

Form No. HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT

JUDICIAL DEPARTMENT

Case No. **Crl. Misc. No.16105-B of 2024**

Muhammad Rauf vs The State, etc.

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary.
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28.06.2024 Ms. Asifa Riasat, Advocate for the petitioner.
Rana Muhammad Shafique, Deputy Prosecutor General for the state
alongwith Muhammad Maalik, A.S.I. and record of the case.
Mian Shaukat Ali, Advocate for respondent No.2/complainant of the
case.

Through instant petition, Muhammad Rauf (petitioner/accused) has sought post-arrest bail in case arising out of F.I.R. No.565/2021 dated: 28.05.2021 registered under Section: 489-F PPC at Police Station: City Jaranwala, District: Faisalabad.

This is second petition filed by the petitioner for grant of post-arrest bail in the case before this Court whereas first petition filed by the petitioner for post-arrest bail in the case before this Court bearing Crl. Misc. No.13294-B of 2023 was dismissed on merits vide order dated: 16.03.2023 passed by this Court (copy of the order is available at Page No.13-14 of the petition). Thereafter, petitioner filed Crl. Petition No.866-L of 2023 before Supreme Court of Pakistan against aforementioned order dated: 16.03.2023 passed by this Court in Crl. Misc. 13294-B of 2023, which came up for hearing on 06.12.2023 and learned counsel for the petitioner contended there that right of bail on statutory ground has been accrued in favour of the petitioner, therefore, in order to file application before the trial court on this fresh ground i.e. statutory ground, he wants to withdraw the petition for the time being and same was dismissed as withdrawn (copy of the order is available at Page No.19 of this petition) and relevant portion of the order is hereby reproduced:-

“Learned counsel for the petitioner contends that during the pendency of this petition a right of bail on statutory ground has been accrued in favour of the petitioner and in order to file an application before the trial court, on this fresh ground i.e. statutory ground, he wants to withdraw this petition for

the time being. He may do so. This petition is dismissed as withdrawn."

Then petitioner filed application for post arrest bail on statutory ground of delay in conclusion of trial of the case before trial court and then before learned Additional Sessions Judge, Jaranwala but same have been dismissed and now instant petition has been filed for post-arrest bail before this Court on the ground of delay in conclusion of trial of the case.

2. After hearing learned counsel for the parties, learned Deputy Prosecutor General and going through the available record with their able assistance, it has been noticed that briefly, as per Crime Report (F.I.R.) got recorded by Mirza Shabbir Haider (complainant of the case/respondent No.2 in the petition), petitioner issued cheque of Rs.30,00,000/- to the complainant which was dishonoured on presentation by the bank. Petitioner was arrested in this case on 30.07.2022 and sent to jail on the same day where he is confined till now i.e. for more than period of one year and 10 months and trial of the case has not been concluded.

Case has been registered against the petitioner under Section: 489-F PPC and same is not punishable with death, therefore, statutory period for grant of bail on the ground of delay in conclusion of trial of the case is continuous detention exceeding one year as per 3rd proviso to Section: 497(1) Cr.P.C. It is not disputed by the learned Deputy Prosecutor General and learned counsel for the complainant that petitioner is behind the bars for a continuous period exceeding one year and ten months so now question does arise that whether after his arrest, petitioner has caused any delay during the period exceeding one year in conclusion of trial of the case and in order to examine the same, attested copy of order sheet annexed with this petition from Page No.32-40 has been perused and perusal of the same reveals that challan report

under Section: 173 Cr.P.C. was received in the Court on 19.11.2022, charge was framed against the accused on 20.01.2023 and prosecution witnesses were summoned for 03.02.2023, however, prosecution witnesses did not appear before the court till 17.10.2023 inspite of summoning them through warrants of their arrest. Meaning thereby that after arrest of the petitioner on 30.07.2022, continuous period of detention of the petitioner exceeding one year lapsed without conclusion of the trial and said delay was not caused due to any act or omission of the petitioner or any other person acting on his behalf. Learned Deputy Prosecutor General and learned counsel for the complainant could not refer any material to show that petitioner is previously convicted offender for an offence punishable with death or imprisonment for life or to opine at this stage that petitioner is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life. It is also relevant to mention here that after completion of statutory period, if any adjournment has been obtained by the accused, it does not disentitle him for grant of bail on ground of delay in conclusion of trial rather he is entitled to be released on bail as a matter of right and in this regard cases of **“Muhammad Umer Shahzad versus The State and others”** (2023 SCMR 1450) and **“Nadeem Samson versus The State and others”** (PLD 2022 SC 112) can be referred and relevant portions from latter case law from its paragraphs No.8 to 10 are reproduced:-

