

Form No:HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. Crl. Misc. No.34710-B of 2023

Shehzad

Versus

The State etc.

S.No. of order/ Proceedings	Dates of order/ Proceedings	Order with signature of Judge and that of Parties of counsel, where necessary.
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20.06.2023 & Mr. Sajjad Mahmood Bhatti, Advocate for the petitioner.
21.06.2023 Ms. Ummul Baneen, Deputy District Public Prosecutor along with Ch. Sultan, Addl. I. G. (Investigation), Punjab, Lahore, Farhan, SP (Investigation), Qadeer, DSP (Legal) and Ashraf, SI with record.

This is in continuation of my short order of even date which canvasses the following details.

2. Shehzad, petitioner seeks post arrest bail in case FIR No.686 dated 30.10.2022 registered for offence under Section 9(1)3C of the Control of Narcotic Substances Act, 1997 at Police Station Saddar District Sargodha.
3. Learned Prosecutor accepts the notice.
4. Heard. Perused.
5. As per prosecution's case, the petitioner when in possession of 1600 grams of '*Charas*' was arrested on 30.10.2022 by police raiding party headed by Muhammad Aslam, SI. Challan as per police file was prepared on 05.11.2022 while report of the Punjab Forensic Science Agency was complete and signed on 09.12.2022 but the record is silent about the reasons for delayed submission of challan on 10.05.2023. It is to be kept into consideration that this case came up for hearing for the first time on 24.05.2023 when the Investigation Officer was summoned to assist this Court regarding the argument furnished by learned counsel for the petitioner

about non-submission of challan till then. Upon the information provided by Ashraf, SI, Investigation Officer, Incharge Investigation District Sargodha and the District Public Prosecutor were asked to join the proceedings along with detailed report explaining the reasons for that delay. According to the report submitted by the Superintendent of Police (Investigation), Sargodha road certificate No.1096/21 was chalked out in the name of Muhammad Aslam, SI/complainant of the case on 09.12.2022 for transmission of report under Section 173 of the Code of Criminal Procedure, 1898 to the prosecution branch and thereafter, for its submission to the learned trial court. The report also says that not earlier to 18.04.2023, Muhammad Aslam, SI presented the challan to the prosecution branch but on the same day for rectification of defects, it was returned. Where after, he re-committed the report on 10.05.2023 i.e. after about six months and ten days of the registration of case and arrest of the petitioner.

The available record does not carry any justifiable explanation regarding inordinately delayed submission of challan i.e. after about 190 days despite of the fact that Section 173 of the Code of Criminal Procedure, 1898 directs submission of challan within 14 days and in case of incomplete investigation, an interim report is to be submitted to the Court by the Station House Officer concerned within next three days and the Court is required to commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that trial should not so commence. Though the Control of Narcotic Substances Act, 1997 does not provide specific duration for conclusion of trial yet Section 173 of the Code of Criminal Procedure, 1898 mandatorily requires submission of interim or complete

report within a given time in the form prescribed by the Provincial Government stating therein the result of investigation made until then. In the instant case, the accused/petitioner arrested on 30.10.2022 was sent to judicial custody upon the motion of the Investigation Officer himself on 31.10.2022. On 05.11.2022, having found the petitioner connected with the alleged offence, the Station House Officer prepared report under Section 173 of the Code *ibid*. Meaning thereby, the investigation then was complete as the outcome of investigation was mentioned in the said report which for non-availability of forensic report till then at least required submission of interim challan to the learned Magistrate concerned immediately thereafter. This Court has observed that violation of provision of Section 173 of the Code of Criminal Procedure, 1898 has become normal practice of police especially in cases of narcotics which calls for a serious concerted concern and probe by the Inspector General of Police, Punjab and the Secretary, Prosecution, Government of Punjab.

Another aspect observed is that SI Muhammad Aslam, complainant of the case, as per facts surfaced, clutched this case till the end as he is the person who purportedly captured the petitioner, he recovered the contraband, prepared the sealed parcel of the sample separated from the bulk, he transmitted the sample parcel to the Punjab Forensic Science Agency and even challan was entrusted to him for its transmission to the Court through the Prosecution branch. It is also to be noted that the case was investigated by Muhammad Ashraf, SI of the same police station and as per law the report under Section 173 of the Code *ibid* was prepared by the officer incharge of the police station. Hence, issuance of road certificate in the name of SI Muhammad Aslam,

complainant of the case instead of the Investigation Officer or any other official for transmission of challan to the prosecution branch and thereafter, to the learned court, in the peculiar circumstances of the matter in hand, is also a question that craves determination by the learned trial court.

