SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Muhammad Ali Mazhar

Criminal Petition No.1072/2021
(Against the order of Islamabad High Court, Islamabad dated 08.12.2020 passed in Crl.M No.677-B of 2021)

Shakeel Shah

.....Petitioner(s)

Versus

The State, etc

.....Respondent(s)

For the petitioner(s): Raja Ikram Ameen Minhas, ASC.

For the complainant: Mr. Israr-ul-Haq, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the State: Sub-Inspector Mehboob Hasan
ASI Ishaq.

Date of hearing: 04.10.2021

ORDER

Syed Mansoor Ali Shah, J.-

Crl.M.A No.1276/2021: For the reasons given in the application, the delay in the filing of this criminal petition by the petitioner, an imprisoned person, is condoned. (See *Arshad Nadeem v. State*[1]).

Criminal Petition No.1072/2021:

2. The petitioner seeks leave to appeal against the order dated 14.07.2021 passed by the Islamabad High Court, whereby post-arrest bail on the statutory ground of delay in the conclusion of the trial, has been denied to him in case FIR No.399 registered at Police Station Sabzi Mandi, Islamabad for offences punishable under sections 392 and 411 read with section 75 PPC. The High Court observed that the delay in the conclusion of the trial was caused by the petitioner and that the petitioner having been previously convicted for other offences was a hardened, desperate and dangerous criminal.

[1] Criminal Petition No.408-L/2021 decided on 13.7.2021

3. We have heard the learned counsel for the parties and have examined the record of the case with their able assistance. In order to examine the legality of the impugned order, it would be useful to first examine the extent and scope of the right of an accused to bail on the statutory ground of delay in conclusion of the trial under the third proviso to section 497(1), Cr.P.C. The said proviso and the related fourth proviso to section 497(1) Cr.P.C. are reproduced hereunder for ready reference and convenience:

> 497. **When bail may be taken in case of nonbailable offence.**
>
> (1).....
> Provided .....
> Provided .....
>
> Provided further that the Court shall, except where it is of the opinion 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 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 petitioner is charged with offences punishable under sections 392 and 411 PPC, which are not punishable with death; his bail plea is, therefore, covered by part (a) of the third proviso to section 497(1) Cr.P.C. The above provision envisages that in an offence not punishable with death,[2] the trial of the accused is to be concluded within a period of one year from the date of detention of the accused, and in case the trial is not so concluded, the law mandates the release of the accused on bail. The accused, thus, has a statutory right to be released on bail if his trial for such offence is not concluded within a period of one year from the date of his detention. The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused and it is of little importance as to when the charge is framed and the trial commenced. The purpose and objective of the provision is to ensure that the trial of an accused is conducted expeditiously and the pre-conviction detention

[2] where the offence is punishable with death, the period for conclusion of the trial is two years.

of an accused does not extend beyond the period of one year, in cases involving offences not punishable with death. In such cases, if the trial of an accused is not concluded within a year of his detention, the statutory right to be released on bail ripens in his favour.

4. This statutory right to be released on bail is, however, subject to two exceptions: one is embodied in the third proviso itself and the second is provided in the fourth proviso. As per these exceptions, the right to be released on bail on the ground of delay in conclusion of the trial is not available to an accused if: (i) the delay in conclusion of the trial is occasioned by an act or omission of the accused or by any other person acting on his behalf, or (ii) the accused is a convicted offender for an offence punishable with death or imprisonment for life or is in the opinion of the court a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

Delay in conclusion of the trial if occasioned by an act or omission of the accused or by any other person acting on his behalf.

5. The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso. The statutory right to be released on bail flows from the constitutional right to liberty and fair trial under Articles 9 and 10A of the Constitution. Hence, the provisions of the third and fourth provisos to section 497(1) Cr.P.C must be examined through the constitutional lens and fashioned in a manner that is progressive and expansive of the rights of an accused, who is still under trial and has the presumption of innocence in his favour. To convince the court for denying bail to the accused, the prosecution must show, on the basis of the record, that there is a concerted effort on the part of the accused or

his counsel to delay the conclusion of the trial by seeking adjournments without sufficient cause on crucial hearings and/or by making frivolous miscellaneous applications.

6. In the present case, the petitioner was arrested on 21.01.2020 and the charge against him was framed on 08.12.2020. He moved the application for bail on statutory ground of delay in January, 2021. The order sheet of the period commencing from 08.12.2020, the date of framing charge, till the date of his filing the application for bail does not reflect any design, pattern or concerted effort on the part of the accused to delay the conclusion of the trial. The adjournments mentioned in the impugned order are after the lapse of the first year of detention of the accused and are therefore of little significance, besides the impugned order does not discuss whether the said adjournments were on crucial dates and without sufficient cause.

