

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.417-A/2017

JUDGMENT

Date of hearing.....14-07-2017.....

Petitioner(s)...(Mst. Robina Bibi) by Mr. Muhammad Shafiq, Advocate....

Respondent(s)...(The State etc) by M/S Yasir Zahoor Abbasi, Assistant Advocate General and Amanullah Khan Salik, Advocate

SYED MUHAMMAD ATTIQUE SHAH, J.- Mst.

Robina Bibi, accused-petitioner, seeks post arrest bail on statutory grounds in case FIR No.237 dated 15.03.2016, under sections 337A(v)/337-L(i)/34 PPC, registered at Police Station City, Haripur.

2. The allegation against the accused-petitioner, as reveals from F.I.R, is that she alongwith her husband, Ijaz has assaulted and caused injuries to Mst. Sameena Kosar.

3. Valuable arguments of the learned counsel for the parties heard and the record perused with their able assistance.

4. Learned counsel for the accused/petitioner stressed that despite lapse of more than a year, the trial has not yet been concluded without any fault on the part of the accused/petitioner, thus, he prayed for release of the accused/petitioner on statutory delay.

5. On the other hand, learned AAG assisted by learned counsel for the complainant controverted the plea of the accused/petitioner by contending that trial is almost complete in the present case, as material evidence of the prosecution has already been recorded. He submitted that delay, if any, is occurred due to fault of the defence. They submitted that the prosecution will conclude the trial within a period of four months.

6. Perusal of record reveals that charge against the accused/petitioner was framed on 03.02.2017. Thereafter, the case was adjourned due to absence of defence counsel on 09.03.2017,

22.03.2017, 05.04.2017, 10.05.2017 and 17.05.2017. In other words, defence counsel remained absent therefore evidence of the prosecution could not be recorded. In similar situation and circumstances, the Hon'ble Supreme Court of Pakistan in case titled '*Babar Hussain Vs. the State and others*' (2016 SCMR 1538), has observed that:

“We are of the considered view that even after lapse of two years, the conduct of an accused seeking adjournments can be taken note of and bail can be denied by a Court even on statutory ground. We have noticed that adjournments were sought and even the cross-examination of the eye-witnesses was not conducted by the petitioner's counsel, for which no plausible explanation has been offered. In these specific circumstances, we do not find the petitioner to be entitled to the concession of bail on statutory ground as a matter of right.

This petition being misconceived is dismissed accordingly. Leave refused.”

This Court considers that in such like cases, where bail is sought on statutory ground of delay in conclusion of trial, mere mathematical calculation alone is not sufficient for grant of bail rather the Court has to look into the overall conduct of the accused during the course of trial and to take into

consideration the factors which caused delay in the trial on the part of the defence. In case titled **‘Khalid Vs. The State’** (2014 P,Cr.L.J 437), it has been held by Hon’ble High Court that:

“The honourable Supreme Court in the case of Abdul Rasheed v. The State, report in 1998 SCMR 897 has already observed that where for any reason accused or his authorized agent which necessarily includes the Advocate engaged for defence causes delay, protection contained in third proviso to section 497(1) Cr.P.C. cannot be invoked. As I have observed that at some occasions the Presiding Officer or the prosecution witnesses remained absent, however, while ascertaining cumulative effect of the delay in disposal of the case it would not be merely a mathematical calculation of excluding the adjournments obtained by the accused or his counsel. Mechanism of delay in the trial do not work on the basis of mathematical and mechanical inclusion and exclusion of days. This is so because one adjournment by accused whether necessary or unnecessary deliberate or non-deliberate may frustrate further dates of hearing as it take hectic efforts to accumulate and motivate all prosecution witnesses, complainant etc for trial/evidence and one such desire of adjournment on the part of the accused may unsettle mind of prosecution witnesses for the next few dates at least if not more. ”

7. While considering the present case with the above mentioned yardstick, one can easily determine that the delay, if any, caused in conclusion of trial cannot be necessarily

attributable to the prosecution. The adjournments were being sought due to absence of defence counsel, therefore, while taking into consideration this conduct on the part of the defence, this Court hold that accused/petitioner is not entitled to be released on bail on statutory ground. Accordingly, this bail petition is dismissed.

8. Before parting with this judgment, this Court considers that material evidence of the prosecution has already been recorded and few witnesses formal in nature are yet to be examined. Therefore, while disposing of instant application, in view of the request made by the learned AAG, the prosecution is directed to produce the remaining witnesses on next date of hearing and the learned trial Court is directed to conclude the trial expeditiously, but not beyond a period of two months. Office is directed to send the record of the case immediately to the trial Court.

Dt.14-07-2017.

J U D G E

M.Saleem/*