

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. D-794 of 2018

PRESENT:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Khadim Hussain Tunio- JJ

Applicant: Gajhdar through
Mr. M.A Kazi, Advocate

State: Mr. Abdul Jabbar Qureshi, D.A.G-1.
A/W Israr Ali and Humaira Junaid

Date of Hearing: 15.12.2018

Date of Decision: 15.12.2018

J U D G E M E N T

KHADIM HUSSAIN TUNIO, J- Through this judgment we intend to dispose of the above captioned bail application filed by the above named applicant in FIR No. 12/2016 of P.S F.I.A, C.B.C. Karachi, for an offence under section(s) 409, 468, 471, 477-A, 109, 34 PPC. Applicant approached the learned trial Court with same plea which has been declined vide order dated 29.05.2018.

2. Precisely, facts of the prosecution case as envisaged in the FIR is that Branch Operation Manager namely Gajdhar alias Anand of MCB Saira Centre Branch Karachi in connivance with co-accused by adopting different modes of transfer of money by issuing call deposit receipts transfer through Real Time Gross Settlement (FTGS) transactions, cheques clearing credit and online transfer to the account of co-accused persons in Meezan Bank, Bank Al Habib, Habib

Metropolitan Branch and another account especially in the account of Shaikh Aqib Masood and by the time of registration of the FIR the amount of Rs.46,730,000.00 were detected and still search of the remaining false transactions is going on. The applicant Gajdhar alias Anand during the course of investigation has voluntarily returned an amount of Rs.30.7 million as such the FIR as stated above was therefore registered.

3. Mr. M.A Kazi, learned counsel for the applicant has argued that on 09.05.2017 the present applicant was granted bail on statutory ground and he continued to remain on bail till the conclusion of his trial on 29.06.2017 when he was convicted and sentenced by this court. The Hon'ble High Court of Sindh set-aside the conviction of the accused vide judgment dated 30.04.2018 in Cr. Appeal No.296/2017 with directions to conclude the same within 90 days. Since the conviction and sentence passed by this court has been suspended and the trial court has failed to comply with the order of this court, therefore the accused may be released on bail. In this respect, he has relied upon case law reported as **1998 P.Cr.L.J 320 & 1998 P.Cr.L.J 358** as well as an unreported order dated 05.10.2017 passed by a Division Bench of this Court in Cr. Acqtl. Appeal No. D-80 of 2015 re: Syed Altaf Hussain v. The State.

4. The learned DAG for the State has opposed the instant application on the ground that the accused was convicted by this court though his conviction has been set-aside by the Hon'ble High Court of Sindh but the case is remanded for specific purpose for providing

certain documents to the accused u/s 94 Cr.P.C. and allowing opportunity to the defence to cross-examine PW-1 and then decide the case within three months.

5. We have heard the learned counsel for either parties and have perused the record.

6. Admittedly, the appellant had been granted bail till he was convicted by the trial court. However, the judgment of the trial court was set aside by this court and the case was remanded back to the trial court with directions to complete the trial in a total of 90 days. Now, the applicant seeks bail on the grounds that the trial court has failed to comply with the order of this court and has not been able to conclude the trial within stipulated time.

7. So far alleged non-compliance of directions of this Court for conclusion of trial is concerned, in this context progress report was called from the trial Court, which has been submitted by the learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi vide letter No.604/2018.SCIB/Karachi, dated 13.12.2018, which on perusal shows that the trial could not be concluded mostly due to the adjournments sought by the learned Counsel representing the applicant/accused. Apart from that, it has also been noted that the case is now being adjourned for additional cross-examination of 06 P.Ws, who have been recalled on an application u/s 540, Cr.P.C of the applicant/accused. It is further observed that the directions issued by this Court are not mandatory but directory in nature, as such the accused cannot claim bail on this ground alone as a matter of right.

8. In case of *Nisar Ahmed v. The State and others (PLD 2016 Supreme Court 11)*, the Hon'ble Supreme Court has held that :-

“Non-compliance of directions issued by the High Court to the trial Court to conclude the trial expeditiously or within specified time could not be considered a valid ground to grant bail to the accused”.

9. A Division Bench of this Court was pleased to observe in Crl. Bail Application No. D- 817 of 2001 Re: *Muhammad Nawaz alias Deno & another Vs. The State* that:

“It needs to be clarified that indulgence shown by the superior Courts by issuance of such directions for the trial Court to conclude cases within some specified period are only meant/aimed to expedite proceedings of the cases against the accused and not to arm them with so-called new ground for bail in case of non-compliance of such directions, as vehemently argued by Mr. Muhammad Ayaz Soomro. It will be seen that such a concept is totally alien to any statutory provision. Learned counsel, when asked to refer any provision of law in this context also failed to do so. As observed above in the cases referred by learned counsel also the question of grant of bail to an accused was taken into consideration on the principle of hardship, with reference to the nature of the offence and the period for which accused had remained in custody without conclusion of trial and not merely due to non-compliance of earlier directions.”

10. Similar point was again considered and decided by this Court in case of *Abdul Qadir Sahar v. The State (SBLR 2004 Sindh 785)*, wherein it was observed as under:

“In the first instance it was argued that failure to get the trial concluded within the period of two months undertaken in C.P. No. D- 739/2003 itself entitled the petitioner to bail. We regret we are unable to agree. It is well settled that such directions could only be treated as directory. In any event the order itself states that upon

expiry of the said period the petitioner may be able to apply for bail. It does not state that the petitioner shall acquire a right to be enlarged on bail.”

11. Even otherwise, per the progress report of the trial court, not only did the trial court comply with the orders of this court, but has also made further progress in the trial. The delay in the finishing of trial, if any was caused because the applicant filed an application for the summoning of 6 witnesses which was allowed by the trial court and summons were issued to the 6 witnesses. Time and time again, the applicant's own counsel had either filed an adjournment application or the applicant's witnesses were absent. The trial court, in its progress report has assigned reasoning for the delay on each and every date of hearing and the same were found satisfactory for us.

12. So far the case law cited by the counsel for applicant is considered, the same is not applicable with the circumstances of the present case.

13. Accordingly, instant bail application stands dismissed. However, the trial court is directed to expedite the case, dispose of the same preferably within a period of three months from the announcement of this order.

J U D G E

J U D G E