The accused, a hardened, desperate or dangerous criminal, in the opinion of the Court

7. The second exception to the right of the accused to be released on bail on the ground of delay in conclusion of the trial is provided in the fourth proviso. According to which the provisions of the third proviso do not apply to the accused who is:

(i) a convicted offender for an offence punishable with death or imprisonment for life; or

(ii) a hardened, desperate or dangerous criminal, in the opinion of the Court; or

(iii) an accused of an act of terrorism punishable with death or imprisonment for life.

Conditions (i) and (iii) are self-explanatory and must be borne out from the record. Under condition (i), the accused must have been earlier convicted by a court of law for an offence punishable with death or imprisonment for life. Under condition (iii), the accused must be accused of an act of terrorism punishable with death or imprisonment for life. It is condition (ii) which requires the Court to apply its judicious mind to the facts and circumstances of the case and make an opinion as to whether or not the accused is a hardened, desperate or dangerous criminal. The words *hardened, desperate or dangerous* have been couched in between conditions (i) and (iii) and therefore signify the same sense of gravity and seriousness as to the nature of the offence and character of the accused.

The principle that the meaning of a word is recognized by its associates is traditionally expressed in the Latin maxim *noscitur a sociis.* A word or phrase in an enactment must always be construed in the light of the surrounding text, and their colour and meaning must be derived from their context.[3]

8. Further, the words *hardened, desperate or dangerous* are to be understood collectively. The *ejusdem generis* principle is a principle of constriction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character.[4] For the said principle to apply, there must be sufficient indication of the category or word that can be properly described as the class or genus, which is to control the general words. The genus must be narrower than the general words it is to regulate[5]. Applying this principle to the phrase *a hardened, desperate or dangerous criminal,* it is the word *dangerous* which not only meets the requirements of conditions (i) and (iii) discussed above, it is also precise and narrow in order to regulate the meaning of the other two words. "Dangerous" means harmful, perilous, hazardous or unsafe – someone who can cause physical harm or injury or death.[6] "Hardened" is someone who is pitiless, hardhearted, callous or unfeeling and set in his bad ways and no longer likely to change,[7] having a tendency of repeating the offence and is, thus, dangerous to the society. "Desperate" is someone who is reckless, violent and ready to risk or do anything;[8] such person is, therefore, also dangerous to society. All the three words paint a picture of a person, who is likely to seriously injure and hurt others without caring for the consequences of his violent act. Therefore, for this exception to apply, there has to be material to show that the accused is such a person who will pose a serious threat to the society if set free on bail. In the absence of any such material, bail cannot be denied to an accused on the statutory ground of delay in conclusion of the trial. (*See Moundar v. State PLD 1990 SC 934*)

8. In the present case, the earlier convictions of the petitioner passed in the years 2004-2005 do not fall under the offences mentioned

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[3] Bennion on Statutory Interpretation. 7th edition. p. 459.
[4] Ibid. p. 554
[5] ibid. p. 557
[6] Cambridge Dictionary, Shorter Oxford English Dictionary & Dictionary.com
[7] ibid
[8] ibid

in the fourth proviso to section 497(1) Cr.P.C., i.e., an offence punishable with death or imprisonment for life. Further, according to the prosecution, there has been no criminal case registered against the petitioner since 2005, which shows that for the last fourteen years, he has had no criminal record. Even otherwise, he has served out his sentences under the earlier convictions and even the nature of the said offences are not such as to indicate that he is a hardened, desperate or dangerous criminal who can pose a serious threat to the society at large if released on bail, nor do the facts and circumstances of the present case give such indication.

9. We have, therefore, come to the conclusion that the delay in concluding the trial of the petitioner beyond the period of one year from the date of his arrest/detention has not been occasioned by an act or omission of the petitioner or any other person acting on his behalf, and that in the facts and circumstances of the case the accused does not appear to be a hardened, desperate or dangerous criminal. The petitioner has, thus, made out a case for grant of bail as a matter of right under the third proviso to section 497(1) Cr.P.C. The High Court has failed to correctly appreciate the scope of the third and fourth proviso to section 497(1) Cr.P.C in the light of the fundamental rights guaranteed by the Constitution. This petition is, therefore, converted into appeal and allowed: the impugned order is set aside, the application of the petitioner for grant of post arrest bail is accepted and he is admitted to post-arrest bail subject to his furnishing bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the trial court.

10. Foregoing are the reasons for our short order dated 04.10.2021, which is reproduced hereunder for completion of record:

> For reasons to be recorded separately, this petition is converted into an appeal and allowed. Resultantly, the petitioner is admitted to bail subject to furnishing bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the trial Court, with further directions to the trial Court to proceed with the trial expeditiously and conclude the same at the earliest.

Judge

Islamabad,
04th October, 2021.
Approved for reporting
Sadaqat

Judge