6. Today this Court has decided two other bail petitions bearing Crl. Misc. No.37217-B of 2023 and Crl. Misc. No.32111-B of 2023 having almost the similar facts. A common factor surfaced in these three cases is the previous criminal record of same nature of the accused/petitioners. It is unfortunately a growing phenomenon in our police culture that subordinate police officials book the persons having previous criminal record in narcotic cases by fabricating false evidence only to make the campaign or ‘crackdown’ ordered by the superior officers against the addicts or peddlers, successful that practice cannot at all be endorsed and encouraged. Order in the society is to be maintained and the crime is to be curbed by ensuring untainted justice for all. Viable expeditious proceedings in the case is also a requirement of fair trial. In this case, it prima facie, seems that right of fair trial guaranteed by the Constitution stands infringed because of apparently willful abstaining from submission of challan to the Court in time. It prima facie, stinks mala fide on the part of concerned officials which makes this case one of further inquiry into petitioner’s guilt. Finding the unjustifiably belated submission of challan, while granting post arrest bail to the accused, three members Bench of the Hon’ble Supreme Court of Pakistan, in the case of Adnan Prince v. State through the P. G., Punjab and another (PLJ 2017 SC 298) has observed as under: -

"9. Of course, it is too late but we are constrained to give a wake-up call to the prosecution/State that in Criminal cases involving capital punishment, the Investigators and Prosecutors, consisting of large fleets who are being sustained and maintained at the cost of tax payers money of the poor people, shall diligently perform their statutory duties/obligations otherwise, they will be guilty of violating the mandatory statutory provisions of the Cr.P.C., the Constitution and Law relating to the prosecution branch. It is a universal principle of law that to have a speedy trial is the right of every accused person, therefore, un-necessary delay in trial of such cases would amount to denial of justice.

Many years back, the State/Government with the object to put the criminal justice system into the correct channels, bifurcated the police force to preventive/detective, investigation and prosecution wings. The establishment of the same cost dearly the public exchequer because extraordinary budget was allocated for this purpose by all the Governments of the Provinces including Federal Government, however, such costly exercise could not improve the system because supervising officers of these three wings of the police are taking least interest to streamline the working of each wing, in an efficient and effective manner and to comply with the mandatory provisions of law. Thus even today charge sheets and submission of the challans before the competent Courts in criminal cases are delayed beyond the mandatory statutory period for no reason much less plausible. Even interim challans as required under the law are not submitted within the statutory period. This conduct and attitude as well as performance of investigating, prosecution and detective agencies are absolutely un-acceptable and un-condonable because on the one hand, the law is disregarded while on the other hand, with the passage of time and long delay in the submission of challans, trial in each case is delayed and some of the witnesses including star witness either vanish being killed by the opponents, meet natural death or abandon their permanent abode/place of official duties due to transfer to another place or district making it a cumbersome job for the trial Court to procure their attendance. This is one of the major contributory factor in the backlog crisis/pendency of criminal cases. Such type of un-condonable delay in many cases becomes a cause of frustration both for the accused, the

aggrieved complainant party and in some cases, the aggrieved party ordinarily takes the law into hands indulging in revengeful acts.

10. This has certainly resulted in unrest and element of intolerance in the society which ultimately would have negative impacts on the performance of the government as a whole.

11. Accordingly, copy of this judgment be sent to the Attorney General of Pakistan, all the Prosecutor Generals of the Provinces and Islamabad Capital Territory-ICT, Advocate Generals of the four Provinces, DIGs/Addl. IGP who are the Incharges of the Investigation Wings, Ministry of Interior, Govt. of Pakistan and all the Chief Secretaries of the four Provinces, all the Home Secretaries of the provinces, IGP-Islamabad, Chief Commissioner-ICT with the direction to hold deliberations and consultations and after giving deep thought to the subject matter, they should collectively and individually devise a proper strategy/policy to arrest this grave menace of delay and causes thereof and to immediately redress the same within the possible minimum time so that compliance is made with the mandatory provision of law and the relevant article of the Constitution in its true letter and spirit and to make accountable each and every officer who is found responsible for such delay and to show a visible and efficient performance in all three fields, failing which the public would be justified to protest that their money is going waste without any fruitful result even after introduction of the new system.”

