

Judgment Sheet
**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Cr.Misc. (BA) No. 609-A/2022

JUDGMENT

Date of hearing.....11.11.2022.....

Petitioners (Khanvaiz Khan & another) By Qazi Muhammad
Arshad, Advocate.

Respondents (State & another)

The State By Khursheed Alam, Advocate and
Complainant By Mr. Shah Sultan Tahirkheli, Advocate.

KAMRAN HAYAT MIANKHEL, J.- This petition has been moved on behalf of the petitioners namely Khanvai Khan and Afsar Khan for admitting them to bail till final conclusion of trial on statutory delay, who is detained in case FIR No.103 dated 19.01.2018 registered under sections 324/34 PPC/512 Cr.P.C at police station, City District Haripur.

2. The allegation against the petitioners is that they injured the son of complainant namely Hamraj Khan by means of firearm. They were placed under arrest on 25.02.2020 and 26.02.2020. Vide order dated 07.07.2022 he was declined bail by the learned Additional

Sessions Judge-VI, Haripur on statutory delay, hence, this petition.

3. I have heard arguments of learned counsel for the petitioner as well as learned State counsel assisted by learned counsel for complainant at length and scanned the record with their valuable assistance.

4. Perusal of the record depicts that petitioners were arrested on 25.02.2020 & 26.02.2020 and challan was submitted against them before the learned trial court on 25.11.2020 and charge was framed against him on 08.12.2020. It is evident from the record that in this case twenty witnesses are to be examined by the prosecution but till today six witnesses have been examined by the prosecution. It is by now settled law that speedy and fair trial is the inherent right of every accused. The guiding principle for the grant of bail on the ground of inordinate delay was laid down by the Hon'ble Supreme Court in the case of **Riasat Ali Vs Ghulam Muhammad and the State (PLD 1968 SC 353)**, wherein it was held that "delay in

prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out accused, however, delay in prosecution of each case as a ground for bail is to be weighed and judged, in each case on its merits.” It is clear from the record that the delay, if any, in concluding the trial is neither attributable to the petitioners nor anyone acting on their behalf and there is nothing on record to suggest that petitioners are either a hardened or desperate or dangerous criminal or previously convicted offenders or involved in the act of terrorism.

5. As regards the category of accused mentioned in sixth proviso, it will be appropriate to refer the case reported as ***‘Moundar Vs The State’ (PLD 1990 SC 934)*** wherein, the Full Bench of august Supreme Court of Pakistan held as under:

“It is quite plain that the normal rule stipulated in the Third proviso to section 497 was that an under trial prisoner shall be released, after expiry of the respective period, without the trial concluding. The Fourth proviso is in substance an exception to the aforesaid general rule contained in the Third proviso. Before the Court applies

the exceptional provisions of the Fourth proviso, it has to form an opinion that the accused was a previous convict or a criminal of one of the categories described therein. The words are "in the opinion of the Court". Such opinion cannot be obviously subjective but must be based upon materials placed before the Court, reasonably supporting the conclusion that the person concerned is a criminal of the classes described. The word "criminal" has not been defined. It will not be proper and indeed would be difficult to define it or give it a specific meaning. However, it is a common word of the English language. According to the Shorter Oxford English Dictionary the word carries several meanings, including the meaning-- a person accused of a crime. In the context of the provisions under construction, we feel that the word cannot be construed in the technical sense, namely, that a formal accusation must be made against the person or that he should have been adjudged guilty of a charge in a Court of law. It appears to have been used in the sense of a person who violates the law of the land. The three adjectives qualifying the word "criminal" may also be examined.

According to the same dictionary the word "harden" has been defined to

mean, inter alia, (1) to render or make hard; to indurate, (2) to embolden, confirm, (3) to make callous or unfeeling and (4) to make persistent or obdurate in a course of action or state of mind. The word "hardened" has also been defined to mean "made hard, indurate; rendered callous; hard-hearted; obdurately determined in a course".

The same dictionary gives the meaning of the word "desperate" inter alia, in relation to person: driven to desperation hence reckless, violent, ready to risk or do anything.

The, same dictionary gives the meaning of the word "dangerous", inter alia, as fraught with danger or risk; perilous, hazardous, unsafe."

I am in respectful agreement with the above enunciation of law. In the instant case, the prosecution has not placed on record anything before the Court to indicate that the petitioners are hardened, desperate or dangerous criminal or previously convicted persons for an offence punishable with death or imprisonment for life or a persons involved in the act of terrorism. Under these circumstances, it can safely be concluded that

the petitioners have successfully proved its case for the grant of bail on the basis of statutory delay, after remaining in custody for more than one year and no prospects existed of the trial being concluded within reasonable time and detention of the accused-petitioners for an indefinite period would amount to an abuse of the process of the Court.

6. For what has been discussed hereinabove, this petition is allowed and petitioners are admitted to bail, subject to furnishing bail bonds in the sum of Rs.1,00,000/-(one lac) with two sureties, each in the like amount to the satisfaction of the Illaqa / duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

These are the detailed reasons of the order of even date.

Announced:
11.11.2022.

J U D G E

Aftab PS/*