

ORDER SHEET.

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

Crl. Misc. No.809/B/2019.

Saeed Mumtaz Durrani

Versus

The State and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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09.01.2020. Mr. Haroon ur Rashid, Advocate for the petitioner.
Mr. Adil Aziz Qazi, Advocate for respondent No.2.
Mr. Sadaqat Ali Jahangir, State Counsel.
Tarab, S.I, P.S Abpara, Islamabad.

Through instant petition, the petitioner has prayed for post arrest bail in case FIR No.326, dated 09.09.2018, U/S 324/452/337-F(d) PPC, P.S Aabpara, Islamabad.

2. Brief facts as referred in the above mentioned FIR are that Faisal Rafique/respondent No.2 got lodged the complaint alleging therein that on 08.09.2018, at about 7:55 p.m, he was present in house No.13, street No.38, sector G-6/1-3, Islamabad, Saeed Mumtaz Durani ex-brother in law (سابقہ ہم زلف) entered into his house and fired upon his son Abdul Ahad Faisal, who escaped the fire, however, Saeed Mumtaz Durani fired second shot with his pistol upon Uzma Faisal wife of respondent No.1, where-after the accused fled away from the scene on vehicle No.IDN-7329 Honda Civic. The motive for causing injury to wife of respondent No.2 is dispute of sister in law (سالی)of respondent No.2 namely Faiza, who got divorced from accused Saeed Mumtaz Durani and is living with family of respondent No.2.

3. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been implicated in this case;

that this is second post arrest bail application on the ground of statutory delay as trial has not yet been concluded despite best efforts of the petitioner side and the delay is attributed to the prosecution; that the petitioner is behind the bars since 12.10.2018 and he is entitled for grant of post arrest bail in the judgments reported as 2016 P Cr. L J 1206 (Muhammad Riaz vs. State), 2015 P Cr. L J 259 (Imran Masood vs. State) and 2018 P Cr. L J 140 (Jalal Shah vs. Niaz Akber).

4. Conversely, learned counsel for respondent No.2 and learned State Counsel contend that the petitioner is hardened and desperate criminal, who injured wife of respondent No.2 in desperate manner while entering into house by force; that charge has been framed on 01.04.2019 and statements of four prosecution witnesses have been recorded and only four prosecution witnesses are left to be examined and it would be appropriate to direct learned Trial Court to conclude the trial at the earliest; that only evidence of doctor and the I.O is to be adduced because the doctor was not available due to which her statement could not be recorded.

5. I have heard the arguments and gone through the record.

6. Perusal of the record reveals that the petitioner is nominated accused in case FIR No.326, dated 09.09.2018, U/S 324/452/337-F(d) PPC, P.S Aabpara, Islamabad with specific role of causing firearm injury to wife of respondent No.2/complainant Uzma Faisal on 08.09.2018 at about 7:55 p.m in presence of the witnesses.

7. This is second post arrest bail petition, which has been filed on the ground of statutory delay, whereas earlier post arrest bail petition of the petitioner was dismissed by this Court on merits,

therefore, this Court confines itself only to the extent of statutory delay.

8. Perusal of record further reveals that charge was framed on 01.04.2019 and out of eight witnesses, evidence of four P.Ws has been recorded and only material witnesses i.e. Dr. Durdana Kazmi, MLO, Poly Clinic Hospital, Islamabad and the Investigation Officer, Tasadaq Hussain, S.I, P.S Aabpara, Islamabad are left to be examined, therefore, there is likelihood that the trial will be concluded in short time.

9. Besides the above referred position, learned Sessions Judge has passed direction vide order dated 22.11.2019 to conclude the trial **“preferably within period of two months”**. In this situation question of delay has to be seen in the light of record, which reflects that the prosecution has produced witnesses after framing of the charge on 18.05.2019 and 01.06.2019 and four prosecution witnesses have recorded their statements and all the remaining witnesses have been called by learned Trial Court, which shows that statements of private witnesses have already been recorded and there is no intentional delay on part of the prosecution. Therefore, ground raised by the petitioner regarding delay in trial is not attributed to the prosecution, which is key factor to be considered for release on bail in terms of section 497, Cr.P.C. This Court is guided by the pronouncement of the Apex Court reported as **2016 SCMR 2094 (Muhammad Aslam vs State)**, **2015 MLD 181 (Muhammad Umar vs. State)**, **2017 MLD 464 (Nasir alias Imran Nasir vs. State)**, **2016 MLD 1742 (Muhammad Iqbal vs. State)**, **2017 P Cr. L J 21 (Ameer Hamza vs. State)** and **2016 P Cr. L J Note 105 (Abdul Hayee Rind vs. State)**, whereby post arrest bails on statutory ground were refused while considering the reasonable grounds as well as

desperate character of the accused including other reasons of delay, which were attributed to the accused. However, this Court is bound by the dictum laid down in **2011 SCMR 1332 (Rehmat Ullah vs. The State and another)**, wherein it has been held that:-

“The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial Court to conclude the trial of the case within a specified period”.

10. In view of above discussion, the instant petition is **dismissed**. However, learned Trial Court seized with the matter is directed to summon Dr. Durdana Kazmi, MLO, Poly Clinic Hospital, Islamabad and the Investigation Officer, Tasadaq Hussain, S.I, P.S Aabpara, Islamabad on the next date of hearing for recording their testimonies and to conclude the trial within a period of 04 months from the date of receipt of copy of this order under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam