

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 541 of 2023

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

07.12.2023

Mr. Maroof Hussain Hashmi advocate for the applicant
Nemo for the complainant.
Mr. Saleem Akhtar Buriro, Additional PG

Through this Bail Application, Muhammad Rizwan @ Rustum seeks bail on the statutory ground of delay in the conclusion of the Trial in FIR No. 61/2020 for the offenses under Section 302, 393, 394, 109, 34 PPC of PS New Karachi. The Trial Court has dismissed the bail application of the applicant on the premise that no fresh ground was agitated by the applicant as his two previous bail applications had already been dismissed vide orders dated 08.06.2021 and 22.07.2022.

2. The prosecution has alleged that the avoiding conduct of the advocates of the accused persons to proceed with the matter can also be assessed from the case diaries of the Trial Court. As per the prosecution, the case could not proceed on the dates i.e. 20.10.2022, 01.11.2022, 17.11.2022, 06.12.2022, 10.12.2022, 14.12.2022, 16.12.2022, 21.12.2022, 22.12.2022, 24.12.2022 and 26.12.2022, but on all above dates the advocates for co-accused persons remained absent without any intimation which was/is the main hurdle/cause of delay in the expeditious delay of the case.

3. Brief facts of the case are that on 04.02.2020 complainant Muhammad Nabil Naeem lodged FIR No.61/2020 Under Section 393/394/34 PPC at at Police Station New Karachi with the allegations that his father was murdered by an unknown person. During the investigation on 22.7.2020, the Investigating officer arrested the accused under section 23 (1) (a) S.A.A who confessed his guilt and thereafter the applicant/accused was booked in the subject crime. Thereafter completion of the investigation the Police submitted the charge sheet before the trial court where his first bail plea was dismissed on 18.6.2021. That after the dismissal of the bail application of the applicant/ accused, the applicant filed bail application No. 1519/2022, before this Court after hearing the bail plea of the applicant was disposed of vide order dated 26.9.2022 with direction to the trial court to conclude the above matter within six weeks.

4. The trial of the applicant, however, could not be concluded till his last bail application was filed on fresh ground in the trial court, on the

statutory ground of delay in the conclusion of the trial. The trial court dismissed the application of the applicant, with the observation that the earlier post-arrest bail application stood dismissed by this Court; therefore, the fresh application on the same ground was not maintainable. The applicant has now approached this Court again on the statutory ground of delay in the conclusion of the trial.

5. It is inter-alia contended that the name of the applicant /accused does not appear in the FIR, but his bail has been declined by this Court as well as by the Trial Court. Learned trial Court in offshoot case after conclusion of evidence has passed the Judgment and acquitted the applicant/ accused under section 265-H(i) on 5.3.2021, the question of empty recovered of the subject pistol from the place of incident and subsequently booking the applicant in the main case is unlawful. He emphasized that co-accused persons have already been granted bail by this Court. He asserted that police has only relied upon the extra Judicial confession of the applicant before the police, which is not admissible in evidence in terms of Articles 38 and 39 of the Qanoon Shahadat, therefore, the applicant/ accused is entitled to bail on statutory grounds. Per learned Counsel charge was framed on 27.01.2021 since then the prosecution has failed to produce a single witness, which is apathy on the part of the prosecution. Learned counsel submits that in this Court in Criminal Bail Application No.1519/2022, the direction was issued to the learned trial Court to conclude the case preferably within two months but such compliance has not been made yet, which is another irony on the part of the Trial Court.

6. I have heard the arguments of the learned counsel for the parties present in the Court and examined the case diaries of the trial court relied upon by the prosecution, as well as, the record of the case.

7. The report of the trial court reveals the following aspects of the case:-

“a. Sessions Case No. 1156/2020, The State vs. Muhammad Shahid & others arising out of FIR No. 61/2020, u/s 302/393/394/109/34 PPC registered at P.S New Karachi, was received in this Court by way of transfer from the Court of Honourable Sessions Judge, Karachi Central on 26.08.2020 for disposal according to law.

b. On 27.01.2021, the charge was framed against the accused persons, and the matter was fixed for evidence of the prosecution, but, the prosecution failed to produce the PWs, however, necessary action as per laws was being taken to ensure production of PWs.

c. I have the honor to submit that the undersigned assumed the charge of this Court on 05.12.2023. It is further submitted that the matter was being delayed due to the reluctant attitude of the

advocates of the parties but the Court has already taken it seriously. The undersigned is trying his level best to dispose of the matter expeditiously. The case was fixed on 11.12.2023 and the official witnesses were also in attendance, however, the learned advocate for the accused persons moved the adjournment application. Now, the subject sessions case is fixed on 23.12.2023 for evidence and schedule for earliest disposal, with the consent of learned advocates for the parties as well as learned ADPP for the State, has already been issued.”

