

HCJD/C-121  
**ORDER SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**CRL. MISC. NO. 938-B of 2020.**

**Muhammad Yameen.**  
*VERSUS*  
**The State, etc**

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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17.09.2020. Ch. Abdul Khaliq Thind, Advocate for the petitioner.  
Raja Haider Ali, Advocate for the complainant.  
Mr Rabi bin Tariq, State Counsel.  
Mr Muhammad Iqbal, S.I. with record.

The petitioner Muhammad Yameen son of Muhammad Taj has sought post arrest bail in case F.I.R. No. 73, dated 29.04.2017, registered under sections 302, 324, 337-D & 34 of the Pakistan Penal Code 1860 (hereinafter referred to as "**PPC**") at Police Station Bani Gala, Islamabad.

2. The brief facts are that the petitioner was nominated in the FIR and specific role has been attributed to him in relation to the occurrence on 29.04.2017. Hence the instant case.

3. The learned counsel for the petitioner has contended that; this is the first bail petition of the latter on statutory ground; the petitioner has been incarcerated for more than three years; report under section 173 of Cr.P.C. has been submitted before the learned trial court; the statutory period of the petitioner has lapsed but the trial has not been concluded as yet; the delay in conclusion of the trial is not attributed to the petitioner;

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the petitioner is entitled to be released on bail under clause (b) of the third proviso of section 497 of Cr.P.C.; the petitioner has no criminal record; the petitioner is not a hardened, desperate or dangerous criminal; the delay in conclusion of trial is attributed to the prosecution; the alleged weapon of offence was recovered from the co-accused; no recovery whatsoever has been affected from the petitioner; recovery if any is fake and planted; no incriminating material was recovered from the petitioner; there is no evidence against the petitioner; no independent witness was associated during proceedings; the eye witnesses are the interested witnesses; the petitioner is innocent and has been falsely involved in the instant case; allegations against the petitioner are false, frivolous and vexatious; the complainant had attacked the petitioner due to which he sustained injuries; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; charge against the present petitioner was framed on 05.12.2017 and, thereafter, amended charge was framed on 24.03.2018; since then several adjournments have been granted but only few adjournments are attributed to the defence; story as narrated in the FIR is false and concocted; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; in the circumstances, the petitioner is entitled to bail as of right under the 3<sup>rd</sup> Proviso to section 497(1) Cr.P.C. on account of statutory delay as well as on merit. The learned counsel has prayed for grant of post arrest bail on statutory ground as well on merit. The learned counsel for the petitioner has placed reliance on the cases titled "*Muhammad Azeem vs. The State and others*" [2020 SCMR 458], "*Adnan Prince vs. The State through P.G. Punjab and another*" [PLD 2017 S.C. 147], "*Imtiaz Ahmed vs. The State through Special Prosecutor, ANF*" [2017 SCMR 1194], "*Muhammad Ramzan vs. The State and others*" [2016 SCMR 2046],

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*"Muhammad Noman vs. The State and another" [2017 SCMR 560], "Muhammad Abid vs. The State and another" [2012 SCMR 1691], "Nazir Hussain vs. Ziaul Haq and others" [1983 SCMR 72], "Asad Ullah vs. The State" [2017 P.Cr.L.J. 18] and "Imran Mohsin vs. National Accountability Bureau through Chairman and 02 others" [PLD 2018 Islamabad 62].*

4. The learned counsel appearing on behalf of the complainant assisted by the learned State Counsel and Muhammad Iqbal SI, on the other hand has contended that; delay in concluding the trial is attributed to the petitioner as his counsel was not available on most of the occasions; the petitioner is specifically nominated in the FIR; recovery has been affected from the petitioner; delay in the trial was not due to the prosecution; rather it was due to the accused/petitioner; the petitioner is involved in a heinous offence; the petitioner was arrested in the instant case on 14.09.2017 i.e. after a period of more than four months; so far eleven prosecution witnesses have been examined; moreover, it is submitted that since it is an offence under section 302 of PPC, therefore, the petitioner is not entitled to the concession of bail on the ground of statutory delay. The learned counsels prayed for dismissal of the instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The 3<sup>rd</sup> Proviso to Section 497(1) of the Cr.P.C. was inserted through amendment made vide Act VIII of 2011 and enforced w.e.f. 18.04.2011. The said Proviso provides that a person accused of an offence punishable with death, is as of right entitled to be released on

bail, if he has been detained for such an offence for a continuous period exceeding two years. However, this is subject to certain conditions; firstly, the Court has to form an opinion that the delay in the trial of the accused has not been occasioned by the accused, or due to omission attributed to the person acting on his behalf; secondly, he is not a previously convicted offender for an offence punishable with death or imprisonment for life ; thirdly, he is not in the opinion of the Court, a hardened, desperate or dangerous criminal and, lastly, he is not accused of an act of terrorism punishable with death or imprisonment for life.

7. Besides the above statutory ingredients, the principles and law enunciated by the Courts through interpreting the said statutory provisions are summarized as follows:-

- (i) *The accused under the 3<sup>d</sup> Proviso of Section 497(1) Cr.P.C. is entitled to bail as a matter of right, if the statutory period mentioned in either clause a or b has expired and the trial has not been concluded.*
- (ii) *The right of bail in case of statutory delay is clearly provided in the law, as the word "shall" cannot be read as "may".*
- (iii) *Such right can be defeated only if the state or the complainant is able to show that the delay in the trial is attributable to the accused, and once it is shown, then such a right is forfeited.*

- (iv) *The right under the 3<sup>d</sup> Proviso cannot be denied under the discretionary power of the Court to grant bail and, therefore, the right is not left to the discretion of the Court but it is controlled by the 3<sup>d</sup> Proviso read with the 4<sup>th</sup> Proviso.*
- (v) *It is not the intention of the law to calculate the amount of the delay caused by the defence; rather, it is necessary to see whether the progress and conclusion of the trial has, in any manner, been delayed by an act or omission on the part of the accused.*
- (vi) *While ascertaining the delay, the cumulative effect in disposal of the case is to be considered, and it will not be merely mathematical calculation of excluding such dates for which adjournment was obtained by the accused or counsel.*
- (vii) *When witnesses are in attendance and the matter is ripe for recording evidence, but the defence does not proceed, and the effective hearing is postponed by the accused or his counsel, it is an important factor for consideration.*

(viii) *Bail under the 3<sup>rd</sup> Proviso can be refused on the ground that delay in the conclusion of the trial had been caused on account of any act or omission of the accused or any person acting on his behalf.*

(ix) *Where, for any reason, the accused or his authorized agent, which necessarily included the counsel engaged for defence, caused delay, the protection under the 3<sup>rd</sup> Proviso cannot be invoked.*

(x) *The right of the accused for bail on statutory grounds cannot be defeated for any other reason except on the ground as provided in the 3<sup>rd</sup> and 4<sup>th</sup> schedule.*

(xi) *The object of the right to bail on statutory grounds subject to the conditions mentioned in the 3<sup>rd</sup> Proviso is to ensure that criminal trials are not unnecessarily delayed.*

(xii) *When the statement of one of the witnesses has yet to be recorded, it cannot be said that the trial has been concluded.*

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8. For the above principles, reliance is placed on "*Nazir Hussain vs. Zia ul Haq and others*" [1983 SCMR 72], "*Sher Ali alias Sheri vs. The State*" [1998 SCMR 190], "*Akhtar Abbas vs. State*" [PLD 1982 S.C. 424], "*Moundar and others vs. The State*", [PLD 1990 SC 934], "*Abdul Rashid vs. The State*" [1998 SCMR 897], "*Zahid Hussain Shah vs. The State*" [PLD 1995 S.C. 49] and "*Muhammad Siddique vs. Muhammad Behram and another*" [1998 P.Cr.L.J. 358]. The facts and circumstances of the present case require to be analysed in the light of the above principles.

9. The FIR was registered on 29.04.2017 and the petitioner was arrested on 14.09.2017 i.e. after a period of more than four months. Initially the charge was framed by the learned trial Court on 08.11.2014 and, thereafter, amended charge was framed on 24.03.2018, after acceptance of application for amendment in the charge sheet. So far eleven prosecution witnesses have been examined. According to the learned counsel for the petitioner, thirty adjournments are attributed to the latter or his lawyer. The co-accused is a close relative of the petitioner. The learned counsel for the private respondent and the learned State Counsel contended that more than forty hearings were adjourned due to the petitioner or his counsel. Even if the admitted adjournments are taken into account then delay in conclusion of the trial was significantly due to the petitioner or his counsel's acts and omissions. The learned counsel could not satisfy the court that a fresh ground has arisen after dismissal of the earlier petitions so as to entertain the petition on merits. The prosecution has informed that the remaining three witnesses will be produced before the trial court for being examined as witnesses. In the facts and circumstances of the case, this court is not inclined to extend the concession of bail on the ground of delay in conclusion of trial.

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10. In the light of the above, this Court is satisfied that in the facts and circumstances of the instant case the concession of bail ought to refuse. The instant bail petition is accordingly ***dismissed***. This Court however, expects that the learned trial Court shall conclude the proceedings expeditiously.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

**(CHIEF JUSTICE)**

*Asad K/\**