

**JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT.**

**Cr.M/BA No. 1427-P/2018**

**Zareen Muhammad and another**

**vs.**

**Muhammad Shoaib and another**

**JUDGMENT**

**Date of hearing: 24.09.2018**

**Petitioner (s) by Mr. Khizar Hayat Khazana, Advocate.**

**Complainant by Mr. Azizur Rehman, Advocate.**

**State by Mr. Rab Nawaz Khan, AAG.**

**WAQAR AHMAD SETH, CJ.-**      Petitioners, Zareen

Muhammad son of Faqir Muhammad & Nazeer Muhammad son of Zareen Muhammad, seek bail in case FIR No. 409 dated 26.08.2014 under Sections 302/324/34 PPC registered at Police Station Katlang Mardan on the grounds of statutory delay.

2.            As per contents of FIR, the complainant party was present at the place of occurrence, in the meanwhile, petitioners appeared duly armed with deadly weapons and started firing at them, as a result of which, complainant Muhammad Shoaib sustained injuries while Awais, Nauman and Sajjad were hit and died on the spot. The occurrence was

witnessed by Gohar son of Dawa Khan and other persons present on the spot. Motive is stated to be that prior to the occurrence, an altercation was taken place in between accused Qasim and complainant party in playground of cricket.

3. Arguments heard and record perused.

4. Undisputedly, speedy and fair trial is the fundamental right of every accused person. The policy of criminal law is to bring accused person to justice as speedily as possible so that if he is found guilty he may be punished and if he is found innocent he may be acquitted and discharged. Before the insertion of Article 10-A in the Constitution, all the rights regarding expeditious and fair trial were already available in the Constitution and Criminal Procedure Code etc. The guiding principle for the grant of bail on the ground of inordinate delay was laid down by the Hon'ble Apex Court in the case of **Riasat Ali vs. Ghulam Muhammad and the State** (PLD 1968 SC 353), wherein it has been 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”.*

5. The third proviso of section 497(1) Cr.P.C. was, later on, introduced through Ordinance No. LXXI of 1979, which reads as under:-

***“Section 497.---(1) When.....***

***Provided.....***

***Provided.....***

***Provided further that the Court shall, except where it is of the opinion of the court that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail.***

***(a) Who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or***

***(b) Who being accused of an offence punishable with death has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded.***

***Provided, further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who , in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.***

The bare reading of above referred provisos would make it clear that it is a statutory right, which is earned by an accused person for his post arrest bail where he has been detained continuously exceeding two years for an offence punishable with death or imprisonment for life and whose trial for such an offence has not concluded, provided he, in the opinion of the court, is not a hardened, desperate and dangerous criminal or is an accused of an act of terrorism punishable with death or imprisonment for life or previously convicted person for an offence punishable with death. The word “shall” means that where statutory period is complete, the delay is not on the part of the accused and where his case does not fall under any of the categories of the fourth proviso, then the Court is left with no choice but to release him on bail. Time and again, it has been held by the Apex Court that if a case on statutory delay in the conclusion of trial is made out then, as a rule, bail should not be refused. The object behind this view is that any accused person is acquitted at the end of the trial then there is no compensation for the wrong caused to him due to his long confinement in

prison while, on the other hand, in case if he is convicted then he has to be rearrested and put behind the bars to serve out his sentence and in that case no prejudice would be caused to the prosecution/complainant.

6. In the case in hand, petitioners were arrested on 08.09.2015 and since then they are behind the bars for the last three years (03), whereas four (04) PWs have been examined so far while thirteen (13) PWs are remaining, and there is no likelihood of its conclusion in near future, hence, the petitioners have earned the right of their release on bail on the ground of statutory delay as provided in third proviso (b) of section 497 (1) Cr.PC. Moreover, there is also no delay in conclusion of trial on part of the petitioners as reflects from the order sheets of the learned trial Court.

7. In view of the above, the petition in hand is accepted and the accused-petitioners are admitted to bail provided each of them furnishes bail bonds to the tune of Rs. 4,00,000/- with two sureties each in the like amount to the satisfaction of Alaqa/Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

**Announced.**  
**24.09.2018**

**Chief Justice**

