

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 45 of 2019

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection at "A".
2. For hearing of bail application.

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14.05.2019.

Mr. Mehmood-ul-Hasan, advocate for applicant.
Mr. Siraj Ali Khan Chandio, Addl. P.G. Sindh.
Mr. Sajid Hussain Awan, advocate for complainant.

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Through instant bail application, applicant Lal Bux seeks post arrest bail in Crime No. 264 of 2017 under Sections 302/34 PPC registered at Police Station Sukhan Malir Karachi.

2. Relevant, facts of the case are that after the orders passed by learned Sessions Judge Malir/ Ex-officio Justice of Peace, the FIR bearing No. 264/2017 was registered at Police Station Sukhan Malir Karachi wherein it is alleged that complainant received information regarding admission of his brother in Emergency who used to work at Hamza Vegetable Oil Refinery Private Limited at North West Industrial Zone Area, Karachi. Upon receiving such information complainant reached at hospital where his brother Altaf Hussain was in serious condition, it was informed to the complainant that Shoaib Ahmed and Lal Bux put air in the stomach of the deceased through pipe having 80 ponds speed. Brother of the complainant Altaf Hussain was operated at Jinnah Hospital but he could not sustain and died after two hours of operation. Complainant approached Incharge of the factory Tahir and Shakeel of Admin Department but they did not pay any heed regarding registration of the FIR, thereafter, the complainant approached the learned Sessions Judge Malir/ Ex-officio Justice of Peace and after receiving orders, he appeared at police station where his statement was recorded and FIR under the above referred sections were registered against the applicant and other co-accused.

3. After usual investigation, accused were arrested by the police and challan was submitted before the competent Court of law.

4. Thereafter, applicant/accused filed bail application after arrest before the learned trial Court and vide order dated 11.12.2018 his bail application was

dismissed on merits, hence the applicant/accused has approached this Court for grant of bail on merits as well as on statutory ground.

5. Learned counsel for the applicant/accused, *inter alia*, contended that applicant has been falsely implicated in the crime by the complainant with the collusion of the police; that no specific role of the applicant/accused has been mentioned in the FIR; that there delay of 5 months in lodging of the FIR and that there is no eye witness of the case. He further pressed the bail application on statutory ground and prayed for grant of bail to the applicant/accused. He relied upon the cases reported as 1995 SCMR 127, 2018 SCMR 1051, 2016 SCMR 2046, PLD 2012 S.C. 222, PLJ 2018 Cr.C (Lahore) 190, 2001 MLD 566, 2011 MLD 566, 2011 MLD 356, 2007 YLR 395, 2017 P.Cr.L.J Note 60, 2017 P.Cr.L.J 306 and 2002 P.Cr.L.J 1773.

6. On the other hand learned counsel for the complainant contended that applicant/accused is nominated in the FIR with specific role; that delay of registration of the FIR has been furnished by the complainant plausibly; that offence with which the applicant/accused is charged is heinous in which brother of the complainant lost his life. It is contended that no delay in trial of the case is caused from the prosecution side but the same is caused due to lethargic attitude shown by the counsel for the accused and whose benefit cannot be extended to the applicant/accused. Reliance is placed upon the cases reported as 1999 P.Cr.L.J. 1105, 2002 P.Cr.L.J 1277, 2010 MLD Karachi 1137, 2012 MLD Lahore 693, 2013 P.Cr.L.J Peshawar 1437, 1999 P.Cr.L.J Peshawar 1888 and 2006 YLR Lahore 3007.

