

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Bail Application No.S-765 of 2023
(*Sarfraz alias Faraz v. The State*)

Crl. Bail Application No.S-766 of 2023
(*Syed Saqlain Muhib Shah v. The State*)

Crl. Revision Application No.S-01 of 2024
(*Zahid Hussain Rajput v. The State & another*)

Date of hearing	Order with signature of Judge.
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M/s Rashid Mustafa Solangi, Syed Muhib Ali Shah and Ghulam Murtaza Buriro, Advocates for the applicant in Crl.B.A.No.S-766 of 2023.

Syed Ali Murtaza Shah, Advocate for applicant in Crl. Bail Application No.S-765 of 2023 and for applicant in connected Revision.

M/s Syed Jaffar Ali Shah and Mehboob Ali Wassan, Advocates for complainant.

Syed Sardar Ali Shah, Additional P.G for the State.

Date of Hearing & Order: **07-05-2024**

ORDER

MUHAMMAD IQBAL KALHORO, I.- This order seeks to dispose of all the listed applications. As per details of reported incident, complainant and other witnesses spotted applicants and other accused committing murder of ASI Junaid Bilal at a link road near Maitla village, Khairpur by chopping off his body parts in their presence and setting them on fire on 17.11.2020 at 2400 hours. Report of which was however filed with P.S, Shaheed Murtaza Mirani on 20.11.2020 at about 2130 hours.

2. Subsequently, in investigation, applicants were arrested on 21.11.2020. One of applicants namely Syed Saqlain Muhib Shah filed an application before the trial Court for bail, dismissed. He then filed application before this Court, which too was dismissed on merits. Then he approached the Supreme Court for the same relief but without a success. Insofar as applicant Sarfraz alias Faraz is concerned, he has

filed application before this Court first time after failing to receive such relief from the trial Court.

3. Learned counsel in defense have argued that there are contradictions between medical evidence and ocular account; that medical evidence runs contrary to the witnesses' version of events; that delay has occurred in the trial that is not attributable to the applicants; that although four witnesses have been examined, but cross-examination of three witnesses has been reserved due to failure of prosecution to bring certain articles to be produced in their evidence; that charge was framed after one year and 11-months, and for which no part can be assigned to the applicants. To support his contentions, he has relied upon the cases reported as **PLD 2017 SC 147, PLD 2022 SC 112, 2023 SCMR 1450, PLD 2005 Karachi 255 & 2003 PCr.LJ 1459.**

4. Learned counsel for applicant Syed Saqlain Muhib Shah has insisted the bail on the ground of statutory delay in conclusion of the trial. He has relied upon the cases reported as **2023 SCMR 1450, 2022 SCMR 1, 2020 SCMR 1225, 2020 SCMR 458, 2015 SCMR 1696, 2012 SCMR 354, 2000 SCMR 79, PLD 1990 SC 934, 2024 SCMR 28 & PLD 2023 SC 648.**

5. On the contrary, learned counsel appearing on behalf of complainant have opposed bail and submitted certain documents including case-diaries showing that delay has occurred due to part played by each accused separately.

6. Learned Additional P.G has also opposed bail by referring to the case of applicant Syed Saqlain Muhib Shah (**2010 SCMR 1861**) and further relying upon the case law reported as **2005 MLD 1247**. In the context of above cases, he states that accused in this case are found moving various applications separately before the trial Court to cause delay in the trial. Sometime, they move applications challenging jurisdiction of the Court. Sometime, they file petitions challenging conduct of presiding officer. Sometime, they make statements before the presiding officer showing lack of confidence over him. So much so,

that even an application was filed before the trial Court to bring on record a report of JIT, although no provision is available in the Criminal Procedure Code permitting such step. After dismissal of such application, they have even moved listed Revision Application before this court. Not only, they have failed to conduct cross-examination of witnesses, but because of their raising legal battle in the shape of so many applications, the delay in the trial has been occasioned.

7. I have considered submissions of parties and perused material available on record including the case law cited at bar. Applicants are specifically nominated in FIR with direct role of heinously and shockingly murdering ASI Junaid Bilal by chopping off his body parts and lighting them. The difference, if any, between medical evidence and oral account regarding injuries on the person of deceased, requiring deeper appreciation of evidence, cannot be looked into while deciding merits of the case tentatively for deciding a right of an accused to bail. Although the charge was framed after one year and 11-months, as alleged, but applicants, who were in jail, did not try to even move an application for expediting the trial or showing any interest or anxiety before the trial Court so that charge could have been framed earlier and the case proceeded. *Prima facie*, it appears that they were waiting for lapse of two years to press a right to bail on statutory delay ground. Further, ostensibly, it appears that moving various applications by the applicants on one or the other issue was aimed at achieving the same object.

8. Be that as it may, on merits, bail application of applicant Syed Saqlain Muhib Shah, who is assigned the same role to that of applicant Sarfraz alias Faraz, has been dismissed up-to the Supreme Court. In the trial, four witnesses have been examined, out of whom accused have cross-examined only one witness. And on one pretext or the other, they have avoided cross-examining the remaining witnesses.

9. A mathematical calculation as to who has caused delay in the trial while deciding a right of accused to bail is neither desired, nor can be pressed. Therefore, while deciding such right of applicants the same

exercise can be undertaken and figures considered to determine mathematically that delay in the trial has occurred either on the part of prosecution or the accused. Before me, the material *prima facie* shows that trial has proceeded and four material witnesses including eyewitnesses have been examined. Their examination-in-chief has been recorded and it was on the accused to cross-examine them. But instead of doing so, they have been moving applications on various issues to ensure its delay. I, therefore, do not find any material in their current attempt to seek concession of bail persuading either on the ground of merits or on the ground of statutory delay. The Supreme Court in the case reported as **2011 SCMR 1332** has laid down that when the trial has proceeded the trial Court should refrain from granting post arrest bail to the accused who is in jail or decline bail of accused who is on interim pre-arrest bail.

10. Insofar as Crl. Revision is concerned, learned counsel has failed to point out under what law the JIT report can be brought on record and produced in the evidence. He has also failed to explain why after evidence of prosecution witnesses, accused in his statement under section 342 CrPC cannot produce its copy in defense or try to summon relevant officer to produce the same. I therefore find no justification to intervene in the order passed by the trial Court. This being the position, I do not find any merits in the Crl. Revision either.

11. The upshot of the above discussion is that all applications are **dismissed**. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits. ***Office to place a signed copy of this order in captioned in connected matters.***

JUDGE