

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

BA No. 2513-P of 2017

ORDER

Abdullah alias Raajo

Verses

The State.

Date of hearing. **15.12.2017**

Petitioner by; Mr. Hassan U.K Afridi, advocate.

State by: Syed Sikandar Hayat Shah Addl; A.G.

Complainant by: Mr. Astaghfirullah, advocate.

QAISER RASHID KHAN, J. Through this single order, I intend to dispose of the instant bail petition filed by the petitioner, Abdullah alias Raajo and the connected BA No. 2575 of 2017 titled Muhammad Kashif versus the State as both the petitions arise out of case FIR No.426 dated 02.07.2014, under sections 302/324/427/392/411/404/148/149/109 PPC/15 AA, registered at police station MRS, Kohat with the allegations that they along with their co-accused had intercepted the vehicle of the complainant party, made firing at them, as a result, the occupants of the car , namely, Muhammad Younas (complainant), Shah Hussain , Fazal Rahim and driver Muhammad Shafique received firearms injuries and then decamped with a cash amount of Rs. 1,90,00,000/-. Muhammad Shafique succumbed to his injuries later on. Presently, both the

accused/petitioners seek their release on bail on the ground of statutory delay in the conclusion of trial in terms of 3rd proviso to section 497(1) Cr.P.C.

Arguments heard and the available record perused.

2. All that the learned counsel for the petitioners vehemently contend is that ever since their arrest way back in the month of July 2014 i.e. immediately after the occurrence, they have been behind the bars and though several PWs have been examined, yet the conclusion of the trial is not possible in the foreseeable future. They further contend that the law has made it obligatory rather mandatory upon the courts to grant bail to the accused where they have been in incarceration for over two years in terms of the explicit language of the 3rd proviso to section 497(1) Cr.P.C and in this respect the Hon'ble Supreme Court has also given such directions in several cases.

3. The learned AAG assisted by the learned counsel for the complainant, on their turn, resist the submissions of the learned counsel for the petitioners and contend that several accused have been involved in the commission of such a heinous offence wherein one person has lost his life while three others received firearms injuries and also a huge sum of Rs.1,90,00,000/- (one crore and ninety lac) was looted from the complainant party whereafter some of the looted money was recovered from some of the accused in respect of which they have even confessed their guilt and more so that during the pendency of the trial before the learned trial judge, other accused were arrested from Karachi and another hefty amount

of over six million rupees was recovered from them. They further contend that the delay as occasioned in the conclusion of the trial is not mainly attributable to the prosecution but that the record was requisitioned by this court in the bail petitions of some of the co-accused and also by the august apex court on two occasions and more so in view of the new development whereby recording the statements of some of the PWs, to be called from Karachi which will have a direct bearing on the fate of the case, is necessary and in this respect, the learned counsel for the complainant undertakes that the complainant is even ready to foot the bill even of the air tickets of the PWs and that no delay would be caused at the complainant's end.

4. Whereas on the one hand, the accused/petitioners have come up with a genuine plea for having faced incarceration for the last over three years and where the mandate of law as per the 3rd proviso of section 497(1) Cr.P.C is to allow bail to such accused in case the delay in the conclusion of the trial has not in any manner been occasioned by them or any person acting on their behalf but simultaneously where in view of the new development made in the case on account of the arrest of some accused at Karachi and recovery of substantial amount of looted money from them and where recording of statements of such PWs is essential by the estimate of the prosecution to enable the learned trial judge to arrive at a just decision, then a little room is to be given to the prosecution to produce the said witnesses. Above apart, even the bail application of co-accused Abdul Wahab has been rejected by

the Hon'ble apex court on 11.11.2016 in Criminal Petition No. 89-P of 2016 on the ground of statutory delay in the conclusion of the trial.

5. Accordingly, both the bail petitions stand disposed of in terms of directing the learned trial court and of course the prosecution as well as the complainant to ensure that the remaining PWs are examined at the earliest. The learned trial court is simultaneously directed to record the presence of the learned counsel for the parties or for that matter of the PWs at his end on each date of hearing. Accordingly, a time frame of two and half months is given to the learned trial court for the conclusion of the trial from the date of receipt of the record. In case of failure to conclude the trial within the specified period and when the delay is not occasioned on the part of the defence, then the bail petitions of the petitioners on the ground of statutory delay in conclusion of the trial would be favourably considered for which the petitioners may apply to this court afresh. The office is directed to send the record to the learned trial court forthwith.

Announced
15.12.2017.


J U D G E

"younas"

