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ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 892 of 2020

Date Order with signature of Judge

For hearing of bail application.

Dated of hearing:

14th September, 2020

Mr. Zakir Hussain, Advocate for applicants/accused

Mr. Shafiq-ur-Rehman, Sub-Inspector/Legal, PRP Karachi.

Kausar Sultana Hussain, I:- Through instant Bail Application, applicants/accused Mst. Fozia Akbar and Mst. Saba Parveen seek their release on post arrest bail in case Crime No. 02 of 2018, registered at PS Railway Police, Landhi Karachi under Section 6-9/C R/W Section 14/15 of the CNS Act, 1997. The bail plea raised by them before the learned trial Court, which was turned down vide order dated 06.04.2020. The challan of the case has been submitted by the police and the same is now pending for trial before the Court of learned IInd Special Judge, (C.N.S) at Karachi (The State versus Mst. Fozia Akbar and others).

- 2. I have heard arguments of both the sides and perused the material available on record. From the perusal of record, it reveals that prior to filing of this bail application, the co-accused Mumtaz Azam, Muhammad Saleem and the applicant/accused Fozia Akber have filed their bail applications before this Court and time and again the learned trial Court was directed to dispose of the matter sometime within 2, 3 and 4 months, on different dates but the learned trial Court has not concluded the matter within stipulated time, hence the lady applicants/accused have filed the present bail application.
- 3. From the perusal of record, it also reveals that the applicants/accused are behind the bar since after their arrest on 07.03.2018. The trial court could not conclude the case within two, three and four months despite clear directions of this Court dated 27.9.2018, 15.7.2019 and 06.04.2020 in earlier Bail

Applications No. 1229 of 2018, 614 of 2019 and 119 of 2020. I reached at the irresistible conclusion that the applicants/accused have succeeded to establish the grant of bail on statutory delay in trial and in our country 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. An accused person cannot be left at the mercy of the prosecution to rotten in jail for an indefinite period. The 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 instant case prosecution during the period of more than three and half years hardly succeeded to examine one prosecution witness and there remain thirteen prosecution witnesses those are yet to be examined by the prosecution and certainly it shall take sufficient time. Moreover, the applicants/accused are women and they are behind the bar since the date of their arrest, therefore, they are also entitled for concession of bail under the first proviso of section 497(1), Cr.P.C.

- 4. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature and will not prejudice the case of either party.
- 5. These are the reasons of my short order dated 14.9.2020.