

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Jamal Khan Mandokhail  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Syed Hasan Azhar Rizvi

**Crl.P.L.A No.238/2024**

[Against the order dated 04.03.2024 passed by the Lahore High Court, Lahore  
passed in Crl. Misc No. 68511-B/2023]

***Adnan Shafai***

*...Petitioner(s)*

***Versus***

***The State & another***

*...Respondent(s)*

For the Petitioner(s) : Zill-E-Huma, ASC  
Mr. Muhammad Amir Malik, AOR

For the State : Mr. Rashdeen Nawaz Kasuri,  
Additional Attorney General for  
Pakistan  
Mr. Irfan Zia,  
Additional PG, Punjab  
Naeem Sajid, Inspector FIA, Lahore  
Huma Noreen Hassan, Legal  
Consultant, Pak Railway

For the Complainant : Mian Sohail Anwar, ASC.

Date of Hearing : 05.06.2024.

**JUDGMENT**

**Syed Hasan Azhar Rizvi,:-** Through the present petition, the petitioner seeks leave to appeal against the order of Lahore High Court, Lahore, dated 04.03.2024, (**Impugned Order**) whereby the post-arrest bail has been declined to him in FIR No.10/2022 dated 05.07.2022, registered under sections 109 and 409 PPC read with section 5(2) of the Prevention of Corruption Act, 1947 and Section 3/4 of Anti-Money Laundering Act, 2010 at Police Station FIA, Anti-Corruption Circle, Lahore.

2. Briefly, the factual background of the case is that the petitioner being a Project Director received cash amount of Rs. 15.989 Million involved in 101 local purchase cases. Out of 101 local purchase cases, 33 were matured for financial year 2020-2021 and the remaining 68 cases were available with him when he relinquished the charge of post of PD/SR/100 Locos on 24.05.2021. Consequently, FIR was registered against the petitioner on the inquiry report conducted by the officials of Pakistan Railways. The inquiry committee found that the petitioner being competent to sanction and withdraw cash and local purchase is responsible to adopt proper procedure and its account but failed to do.

3. The learned counsel for the petitioner contends that the petitioner seeks his post-arrest bail on statutory ground only. The Petitioner's trial could not be concluded due to the consistent absence of prosecution witnesses; there is not a single adjournment sought by the petitioner or his counsel on the dates of the hearing; it is the prosecution that is responsible for causing a delay in the conclusion of the trial.

4. The learned Law officers assisted by the counsel for the complainant contend that petitioner has caused delays in the conclusion of trial by repeatedly filing baseless applications, which have consumed substantial time of Court. Therefore, he is not entitled to post-arrest bail on statutory grounds, as his actions have contributed to the trial's delay.

5. We have heard the arguments advanced by the learned counsel for the parties and perused the record of the case.

6. This case does not involve any crime punishable by death. Under the third proviso to Section 497(1) of the Cr.P.C, a

statutory ground exists for granting post-arrest bail to an accused due to delays in conclusion of the trial. A person accused of an offence not punishable by death has the right to be released on bail if they have been detained for over a year, provided the delay in the trial's conclusion was not caused by their actions or the actions of someone on their behalf, and situation does not fall under the fourth proviso to Section 497(1) of the Cr.P.C.

7. This Court in the case of Shakeel Shah,<sup>1</sup> elaborately explained the concept of bail on statutory grounds and ruled that it is subject to two exceptions:

- a) Delay in conclusion of the trial if occasioned by an act or omission of the accused or by any other person acting on his behalf;
- b) The accused, a hardened, desperate or dangerous criminal, in the opinion of the Court.

Now, we proceed to examine the instant case on the touchstone of Shakeel Shah case (*supra*) to determine whether it falls in any of exceptions laid down therein.

