

**PESHAWAR HIGH COURT,
ABBOTTABAD BENCH**

JUDICIAL DEPARTMENT

Cr.Misc. (BA) No. 41-A/2022

JUDGMENT

Date of hearing.....**14.03.2022**.....

Petitioner (Anyi Sundy alias Joe) by M/S Mirza Babar Shakeel and
Sajjad ul Hassan Mughal, Advocates....

Respondents (The State & others) by Mr. Tauqeer-ur-Rehman,
Assistant Attorney General.....

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KAMRAN HAYAT MIANKHEL, J.- Petitioner, Anyi

Sundy alias Joe, a Nigerian National, who is detained in
FIR No. 19/2020 dated 24.02.2020 registered against
him under Sections 409 / 419 / 420 / 468 / 471 / 406 /
109 PPC read with section 5 (2) Prevention of
Corruption Act, 1947 and 3 / 4 of Anti Money
Laundering Act, 2010 at police station, FIA ACC
Abbottabad, has approached this Court for admitting
him to bail on statutory delay till final conclusion of trial.

2. The facts of the case, in brief, are that
complainant, Shoaib Akhtar Qureshi, Regional
Executive NBP and Abdur Rashid, AVP Head NBP
Regional Office Abbottabad reported the matter to the
local police to the effect that Jehangir Khan was posted

as Manager National Bank of Pakistan, Khanaspur Ayubia Branch Abbottabad; During usual review of the branch ledger on 13.02.2020, he observed irregularity in “cash in hand” and “adjusting account other” GLs. An internal enquiry was conducted, which showed cash shortage of Rs.119,100,715/- and unauthorized debit to adjusting of account of Rs. 20,900,000/- was also detected on 17.02.2020. After detailed inquiry, case was registered against the Branch Manager, Cashier including the present petitioner/accused for the offences of embezzlement, cheating, fraud and money laundering, hence, the ibid FIR.

3. Arguments of learned counsel for the petitioner and learned Assistant Attorney General heard at length and record perused.

4. Perusal of record reveals that accused/petitioner was arrested in this case on 05.08.2020 and since then he is in continuous detention and the trial has not yet been concluded. Before the bail petition in hand, the petitioner has not moved any application for grant of bail even on merits. In this petition, the petitioner sought his bail on statutory ground and also pressed into service the principle of consistency. It is evident from the record that while dismissing bail applications on merit filed by co-accused involved in the

case, the prosecution was directed to submit complete challan against them within ten (10) days from the date of receipt of order and the trial Court was directed to conclude the trial within four (04) months. However, the record reflects that the challan was given against the petitioner on 08.12.2020 and provisions of section 265-C Cr.P.C, were complied with on 05.04.2021, charge was framed on 10.07.2021 and P.Ws, i.e. forty-four (44) witnesses, were summoned, however, not a single witness could be examined till date.

5. In order to convince the Court to deny bail on statutory delay, the prosecution must show that there was a concerted effort by the accused or his counsel to delay the conclusion of the trial by “*seeking adjournments without sufficient cause on crucial hearings*” or by “*making frivolous miscellaneous applications*” and there exists some material to show that the accused would pose a serious threat to the society if set free on bail.

6. It is obvious from record that the statutory period mentioned in fifth proviso has expired and conclusion of trial is not expected in near future as no progress could take place in the case in hand despite clear direction issued by this Court while disposing of bail petitions of co-accused. It depicts from record that

delay, if any, in concluding the trial cannot be ascribed to the petitioner or anyone acting on his behalf. Furthermore, the second exception to the right of the accused to be released on bail on the ground of delay in conclusion of the trial was provided in the sixth proviso to section 497 Cr.P.C. According to the sixth proviso, the provisions of the fifth proviso do not apply to the accused who is a convicted offender for an offence punishable with death or imprisonment for life; or a hardened, desperate or dangerous criminal in the opinion of the Court; or an accused of an act of terrorism punishable with death or imprisonment for life. Additionally, the prosecution has not placed on record before the Court to indicate that the petitioner is hardened, desperate or dangerous criminals or previously convicted persons for an offence punishable with death or imprisonment for life or persons involved in the act of terrorism. As held earlier by this Court while disposing of the bail petitions of co-accused, namely, Marvellours Amechi and Patrick Osandu Nzogawa alias Dr. Ibrahim that *'mere allegation of involvement of the petitioners in financial corruption, which is yet to be proved during trial, could not be sufficient to hold them as hardened or desperate criminals'*. Therefore, in my opinion, the prosecution

could not convince this Court on above mentioned crucial issues involved in the present case, thus, in the absence of any such material, bail cannot be denied to an accused on the statutory ground of delay in conclusion of the trial. Besides, the petitioner is also entitled to be released on bail on the principle of consistency as the co-accused having similar role, have already been released on statutory ground of delay.

7. Under these circumstances, it is held that the statutory right to be released on bail flowed from the constitutional right to liberty and fair trial under Articles 9 and 10A of the Constitution. 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. The purpose and objective of the provision was to ensure that the trial of an accused was conducted expeditiously and the pre-conviction detention of an accused did not extend beyond the period of one year, in cases involving offences not punishable with death. In such cases, if the trial of an accused is not concluded within a year of his detention, the statutory right to be released on bail ripens in his favour. In this context, reliance can well be placed on the judgments reported as '**Amir v. The State**' (PLD1972 SC 277), '**Abdul Hakeem Khan v.**

The State’ (1981 P.Cr.L.J 607), ‘Raheem Bux and others v. The State’(PLD 1986 Karachi 224), ‘Aijaz Ahmad v. Tasawar Hyder’ (1988 P.Cr.L.J 1408) and ‘Abdul Rehman v. The State’ (1978 P.Cr.L.J 589).

8. For the foregoing reasons, this petition is allowed and petitioner is admitted to bail, subject to his furnishing bail bonds in the sum of Rs.20,00,000/-(Two Millions) with three sureties, each in the like amount to the satisfaction of the learned Special Judge (Offences in respect of Banks) Khyber Pakhtunkhwa, Peshawar, who shall ensure that the sureties are local, reliable and men of means, besides surrendering their passports before the FIA authorities and their name shall be placed on Exit Control List (**ECL**) and shall not be allowed to depart from Pakistan.

Above are the reasons for short order of this Court of even date.

Announced:
Dt.14.03.2022.

J U D G E

M.Saleem PS/*

(SB) Mr. Justice Kamran Hayat Miankhel