

IN THE HIGH COURT OF SINDH AT KARACHI**Cr. Bail Application No. 80 of 2024**

APPLICANT : **Muhammad Touheed**
Through Mr. Aamir Mansoob Qureshi
Advocate

RESPONDENT : **The State**
Through Mr. Muhammad Anwar Mahar,
DDPP for the State along with
PI Naeem Ashraf, Investigating Officer

COMPLAINANT : **Badshah Khan**
Through Mr. Qadir Khan Mandokhail

Date of hearing : 19.02.2024

Date of order : 18.03.2024

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ORDER

Omar Sial, J.: Muhammad Touheed son of Muhammad Dabeer Khan has sought post-arrest bail in crime number 1354 of 2021, registered under sections 302, 324, 394, 109 and 34 P.P.C. at the Orangi Town police station. The learned 6th Additional District & Sessions Judge, Karachi-West, on 08.12.2023, dismissed the application filed earlier by the applicant.

2. Briefly, the facts of the case are that the Complainant Badshah Khan, on 07.12.2021, reported to the police that on 06.12.2021 on account of some personal work he had gone to Naval Colony, where at about 9.15 p.m., he received a call from his relative Hidayat Masood who informed him that his nephew Arsalan and Yasir have received bullet injuries and that they have been taken to Abbasi Shaheed Hospital for treatment. On such information Badshah Khan immediately reached the Abbasi Shaheed Hospital and found that his nephew Arsalan aged about 16 years had succumbed to his injuries.

Subsequently he came to know that his nephew along with his friend Yasir went on a motorcycle for tuition near the Board office and at about 08.30 p.m. while they were returning and had reached at Ponay Panch Chowrangi near Qatar Masjid, Orangi Town they were intercepted by culprits who tried to snatch their motorcycle and during such incident Arsalan received a firearm injury on the left side of his back and Yasir received injury on his left thigh, however, Yasir had managed to escape on the motorcycle.

3. I have heard the learned counsel for the applicant, and the learned Additional Prosecutor General duly assisted by the learned counsel for the Complainant. My observations and findings are as follows.

4. Learned counsel for the Applicant has pressed this bail application on the ground of statutory delay in trial. Toheed was arrested on 07.12.2021 and has been in custody since then.

5. Section 497(1)(b) Cr.P.C. provides that a person accused of an offence punishable with death, who has been detained for a continuous period exceeding two years shall be released on bail if the delay is not on part of the accused and if the accused is not a previously convicted offender for an offence punishable with death or life imprisonment or who is a hardened, desperate or dangerous criminal or if he is accused of a terrorism offence.

6. Learned Additional Prosecutor General has confirmed that the applicant does not have a past criminal record nor is he a hardened, dangerous or desperate criminal nor has he been accused of a terrorism offence. In these circumstances it is to be seen whether the applicant or his lawyer was in any manner responsible for the delay.

7. Perusal of the case diaries further reflects that on 29.01.2022, 12.07.2022, 05.12.2022 and 09.01.2023, the case was adjourned either due to the absence of a co-accused (who was on bail), or absence of their counsel. It further appears that on 06.02.2023,

22.05.2023, 08.06.2023, 19.06.2023, 26.06.2023, 31.10.2022, 27.11.2022, 05.12.2022, 06.02.2023, 17.04.2023, 22.05.2023, 08.06.2023, 19.06.2023, 26.06.2023 and 01.01.2024 counsel for the complainant remained absent and on 10.10.2022, 19.12.2022, 20.03.2023, 03.04.2023, 08.05.2023, 21.08.2023, 02.10.2023, 23.10.2023, 06.11.2023 application for adjournment was moved by the learned counsel for the Complainant and matter was adjourned.

8. The learned counsel for the complainant did not defend his absences however justified that his absences were caused as a consequence of his engagement in the Parliament. He, further justified it by submitting that if the applicant was in such a hurry to go through his trial, he should have made efforts that the Court appoint another counsel for the complainant. For obvious reasons, this is an argument that is devoid of force.

9. I notice from the case diaries that the complainant and his witnesses remained present on most of the dates when the case was fixed for hearing. Contributory factors in the delay of the trial have also been the accused moving applications for the case to be transferred to a common court (as initially it proceeded before the anti-terrorism court), defence counsel for the co-accused remaining absent, Presiding Officer being on leave, demand by the accused that a certain witness be examined first and that witness (a learned magistrate) remaining absent on a number of occasions. It is with regret that I notice that the learned trial court too has shown a lax attitude towards proceeding with the trial. It is true that the learned trial courts are inundated with work, yet a more dynamic approach is required so that justice can be done.

10. Looking at the situation holistically, I am not inclined to grant the applicant the concession of bail on the ground of statutory delay in trial at this moment. I however deem it appropriate in the interest of justice that the trial court be directed to complete the trial within a maximum period of three months even if it entails a day to day

hearing. No adjournment should be granted to either side. If the counsel for the complainant seeks an adjournment, such an adjournment should not be granted and instead two days' time should be given to the complainant to engage another counsel. No further opportunity should be given. If any of the accused who are on bail, even if granted by this Court, remain absent, their respective bail should be re-called by the trial court. The learned MIT-II should be sent a monthly progress report. As far as the applicant is concerned, he may repeat his bail application after two months from the date of this order.

11. Bail application is dismissed.

JUDGE