

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Crl. Misc. No. 635-B/2020

Intekhab Hussain

Versus

The State etc.

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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05.05.2020

Mr. Talat Mehmood Zaidi, Advocate for petitioner.
Mr. Muhammad Sohail Khursheed, State Counsel.
Raja Muhammad Shafaat Khan, Advocate for respondent No.2.
Zulfiqar, Inspector and Asif, S.I. P.S. Secretariat, Islamabad.

Through this Crl. Misc. petition, the petitioner/Intekhab Hussain has prayed for post-arrest bail in case FIR No. 16/05 dated 15.02.2005 under Sections 302, 324, 148, 149, 337-D PPC r/w 6/7 ATA registered at P.S. Secretariat, Islamabad.

2. Brief facts referred in the instant FIR are that on 15.02.2005, the complainant/Hafiz Ejaz alongwith his other relatives after attending funeral ceremony (نماز جنازه) of Raja Kausar in the area of Bari Imam were coming back and when they reached near (Barsati Nala برساتی نالہ) bridge, suddenly Tanveer armed with Kalashnikov, Muhammad Saeed armed with .12 bore repeater gun, Sain Tauqeer armed with rifle, Tanveer alias Shana armed with .12 bore repeater gun, Nadeem armed with .30 bore pistol, Intikhab armed with Kalashnikov, Saeed armed with rifle and Zahid Abbasi armed with rifle alongwith other 3/4 unknown persons came in front of them. Sain Tanveer raised *lalkara* to Raja Akram that he will be done to death and started firing. Whereas, the present petitioner/Intikhab Hussain fired with Kalashnikov upon Ejaz Ahmed and Saeed fired with his rifle upon complainant/Hafiz Ejaz Ahmed, as a result of said firing,

Raja Akram and Ejaz Ahmed got injured and died on spot. In the meanwhile, police guards who were performing their duties in the Imam Bargah rushed to the scene, the accused persons also fired upon the police guards, as a result of the same Constable, Abrar got injured, however, due to the cross firing, one of the accused namely Sain Tanveer got injured and one of their companion namely Saeed also died. Due to firing of accused persons, complainant, Muhammad Nazir, Riaz and Hafeez also got injured.

3. Learned counsel for the petitioner contends that it is the 3rd post-arrest bail application of the petitioner on the ground of statutory delay and hardship, as the trial has not yet been concluded and only 08 PWs have been recorded. He further contends that the petitioner is behind the bars since 13.05.2015 and has spent almost 5 years behind the bars, whereas, his period of statutory delay has also been completed even after framing of charge on 17.05.2017. Learned Counsel further contends that first two bail petitions of petitioner were dismissed by this Court on 20.05.2019 and 30.10.2019. He also contends that the petitioner has also approached the Apex Court through Crl. Petition No. 1302/2017, but the same was not pressed and withdrawn on 29.01.2018. He lastly contended that the delay in conclusion of trial is not attributed to the petitioner, therefore, in these circumstances the petitioner is entitled for concession of the bail as a matter of right on the ground of statutory delay.

4. Conversely, learned counsel for complainant as well as learned State counsel opposed the post-arrest bail application on the ground that the entire record reflects that majority of the adjournments have been sought by the petitioner/accused and even he remained fugitive from the

law from the date of occurrence i.e. 05.02.2005 till his date of arrest i.e. 13.05.2015 for ten long years and as such his conduct does not entitle him for concession of bail.

5. Arguments heard, record perused.

6. Cursory glimpse of record reveals that the petitioner has been nominated as accused in case FIR No. 16/05 dated 15.02.2005 under Sections 302, 324, 148, 149, 337-D PPC r/w 6/7 ATA, registered at P.S. Secretariat, Islamabad, whereby, the petitioner has been attributed with role of firing due to which one person namely Ejaz Ahmed was done to death in the coordinated attack by the petitioner and his co-accused persons. In the entire incident three persons were murdered and four were injured, even one police Head Constable has also received firearm injuries.

