

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.662-B of 2012

Wajid 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.
------------------------------	----------------------------	---

23.01.2013. Ch. Muhammad Khan, Advocate for the petitioner.
Mr. Tariq Mahmood Jahangiri, Deputy Attorney-General assisted by Raja Rizwan Abbasi, Advocate for the complainant.
Abbas, S.I.

Petitioner Wajid Hussain S/O Shaukat Hussain seeks post arrest bail in case FIR No.231 dated 22.07.2010, registered under Section 365-B P.P.C., at P.S., Koral, District Islamabad.

2. The facts need not to be described in the instant post arrest bail application as the same find mentioned in the earlier bail applications.

3. Learned counsel for the petitioner has urged the fresh ground that after the amendment in Section 497 Cr.P.C. the petitioner is entitled to the concession of bail on statutory ground as he is behind the bars for the last two years; that the delay in conclusion of the trial is not on the part of the petitioner as he was in jail for the last two years rather, the same has been occurred on behalf of the prosecution; that the absence of the co-accused Adeela who is a lady was due to the threats extended by the

opponent party; that due to the delay in conclusion of trial on the part of the co-accused, if any, the petitioner cannot be held responsible for the same; that the learned trial Court, vide order dated 11.12.2012 has observed that the offence under Section 265-B P.P.C. is not made out rather only offences under Section 496 & 493 P.P.C. etc. are made out against the petitioner and co-accused Adeela and has acquitted the rest of the co-accused persons, as such, the petitioner is entitled to the concession of bail. It has been further argued that in view of proviso III to Section 497 (1) Cr.P.C. the petitioner deserves enlargement on bail.

4. On the other hand, learned counsel for the complainant has vehemently opposed the bail of the petitioner and has argued that the post arrest bail application of the petitioner has already been dismissed on merits vide order dated 30.05.2011; that the delay in conclusion of trial is not on the part of the prosecution rather on the part of the co-accused who remained absent deliberately for several dates, as such, a party in default cannot get premium of their own default; that the criteria mentioned in proviso III to Section 497 (1) Cr.P.C has not been fulfilled, therefore, the petitioner cannot claim post arrest bail on the basis of fresh ground i.e. statutory ground. Learned counsel for the complainant has relied upon the case of Khalid Dad, etc. vs. the State (NLR 1982 Criminal 138).

5. Learned Deputy Attorney-General has also opposed the bail application of the petitioner by contending that the bail application of the petitioner has already been dismissed on merits in which the petitioner has not agitated the statutory ground which was also available at that time, as such, he cannot press the same ground in the present bail application; that petition for quashing of F.I.R. filed by the petitioner and co-accused Adeela has been dismissed by the Court of Mr. Shaukat Aziz Siddiqui, J. Hence, the petitioner is not entitled to the concession of bail. Learned Deputy Attorney-General has relied upon the cases of Muhammad Riaz. Vs. The State (2002 SCMR 184).
6. Arguments of learned counsel for the petitioner as well as learned counsel for the complainant and learned Deputy Attorney-General heard. Record perused.
7. This is the fifth bail application in which the petitioner seeks his post arrest bail on statutory ground in view of proviso III to Section 497 (1) Cr.P.C. Admittedly, the earlier post arrest bail application of the petitioner had been dismissed on merits in Criminal Miscellaneous Petition No.216-B of 2011 vide order dated 30.05.2011. From the material made available, it is quite apparent that the petitioner has not been able to assert that the delay in conclusion of trial of petitioner's case had occurred on the part of the prosecution rather, it is observed, as argued by the learned counsel for the complainant/ respondent No.2 that the delay has been occurred on the part of the co-

accused who have been absenting themselves from appearing before the learned trial Court and one of the co-accused as stated to be the wife of the petitioner. In the circumstances, it could be safely said that proviso III to Section 497 (1) Cr.P.C cannot be invoked by the petitioner as he has failed to assert that the delay in conclusion of trial, wholly or partly, has been caused by the prosecution. In the absence of which the benefit of proviso III to Section 497 (1) Cr.P.C cannot be afforded to the petitioner. In this regard reliance can be placed on the case of Muhammad Riaz. Vs. The State (2002 SCMR 184) wherein it has been held as under:-

*"Non-conclusion of trial within one year---
Circumstances warranting inference that absence of
one co-accused was intentional for benefit of co-
accused which caused delay in conclusion of trial ---
Held, petitioners had failed to make out a ground for
bail under clause (a) of third proviso to sub-section
(1) of S. 497."*

8. In view of the above circumstances, I am not inclined to allow the present post arrest bail application of the petitioner, hence the same is dismissed.

CHIEF JUSTICE

M. Naveed