

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.MB.No.137-D/2024.

Nadeem Durrani

Vs.

The State.

JUDGMENT

For Petitioner: Muhammad Salim Khan Marwat and
Muhammad Salim Shehzad Kundi,
Advocates.

For State: Mr. Hamid Sarfaraz, Special
Prosecutor ANF.

Date of hearing: 03.4.2024.

FAZAL SUBHAN, J.- Instant is a bail application under Section 497, of the Criminal Procedure Code, 1898, (Code), wherein the petitioner Nadeem Durrani son of Najib Ullah seeks post-arrest bail in case FIR No.08/21 dated 09.7.2021, registered under sections 9(c) of the Control of Narcotic Substances Act, 1997, at Police Station ANF, D.I.Khan.

2. Facts need not to be reiterated as bail petition of the petitioner was dismissed by this Court on merit vide order dated 04.10.2021, rendered in Cr.MBA.No.394-D/2021.

3. Arguments heard and record perused.

4. After considering the arguments of learned counsel for the parties, the available record reveals that in the present case, the petitioner was

arrested on 09.7.2021, complete challan was submitted before the trial Court on 29.10.2021, while charge was framed on 27.11.2021, however, his trial could not be concluded as yet. The petitioner is in the judicial lockup for more than two years and for considering the bail plea on the ground of statutory delay in conclusion of trial, is to be reckoned from the date of arrest of the petitioner. Needless to say that on few occasion, dates were adjourned due to strike of lawyers, absence of Presiding officers, engagement of official witnesses in emergency duties or due to any natural calamities like Covid-19 virus and floods, however, during all this period the petitioner remained in custody as under-trial prisoner and adjournment of case due to the above reasons were beyond his control, hence delay in progress of case owing to these reasons cannot be attributed to the petitioner. Even adjournment of case due to absence of a co-accused, already on bail, cannot be counted against an accused who is regularly produced before the trial Court from prison. Since the trial could not be concluded within stipulated period of two years, as enumerated in Section 497(1) third proviso (b), Cr.P.C., therefore, petitioner is found entitled for grant of bail. In this respect, reliance can be placed on case of "Shakeel Shah Vs. The State and others" (2022 SCMR 1), and

recently endorsed by the apex Court in judgment reported as "Syeda Ayesha Subhani Vs. The State and others" (PLD 2023 Supreme Court 648), wherein principle has been laid down for extending benefit of bail on statutory ground as following:

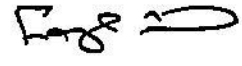
The purpose and objective of the 3rd proviso, as observed by this Court in Shakeel Shah, is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a fresh right, that is to say, a fresh ground, would accrue in his favour".

5. For the aforesaid reasons, the instant petition is allowed and the accused/petitioner is directed to be released on bail subject to furnishing bail bonds in the sum of Rs:300,000/- (three lac) with two sureties,

each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

6. Above are the reasons of my short order of even date.

Announced.
Dt: 03.4.2024.
(Kifayat*)


JUDGE

(S.B)
Hon'ble Mr. Justice Fazal Subhan

