

6

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 519 of 2017.

Date of hearing	Order with signature of Judge
04.12.2017.	

1. For orders on office objections.
2. For hearing of bail application.

Mr. Ashique Ali Jatoi, Advocate for the applicant.

Mr. Ahmed Raza A. Sundrani, Advocate for complainant.

Mr. Aijaz Mustafa Samtio, DDPP.

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Muhammad Saleem Jessar, J: Through this application, applicant Riaz son of Sikander Kandhro seeks post-arrest bail in Crime No.123/2013, registered with P.S Nasirabad (District Kamber-Shahdadkot @ Kamber), for offence punishable under Section 462-B P.P.C.

Learned counsel for the applicant submits that, initially the applicant after his arrest in the aforementioned case was granted bail on merits by the learned trial Court on 28.2.2015 and thereafter he remained absent from the trial Court for some dates of hearing and ultimately after his producing before trial Court by his surety on 07.3.2017, the applicant was taken into custody and remanded to jail and since then he is behind Bars for about 9 months. Per learned counsel the applicant has been sufficiently punished for his absence from the trial Court. In support of his contentions, learned counsel placed his reliance upon case of *Zaheer Ahmed v. The State* (1983 P.Cr.L.J 2600), *Dosoo v. The State* (2003 P.Cr.L.J 933), and case of *Godho alias Muhammad Siddique v. The State* (2012 YLR 2822).

On the other hand learned Advocate for complainant vehemently opposed grant of bail in favor of the applicant on the ground that the applicant after grant of bail has misused the concession and that after completing all the formalities he was declared as proclaimed offender, therefore, he do not deserve any concession as a bonus for his absconsion.



In support of his contentions, learned counsel relied upon case of *Mst. Mastari v. The Noor Nawaz alias Noor Niaz* (1999 P.Cr.L.J 616).

Perusal of record reflects that, initially the applicant was arrested in this case on 13.08.2014 and was sent up to the concerned Court on 21.8.2014. Ultimately, the applicant was allowed bail by learned trial Court on merits and upon furnishing the required surety of Rs.200,000/- he was released on 28.02.2015, then he was attending the trial Court. However, on 17.10.2015 he did not appear before the trial Court and remained absent from the trial Court upto 07.03.2017 when he has surrendered before the trial Court through surety and the trial Court remanded him to jail on same date. Though he was produced by the surety, thus he has surrendered voluntarily before the trial Court.

It is well settled principle of law that mere absconsion does not come in the way to refuse grant of bail, if on merits he deserves the concession of bail. reference can be had from the case of *MITHO PITAFI versus THE STATE* (2009 SCMR 299). The Hon'ble Supreme Court of Pakistan while deciding the bail application of Mitho Pitafi (supra) has held as under:

*"According to F.I.R, neither any role has been attributed to the petitioner nor his presence has been shown at the time of occurrence. Vide order, dated 18.2.2002, co-accused namely Jam Pitafi has been released on bail by the learned trial Court but the concession of bail was declined to the petitioner on the ground that he was fugitive from law. Learned High Court of Sindh as well as learned trial Court has rejected the bail of petitioner on account of absconsion and not on merit. It is well-settled principle of law that bail can be granted if an accused has good case for bail on merit and mere absconsion would not come in way while granting the bail. we are, prima facie, of the view that the learned High Court has not appreciated the facts and circumstances of the case in its true perspective while declining bail to the petitioner.*

*For the foregoing reasons, this petition is converted into appeal and the same is allowed. The impugned order, passed by the High Court of Sindh, is set aside and the petitioner is directed to be released on bail subject to furnishing bail bond in the sum of Rs.2,00,000/- (two*



lacs) and P.R bond in the like amount to the satisfaction of trial Court."

The facts of case of *Mst. Mastari v. The Noor Nawaz alias Noor Niaz*. (1999 P.Cr.L.J 616), are distinguishable and are not applicable with the facts and circumstances of the present case.

Initially, the applicant was granted bail by learned trial Court on merits. However, since date of his re-remand to jail i.e. 07.03.2017, the applicant is in jail. The applicant has sufficiently been punished for his absence before trial Court for 17 months, as he has been behind bars since last 09 months. Moreover, co-accused Abdul Hafeez Tatri and Khair Muhammad Kolachi have also been granted bail by this Court vide Order dated 10.11.2014 in Crl. Bail Appln. No. S- 145 and 194 of 2014, respectively. Reference can be had from the case of *BALOO alias PIYAR ALL versus THE STATE* (2006 P.Cr.L.J 1508).

Accordingly, instant bail application stands allowed. The applicant shall be released subject to his furnishing solvent surety in the sum of Rs.200,000/- (Two hundred thousand rupees) and P.R bond in the like amount to the satisfaction of trial Court.

  
04/12/2017  
JUDGE

Ansari/\*