

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1939 of 2017

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 20.02.2018
Date of Decision : 21.03.2018
For Applicant : Mr. Ajab Khan Khattak, Advocate.
For State : Mr. Deewan Bhuromal, D.D.P.P alongwith SIP
Rashid Ahmed of PS Surjani Town.

Mrs. Kausar Sultana Hussain, J.:- Being dissatisfied with the order dated 08.04.2017, passed by the learned Xth Additional Sessions Judge, Karachi-West in Sessions Case No. 2684 of 2014, arising out of FIR No. 438/2014, registered under Section 324/34 PPC at Police Station Surjani Town, Karachi, whereby the learned trial Court dismissed the bail application of the applicant/accused, who has filed instant bail application before this Court seeking release of applicant/accused on bail.

2. Precisely facts relevant for the purpose of disposal of instant bail application and the prosecution story as stated in the FIR are that on 13.10.2014 complainant alongwith his friend Mehboob Ali was returning home on motorcycle after purchasing "Milk" from Dilbahar Dairy Farm, when he reached in front of gate of his house and alighted from motorcycle, all of sudden two boys namely Shah Muslim (applicant/accused) and Junaid came on motorcycle. Applicant/accused Shah Muslim with T.T. Pistol started firing upon complainant, who sustained bullet injury on his chest on left side, subsequently applicant/accused Shah Muslim and co-accused junaid had managed good to escape from the scene. Their unknown accomplices on another motorcycle were also fled away, he can recognize them by face. Thereafter, complainant was removed to Abbasi Shaheed Hospital, Karachi and then Aga Khan Hospital, where his statement under Section 154 Cr.PC was recorded by the police. Hence, this FIR was lodged against the above named accused persons for legal course of action.

3. Heard arguments, advanced by the learned counsel for the applicant/accused and the learned D.D.P.P as well as perused the record under their valued assistance.

4. It is inter alia contended by the learned counsel for the applicant/accused that the applicant/accused is innocent and has been falsely implicated in this case with malafide intention and ulterior motives. No incriminating article has been recovered from the possession of the applicant/accused but alleged T.T. Pistol has been foisted upon him by the police. He contended that learned trial Court has dismissed the bail application without mentioning any reasonable ground. The learned defence counsel has mainly implies on the point of granting bail to the applicant/accused on the ground of statutory delay as from the day of his arrest i.e. 22.10.2014, the applicant/accused is behind the bar and his case is still pending before the learned trial Court for adjudication, therefore, the applicant/accused cannot be confined in jail for indefinite period. Per learned counsel, the prosecution is adopting delaying tactic in completion of the trial. It is further contended that co-accused Juanid Ahmed has already been granted bail, therefore, applicant/accused is also entitled for grant of bail under the rule of consistency. Per learned counsel, the mater requires further inquiry, as the applicant/accused has a prime facie good case to be released on bail.

5. Learned D.D.P.P has opposed the grant of bail, as according to him first bail application of the applicant/accused was rejected by the learned IVth Additional Sessions Judge, Karachi-West, vide order dated 21.5.2015 and then the applicant/accused approached to this Court for bail, but it was withdrawn by the learned defence counsel on behalf of applicant/accused on 23.11.2015 and this Court while dismissing the said bail application as withdrawn issued directions to the learned trial Court for concluding the evidence of complainant and witnesses in a period of four months. Learned D.D.P.P has further submitted that thereafter on 11.3.2016 when the said witnesses were in attendance before the learned trial Court, learned defence counsel got adjournment. Per learned DDPP in the given situation, delay in the disposal of the case

is on the part of learned defence counsel. The learned DDPP pointed out that the co-accused Junaid Ahmed after grant of bail jumped from bail and become fugitive from law.

6. I have heard the learned counsel for the applicant/accused as well as learned DDPP for the State and perused the record. On tentative assessment, it appears that the applicant/accused has approached this Court through filing this bail application for release him as in earlier round trial Court had rejected the bail application of the applicant/accused on merits and then the applicant/accused filed bail application before this Court, which was later on withdrawn by the learned defence counsel, this court issued directions to the learned trial Court to conclude the evidence of the complainant and witnesses within four months. The applicant/accused has filed second bail application in the Court of learned trial Court but his second bail application was again dismissed by the learned trial Court, vide order dated 8.4.2017. After dismissal of second bail application, the applicant/accused has filed present bail application before this Court. The learned defence counsel did not argue the present bail application on merits but he impleaded on the point of statutory delay in completion of trial, due to which, the applicant/accused is facing hardships.

7. Before discussion on the point of statutory delay in conclusion of trial, the Court should find whether the accused was instrument to cause delay in trial or delay in conclusion of trial had accessioned on account of an act or omission on the part of the accused or any person acting on his behalf etc., where delay is not attributed to the accused, the benefit of amended provision of section 497 Cr.PC cannot be decided. In instant case record shows that the complainant and his witnesses had appeared before the learned trial Court, who had recorded their statements, but the learned counsel for the accused instead to cross examine them got adjournment repeatedly on one ground or other, due to which inspite of appearance of the complainant and his witnesses their evidence could not be recorded completely. It is also very important to mention here that the co-accused Junaid after obtaining bail become fugitive from law,

which also caused a obstacle in conclusion of the trial within shortest possible time as directed by this Court. On merits the learned defence counsel has not argued this bail application. I, therefore, of the clear view that the reasons of delay in imparting justice are not due to the act and omission of the prosecution but it was the applicant/accused and co-accused who are responsible for the delay, hence the benefit of statutory delay does not go in favour of the applicant/accused. I, therefore dismiss the present bail application of the applicant/accused. Order accordingly.

J U D G E