

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Bail. Appln. No.S – 791 of 2020

Date	Order with Signature of Hon'ble Judge
------	---------------------------------------

For hearing of bail application

1. For orders on office objection at flag 'A'
2. For hearing of bail application
(letter issued for report)

08.02.2021

M/s Shamsuddin Rajper and Abdul Rauf Hulo Advocates for the applicant/accused

Mr. Ghulam Umar S.M Rajput Advocate for the complainant

Mr. Aftab Ahmed Shar, Additional PG for the State

ORDER

Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicant/accused Raja S/o Imam Dino Lashari, seeks post-arrest bail in case / crime arising out of FIR No.128 of 2015 registered at Police Station, Ranipur, District Khairpur for offences punishable under Sections 302, 337-J, 34 PPC.

2. Precisely stated the facts of the prosecution case are that on 17.09.2015 at 1530 hours, complainant Riaz Hussain Abbasi lodged his FIR at Police Station Ranipur, stating therein that about 4/5 years back, his brother Fayaz Hussain alias Papoo had contracted marriage with Mst. Shakeela daughter of Imam Dino Lashari; some days prior to the incident, the brother-in-law of his brother namely Raja Lashari had quarreled with him. On 30.08.2015 at about 5:00 pm, his brother Aftab Ahmed informed

him through cellphone that accused Raja S/o Imam Dino with T.T Pistol, Mst. Shakeela empty handed and three unknown persons have intruded into their house and have confined him in a room, and they (accused) are fighting with his brother Fayaz Hussain alias Papoo, hence he accompanied Mehrab Ahmed and reached there and saw that the unknown accused had caught hold of his brother Fayaz Hussain lying on the Cot, while accused Raja and Mst. Shakeela were administering poison to him, on his (Fayaz Hussain) resistance accused Raja caused him pistol butt blows on his head. It is alleged that the complainant party challenged the accused, on which accused Raja aimed pistol towards them, leaving Fayaz Hussain escaped-away; thereafter they went over Fayaz Hussain who was in serious condition, he (complainant party) also set at liberty his brother Aftab Ahmed, thereafter in their presence Fayaz Hussain died at the spot. Thereafter the (complainant party) on chasing the accused persons boarded in Alto Car Registration No.ALA-832. Thereafter he (complainant) saw that his brother Fayaz Hussain had one injury on backside of his head, another injury on the left side ear, one injury on right hand wrist, hence after interment and under after getting the orders from Ex-Officio Justice of Peace, the FIR was registered.

3. It is contended by learned counsel that the applicant/accused is innocent and has been falsely implicated by the complainant in the instant case; there is delay of about 18 days in lodgment of the FIR for which no plausible explanation has been furnished; that the applicant/accused is behind the bars since 02.10.2017 and is languishing in jail and there is no

sufficient material available on record to connect the applicant/accused in the commission of the offence; that the delay if any in conclusion of the trial is not on the part of the applicant/accused because not a single adjournment has been sought by the applicant/accused; that co-accused Mst. Shakeela has been granted bail by this Court vide order dated 30.01.2018 hence the applicant/accused is also entitled for the same concession; that the Investigating Officer has recommended the case for disposal under 'C' class; that both the post-mortem reports do not support the version of the complainant as set-out in the FIR; that the applicant/accused has made-out a case for grant of bail on the ground of statutory delay in conclusion of trial / hardship. In support of their contentions, relied upon the ***cases of Ali Akbar vs. The State and another (2020 SCMR 1225); Shah Barat and another vs. The State (2007 Y L R 378), Mahmood vs. The Stat and another (2017 P Cr. L J Note 58); Mehboob alias Mooba vs. The State and another (2017 P Cr. L J Note 172) and Muhammad Ijaz Khan vs. The State and another (2017 M L D 1357).***