7. Learned Addl. P.G. Sindh while adopting the arguments made by learned counsel for the complainant prayed for dismissal of instant bail application

8. The contention of the learned counsel for the applicant/accused consists of two folds firstly on merits and secondly on statutory ground. As regards the first contention of the learned counsel for the applicant/accused is concerned, it is observed that applicant/accused has been specifically named in the FIR with specific role. However, as regards the delay in lodging of the FIR is concerned, it is observed that delay in registration of the FIR is not fatal in all the cases as it never washes away nor torpedoes trustworthy and reliable ocular and

circumstances evidence. Reliance is placed upon the case reported as **Sheraz Asghar vs. The State (1995 SCMR 1365)**. In the present case, complainant ran from pillar to post but without any success thereafter, he filed a petition before the learned Sessions Judge, Malir / Ex-officio Justice of Peace and after receiving the orders, the police registered the FIR, therefore at this stage the explanation of the complainant regarding delay in lodging of the FIR cannot be brushed aside.

9. Now coming to the second argument of the learned counsel for the applicant/ accused on statutory ground, in order to ascertain the correct position regarding delay in conclusion of the trial, report was called from the learned trial Court which reflects that on different dates of hearing witnesses were present but defense counsel failed to proceed with the matter particularly diary dated 05.01.2019, 23.01.2019, 12.02.2019, 02.03.2019, 25.03.2019 and 23.04.2019 reflect presence of witnesses but defense counsel failed to proceed with the matter. Needless to mention that delay in conclusion of trial cannot be calculated in mathematical manner and it is to be examined whether delay was caused due to deliberate design of accused or not, which is a sole criterion. In the case of Liaquat Hussain Vs. Federation of Pakistan, [PLD 1999 SC 504], the Honourable Supreme Court thorough discussed the same. The relevant portion of the judgment reads as under:-

45. Before concluding the above discussion, it will not be out of context to point out that the third proviso to section 497 of the Criminal Procedure Code is also substantially contributing towards the delay in the disposal of criminal cases as it entitles an accused person accused of an offence not punishable with death to obtain bail on the expiry of one year from the date of his arrest, and in case of an offence punishable with death on the expiry of two years' period from the date of his arrest. Some of the accused persons by **their design** ensure that the trials of their cases are delayed, so that they may come out of jails on the expiry of the above statutory periods. In my humble view, the above provision has been misused and the same needs to be deleted. I may also observe that even before the incorporation of the above proviso, it was open to a Court to grant bail in a fit case on the ground of inordinate delay in the trial of a case, but no accused person was, entitled to claim bail as a matter of right on the expiry of certain period."

10. From above, it is evident that such *provision* was observed to be one of the causes of backlog as to avail benefit of the provision the delay may be *designed* which may appear to be not *individual* but may well be a consequence of common object / intention of some or all of them. This had convinced the honourable Apex Court to issue direction to the Federation to delete the provisions of statutory delay. While dealing with statutory ground, the Courts are not supposed to *blindly* grant bail only by doing some mathematical exercise but are required to examine the available material to *first* form an opinion that such delay is not *designed* by the accused *himself* or ***any other person*** acting on his *behalf*. This, being the reason that bail even on ground of *statutory delay* may well be declined. Reference, if any, may well be made to the case of *Babar Hussain v. The State & Others* 2016 SCMR 1538 wherein it is held as:-

*4. We have heard the parties; Counsel as well as the learned Law Officer and have perused the record. We are of the considered view that **even after lapse of two years, the conduct of an accused seeking adjournments can be taken note of and bail can be denied by a Court even on the statutory ground.***

11. Therefore, in view of above discussion, I am of the considered view that delay in conclusion of the trial is caused due to the lethargic attitude of the counsel for the accused and blame of such delay cannot be made on the prosecution side.

12. For what has been discussed above, no case for further inquiry is made out at this stage and as it is well settled that while deciding the bail application, the Court should take into consideration the available record as deeper appreciation of evidence is not permissible at bail stage. Even otherwise, the applicant/accused is charged with an offence punishable with death or imprisonment for life and there appear no reasonable grounds for believing that he is not guilty of the offence. The case law relied upon by the learned counsel for the applicant is distinguishable from the facts and circumstances of the present case.

13. Therefore, I do not find to interfere with the findings arrived at by the learned trial Court, consequently, the instant bail application is dismissed. However, learned trial Court is directed to conclude the trial expeditiously under intimation to this Court.

JUDGE