“8. The scope of the 3rd proviso to section 497(1), Cr.P.C. has recently been expounded by this Court in the Shakeel Shah case, cited by the counsel for the petitioner, by examining and interpreting provisions as well as the provisions of the related 4th proviso, in detail. We, therefore, think it unnecessary to re-examine the scope of those provisos again in this case, especially when we find ourselves in agreement with what has been held in that case. What we consider appropriate to do is to recapitulate the main principles enunciated therein, as to the meaning, extent and scope of the 3rd proviso, for clear understanding of, and compliance by, all the other courts in the country in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan 1973. They are:

*(i) **The purpose and object of the 3rd proviso to section 497(1), Cr.P.C. is to ensure that the trial of an accused is conducted and concluded expeditiously, and that the pre-***

conviction detention of an accused does not extend beyond the period of two years in cases involving an offence punishable with death, or one year in other cases;

(ii) The period of one year or two years, as the case may be, for the conclusion of the trial begins from the date of the detention of the accused in the case, not from the date when the charge is framed and trial commenced:

(iii) A statutory right to be released on bail accrues in favour of the accused if his trial is not concluded within the specified period, i.e., exceeding one year or two years as the case may be, from the date of his detention;

(iv) This statutory right of the accused to be released on bail is, however, subject to exceptions: one is embodied in the 3rd proviso itself and the second is provided in the 4th proviso, which are: (a) the delay in conclusion of the trial is occasioned by an act or omission of the accused or by any other person acting on his behalf, and (b) the accused is a convicted offender for an offence punishable with death or imprisonment for life, or is in the opinion of the court a hardened, desperate or dangerous criminal, or is accused of an act of terrorism punishable with death or imprisonment for life.

(v) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel for the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive reflecting a design or pattern to consciously delay the conclusion of the trial; and

(vi) The phrase "a hardened, desperate or dangerous criminal" denotes an accused who is likely to seriously injure and hurt others without caring for the consequences of his violent act and will pose a serious threat to the society if set free on bail. Such tentative finding as to character of the accused must be based upon careful examination of the facts and circumstances of the case, supported by sufficient incriminating material.

In the light of the above principles, we proceed to appreciate the statutory ground of delay in conclusion of the trial pleaded by the counsel for the petitioner, for grant of bail to the petitioner.

9. The petitioner was arrested and detained, in this case, on 24.11.2017. The charge against the petitioner was framed on 03.04.2018. Two prosecution witnesses were recorded on 27.02.2020. Till that date, a continuous period of exceeding two years since the detention of the petitioner in the case had lapsed without conclusion of the trial: therefore, a right to be released on bail had prima facie accrued to the petitioner, which could have been denied to the petition of the above-stated two exceptions: only this conclusion of the trial had her person on demission of the petitioner or by any other person acting on his behalf and (b) if the petitioner was found to be a convicted offender for an offence punishable with death or imprisonment for life, or was in the opinion of the court a hardened, desperate or dangerous criminal, or was accused

of an act of terrorism punishable with death or imprisonment for life.

10. We have examined the record of the case and found that there is no delay in conclusion of the trial till expiry of the two year period of detention of the petitioner on 25.11.2019, which can be attributed to the petitioner or to any person acting on his behalf reflecting a design or pattern to consciously delay the conclusion of the trial. **Any delay attributable to the petitioner after the expiry of the said period is not relevant for determining his right to be released on bail on the statutory ground provided in the 3rd proviso to Section 497(1), Cr.P.C.** Nor he appears, in the facts and circumstances of the case, to be a hardened, desperate or dangerous criminal” who is likely to seriously injure and hurt others without caring for the consequences of his violent act and will thus pose a serious threat to the society if set free on bail. The petitioner is, therefore, entitled to be released on bail as a matter of right, not as a concession. The delay in conclusion of the trial, noted by the High Court, attributable to the counsel for the petitioner representing him before the trial court, relates to the period after expiry of the continuous two year period since detention of the petitioner in the case; therefore, it could not have been considered by the High Court for determining the right of the petitioner to be released on bail under the 3rd proviso to section 497(1), Cr.P.C.”

