence under this Ordinance in the Court and the case shall be heard from day to day and shall be disposed of within thirty days."

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13. An accused person cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. The inordinate delay in the conclusion of trial of detained prisoners cannot be lightly ignored provided it was not caused due to any act or omission of accused. In the case of ***The State v. Syed Qaim Ali Shah*** *(1992 SCMR 2192)* the accused was facing charges under the Suppression of Terrorist Activities (Special Courts) Act (XV of 1975) where under section 7 thereof grant of bail even in bailable offences was taken out of the discretion of the Court, however, it was held that despite of exclusion clause beneficial provision of section 497, Cr.P.C. can be pressed into service in some genuine and rare cases to provide relief of grant of bail to a highly deserving accused, incarcerated in prison for a longer duration.

14. The grant of bail on account of inordinate delay in prosecution was discussed and guiding principle was laid down by this Court in the case of *Riasat Ali v. Ghulam Muhammad and the State (PLD 1968 SC 353)*, which is to the following effect:-

> "Criminal Procedure Code, S. 497---Grant of bail in non-bailable offences:-
>
> **Delay in prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out accused however, delay in prosecution of each case as a ground for bail is to be weighed and judged, in each case on its merits."** (bold added)

30. The key issues in the instant case therefore in terms of the grant of statutory bail under S.426 (1A) © Cr.PC are whether the appellant has satisfied the following pre conditions:

(a) whether the delay in the decision of appeal has been occasioned by an act or omission of the appellant and

(b) whether the appeal has not been decided within two years of his conviction and

(c) whether the appellant was a previously convicted offender for an offence punishable with death or imprisonment for life or is a person who in our opinion is a hardened desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

31. It is apparent from the record as indicated earlier that the appellant has tried to get the appeal fixed and heard on

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numerous occasions but has not been able to have it finally heard and decided through no fault of his own. No delay therefore in our view is attributable to the appellant.

32. The appellant was convicted on 16-9-2013 so more than 2 years have passed since his conviction.

33. Further more the accused has been in custody since 25-5-2011 and as mentioned above it appears from the jail role that he has served more than half of his sentence.

34. No material has been placed before us to show that the appellant was a previously convicted offender for an offence punishable with death or imprisonment for life or is a person who is a hardened desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

35. As such the criteria for the suspension of sentence pending the hearing of his appeal and the grant of statutory bail have been met by the Appellant under S.426 (1A) (c) Cr.P.C.

36. It would also not be out of place to mention that the Appeal in issue, like so many other such Appeals, is not likely to be disposed of in the foreseeable future due to the large backlog of such appeals and there may be a need to increase the capacity of the Courts to enable these matters to be dealt with more expeditiously bearing in mind that each criminal appeal tends to take a long time to hear and consider as quite often a review of the entire evidence is required and since such cases involve the liberty, if not the life, of the convict extra time and care needs to be taken whilst dealing with such matters. In our view the convict cannot be made to suffer due to this lack of capacity and accordingly relief under S.426 Cr.P.C. may need to be liberally resorted to by the Courts in cases of excess delay which fulfill the requirements of S.426 to ensure that convicts are not unfairly prejudiced due to delays which are caused through no fault of their own.

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This is largely because, it needs to be considered that, if the sentence is completed before the Appeal is heard in effect the convict would have been denied his right of appeal which may violate both Articles 4 and 10(A) of the Constitution and the right of access to justice and due process.

37. As such taking these factors into consideration and for the other reasons mentioned in this order we hereby suspend the appellants sentence pending the final disposal of his Appeal and release him on bail subject to furnishing solvent surety of RS 500,000 (five hundred thousand) and PR bond in the like amount subject to the satisfaction of the Nazir of this Court.

Dated: 14-04-2016