7. The tentative assessment of record reflects that petitioner remained fugitive from the law for ten long years from the date of registration of FIR i.e. 15.02.2005 till 13.05.2015, whereas, charge was framed against the petitioner on 17.05.2017 and at present 08 PWs have been recorded and trial is in progress, however the matter is now transmitted to ordinary Sessions Court by the Anti Terrorism Court-I, Islamabad vide order dated 30.01.2020, after deciding the application U/S 23 of Anti-Terrorism Act, 1997. The order sheet appended with the instant application reveals that case was entrusted to learned Sessions Judge-IV (West), Islamabad, who recorded the statements of witnesses PW-6 to PW-8 on 17.03.2020, where-after, the case was fixed for cross examination on the part of the accused side and matter was adjourned to 31.03.2020, but on the said date accused has not been produced before the Court due to COVID-19 Pandemic and the same is the position today.

8. I have gone through the entire record of the learned Trial Court, which reveals that 59 adjournments have been sought by the accused, 19 adjournments have been sought by the complainant side, 25 adjournments have been attributed to the learned Trial Court, 02 adjournments have been referred due to strike and last 02 adjournment have been attributed to COVID-19 Pandemic. As it is 3rd bail application on the ground of statutory delay and hardship, therefore, it is important to mention here that this Court in the earlier two orders has considered all these aspects including the delay, which have been recorded by the learned Division Bench of this Court and the same was attributed to the petitioner. Even otherwise, this Court while dismissing Crl. Misc. No. 613-B/2018 titled **(Zahid Hussain Vs. The State)**, of co-accused in the same case vide order dated 03.09.2018, passed a direction to learned Trial Court to conclude the trial within period of 06 months, under intimation to this Court, whereas, direction has not been complied with. In such situation, the Apex Court has settled the proposition in **PLD 2016 S.C. 11 (Nisar Ahmed Vs. the State)**, wherein, it has been held that non-compliance of such direction could not be considered as valid ground to grant bail to the accused and even such ground for grant of bail has been declared alien to law. Reliance has also been placed upon **2017 MLD 464 (Nisar alias Imran Nasir Vs. The State and another)**.

9. Record of learned trial Court reflects that delay has been caused due to petitioner's conduct, hence, the petitioner/accused is not entitled to avail the benefit of 3rd proviso of Section 497 (I) Cr.P.C. Reliance is placed upon **(1998 SCMR 897 Abdur Rashid Vs. The State)**.

10. It is trite law that fugitive from law and Courts loses some of his normal rights granted under the procedure as well as substantive law, however, unexplained noticeable abscondence of accused, disentitles him to concession of bail notwithstanding the merits of the case. Reliance is placed upon **1997 SCMR 190 (Sher Ali alias Sheri Vs. The State)**, **2007 P Cr. L J. 1332(Ch. Javaid Riaz Vs. The State)** and **2005 P Cr. L J 288 (Raham Sher Vs. Mst. Malika and another)**.

11. I am also mindful of the fact that instant bail is 3rd bail application, whereas, earlier two bail petitions of petitioner were dismissed, even the petitioner has approached the Apex court through Criminal Petition No. 1302/2017, which was dismissed as having not been pressed vide order dated 29.01.2018, which further reduces the scope of his 3rd bail application, as the same could only be filed on fresh ground and not on the same ground, which were available at the time of disposal of petitioner's earlier bail applications. Reliance is placed upon **2013 SCMR 1059 (Amir Masih Vs. The State and another)**, whereas, no fresh ground is available to the petitioner at the moment, therefore, this Court deems it appropriate to pass a direction to learned Trial Court, while placing reliance upon **2011 SCMR 1332 (Rehamtullah Vs. The State)** and the same has already been given by this Court in the case of co-accused, hence, instant Crl. Misc. bail petition is not made out and the same is hereby **dismissed**. However, learned Trial Court seized with the matter is directed to conclude

the trial within 30 days after receipt of this order, under intimation to this Court and if the accused persons are not being produced by the jail authorities before the Court, due to COVID-19 Pandemic, their presence shall be procured through video link services/E-Court arrangement from the jail. Learned Trial Court as well as the Superintendent Central Jail, Adayala, Rawalpindi shall ensure the necessary arrangements in this regard. Learned Trial Court shall also submit compliance of this order through learned MIT for perusal in Chambers.

(MOHSIN AKHTAR KAYANI)

JUDGE

Khuram