

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.1867-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioners

1. Arbab and 2. Haider Ali, whose earlier plea for bail has been turned down by this Court on merits in case FIR No.269 dated 04.12.2014 registered under sections 324/392/34 PPC, through this further petition, seek the concession of bail on fresh ground i.e. on the ground of delay in conclusion of trial within the period specified by this Court vide order dated 06.04.2015 in Cr.Misc.BA No.301-P/2015.

2. Arguments heard and record perused.

3. This court while declining bail to the petitioners vide order dated 06.04.2015, directed the prosecution and the learned Trial Court in the following manner:-

“However, prosecution is directed for submission of challan within a week and the

learned Trial Court for conclusion of trial as early as possible, but not later than two months, from the date of receipt of the record. In case of failure in conclusion of trial within the specified period, if delay was not on the part of the petitioners or any person acting on their behalf, they will be at liberty to file identical petition for their release on bail before the learned Trial Court, which shall be disposed of independently, in accordance with law”.

Record divulges that challan was put in court on 04.05.2015, followed by compliance of provision of section 265-C Cr.P.C. on 19.05.2015, and framing of charge on 06.06.2015. PWs were summoned for 15.06.2015, on which date PWs Dastan Ali LHC, Taleem Gul IHC, Refaat Ali FC and Gulzar MHC, appeared, but sent unexamined on the request of learned counsel for the complainant, who submitted Wakalat nama. On 26.06.2015, PW Dastan Ali was examined while PW Taleem Gul abandoned. On 07.07.2015, newly arrested accused Arbab Ali and Haider Ali, were produced and their supplementary challan was received by the learned Trial Court. On the same date, provisions of section 265-C

Cr.P.C. were complied with against them, however, neither any signature nor any thumb impression of the accused has been obtained on the margin of the order-sheet dated **07.07.2015**. Such irresponsible conduct of the learned Trial Court, may at the fag end of trial, be a cause to vitiate the entire proceedings, in case the accused took the plea of non-delivery of any copies to them within the meaning of S. 265-C Cr.P.C. or even may cause remand of the case in case of their conviction and appeal before the Appellate Court. On 06.08.2015, charge against the newly arrested accused was framed and PWs were summoned for 12.08.2015, on which date, PW Gulzar Hussain MHC was examined while rest of the PWs could not be examined due to absence of counsel for complainant. On 16.09.2015, due to absence of complainant PWs could not be examined and the case was posted to 29.09.2015, on which date the Presiding Officer remained on leave and the case was posted to 10.10.2015. On 10.10.2015, PWs remained absent. On 19.10.2015, PW Shafqat Ali examined while remaining PWs remained absent hence, were directed to be summoned for 29.10.2015.

4. A careful perusal of order-sheets of the learned trial Court, reveal that delay in conclusion of trial within the period specified by this Court, cannot be

attributed to the petitioners, rather it can safely be assigned to the prosecution as well as the learned Trial Court, because on some dates despite attendance of the PWs, they could not be examined on the request of learned counsel for the complainant, while on some dates PWs remained absent, but the learned Trial Court has not shown any efforts, much less serious, in procuring their attendance by adopting coercive methods under the Procedural Law, so much so, considering the gap of days between the adjournments i.e. from seven to ten days, the learned Trial Court has not shown any respect to honour the direction of this Court. Had the learned Trial Court been serious in honouring the direction of this Court, it could proceed with the trial on day to day basis keeping in view the apprehension of expiry of the specified period. The disrespectful attitude of the learned Trial Court being highly deplorable is deprecated. If the subordinate Judiciary does not show any respect towards the Higher and Superior Judiciary by following the directions, it would not only convey a wrong message to the other Institutions of the country and society but would eventually frustrate the ends of justice and destroy the entire system of Judiciary.

5. In view of the above, even if further time is provided for conclusion of trial, it would serve no useful purpose because neither the prosecution is serious in leading its evidence nor the learned Trial Court is expected for honouring the direction of this court, therefore, this court is left with no other option but to release the petitioners on bail at the cost of the prosecution. I, by allowing this petition, direct the petitioners to be released on bail provided each one of them furnishes bail bonds to the tune of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of the Trial Court.

6. I deem it appropriate to refer to Cr.Misc. BA No.1753-P/2015, titled, “Abdur Rahim Vs the State” wherein bail was granted by this court on 21.10.2015, on the ground of delay in conclusion of Trial within the period specified by this Court and it was the same learned Trial Judge, who failed to honour the directions. For ready reference, I would like to reproduce the relevant part of the judgment as under:-

“It appears from order sheets of the learned Trial Court, that the case has been adjourned due to persistent non-attendance of the PWs. The learned Trial Court,

despite unambiguous directions of this court, has not taken pain to conclude the trial within the specified period and has not adopted any coercive methods against the unexamined PWs under the Procedural law. If the prosecution has demonstrated its lethargic conduct in production of the PWs, at the same time, the learned Trial Court too has not shown any respect to comply with order of this court, which conduct being highly deplorable shall not be countenanced in future. Had the learned Trial Court been serious and conscious qua direction of this court, it could proceed with the trial on day to day basis for compliance of order of this court in a letter and spirit, but such is not the situation herein.

The Additional Registrar (Judicial) of this Court is directed to communicate copy of this order/judgment to the learned Sessions Judge, Kohat for taking the matter into consideration and keeping

**check over the matters involving directions
of this court, in future”.**

7. This is for the second time that this Court observed the same conduct and negligence on the part of the learned Trial Judge/ Additional Sessions Judge-III, Kohat, which either reflects his incompetency or intentional disobedience to honour the directions of this Court, therefore, the Additional Registrar (Judicial) of this Court is directed to call the explanation of Trial Judge Mr. Irshad Ahmad Khan Additional Sessions Judge-III, Kohat, as to why disciplinary action under the relevant law should not be taken against him for not honoring the directions of this Court. His reply should reach this court within a fortnight; otherwise, a unilateral action will be taken against him.

Announced
12.11.2015

J U D G E

7. For what has been discussed above, Suo motu notice given to accused Shakir stands withdrawn. He is admitted to bail on already existing bail bonds, on merits. Since this court has already directed expeditious conclusion of trial while dealing with the bail petition of co-accused Farman, therefore, office is directed to send the record to the quarter concerned within two days, positively.

announced:
19.10.2015

J U D G E

