

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

Criminal Petition No.239 of 2024

[Against the order dated 04.03.2024, passed by the Lahore High Court, Lahore in Criminal
Miscellaneous No.69212-B of 2023]

<i>Adnan Shafai.</i>	<i>Versus</i>	<i>...Petitioner(s)</i>
<i>The State and another.</i>		<i>...Respondent(s)</i>

For the Petitioner(s)	: Mrs. Zill-e-Huma, ASC
For the State	: Mr. Rashdeen Nawaz Kasuri, Additional Attorney General for Pakistan Mr. Irfan Zia, Additional Prosecutor General, Punjab Naeem Sajid, Inspector, FIA, Lahore Ms. Huma Noreen Hassan, Legal Consultant Pak Railways
For the Complainant	: Mian Sohail Anwar, ASC
Date of Hearing	: 05.06.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J. Through this petition the petitioner has impugned the order dated 04.03.2024, passed by the Lahore High Court, Lahore in Criminal Miscellaneous No.69212-B of 2023, whereby the post arrest bail was declined to him in case FIR No.103 dated 22.12.2021, registered under Sections 161, 162, 109, 409 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947 at Police Station FIA/ACC, District Lahore.

2. The allegation levelled against the petitioner is that he along with other co-accused attracted the complainant by offering

the award of tenders of Rehabilitation Department of Pakistan Railways with a handsome profit and in this regard the complainant has to pay the tenders' amount in advance in order to meet the market expenses on the pretext that there would be normal delay in clearance of the government cheques against the tenders payment. Hence, the petitioner along with other accused extorted an amount of Rs.19,800,000/- from the complainant through different modes.

3. The learned counsel for the petitioner has contended that the petitioner is behind the bars for the last one year. Since the trial has not been concluded, therefore, the petitioner is entitled for the concession of post arrest bail on the statutory ground of delay in the conclusion of trial.

4. On the other hand, while supporting the impugned order, the learned Law Officers assisted by the learned counsel for the complainant have opposed the contentions of the learned counsel for the petitioner. The learned Law Officers have contended that there is no delay in conclusion of the trial on behalf of the State; that the petitioner has filed an application dated 06.03.2023, under Section 265-K Cr.P.C. which was decided on 30.05.2023 and hearing of this application has resulted into the delay hence, the said delay is attributable to the petitioner.

5. We have heard the learned counsel for the parties and perused the material available on the record with their able assistance.

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 delay in conclusion of the trial. A person accused of an

offence not punishable by death has the right to be released on bail, if he has 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. In the present case, the petitioner was arrested on 05.08.2022 and is behind the bars since then. Charge in the case was framed on 12.06.2023 and yet the trial has not been concluded.

8. Grant of bail on the statutory ground of delay in the conclusion of trial is a right of accused unless such delay has been occasioned as a result of his own conduct. This Court in the case of Shakeel Shah versus State and others, (2022 SCMR 1) has elaborately discussed the bail on statutory ground of delay and noted as under:-

“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 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)

Thus, if any accused deliberately causes delay in the conclusion of trial by moving irrelevant repetitive applications,

then he is not entitled for the bail on this statutory ground of delay in trial.

9. Perusal of the impugned order reveals that only ground on the basis of which the petitioner's application for bail was dismissed is that petitioner moved an application under Section 265-K Cr.P.C, the same does not reflect any design, pattern, or concerted effort by the petitioner to delay the conclusion of trial. An application for the protection of the accused's rights and 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, mere moving an application under Section 265-K Cr.P.C does not amount to deliberate the delay on the part of the accused in conclusion of trial.

10. Moreover, the case law relied upon by the High Court titled as Major (R) Muhammad Iftikhar Khan versus The State and another (2022 SCMR 885), is distinguished from the facts and circumstances of the present case for the reason that numerous irrelevant applications were moved by the accused in that case, meanwhile in the present case only one application was moved and even after that no adjournment was sought by the learned counsel for the accused on the relevant date of hearing.

11. In view of what has been discussed above, it is manifested 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.

12. For the above reasons, this petition is converted into an appeal and is 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.

13. Above are the reasons of our short order pronounced on even date as reproduced below:-

“For the reasons to be recorded later on, this petition is converted into an appeal and is allowed. The petitioner is granted 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 the trial Court. The trial Court should proceed with the matter expeditiously and decide the same within a period of 30 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 law.”

JUDGE

JUDGE

Bench-V
Islamabad
05.06.2024
APPROVED FOR REPORTING
Rabbani & Paras Zafar, LC*/

JUDGE