

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.714 of 2020

Applicant : Muhammad Rafique Khan S/o Baboo Khan
Through Syed Suleman Badshah,
Advocate

Respondent : The State
Through Mr. Talib Ali Memon,
Assistant Prosecutor General, Sindh
alongwith I.O./SIP Shakeel Ahmed
Shaikh

Date of hearing : 19.08.2020

Date of order : 19.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this second Bail Application, applicant/accused seeks post-arrest bail in Crime No.109/2019 registered under Sections 324/336-B PPC at PS New Karachi, after his first bail application bail bearing No.1998/2019 has been disposed of vide order dated 18.02.2019.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that no organ of the injured/complainant has been destroyed, simply she has received common injury which does not fall within prohibitory

clause, therefore, the applicant/accused is no more required for further investigation; that prior to this, the applicant/accused moved a bail application before this Court which was disposed of with direction to learned trial Court to expedite the matter and conclude the same preferably within two months. He lastly prays for grant of post-arrest bail to the applicant/accused.

4. On the other hand, learned APG has vehemently opposed for grant of post-arrest bail on the ground that due to Covid19, cases were not being proceeded. He relies upon a case law of Tallat Ishaq vs. National Accountability Bureau through Chairman and others (2019 PLD Supreme Court 112).

5. I have heard the learned counsel for the parties and gone through the material available on record. The record reflects that the bail plea of the applicant/accused was dismissed by the learned trial Court on merits; thereafter, the applicant preferred Criminal Bail Application No.1998 of 2019 before this Court, which was dismissed as not pressed with direction to the trial court to decide the case within two months. Again, the applicant/accused preferred bail application before the trial court, which was too dismissed vide order dated 07.05.2020 on merits. As far as the plea urged by the learned counsel that since the trial Court has failed to conclude the trial, therefore, the applicant is entitled to bail is concerned, the Hon'ble Supreme Court in the case of 'NISAR AHMED V. The STATE and others' [PLD 2016 Supreme Court 11] has held as under:-

“4.....Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C, nor filing of

direct complaint will have any bearing as regards earlier bail refusing orders which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case.”

In another case as cited by learned APG of ‘TALLAT ISHAQ v. NATIONAL ACCOUNTABILITY BUREAU through Chairman and others’ [PLD 2019 Supreme Court 112], the Hon’ble Supreme Court has also observed while clinching the issue that mere delay in conclusion of a trial or longevity of the period of incarceration of an accused person could not by itself entitle him to bail.

6. Furthermore, non-compliance within the time specified by this Court for the conclusion of the trial while deciding the earlier bail application of applicant/accused cannot be deemed to be a fresh ground for bail. In the instant case, as per progress report of the learned trial Court, charge has been framed and now the case is fixed for evidence. As far as merits of this bail application are concerned, I have perused the material, which reflects that on the day of incident, the applicant/accused threw acid upon the complainant/injured which badly caused her neck, arms and other parts of body so also her face burnt. A bare perusal of Section 336-B shows that whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees; hence, the case falls within the ambit of Section 497(1) Cr.P.C. Further, prima facie, sufficient material is available on record to connect the applicant/accused with the offence.

6. In view of the above, learned counsel for the applicant has failed to make out a case for grant of post-arrest bail. Accordingly, the instant Bail Application is dismissed.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

Kamran/PA

JUDGE