

IN THE HIGH COURT OF SINDH, KARACHI

CrI.Bail.Appln.No. 1242 of 2019

Before

Mr.Justice Abdul Mobeen Lakho

Muhammad Achar son of Gul Muhammad, applicant through : Mr. Shaukat Ali Bhambhro, Advocate

The State, complainant, through : M/s Muntazir Mehdi, DPG and Sagheer Ahmed Abbassi, APG

Date of hearing : 29-10-2019

Date of Order : 29-10-2019

ORDER

ABDUL MOBEEN LAKHO---J., Applicant / accused Muhammad Achar son of Gul Muhammad sought post arrest bail declined by the learned the court of IVth -Additional Session Judge, Karachi [Malir] vide order dated 17-04-2017 and 20-08-2018 respectively in a crime bearing No.40 of 2017, Police Station Steel Town Karachi, registered under Section 320, 337-G, 427 read with Section 322, 468 and 471 Pakistan Penal Code.. Applicant accused is being

2. Brief facts according to prosecution case are:-

“That on 14-02-2017 ASI Jawed alongwith subordinate staff in pursuance of report No.6 reached at Sasui Toll Plaza, National Highway, where Bus Nop.JB-9855 was lying in damaged condition after hitting with northern Pillar of Sasui Toll Plaza. ASI Rahib Khan informed that the dead bodies and injured were sent to Jinnah Hospital, therefore ASI Amjad Jawed reached at Jinnah Hospital, where staff provided computerized list of 27 injured. Besides, two ladies and three men were dead and lying in the morgue. The legal heirs identified the dead bodies except one man aged 50/55 years. ASI Amjad Jawed prepared inquest report and issued letters to lady MLO Dr.Noor-un-Nisa and MLO Dr.Afazal Ahmed for conducting post mortem and received such post

mortem reports. Then after 04 dead bodies were handed over to their legal heirs and the fifth one was kept in Chhipa Morgue Saddar. The said ASI also issued letter for recording statements of injured and their medico legal certificates, but they were not able to given statements. Then after he again reached at the place of incident and inquired form Sasui Toll Plaza Stop where it was informed by some peoples that the driver drove the bus rashly and negligently and hit Northern Pillar of the Toll Plaza and due to turmoil they could not know about the driver and conductor, therefore FIR was lodged against unknown driver”

3. **Mr.Shaukat Ali Bhambhro**, advocate, representing the applicant / accused contended that applicant accused has been falsely implicated in the present case with malafide intention and ulterior motives; it is argued that applicant / accused was arrested on 26-02-2017 since then the applicant/accused is in prison with no material progress in the trial, which fact is also reflected in the progress report dated,22-10-2019. Hence the applicant is entitled for the grant of post arrest bail on the sole ground of statutory delay on the part of prosecution in conclusion of the trial, the learned counsel further argued that the accused /applicant is neither hardened, desperate nor dangerous criminal, he has no previous criminal record. He has a valid driving license and it can be verified from the authorities concerned; per learned counsel the applicant / accused is professional driver and prior to this incident no case of accident has ever been reported against the applicant / accused; learned counsel states applicant/accused has not committed any crime deliberately or intentionally. The incident was due to faulty break of the vehicle; learned counsel states the concerned department has also issued NOC for the purpose of verification of driving license of applicant / accused but the Investigating Officer trying to delay the progress in the trial with malafide intentions; learned counsel lastly contended that the applicant / accused may be enlarged on post arrest bail and relied upon 2017 SCMR 19, 2018

P.Cr.L.J 104, 2018 P.Cr.L.J Note 43, 2016 MLD 1714, 2018 P.Cr.L.J Note 77.

4. **M/s Muntazir Mehdi**, learned Deputy Prosecutor General along with **Sagheer Ahmed Abbassi**, learned Assistant Prosecutor General; learned State counsels contended that applicant / accused is the driver of the vehicle which was being driven by him and had intentionally and deliberately committed the accident; State Counsels argued that there is material collected by the Investigation Officer to connect the accused with the crime which has been recorded by the complainant in evidence before the trial court; State Counsels informed that four innocent persons lost their lives and twenty seven persons became injured; out of them some are disabled; the crime is of heinous nature and applicant / accused did not deserve any leniency for concession of post arrest bail; per learned State counsels earlier two bail application moved before the trial court had been dismissed therefore applicant / accused is not entitled for grant of bail; per learned State Counsel the offence committed by the applicant / accused falls within the of prohibitory clause as is provided under Section 497(1) Cr.P.C.