(emphasis added)

Therefore, a right to be released on post-arrest bail has accrued to the petitioner due to delay in conclusion of trial of the case under 3rd proviso to Section: 497 (1) Cr.P.C.

So far as abscondence of the petitioner is concerned, suffice it to say that if case for grant of post-arrest bail on the ground of delay in conclusion of trial has been made out then bail is granted as a “right” under 3rd proviso to Section: 497 (1) Cr.P.C. and in this regard, guidance has been sought from the supra case of “Nadeem Samson versus The State and others” (PLD 2022 Supreme Court 112); relevant portion whereof is hereby reproduced: -

“10. We have examined the record of the case and found that there is no delay in conclusion of the trial till expiry of the two year period of detention of the petitioner on 25.11.2019, which can be attributed to the petitioner or to any person acting on his behalf reflecting a design or pattern to consciously delay the conclusion of the trial. Any delay attributable to the petitioner after the expiry of the said period is not relevant for determining his right to be released on bail on the statutory ground provided in the 3rd proviso to Section 497(1), Cr.P.C. Nor he appears, in the facts and circumstances of the case, to be a hardened, desperate or dangerous criminal” who is likely to seriously injure and hurt others without caring for the consequences of his violent act and will thus pose a serious threat to the society if set free on bail. **The petitioner is, therefore,**

entitled to be released on bail as a matter of right, not as a concession.

(emphasis added)

and case of “Shakeel Shah versus The State and others” (2022 SCMR 1) can also be advantageously referred on the subject and relevant portion from the same is hereby reproduced: -

“9. We have, therefore, come to the conclusion that the delay in concluding the trial of the petitioner beyond the period of one year from the date of his arrest/detention has not been occasioned by an act or omission of the petitioner or any other person acting on his behalf, and that in the facts and circumstances of the case the accused does not appear to be a hardened, desperate or dangerous criminal. The petitioner has, thus, made out a case for grant of bail as a matter of right under the third proviso to section 497(1), Cr.P.C.

(emphasis added)

It is by now well settled that when accused becomes entitled for grant of bail as a matter of right, then he cannot be declined such relief due to abscondance which is matter of propriety and in this regard case of “**RIAZ SHAH versus The STATE**” (2024 YLR 1369) can be referred. So now bail cannot be declined to the petitioner due to abscondence.

As far as registration of some other cases against the petitioner is concerned, it is relevant to mention here that none of them is regarding any act of terrorism punishable with death or imprisonment for life as apprised by learned Deputy Prosecutor General after going through the record, therefore, bar contained in 4th proviso of Section: 497(1) Cr.P.C. does not apply to the case of petitioner; furthermore, since bail on statutory ground of delay in conclusion of trial is to be granted as a “right” hence if petitioner is not accused of act of terrorism as mentioned in the 4th proviso of Section: 497(1) Cr.P.C. then merely due to registration of some other cases against him which are not regarding act of terrorism, bail on statutory ground of delay in conclusion of trial cannot be withheld.

3. In view of what has been discussed above, instant petition for grant of post-arrest bail on the statutory ground of delay in conclusion of trial of the case is **allowed** and

Muhammad Rauf (petitioner) is admitted to post-arrest bail in the case subject to his furnishing bail bonds in the sum of Rs.500,000/- (Rupees five hundred thousand only) with two sureties each in the like amount to the satisfaction of trial Court.

4. It goes without saying that observations mentioned above are just tentative in nature, strictly confined to the disposal of instant bail petition and will have no bearing upon trial of the case which will be concluded by the trial court within a period of three months after receipt of attested copy of this order. Needless to add that if petitioner or anybody else acting on his behalf will create any hurdle in the way of conclusion of trial, then complainant as well as the State would be at liberty to move for recalling of this order.

(Farooq Haider)
Judge

Approved for Reporting.

(Farooq Haider)
Judge

This order has been dictated,
pronounced, prepared and
signed on 28.06.2024.

**Jftikhar*