

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**Crl. Misc. No.845/B/2020.**

Muhammad Naveed

*Versus*

The State, etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	28.07.2020	Mr. Sher Afzal Khan Marwat, Advocate for the petitioner. Ms. Khadija Ali, State Counsel. Mr. M. Bilal Siddique Chouhan, Advocate for respondent No.3. Munir Ahmed, S.I.

Through this Crl. Misc. petition, the petitioner has prayed for post arrest bail in case FIR No.262, dated 23.05.2018, U/Ss 302/148/149/337-A(i)/337-A(ii)/337-F(i)/337-F(ii) PPC, P.S. Khana, Islamabad.

2. Brief facts referred in the instant FIR lodged on the complaint of respondent No.3 Bakhat Munir are that on 23.05.2018 at about 06:30 p.m., present accused/petitioner alongwith other co-accused have committed murder of complainant's brother Arshad Khan deceased and injured the other family members Anwar Khan, Naseer Khan and neighbor Asad Khan.

3. Learned counsel for the petitioner contends that petitioner has not caused fatal injuries to the deceased and instant matter will be resolved after recording of evidence; that evidence of doctor was recorded by the trial Court, whereby doctor has not supported the medical evidence in favour of prosecution and as such deceased died due to

hatchet blow which is not attributed to the petitioner and even eyewitnesses have contradicted each other in the mode and manner in which alleged murder has been committed; that instant petition is second bail application on fresh ground discovered from the evidence of prosecution witnesses and on the statutory ground; that petitioner was arrested on 28.05.2018 and has spent two years and two months period approximately but trial has not yet been concluded despite direction of this Court in the previous round; that petitioner is also suffering from different medical issues which could not be treated in the jail hospital.

4. Conversely, learned counsel for complainant as well as learned State Counsel contend that petitioner is not allowed to argue his case on merit as the same has already been settled in the previous round as such fresh ground on merit as argued by the petitioner's side amounts to deeper appreciation of evidence which is not permissible at bail stage; that non-compliance of direction is not a ground to grant post-arrest bail in such type of heinous cases.

5. Arguments heard, record perused.

6. From the tentative assessment of record, it reveals that petitioner has directly been nominated with specific role of allegedly committing murder of deceased Arshad Khan in the instant matter. The post-arrest bail of petitioner on merit has already been dismissed by this Court vide order dated 03.05.2019, passed in Crl. Misc. No.219/B/2019, whereby direction was issued to the trial Court to conclude the trial within period of 06 months. The

petitioner tried to convince this Court that he is eligible and entitled for grant of bail on merit due to new circumstances emerged on record when the eyewitnesses and doctor have been cross-examined.

7. Learned counsel for the petitioner has referred different extract of evidence of prosecution recorded by the trial Court but it is settled law that merit which has already been discussed could not be considered in the second round, even the evidence which has been referred by the petitioner if considered at this stage would amount to deeper appreciation of evidence, which is not permissible in bail application. The second ground referred by the petitioner is statutory delay and learned counsel for petitioner has referred that total 76 dates of hearing were observed by the trial Court in which 36 adjournments were obtained by the prosecution and 17<sup>th</sup> are the result of Covid-19 pandemic and strikes of bar association, whereas only 07 adjournments are attributed to the defense as such the record reflects that petitioner was arrested on 28.05.2018, challan was submitted on 25.05.2019 and charge was framed on 21.06.2019, whereas trial Court has recorded 12 prosecution witnesses as of today and only I.O is left for cross-examination. In these peculiar circumstances, this Court believes that trial is likely to be concluded in near future, hence, it is not appropriate to grant bail to the accused at this stage. Reliance is placed upon 2008 YLR 2399 (Tanveer Hussain Vs. The State).

8. It is also settled law that bail to accused on completion of statutory period could be granted when

there is no prospect of completion of trial in near future. Reliance is placed upon 2019 MLD 906 (Malik Zafarullah Khan Vs. Murad Ali and another). Mere mathematical calculation alone was not sufficient for grant of bail, rather the Court had to look into the overall conduct of accused during the course of trial and factors which caused delay in the trial on the part of defence. There is no denial that defense side has also requested for adjournments due to absence of defense counsel and in such situation bail could not be granted. Reliance is placed upon 2018 YLR Note 57 (Mst. Robina Bibi Vs. The State and others). This Court has already passed the direction for early conclusion of trial in the previous round while relying upon 2011 SCMR 1332 (Rehmatullah Vs. The State), but this does not give premium to the petitioner for grant of bail. Reliance is placed upon PLD 2016 SC 11 (Nisar Ahmed Vs. The State and others).

9. The last ground raised by the petitioner is ailment of petitioner who is allegedly suffering from chest infection and the same was managed by jail authority, even he was referred to PIMS and it has been observed that seasonal chest infection has been treated with oral medication and as such there is no surgical treatment required or any other ailment which could not be treated while keeping the petitioner behind the bars. The petitioner has highlighted the recent report of PIMS dated 23.06.2020, which discloses chronic anal fissure, whereas doctor has given the medication to the petitioner and as such minimum requirement for protection of petitioner's life has been

meted out. The petitioner is *prima-facie* link with the hideous crime of murder of deceased Arshad Khan and his role could not be segregated on the basis of evidence brought on record rather trial is likely to be concluded within next sixty days, therefore, no ground for grant of post-arrest bail is made out and the same is hereby **dismissed** with direction to the learned trial Court to conclude the trial on or before 31.10.2020.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid.