

Form No: HCJD/C-121.
JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 465-B of 2016

AMEER HAMZA
Vs
THE STATE, ETC.

PETITIONER BY: Mr. Tanveer Khalid Awan, Advocate.
RESPONDENT BY: Ms. Hadiya Aziz, State Counsel.
Mr. Akram, S.I alongwith police record.
Date of hearing: 18-08-2016.

ATHAR MINALLAH, J.- The petitioner Ameer Hamza son of Abdul Rasheed has sought post arrest bail in case, F.I.R. No.322, dated 07-11-2014, registered under Section 395/412 Pakistan Penal Code, 1860 (hereinafter referred to as "***PPC***") at Police Station Lohi Bhair, Islamabad.

2. Brief facts, as narrated in the FIR are that on 07-11-2014, the complainant alongwith another constable while on duty had been overpowered by five persons who forcibly took away the official weapon, the wireless set and the motorcycle. Hence, the FIR was registered under section 395 of PPC.

3. The learned counsel for the petitioner has argued the case on the ground of delay in concluding the trial and, therefore, seeking concession of bail on statutory ground; the learned counsel has forcefully argued that the trial has been delayed by the prosecution rather than an act or omission of the accused or any other person acting on his behalf; the trial being delayed by the prosecution is admitted and evident from the orders sheet; the petitioner has no previous conviction and, therefore, his case does not

fall under the fourth proviso of Section 497 of the Criminal Procedure Code, 1898 (hereinafter referred to as the "*Cr.P.C*"); the petitioner is neither a hardened, desperate or dangerous criminal nor is accused for an act of terrorism punishable with death or imprisonment for life; he has placed reliance on "Shabeer Vs. The State" 2012 SCMR 354, "Mohammad Afzal Butt alias APhi Vs. The State" 2015 SCMR 1696, and "Jamil Raza @ Jeelu Vs. The State & others" 2016 SCMR 1360.

4. The learned State Counsel on the other hand appeared alongwith Mohammad Akram, Sub Inspector and contended that; the petitioner is hardened and dangerous criminal; ten other criminal cases involving heinous offences are registered against the petitioner in various police stations; the official motorcycle snatched from police officials while on duty was recovered pursuant to the information given by the petitioner and from his possession; the petitioner falls within the expression 'hardened', 'desperate' and 'dangerous criminal'.

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

6. It is obvious from perusal of the record that the delay in trial cannot be attributed to any act or omission on part of the petitioner or any other person acting on his behalf. Moreover, the petitioner is not accused of an offence punishable with death and has been detained for a continuous period exceeding one year. Though the petitioner fulfills the conditions as prescribed in the third proviso read with clause (a) thereof nevertheless there is sufficient material on record to form an opinion as contemplated in the fourth proviso of Section 497 Cr.P.C. The allegations as narrated in the FIR relates to committing the offence of dacoity punishable under Section 395 PPC and that too by forcibly taking away the official motorcycle, weapon and wireless set from police officials on

duty. There are ten criminal cases registered against the present petitioner in various police stations and the details whereof are as follows:

1. FIR No.87 dated 14.03.2012, Offence u/S 399/402 PPC, P.S Gunjmandi, Rawalpindi.
2. FIR No.88 dated 14.03.2012, Offence u/S 13/20/65 A.O, P.S Gunjmandi, Rawalpindi.
3. FIR No.277 dated 14.04.2012, Offence u/S 392/411 PPC, P.S New Town, Rawalpindi.
4. FIR No.64 dated 21.01.2014, Offence u/S 13/20/65 A.O, P.S New Town, Rawalpindi.
5. FIR No.52 dated 17.01.2014, Offence u/S 392/337Hii PPC, P.S New Town, Rawalpindi.
6. FIR No.83 dated 01.02.2012, Offence u/S 392 PPC, P.S Airport, Rawalpindi.
7. FIR No.333 dated 27.04.2012, Offence u/S 13/20/65 A.O, P.S Airport, Rawalpindi.
8. FIR No.329 dated 27.04.2012, Offence u/S 399/402 PPC, P.S Airport, Rawalpindi.
9. FIR No.322 dated 07.11.2014, Offence u/S 395/412 PPC, P.S Lohi Bhair, Islamabad.
10. FIR No.72 dated 08.04.2015, Offence u/S 13/20/65 A.O, P.S Lohi Bhair, Islamabad.

7. The official motorcycle which had been snatched and taken away from the possession of the complainant and the other police official while on duty was recovered from the place pointed out by the petitioner. There is no force in the argument of the learned counsel for the petitioner that in order to attract the fourth proviso it is mandatory that the person ought to have been convicted for an offence otherwise the expressions used therein i.e. hardened, desperate or dangerous would not apply. The interpretation of the fourth proviso, particularly the expressions 'hardened', 'desperate' or 'dangerous criminal' and the law relating thereto is well settled by now. The august Supreme Court in the case titled "Moundar and others vs. The State", **PLD 1990 SC 934** after examining the meaning of the said expressions upheld the

dissenting view taken by Sajjad Ali Shah-J, as he then was, in “Muhammad Hanif vs. The State”, PLD 1986 Karachi 437 to the effect that the word ‘criminal’ cannot be given a special meaning as a person already convicted of a crime. There is no cavil to the proposition that if an accused fulfills the conditions prescribed under the third proviso to sub-section (1) of Section 497 of Cr.P.C then he becomes entitled to bail as a matter of right. Such right can be defeated if it can be shown that the delay in concluding the trial is attributed to the accused. Moreover, the right can also be defeated if there is sufficient material on record to show that the accused person falls within the ambit of the expression ‘hardened’, ‘desperate’ or ‘dangerous criminal’ and in this regard it is not necessary to prove that he had been previously convicted. Reference in this regard may be made to “Sher Ali alias Sheri vs. The State”, 1998 SCMR 190, “Umar Draz and another vs. The State”, 1997 SCMR 885, “Jalal vs. Allahyar and another”, 1993 SCMR 525 and “Jaggat Ram vs. The State”, 1997 SCMR 361.

8. When the above principles and law enunciated by the august Supreme Court are applied to the facts and circumstances of the instant case it leaves no doubt that the exception vide the fourth proviso to section 497 Cr.P.C is attracted. There is sufficient material on record to attract the exception under the fourth proviso. The nature of the offence, the recovery of the official motorcycle, the material collected by the prosecution and the alleged involvement of the petitioner in ten other registered criminal cases has been rightly made the basis by the learned Judicial Magistrate-East, Islamabad and the learned Addl. Sessions Judge-II, (East), Islamabad vide their respective orders dated 24-06-2016 and 12-07-2016 for forming an opinion that the petitioner falls within the ambit of the expressions ‘desperate’ and ‘dangerous criminal’ and, therefore, not entitled to be released on bail. The learned counsel for the petitioner has not been able to make out a case in support of the contention that the fourth proviso under Section 497 Cr.P.C is

not attracted unless the accused has a previous conviction. The case law relied upon by the learned counsel is distinguishable in the facts and circumstances of the case.

9. For what has been discussed above, the instant petition is without merit and is, therefore, accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Approved for reporting.

JUDGE

*Asif Mughal/**