

have been quoted. In the same way to show the reluctance of other prosecution witness Bailable Warrants issued because of their continuous non-appearance have been reported to show their disinterest to appear in the matter in spite of coercive methods. Referring to the documents, learned counsel for the applicant contended that all these document and the conduct of prosecution shows that it has not been able to produce witnesses and in such circumstances applicant, who is a victim of hardship and is behind the bar be enlarged on bail.

Conversely, learned Spl. Prosecutor ANF has opposed the bail application stating that the diaries of the trial court reflects that on most of the dates learned defence counsel remained absent. And at one part of time court remained vacant for want of Presiding Officer for about a year, thus there is no fault on the part of prosecution in delay of trial. He proposed that two months time be given to the trial court to conclude the trial and the prosecution will try its best to proceed with the matter.

No doubt, in FIR a recovery of 736 Kgs of charas has been shown from the possession of this applicant. Considering that aspect his first bail application was rejected but at this stage even after a lapse of sufficient time from the date of charge framed on 18.11.2005, if no progress is made in trial of case, although provisions of 3 & 4 of Section 497, Cr.P.C. have been omitted by Amended Ordinance LIV of 2001, but still in the interest of justice court can be examined this aspect.

In the like circumstances, observation made in the case of ANWAR Ali and another VS. THE STATE (2002 P.Cr.L.J. 186) are very much material, which reads as under:

"A charge has to be framed within a reasonable period. In this case as is apparent from the case diaries it took the trial Court two years to frame a charge. Even

if an accused is charged with indulgence in activities which are not approved by the society, the society which claims to be looking after the law and order situation and as custodians of law should follow the law in toto, such delay tantamounts to negligence and defeats the very purpose behind which civilised societies pride themselves having a legal order which serves as a shining examples to others."

"The administration of justice requires that a matter should proceed and be adjudicated expeditiously. If an accused deserved to be hanged for the offence alleged against him, he should be tried without unreasonable delay and executed. It would not be just from any angle of administration of justice that in a case where only two or three witnesses are to be examined, first the accused may be left to languish in jail for years and thereafter try and execute him. This situation is applicable in the present case as well. The applicants are charged with an offence punishable death; only two or three witnesses are to be examined for final adjudication; but no material progress has been made in the last three years; and nothing can be said as to when their trial will conclude."

No opinion at this stage because of non-production of evidence can be formed against this applicant. I, in agreement to the observations referred above, am of the view that accused cannot be kept behind the bar for an indefinite period for no fault of his own in delay of trial of case.

For the foregoing reasons the applicant Ahmed Hussain son of Muhammad Essa is allowed to be enlarged on bail subject to furnishing solvent surety in the sum of Rs.10,00,000/- (Rupees Ten Lac Only) and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

JUDGE