

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Muhammad Ali Mazhar

Criminal Petition No.1496 of 2022

Against the order dated 24.10.2022 passed by Lahore High Court, Multan Bench, Multan in CrI.Misc.2448-B/2022

Shahbaz Akmal

...Petitioner

Versus

The State through Prosecutor General Punjab,
Lahore and another

...Respondents

For the Petitioner:

Mr. Shakir Ali, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Ch. M. Sarwar Sidhu, Addl. PG Pb.

For respondent No.2:

Mr. Usman Sharif Khosa, ASC

Date of Hearing:

05.01.2023

ORDER

Qazi Faez Isa, J. Through this petition for leave to appeal the petitioner seeks bail in a murder case which was registered on 9 April 2018 at police station Gulgasht, Multan through FIR No. 246/18.

2. The learned counsel representing the petitioner states that the petitioner was arrested on 17 May 2018 and remains detained continuously since then and, by referring to clause (b) of the third proviso of section 497 of the Criminal Procedure Code, 1898, submits that the petitioner is now entitled to bail because his trial has not concluded within a period of two years (as mentioned the cited provision) and the delay is not occasioned by the petitioner. He further submits that the High Court on 23 June 2020 had directed the Trial Court to conclude the trial preferably within three months, but the trial has not concluded despite the passage of four years and seven months since the petitioner's arrest and over two years and six months since the said direction was issued.

3. We had sought a report from the Trial Court to understand why the trial had not concluded and the report submitted by the learned Additional Sessions Judge, Multan, who is conducting the trial,

mentions a number of reasons, including strikes by lawyers and the absence of some of the co-accused (who are on bail).

4. The learned counsel representing the complainant and the learned Additional Prosecutor General, Punjab ('**APG**') who represents the State submit that the ground of statutory delay, on the basis of which bail is sought, is no longer available to the petitioner because two years of his detention completed on 17 May 2020 whereas the petitioner's bail application (Cr. Misc. Application No. 4650-B of 2020) was withdrawn thereafter from the High Court, on 23 June 2020. Therefore, bail on the said ground of statutory delay cannot be sought in view of the judgments of this Court in the cases of *Nazir Ahmed v The State*¹ and *Muhammad Aslam v The State*.² However, both the complainant's learned counsel and the learned APG assured the Court that no unnecessary adjournment will be sought during the trial.

4. In the cited case of *Nazir Ahmed* (a judgment by a three-Member Bench of this Court) it was held that another bail application on the same ground cannot be repeated before the same court. And, if a bail application is withdrawn during the subsistence of a ground on which bail is sought it cannot be taken again if the bail application was withdrawn. The said decision was endorsed in the case of *Muhammad Aslam* (a judgment by a five-Member Bench of this Court). Therefore, the ground of statutory delay is no longer available to the petitioner and to such extent this petition is not maintainable.

5. However, we cannot be unmindful of the fact that the petitioner is suffering through no fault of his own and that the direction of the High Court, to conclude the trial, has in effect been rendered meaningless. A detained accused must not be made to suffer because his advocate elects to strike or does so in solidarity with his colleagues. The Pakistan Bar Council has enacted the 'Canons of Professional Conduct and Etiquette of Advocates' which stipulates that, '*It is duty of the Advocates to appear in Court when a matter is called*'³ and '*make satisfactory alternative arrangements*' if he is unable to. The advocate representing an accused must discharge his duty towards his client. Every relationship functions on the basis of trust,

¹ PLD 2014 Supreme Court 241.

² PLD 2015 Supreme Court 41.

³ Pakistan Legal Practitioners and Bar Council Rules, 1976, rule 166, Gazette of Pakistan, Extraordinary, 22 May 1976.

and when trust is broken the relationship flounders and unravels, which also has societal repercussions.

6. The Constitution of the Islamic Republic of Pakistan ('**Constitution**') commences by stating that the exercise of authority *is a sacred trust*. If an advocate representing a detained accused does not attend court he fails to perform his professional duty and breaks his client's trust. An accused person like any other has the *inalienable right* to '*enjoy the protection of law and to be treated in accordance with law*⁴ but if advocates strike and trials are postponed this constitutional right of the accused is negated. The Constitution also mandates that '*no action detrimental to the ... liberty*⁵ of anyone be taken '*except in accordance with law* therefore, if the trial of a detained accused is delayed on account of strike(s), and subsequently, the accused is acquitted then the additional incarceration suffered by the accused would have been *detrimental to his liberty*. Amongst the designated Fundamental Rights of an accused there is also the right *to a fair trial and due process*⁶ which rights are premised on proceeding with the trial of a detained accused.

7. Lawyers played an extraordinary role in ensuring compliance with the Constitution and the rule of law during the movement launched by them for the independence of the judiciary and for the restoration of judges who had been unconstitutionally deposed (the Lawyers' Movement⁷), which was wholeheartedly supported by civil society. During this movement some superior courts came to be presided over by those who took an oath of allegiance to a dictator (in violation of their constitutional oath of office⁸) or by those who were not appointed in accordance with the Constitution. Therefore, to protect and ensure compliance with the Constitution for the benefit and protection of the people, strikes were called and *courts* were boycotted.

8. However, if an advocate strikes for a lesser or personal reason it would be appropriate to first return the professional fee received from the client. An advocate should not strike at the expense of the client.

⁴ Constitution of the Islamic Republic of Pakistan, Article 4(1).

⁵ Ibid, Article 4(2)(a).

⁶ Ibid, Article 10A.

⁷ March 2007 to March 2009.

⁸ Ibid, Third Schedule.

We also note that at times a case is adjourned because the complaint's advocate is not in attendance. It is clarified that a court does not have to wait for the complainant's advocate to attend court, much less adjourn a case due to his absence, because the State counsel, employed at taxpayers' expense, is required to prosecute cases.

9. Therefore, for the reasons mentioned above this petition is not maintainable, and is dismissed. However, the assurance extended by the complainant's learned counsel and the learned APG, that no unnecessary adjournment will be sought shall be treated as an assurance given to the Trial Court. And, we direct the learned Judge of the Trial Court to conclude the petitioner's trial expeditiously within two months from the date of the receipt of this order. In case the petitioner's trial is not concluded within the said period the learned Judge shall submit an explanation to the High Court, through the Registrar, mentioning the reasons thereof. It is also clarified that the Trial Court is not obliged to adjourn the case of the petitioner if any co-accused or the complainant's advocate is absent. However, if the petitioner's advocate is absent the Court may adjourn the case after informing the petitioner that due to his advocate's absence the case is being adjourned, and if appropriate the Trial Court may appoint another advocate to represent the accused.

10. Copy of this order to be sent to the learned Judge of the Trial Court for information and compliance. Copies should also be sent to all provincial bar councils and the Pakistan Bar Council, who undoubtedly would remind advocates of their professional duties and would ensure that the prestige of the legal profession is not undermined by advocates who strike for a lesser cause than to protect and defend the Constitution in the public interest.

Judge

Judge

Islamabad,
9 January 2023.
Mudassar/[☆]

Approved for reporting