**I. DELAY IN CONCLUSION OF THE TRIAL IF OCCASIONED BY AN ACT OR OMISSION OF THE ACCUSED OR BY ANY OTHER PERSON ACTING ON HIS BEHALF**

8. This court in the Shakeel Shah case (*supra*) expounded this exception and explained it in the following terms:

“The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso. The statutory right to be released on bail flows from the constitutional right to liberty and

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<sup>1</sup> Shakeel Shah versus State and others, 2022 SCMR 1.

fair trial under Articles 9 and 10A of the Constitution. Hence, the provisions of the third and fourth provisos to section 497(1), Cr.P.C must be examined through the constitutional lens and fashioned in a manner that is progressive and expansive of the rights of an accused, who is still under trial and has the presumption of innocence in his favour. To convince the court for denying bail to the accused, the prosecution must show, on the basis of the record, that there is a concerted effort on the part of the accused or his counsel to delay the conclusion of the trial by seeking adjournments without sufficient cause on crucial hearings and/or by making frivolous miscellaneous applications.”

**(emphasis added)**

9. In the present case, the petitioner was arrested on 05.08.2022 and the charge against him was framed on 27.06.2023. He made an application for his post-arrest bail on statutory ground on 07.08.2023. The order sheets of the period commencing from the date of arrest, date of framing of charge till the date of his filing the application for bail does not reflect any design, pattern, or concerted effort on the part of the accused to delay the conclusion of the trial. During this period, he made two formal applications namely an application under section 265-K CrPC and an application for excluding Khurram Iqbal from the proceedings of this case. Perusal of these applications do not reflect any design, pattern, or concerted effort by the petitioner to delay the conclusion of the trial. An application for the protection of the accused's rights and just for fair trial guaranteed under Article 10-A of the Constitution of Pakistan, 1973 does not amount to any design, pattern, or concerted effort by the accused to delay the trial. Thus, the Petitioner's case does not fall within the ambit of first exception.

**II. THE ACCUSED, A HARDENED, DESPERATE OR DANGEROUS CRIMINAL, IN THE OPINION OF THE COURT**

10. Although this exception is not pleaded against the Petitioner before this court nor mentioned anywhere in the impugned orders however, it is pertinent to consider whether the petitioner's matter falls under the second exception. The phrase “a

*hardened, desperate or dangerous criminal*” denotes an accused who is likely to seriously injure and hurt others without caring for the consequences of his violent act and will pose a serious threat to the society if set free on bail. Such tentative finding as to character of the accused must be based upon careful examination of the facts and circumstances of the case, supported by sufficient incriminating material.”<sup>2</sup>

11. The tentative assessment of the material placed before this Court shows that Petitioner is not a hardened, desperate, or dangerous criminal. He is a government employee working in Pakistan Railways who is not likely to cause any injury to others.

12. In view of what has been discussed above, it is manifest that a case of statutory ground of delay in the conclusion of trial is *prima facie* made out within the remit of Section 497 Cr.P.C. and judgments rendered by this court.<sup>3</sup>

13. For the above reasons, this petition is converted into an appeal and allowed. The impugned order of the High Court dated 04.03.2024 is set aside. The petitioner is granted post-arrest bail subject to furnishing his bail bonds in the sum of Rs. 100,000/- with one surety in the like amount to the satisfaction of Trial Court.

14. The Trial Court should proceed with the matter expeditiously and decide the same within a period of 60 days. The petitioner and his counsel should cooperate with the trial Court and no unnecessary adjournment shall be granted. In case of misuse of concession of bail, the respondent/complainant would be at liberty to avail remedy in accordance with the law.

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<sup>2</sup> Nadeem Samson v. State, PLD 2022 SC 112.

<sup>3</sup> Ibid, 2022 SCMR 1

15. Before parting, it is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove.

16. Above are the reasons of our short order of even date.

**Judge**

**Judge**

**Judge**

**Islamabad,**

5<sup>th</sup> June, 2024

APPROVED FOR REPORTING

*Paras Zafar, LC\**