4. Learned counsel for the complainant as well as learned Additional PG for the State opposed for grant of bail to the applicant/accused by contending that the complainant in his FIR has specifically named the applicant/accused with active role that he along with co-accused forcibly administered the poison to the deceased Fayaz Hussain and also on resistance caused pistol butt blows to the deceased on his head and other parts of the body; that the version of the complainant is supported by the second post-mortem report conducted after exhumation of the dead body;

that earlier the bail application of the applicant/accused was dismissed on merits, therefore, the ground of merits cannot be considered; that the delay, if any, in lodgment of the FIR has been properly explained by the complainant that after the incident that the complainant after getting the order from the Ex-Officio Justice of Peace went to Police Station and lodged the FIR; that the complainant and Prosecution witnesses are regularly attending the trial Court, but the applicant/accused is using the delaying tactics by moving frequent adjournments; that the delay if any caused in conclusion of the trial is attributed to the applicant/accused; that even otherwise the non-compliance of direction issued by this Court to the trial Court may not entitle the present applicant to claim bail is of right. In support of their contention, they relied upon the ***cases of Tallat Ishaq vs. National Accountability Bureau (P L D 2019 Supreme Court 112)***.

5. I have heard the learned counsels for the applicant/accused, learned counsel for the complainant and Additional PG for the State and also gone through the record. Admittedly, the applicant/accused has sought bail solely on the ground of statutory delay in conclusion of trial / hardship. Perusal of the record reflects that initially the applicant/accused was admitted to pre-arrest bail vide order dated 13.10.2016 passed by learned 2nd Additional Sessions Judge, Khairpur in Pre-arrest Bail Application No.2620/2016. Against the said bail grant order, the complainant moved an application in terms of Section 497(5) Cr.P.C for cancellation of pre-arrest bail to the applicant/accused and vide order dated 02.10.2017, passed by learned trial Court, the pre-arrest bail earlier granted to the

applicant/accused was recalled and he was taken into custody and remanded to jail. Thereafter, the applicant moved application for post-arrest bail and vide order dated 12.06.2018, the said post-arrest bail application was turned-down by learned trial Court and then the applicant/accused approached this Court by filing Criminal Bail Application No.S-549 of 2018 and vide order dated 18.02.2019 the said bail application was dismissed as not pressed, however, learned trial Court was directed to expeditiously proceed with the case and conclude the trial preferably within a period of three months. Record further reflects that since the directions of this Court could not be complied-with within stipulated time, as such the applicant/accused again filed application for post-arrest bail before learned trial Court on the ground of statutory delay in conclusion of trial / hardship, but the same was also dismissed vide order dated 05.12.2020. Now the applicant/accused has again approached this Court for the same relief on the ground of statutory delay in conclusion of trial/hardship. So far the non-compliance of the directions of this Court to learned trial Court for conclusion of trial within a stipulated period is concerned, the same were administrative in nature and same were not complied-with by learned trial Court for whatever reasons, would not entitle the applicant/accused to claim bail as of right. While saying so, I am fortified by the case of Tallat Ishaq (Supra).

6. On perusal of case-diaries of learned trial Court, it is evident that complainant and PWs are attending the learned trial Court regularly, but the case is being adjourned due to frequent adjournments of both sides,

suspension of work for considerable time due to pandemic (COVID-19) virus, as such the delay in conclusion of trial cannot be attributed on the part of the prosecution. Earlier the bail application of the applicant/accused was turned-down thrice on merits as well as statutory delay in conclusion of trial / hardship by learned trial Court as well as by this Court. The applicant/accused has not been able to make-out a fresh ground entitling him to concession of post-arrest bail. Consequently, the instant criminal bail application is **dismissed**. However, once again the learned trial Court is directed to proceed with the case expeditiously and conclude the trial by adopting coercive measures for procuring the attendance of the prosecution witnesses and avoid unnecessary adjournments to either party on flimsy grounds. There is no cavil to the proposition laid down in the case-law relied upon by learned counsel for the applicant/accused, but it has no relevancy to the facts and circumstances of the case in hand.

Judge