In another case titled Subhan Khan v. The State reported as (2002 SCMR 1797), the Hon’ble Supreme Court of Pakistan while granting bail in case of narcotics has also observed as under: -

“ ...It is mandatory for the police under section 173, Cr.P.C. to complete the investigation within a period of 14 days and submit the final report but if the investigation in a case cannot be completed within the aforesaid period, the officer incharge of the police station should submit an interim report to enable the Court to take essential steps for commencement of the trial.

The non-observance of the above direction of law is one of the major reasons of worsening the law and order situation and delay in disposal of cases by the

Courts. It is general tendency that without proper check and restraint on the powers of the police official and locating the fault in the public functionaries the burden of negligence and inefficiency of police is put either on the shoulders of innocent people at the cost of public time and exchequer or it is shifted to the Court to be held to the Court to be held responsible for the delay in disposal of cases. The delay of more than one year in submission of challan in such petty cases being without any legal justification, would amount to delay the disposal of cases by the Courts and curtailment of liberty of the persons involved in such cases through abuse of the process of law. We having attended the matter, feel that the question of complicity of the petitioner, would definitely be a matter relating to the scrutiny to be made at the trial, therefore, we would not like to comment upon the innocence or guilt of the petitioner at this stage to cause prejudice to either party at the trial. **We are of the considered view that the ground of inordinate delay in submission of challan by the police taken by the learned counsel for the petitioner in support of this petition being not ignorable would alone be sufficient for the grant of bail.**

The concerned quarter in the Ministry of Interior in the Federal Government and Home Departments in the Provincial Governments while taking notice of the situation should take essential steps to ensure that unnecessary delay in submission of final reports under section 173, Cr.P.C. in criminal cases is avoided and the Investigating Agencies should not be allowed to sit over the investigation beyond the normal period prescribed under the law without legal excuse. In case due to the negligence or inefficiency of an official, the delay is caused in completion of investigation and submission of challan, the Competent Authority should proceed against such official for, an appropriate action under the relevant Rules.”

Similarly, in a recent case titled as Gul Rehman v. The State through AG, KP, Peshawar reported as (**PLD 2021 SC 795**) in paragraph No.7 of the order while dealing with bail petition, the Hon’ble Supreme Court of Pakistan has rendered observation that reads as under: -

“7. **Due to the neglect of the police-prosecution in not submitting investigation reports (challans) trials cannot commence; trials which would**

probably conclude by the time the matter of bail comes before this Court. Therefore, either the accused is kept from being punished for the crime committed by him or he is unable to secure his freedom on being acquitted; in either eventuality a wrong signal is sent out, which is that either the judiciary is unnecessarily releasing the accused on bail or keeping innocent persons incarcerated for no good reason. Moreover, the focus shifts away from the early conclusion of trials to incidental matters, such as pursuing the remedy of bail by the accused and the resources of the State and in most cases also those of the complainant's, expended in opposing bail. Court time is also wasted in attending to bail matters which would have been better spent in attending to the trial and appeals.”

Likewise, observation given by the same Bench of the August Court in case titled Amjad Khan v. The State through A.G. Khyber Pakhtunkhwa and others reported as (2021 SCMR 1458) goes as under: -

“7. ...We are constrained to observe that this unjustifiable delay in the submission of investigation reports (challans) also vitiates the Fundamental Rights of 'fair trial and due process' which the Constitution of the Islamic Republic of Pakistan guarantees in its Article 10A.

In this context, reference can also be made to the case of Ram Prakash Pandey v. State of U.P. and Amr. Reported as AIR 2001 SC 3592.

7. Learned Prosecutor has argued with vehemence the previous criminal record and his alleged conviction in two of the criminal cases yet as the petitioner has reasonably made out his case one of further inquiry into his guilt, mere registration of criminal cases against the petitioner and even his conviction in two of the referred cases is not a fact sufficient to disentitle him to the grant of post arrest bail. Reliance in this regard is placed on the cases Muhammad Rafique v. The State (1997 SCMR 412), Qurban Ali v. The State and others (2017 SCMR

279) and *Nadeem Aslam v. The State and another (2019 YLR 415 Lahore)*. In the circumstances, petitioner's further incarceration till conclusion of trial not in sight, does not at all look justified hence, this petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs.500,000/- with two sureties each in the like amount to the satisfaction of the learned trial court.

Copy of this order be immediately sent to the Chief Secretary, Government of the Punjab and Inspector General of Police, Punjab for the needful to be done.

Signed on 21.07.2023

(Syed Shahbaz Ali Rizvi)
Judge

APPROVED FOR REPORTING:

Judge