Learned State Counsels have relied upon the case law reported in 2016 SCMR 1538 and 2002 SCMR 1381.

5. Heard the learned counsels.

6. Main thrust of the argument is based on the ground of statutory delay for which the relevant portion of the third proviso of Section 497(1), Cr.PC is reproduced herein below:-

“Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his

behalf, direct that any person shall be released on bail----

- (a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of woman exceeding six months and whose trial for such offence has not concluded; or
- (b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded;

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

7. Bare reading of the above provisions of law show that law demands release of the accused, who being accused of an offence per conditions (a) and (b) as the case may be, has been detained for such offence for a continuous period exceeding one year or two years, as the case may be (per conditions (a) and (b)) but whose trial for such offence has not been concluded within such period, however, the demand of release is subject to satisfaction of the Court that delay in conclusion of trial was not occasioned by any act or omission of the accused or any other person acting on behalf of such accused.

8. The primary object behind the above view is that a mistaken relief of bail can be repaired by convicting the accused at the end of trial, if proved guilty, but no reparation can be offered to an accused in case of his/her acquittal in the long run. Right of an accused to be enlarged on bail under 3rd proviso to Section 497, Cr.PC, is a statutory right and such right is left to the discretion of the Court which is to be exercised judiciously. No

doubt such discretion can be refused to an accused in the circumstances when the court reaches to the conclusion that the delay in conclusion of the trial is occasioned by the accused or anybody acting on his behalf.

9. It is an admitted fact that earlier two bail application of the applicant / accused had been declined by the learned trial court on merits; this court required the progress report from the learned trial court which reflects as follows:-

“Charge was framed against him on 11.05.2017. Thereafter process was issued for service upon the prosecution witnesses whereby complainant ASI Amjad Jawed Awan appeared and his examination-in-chief was partly recorded on 12.03.2018 then his further examination-in-chief was recorded on 26.03.2018 while his cross examination was reserved as accused made request to adjourn the matter on next date due to absence of his counsel. After that complainant used to remain absent and PW Abdur Rahman appeared and his evidence was recorded on 22.02.2019. Thereafter the case was fixed for evidence of remaining witnesses but prosecution has failed to bring them to adduce their evidence, even after issuance of coercive process of this court and taking hectic efforts.”

10. The report transpires that prosecution is avoiding to produce witnesses before the learned trial court despite issuance of coercive process by the trial court. Admittedly the applicant / accused is facing trial after his arrest; approximately the period of two years has been elapsed without any material progress on the part of prosecution; whether the applicant / accused would be kept in jail for an indefinite period. As per the progress report which has been produced in the preceding paragraph mentions that after the framing of charge i.e. 11.05.2017 examination-in-chief was partly recorded on 12-03-2018 and further examination on

26.03.2018 thereafter PW Abdur Rahman appeared and his evidence was recorded on 22.02.2019, nearly after a year. Thereafter the case was fixed for evidence of remaining witnesses but prosecution has failed to bring the prosecution witnesses to adduce their evidence, even after issuance of coercive process of this court and taking hectic efforts.

I am fortified with the case law reported in 2017 SCMR 19 which reads as follows:-

---S. 497(2)---Penal Code (XLV of 1860), Ss. 324, 427, 109, 148 & 149---Attempt to commit qalt-i-amd, mischief causing damage to the amount of fifty rupees, abetment, rioting armed with deadly weapons, unlawful assembly---Bail, grant of---Further inquiry---No specific injury had been attributed to the accused in the FIR---Ten accused persons were implicated in the FIR out of which seven persons were exonerated during the investigation, therefore, the question regarding culpability of accused required further probe into his guilt within the purview of S. 497(2), Cr.P.C.---**Investigation of the case had already been finalized and a challan had been submitted and despite framing of a charge by the Trial court no prosecution witness has so far got his statement recorded during the trial---Accused was behind bars since about last 8 months and his continued incarceration was not likely to serve any beneficial purpose at present stage**—Accused was granted bail accordingly.

11. For what have been discussed supra, the applicant / accused was enlarged on bail purely on the ground of statutory delay. These are the reasons of short order dated 29-10-2019.

Note: - the learned trial court is directed to conclude trial of the case preferably within the period of four months and the accused shall be present on each and every date of hearing if the accused misuses the concession of bail, the learned trial court if fully empowered to act in accordance with Law. The observation made hereinabove are tentative in nature and will not cause any harm to the proceedings at trial.

J u d g e