

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Cr. M No. 94-A of 2017

JUDGMENT

Date of hearing.....

Petitioner.....

Respondent.....

QALANDAR ALI KHAN, J:- Niaz Khan, accused/petitioner, is seeking post arrest bail on statutory ground of delay in conclusion of trial in case vide FIR No.343 dated 03.07.2011 under Section 302 PPC read with Section 34 PPC registered in Police Station Saddar, Harpur, on the report of Muhammad Afzal, complainant/respondent, who charged the accused/petitioner along with co-accused Basharat son of Ghulam Farid and Fiaz son of Abdul Maroof for the *qatl-i-amd* of his brother Muhammad Zakir at 0715 hours on 03.07.2011 in his report lodged in DHQ

Hospital Haripur, on the same day at 2155 hours.

2. The accused/petitioner along with co-accused remained at large and were proceeded against under Sections 204 and 87 Cr.PC and challan was submitted against all the three accused charged in the FIR under Section 512 Cr.PC, and they were declared proclaimed offenders and perpetual warrants of arrest were issued against them by the learned Judicial Magistrate, Haripur, vide order dated 10.11.2011, the accused/petitioner was arrested on 20.02.2013 and ever since he is behind the bars as his plea for bail was rejected on merit even by this Court vide order dated 22.08.2014, whereby, the trial Court was "directed to expedite the disposal of trial and if possible to conclude the same at the earliest". Supplementary challan against the accused/petitioner was, however submitted on 26.02.2013, leading to

commencement of trial after taking cognizance in the case by the learned trial Court on 04.06.2013, and framing of formal charge. During trial, statements of four official PWs, namely, Dr. Tahir Aziz Chughtai (PW.1), Jamil FC (PW.2), Tariq Aziz ASI (PW.3) and Riaz Khan ASI (PW.4) have been recorded out of a total of 32 witnesses mentioned in the challan form including private PWs like the complainant and eye witnesses. Although some of the private witnesses have been abandoned by the prosecution, yet statements of material witnesses, including complainant and eye witnesses, are yet to be recorded.

3. Arguments of learned counsel for the accused/petitioner and learned State counsel assisted by learned counsel for complainant/respondent heard, and record perused.

4. Since application for post arrest bail of the accused/petitioner has already been dismissed by this Court on merit, this

discussion would be confined to application for bail on statutory ground of delay in conclusion of trial. Admittedly, the accused/petitioner, after remaining absconder for quite some time, and declared proclaimed offender on 10.11.2011, was arrested on 20.02.2013; and is behind the bars, ever since. Supplementary challan against him was submitted on 26.02.2013, whereupon cognizance was taken by the learned trial Court and a formal charge was framed against the accused/petitioner, for the first time, on 11.07.2013, meaning thereby the accused/petitioner is facing the rigours of trial, latest, since 11.07.2013, during which only four official witnesses could be examined by the learned trial Court, leaving the other material witnesses including the complainant and eye witnesses yet to be examined, who never appeared for recording their statements on a single date till application for post

arrest bail was moved on statutory ground of delay in conclusion of trial, but even then statement of complainant and other private PWs could not be recorded due to non-availability of Mr. Maqbool Hussain, Advocate, representing the co-accused and not because of absence of counsel for the accused/petitioner or due to his request for adjournment. It may also be mentioned here that even on 21.01.2017, the eye witness namely Fazil was not shown present along with complainant. Anyhow, the other successive order sheets since 11.07.2013 are replete with instances of adjournments due to absence of PWs or reasons not attributable to the accused/petitioner, who was all along in custody; barring few exceptional adjournments on the request of defence but even on those dates the material prosecution witnesses were not present for recording their statements on a single date. Needless to say that other reasons

for adjournment like note reader and non production of the accused/petitioner from jail and abscondance of the co-accused cannot serve as a ground for refusal of bail to the accused/petitioner on statutory ground of delay in conclusion of trial. In short, delay in conclusion of trial cannot be attributed to the accused/petitioner, rather the prosecution is to mainly share blame for such delay. In such a situation, the accused/petitioner has been able to make out a case for post arrest bail on the statutory ground of delay in conclusion of trial, notwithstanding his absconsion for quite some time, as apart from considerable delay in conclusion of trial for the past more than three years, there appears no likelihood of conclusion of trial in the near future keeping in view number of prosecution witnesses and failure on the part of the prosecution to ensure their attendance during the aforesaid period.

{2015 SCMR 1696, 2000 MLD 1061

**(Peshawar), and 2012 YLR 477
(Sindh)}.**

5. Therefore, the application is accepted, and the accused/petitioner, is admitted to bail subject to his furnishing bail bonds in the sum of Rs.100000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, Haripur.

Announced.
08.03.2017

J U D G E