8. The only question of law that requires determination, therefore, is whether the delay in the conclusion of the trial that occurs for no fault of the accused following the rejection of his first bail application on the statutory ground of delay, can be considered a “fresh ground”, not earlier available to him, for entertaining his second bail application, within the meaning and scope of that term as elaborated in the case of Nazir Ahmed v. State **PLD 2014 SC 241**.

9. The argument of the learned Additional P.G is that once a bail application of the accused on the statutory ground of delay is dismissed, holding the accused responsible for causing the delay in the conclusion of the trial, his second bail application on the same ground for any subsequent period cannot be entertained. This argument is untenable in terms of the law laid down by the Supreme Court in the cases of Sayed Ayesha Subhani Vs. The State **PLD 2023 SC 448** and in the case of Shakeel Shah v. State **2022 SCMR 1** “that Firstly, the entitlement of an accused to post-arrest bail on the statutory ground of delay in the conclusion of the trial is time-based. If the delay exceeds one year for no fault of the accused, in offenses punishable with death, the right of the accused to post-arrest bail ripens. This right continues to ripen for each period of two years starting from the arrest of the accused if he satisfies the court that he is not at fault for the delay in a particular period of two years unless his case falls within the 4th proviso to Section 497(1), Cr.P.C. Secondly, denying this recurring right to post-arrest bail to the accused would, in my opinion, amount to giving the prosecution a license to delay the conclusion of the trial for an unlimited period after the dismissal of the first bail application of the accused on the statutory ground of delay. The accused would, in such an eventuality, be left confined as an under-trial prisoner for an unlimited period at the mercy of the prosecution to conclude the trial as and when it pleases to do so. Thirdly, the accused shall have no incentive to attend the trial regularly and cooperate in the early conclusion thereof, after the dismissal of his first bail application, if his subsequent orderly conduct cannot entitle him to post-arrest bail despite non-conclusion of the trial for no fault of his in the next one year. Such a situation would be adverse to the constitutional scheme of fundamental rights and make a mockery of the rights to liberty, fair trial, and dignity of the accused guaranteed under the Constitution. As the

statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial, and dignity guaranteed under Articles 9, 10A, and 14 of the Constitution of Pakistan, the provisions of the proviso must be fashioned in a manner that is progressive and expansive of these rights of the accused, who is still under trial, and his guilt is not yet proven, has in his favor the presumption of innocence.

10. The Supreme Court in the case of Sayeda Ayesha Subhani and the case of Shakeel Shah supra has further held that the purpose and objective of the proviso is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offense not punishable with death does not extend beyond the period of one year. If the trial in such an offense is not concluded within one year for no fault of the accused, the statutory right to be released on bail ripens in his favor unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a fresh right, that is to say, a fresh ground, would accrue in his favor. The proviso to Section 497, Cr P. C, thus, becomes operative as and when one year passes but the trial is not concluded for no fault of the accused.

11. The record reflects that co-accused Muhammad Asif has been granted bail by this Court vide order dated 23.12.2020 in Bail Application No. 1762 of 2020 in terms of Section 492(2) Cr. P.C. as per the record, applicant's bail application No. 1519 of 2022 was dismissed as not pressed, with direction to the trial Court to examine material witnesses within six weeks and conclude the trial preferably within two months. The applicant moved fresh bail application No. 541 of 2023 before this Court on the statutory ground as there was a delay in trial in the conclusion of the case on the premise the applicant has been behind bars since his arrest. At this stage, I asked the learned counsel that this bail application needs to be heard and decided by the same bench that earlier decided the bail plea of the accused persons in different bail applications. Learned counsel submitted that this Court vide order dated 13.11.2023 directed the office to fix this matter as per roster and the office has fixed it as per roster,

therefore this matter can be heard and decided on the statutory ground, for which the Trial Court has already submitted a report which shows that the applicant is not at fault in conclusion of the Trial since his arrest on 22.07.2022, as such he is entitled to be released on post-arrest bail in Crime No. 61 of 2020, under Section 302/393/394/109 and 34 PPC of PS New Karachi.

12. In the light of the dicta laid down by the Supreme Court in the aforesaid cases, I am, of the same view that the delay in the conclusion of the trial in the present case that occurs for no fault of the accused falls within the parameters elaborated in the case of Nazir Ahmed supra.

13. In view of the above facts and circumstances of the case the applicant has made out a case for post-arrest bail on statutory grounds, he is enlarged on bail in the aforesaid crime subject to his furnishing solvent surety in the sum of Rs. 200,000/-and P.R Bond in the like amount to the satisfaction of the trial Court. the observation is tentative and shall not prejudice the case of either party at the trial. The trial court is directed to conclude the trial within two months positively without fail. And no adjournment shall be granted to either party on any account. MIT-II is directed to seek compliance with the order within time. In case of failure on the part of the trial court, the matter shall be taken up on the administrative side for appropriate order by the competent authority.

JUDGE