

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.27/2018

Date
Order with signature of Judge
for hearing of bail application.

16.02.2018

Mr. Ghulam Rasool Soho advocate for applicant.
Mr. Muntazir Mehdi, DPG,
Complainant Pervez Ali Ujjan is present.

Salahuddin Panhwar, J: Through instant bail application, applicant seeks post arrest bail in FIR No.165/2013, under section 302, 34 PPC, PS Orangi Town, Karachi.

2. Precisely, relevant facts are that applicant/accused caused fire short injury to Naimatullah (deceased) and was apprehended by the *muhallah* people as well recovery was effected. Report under section 173 Cr.P.C. was filed wherein Allah Dino, Obaidullah, Ahmed Ali and Rano are shown as eyewitnesses.

3. This is fourth bail application; earlier bail applications were dismissed by this Court. In bail application No.1032/2016 direction was issue to the trial Court to conclude the trial within three months.

4. At this juncture learned counsel contends that he has two fresh grounds, one is that two eyewitnesses Allah Dino and Obaidullah have resiled their earlier statement under section 161 Cr.P.C. and that the applicant has earned the right of bail on statutory ground; he refers case law reported in 2005 P.Cr.L.J. 699. 2016 YLR Note 88, 1998 SMR 190, 2012 SCMR 354 and 2015 SCMR



1696. He further agitates that under section 23 of the Arms Act, which is in respect of recovery of weapon, applicant has been acquitted by the trial Court thus this ground is also available with the applicant.

5. In contra, learned DPG contends that this is fourth bail application; two witnesses are to be examined; delay is not on the part of the prosecution; on most of the dates witnesses were remained present but non-production of custody by the jail authority is not explained whether accused was not willing to appear before the trial Court on any ground or there was administrative issue in non-production of accused.

6. It is settled principle of law that while examining the statutory ground, Courts are required to examine the conduct of the prosecution and accused because *normally* the question of bail on statutory ground would arise only if trial is not concluded within a shortest period *least* within period, so insisted in *statutory* clause of section 497 Cr.PC which could *either* be in result of negligence of prosecution or deliberation by accused to avoid trial on one or other reasons. If the delay has occasioned because of *negligence* of prosecution then *normally* the bail is to be granted. Reference may be made to the case of Adnan Prince V State (PLD 2017 SC 147) wherein it is held as:-

"7. It has been consistently held by this Court that if a case on such, statutory delay in the conclusion of trial is made out then, *ordinarily*, bail should not be refused on hyper technical ground".



However, the bail may well be declined if, on examining the conduct of accused, it appears that it (delay) occasioned because of acts or omissions of the accused or one authorized by him. Reference may well be made to the case of Babar Hussain v. State & another (2016 SCMR 1538) wherein it is held as:-

"4. ... we are of the considered view that even after lapse of two years, the conduct of an accused seeking adjournments can be taken note of and bail can be denied by a court even on the statutory ground..."

7. The accused thus was required to establish that delay in trial *prima facie* was result of negligence of prosecution. In the instant matter it is not claimed that witnesses remained absent on each and every date rather examination of five witnesses displays the intention of the prosecution to examine its witnesses hence allegation of delay against prosecution cannot be inferred; evidence of two witnesses who have resiled from their earlier statement and were declared hostile, cannot be *ipso facto* ground to grant bail particularly when bail plea is being insisted on statutory ground. It is contended that two eyewitnesses and three more witnesses are yet to be examined hence this case is at the verge of conclusion of trial thus in my view it is not a fit case for bail to applicant / accused whose bail *pleas* on fourth counts have been declined on merits thereby *prima facie* showing involvement of the applicant/accused in a case falling within prohibitory clause. Bail application is therefore dismissed with direction to the trial Court to decide the case within three months with compliance report.


JUDGE