

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Criminal Bail Application No. 574 of 2022**

Applicant : Ubaidullah s/o Muhammad Hanif, through  
Syed Lal Hussain Shah, advocate

Respondent : The State, through Mr. Siraj Ali Khan Chandio,  
Additional Prosecutor General alongwith I.O. S.I.P.  
Muneer Hussain.

Date of hearing : 20.04.2022  
Date of order : 20.04.2022

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**ORDER**  
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**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Ubaidullah s/o Muhammad Hanif being abortive to get the concession of post-arrest bail in Sessions Case No. 636/2021 from the Court of Additional Sessions Judge-II, Karachi-South vide orders dated 02.12.2021 and 08.03.2022, through this application seeks the same concession from this Court in Crime/FIR No. 46 of 2021, registered under sections 392, 397/34, P.P.C. at Police Station Garden, Karachi.

2. It is alleged that on 05.02.2021 at 6:50 p.m. at Main Fawwara Chowk, Ghulam Hussain Qassim Road, Garden West, Karachi two unknown persons duly armed with pistols robbed cash of Rs. 10,800.00, driving licence, ATM Card, original CNIC and mobile phone from the complainant.

3. Earlier application of the applicant filed before the trial Court on merits was dismissed vide order dated 02.12.2021, whereafter he filed second bail application on the ground of statutory delay in conclusion of the trial, which was also dismissed by the trial Court vide order dated 08.03.2022; hence, instant application has been filed.

4. Learned counsel for the applicant contends that the applicant was arrested on 07.02.2021 and since then he is behind the bars; however, the trial has not yet been concluded and the delay in trial cannot be attributed to him; hence, he is entitled for the bail as a right under third proviso to sub-section (1) of Section 497 Cr. P.C. In support of his contentions, the learned counsel for the applicant places his reliance on the case of *Muhammad Riaz and another vs. The State (2016 P.Cr.L.J. 1206)*.

5. On the other hand, the learned Add. P.G opposes this application on the ground that the applicant is involved in a heinous offence of robbery, which brings his case within the exception of third proviso to sub-section (1) of Section 497 Cr. P.C.; that applicant was arrested by the police in other case, whereafter his identification parade was conducted before concerned Judicial Magistrate wherein complainant identified him as one of the accused persons of the alleged incident; that all the prosecution witnesses have been examined except I.O.; that the trial is likely to be concluded in near future; hence, applicant is not entitled to the concession of bail on statutory ground of delay.

6. Heard the learned counsel for the applicant and learned Add. P.G., appearing for the State, as well as gone through the record of the case with their assistance.

7. It appears from the perusal of record that the alleged offence took place on 05.02.2021, while the applicant was arrested by the police on 07.02.2021 in another case/crime bearing No. 49/2021 registered at PS Garden under Section 23(i)A of Sindh Arms Act, 2013 and he was identified by the complainant in identification parade conducted before a Judicial Magistrate after eight (8) days of his arrest. Challan was submitted by the police against present accused and co-accused on 17.03.2021, whereafter on 19.03.2021 charge was framed against him and case was fixed for evidence of the PWs; however, mostly the PWs remained absent before the trial Court due to which trial could not be concluded.

8. Third proviso of sub-section (1) of Section 497 Cr. P.C. provides to accused an independent right for grant of bail on the ground of statutory delay in conclusion of trial provided (i) that the delay in conclusion of trial had not occasioned on account of an act or omission on the part of the accused or any person acting on his behalf; (ii) that the accused is not a previously convicted offender for an offence punishable with death or imprisonment for life; (iii) that in the opinion of the Court, the accused is not a hardened, desperate or dangerous criminal; and (iv) that the accused is not involved in an act of terrorism punishable with death or imprisonment for life. Since such right is not left to the discretion of the Court, it cannot be denied under the discretionary power of the Court.

**9.** In the instant case, it is an admitted position that the applicant is behind the bars for last about 14 months but the trial could not be concluded for want of PWs despite issuance of B.Ws against them. The delay in conclusion of trial cannot be attributed to applicant and not a single ground, as discussed above, is available with prosecution to decline the bail to accused on the statutory ground.

**10.** Accordingly, I allow this application and in result thereof applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Lac only) and P.R. bond in the like amount to the satisfaction of the trial Court.

**11.** Needless to mention here that if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

JUDGE

Athar Zai