

ORDER SHEET  
IN THE HIGH COURT OF SINDH, AT KARACHI.

**Criminal Bail Appln. No.2918 of 2023**

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

**01.03.2024.**

M/s. Shujaat Abbas and Adnan Ali, Advocates for the  
applicant.  
Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh.  
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**Mohammad Karim Khan Agha, J.** Applicant Shahnawaz S/o. Muhammad Shiraz is facing trial before the Additional Sessions Judge-VII/MCTC-02, Karachi Central in respect Crime No.160/2019 under section 302/34 PPC registered at PS Joharabad, Karachi. He applied for post arrest bail which was declined vide order dated 16.11.2022, hence, the applicant has approached this Court for bail on statutory grounds.

2. Brief facts of the case are that 30.07.2019 Hamza and his friends went out for dinner and on the way home they were intercepted by 03 unknown persons on motorcycle who started firing upon them. As a result of the firing Hamza was killed, hence the instant FIR was lodged against unknown persons.

3. I have heard the parties and perused the record.

4. The applicant has applied for bail on statutory grounds. The applicant has been charged with murder under section 302/34 PPC. Under section 497 Cr.P.C. even in a case of murder the applicant is allowed bail if he has been in continuous confinement of two years and no delay in his trial has been caused on his part and provided he is not a previous convicted offender either in an offence punishable for death or imprisonment for life or to a person, who in the opinion of the Court is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life. No evidence has been produced to show that the applicant has been convicted of a

previous like offence or that he is a hardened, desperate or dangerous criminal or is accused of an act of terrorism. The main issue is therefore, whether the applicant has spent more than 02 years in jail without completion of the trial and the delay in completing the trial has not been caused by the applicant.

5. The applicant was arrested on 15.8.2019, the charge was framed on 11.01.2020 and today on 01.03.2024 being a period of nearly 4 and half years the applicant remains in jail. Only the charge has been framed and only one PW out of 19 has been examined. I have reviewed the diary sheets which reveal that since the date of arrest of the applicant nearly 100 hearing of this case have been heard. A review of the diaries reveals that on very few occasions has the delay been solely caused on the part of the applicant. Most of the delays have been caused on account of absent of the prosecution witnesses which blame cannot be placed on the applicant. No doubt when considering the grounds of statutory delay especially in murder cases mathematical formula is not to be adopted. However, a holistic interpretation of the diary sheets reveals that blame of delay in the trial falls squarely on the part of the prosecution rather than the applicant. In this case the applicant has already spent nearly 4 and half years in jail and yet incredibly only one PW has been examined out of a total of 19. In the event that the trial continues at the same pace the trial is unlikely to be completed at least in further 05 years. The applicant has a fundamental right of life and liberty in the constitution and also to be treated in accordance with law and in this case I am clear in my mind that the prosecution has failed to perform its obligation to prosecute this case expeditiously. It needs to be also borne in mind that at the end of the trial the applicant might be acquitted and so far he has already spend nearly 4 and half years in jail and if he is acquitted neither this precious time is recoverable by him nor any compensation is available to him.

6. Under these circumstances I find that the applicant is entitled to post-arrest bail on statutory grounds of delay and

accordingly the post-arrest bail is granted to the applicant Shahnawaz S/o. Muhammad Shiraz subject to him furnishing solvent surety in the amount of Rs.10,00,000/- (Rupees ten lac. only) and P.R. Bond in the like amount to the satisfaction of the trial court.

7. It is made clear that this order is only after a tentative assessment of the evidence available on record and would have no bearing on the outcome of the trial of the applicant which shall be decided by the concerned trial Court on merits based on the evidence placed before it.

8. The bail application is disposed of in the above terms.

JUDGE

*M. Arif*