

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

Cr.Mic: BCA No.46-B of 2017

Hikmatullah
Vs
The State & another

JUDGMENT

Date of hearing _____ 24.08.2017 _____.

Appellant-Petitioner: **By Mr. Salahudin Khan Marwat,**
Advocate.

Respondent : **By Mr. Ashraf Khan Marwat,**
Advocate,
State By Shahid Hameed Addl: AG.

SHAKEEL AHMAD, J.-- Through instant Cr. Misc:/ B.C.A

No. 46-B of 2017, the petitioner Hikmatullah seeks cancellation of bail granted to the accused/ respondent Faiz Muhammad vide order dated 05.07.2017 by the learned trial Court/ Sessions Judge, Lakki Marwat, in case FIR No.394 dated 17.10.2016 under sections 324/34 PPC, Police Station Peezu, Lakki Marwat.

2. Brief facts of the case as alleged by the complainant in the crime report are that the respondent is one of

the nominated accused in the crime report with the allegation for attempting to commit Qatle Aamd of the complainant by firing effectively and his brother ineffectively.

3. Learned counsel for the complainant argued that in the earlier round of litigation bail of the accused Faiz Muhammad was declined vide order dated 15.12.2016 by this Court on merits, however, learned trial court was directed to accelerate the proceedings of the trial and conclude the same within a period of five months, failing which petitioner should be at liberty to approach the trial court for his release on bail. Learned AA.G shall assure to submit challan within 15 days and the delay if caused by the petitioner and his counsel shall not be counted towards the said time limit. He next contented that complete challan was submitted before the learned Judicial Magistrate Lakki Marwat on 14.01.2017. The case was received to the learned Sessions Judge from the court of the learned Judicial Magistrate Lakki Marwat on 14.01.2017. Formal charge was framed on 27.01.2017 and statement of five PWs were recorded by learned Additional Sessions Judge, Lakki Marwat till 10.06.2017, however the trial could not be

concluded within a period of five months as directed by the by this Court, where after the accused filed an application for the grant of post arrest bail on the ground that order of the Honorable High Court dated 15.12.2016 was not complied with. They lastly argued that the learned trial Court while granting post arrest bail has exercised jurisdiction injudiciously and prayed for cancellation of bail.

4. As against that learned counsel representing the accused Faiz Muhammad argued that the learned trial court had failed to conclude the trial within a period of five months as directed by honorable High Court, therefore, accused was rightly released on bail.

5. Learned A.A.G appearing on behalf of the State supported the contention of learned counsel for the complainant and argued that mere non-compliance of the order of honorable High Court would not make the accused entitled for concession of bail, particularly when bail of the accused had already been refused on merits by this Court.

6. Arguments heard and record perused.

7. Perusal of the record reveals that first bail application moved by the respondent Faiz Mohammad before this Court in Cr. BA No.437-B/2016, which was dismissed on 05.07.2016. He was allowed bail by the learned trial Court vide order dated 05.07.2017, merely on the ground that his trial could not be concluded within a period of five months as directed by this Court. Non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified period could not be considered as a valid ground for the grant of bail to an accused being alien to the provisions of section 497 Cr.PC, particularly, when his bail petition has already been dismissed on merits by this Court, unless some fresh ground is shown by the accused/respondent for consideration of his request for the grant of bail, which is lacking in the present case. In this respect reference can well be made in case titled **“Nasir Ahmad Vs The State (2016 PSC Crl. 6).** wherein it was held that:

“Neither non-compliance of directions issued to trial court to conclude trial expeditiously or within some specified time could be considered as valid ground for grant of bail to an accused, nor filing of direct complaint would have any

bearing as regards earlier bail refusing orders, which had attained finality, unless some fresh ground could be shown.”

8. The impugned order of learnt trial Court dated 05.07.2017 does not fulfill condition incorporated in section 497 Cr.PC, the same being illegal, therefore, by accepting this bail cancellation application, the bail granting order of the accused/ respondent is recalled and the accused/respondent Faiz Muhammad is directed to be taken into custody to be treated as an under trial prisoner. The Additional Registrar of this court is directed to send the certified copy of this order to the learned Sessions Judge, Lakki Marwat for future guidance.

Announced.
24.08.2017

J U D G E