ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.668 of 2016

Date | Order with signature of Judge

For hearing of Bail Application.

Date of hearing : 15.06.2016

Date of Order : 24.06.2016

Mr. Aamir Mansoob Qureshi Advocate for Applicant

Ms. Rahat Ahsan DPG for State alongwith
Complainant ASI Ghulam Hussain of P.S. Ferozabad, Karachi,
Inspector Ijaz Hussain Mughal CTD, Karachi &
Addl. SHO Akhtar Aziz of P.S. Ferozabad, Karachi

O R D E R

ABDUL MAALIK GADDI, J. By this order, I intend to dispose of criminal bail application, filed on behalf of the applicant Shahryar Hyder alias Salman, arising out of FIR No.860/2009, registered under Section 302/324/353/186/34 PPC with Ferozabad police station, Karachi. The bail plea filed on behalf of applicant was initially dismissed by the learned Ist Additional District & Sessions Judge, Karachi (East) and thereafter, by this Court it was also dismissed vide order dated 11.06.2012. While dismissing the bail plea of the applicant it was observed by this Court as under:-

> *"Learned counsel for the applicant does not press this bail application. However, he prays that directions may be given to the learned trial Court to proceed with the matter expeditiously. Learned A.P.G. has no objection to the request made by the learned counsel for the applicant.*
>
> *In the circumstances of the case learned trial Court is directed to conclude the trial and pass judgment within a period of four months from the date of receipt of this order under intimation to this Court through MIT-II.*
>
> *This Criminal Bail Application is disposed of accordingly."*

2. Subsequently, a second bail application was moved before learned trial Court and that too received the same fate, thereafter, counsel for the applicant has filed present application before this Court for grant of bail on statutory ground of delay in non-conclusion of trial by the trial Court.

3. The brief facts of the prosecution case as per the verbal complaint made by ASI Ghulam Hussain of P.S. Ferozabad in the FIR are as under:-

> *"Today on 05.08.2009, I ASI Ghulam Hussain posted at police station Ferozabad alongwith other official staff/associate-I and ASI Waseem Akhtar alongwith constable Basher Ahmed 14464 via motorcycles were busy in patrolling. When we arrived at Motiwala Jeweler Street, Old Identity Card Office, Block-2, PECHS, Karachi at about 1300 hours, we saw a person, who from his appearance was very much appearing to be a wanted criminal, engaged in robbery and snatching incidents in the area. He was alongwith his other criminals. As such, ASI Waseem Akhtar for the purpose of checking stopped his motorcycle but the accused mentioned above due to the fear of his arrest, opened fire with his 9mm Pistol upon the police party with intention to kill us and to prevent us from performing the official duties. Resultantly, ASI Waseem Akhtar got one of the bullets and fell to the ground after getting seriously injured. The above accused by continuously firing escaped from the scene by foot while the accused left his motorcycle bearing No.KCE-3091, Maker Super Star 125CC, on the spot. As the place of incident was highly covered with general public, therefore, keeping in view the safety of the general public, we the police official could not use our official weapon. ASI Waseem succumbed to the injuries, and died on the spot. Due to the non-cooperation of the*

private witnesses ASI Muhammad Aslam Constable and Basher Ahmed were nominated as witnesses against the absconded accused whose name was later on transpired as Shehryar Haider alias Salman, there was a black hand purse between the meter and handle of the above mentioned motorcycle from which CNIC in the name of abovementioned accused and other items were recovered, which were taken into the custody as per the memo."

4. I have heard learned counsel for the respective parties and perused the material placed on record. It has been argued by learned counsel for applicant that he has not agitated the bail application on merits but only on the ground of statutory delay in non-conclusion of trial within the period of two years; that bail applications of applicant were dismissed by the learned trial Court twice before and thereafter, the first application filed before this Court was disposed of with direction that the trial of the case be concluded within the period of four months but according to him, despite of direction issued by this Court, trial has not been concluded. It has also been argued that applicant was taken into custody on 10.08.2009 and the applicant is regularly attending the Court alongwith his counsel; that almost six years and four months have been passed but the trial has not been concluded; that since the arrest of the applicant, the case has been adjourned due to absence of defence counsel only three dates, however, on the rest of the dates, the proceedings were adjourned either due to absence of the prosecution witnesses, absence of the Presiding Officer due to leave, KBA strikes, absence of Investigating Officer or non-production of the accused by the jail authorities; that as per Gazette of Pakistan dated 21.04.2011, the amendments were made

in Section 497 Act-V 1898 of Criminal Procedure Code, the applicant is entitled to be released on the sole ground of hardship as the applicant is in continuous custody for more than six years and four months; that since the arrest of the accused, in total, 153 dates have been adjourned but only two prosecution witnesses have been examined out of twenty six witnesses as such according to him, as per case diaries available on record, delay, if any, however, is not to be attributed on the part of applicant; that according to record, the applicant neither previous convict nor desperate, dangerous or hardened criminal, therefore, according to him, under the aforementioned facts and circumstances, applicant is entitled for bail. In support of his arguments learned counsel for applicant has relied upon the case diaries available on record and has also reiterated the same facts and grounds which he has urged in the bail application and has contended that it is a fit case of hardship and accused may be granted bail on non-conclusion of trial within the period of two years. In support of his arguments, he has relied upon the case laws, which are as follows:-

i. Muhammad Aslam ..vs.. Nazar Khan reported in 2012 SCMR 138.

ii. Shabeer ..vs.. The State reported in 2012 SCMR 354.

iii. Jamsheed Ali ..vs.. The State reported in 2012 P.Cr.L.J. 1022.

iv. Ghazanfarullah Khan Pathan ..vs.. The State reported in 2012 P.Cr.L.J. 1613.

v. Zameer ..vs.. The State reported in 2012 YLR 477.

vi. Syed Hasnain Raza Zaidi ..vs.. The State reported in 2012 YLR 1496.

vii. Taj Muhammad ..vs.. The State reported in 2011 P.Cr.L.J. 1910.

viii. Ghulam Mustafa ..vs.. The State reported in PLD 2011 Karachi 394.

5. Conversely, learned DPG for the State has vehemently opposed the grant of bail in favour of the applicant on the ground that heinous crime has been committed by the applicant and he is also involved in number of other such like cases. During the course of arguments, she has placed on record the list of twenty four criminal cases against the applicant registered at different police stations through a statement of police Inspector Ijaz Ahmed Mughal, CTD, Karachi. She also argued that in this case, out of twenty six witnesses, the prosecution has examined its two witnesses, who have fully implicated the accused with the crime. She further argued that accused is hardened, desperate and dangerous offender. She further argued that on 10.10.2015 and 1910.2015 when the case was fixed for evidence of PW ASI Aslam, who was the material witness present in trial Court for his evidence but defence counsel was absent shows that the delay in conclusion of trial is clearly on the part of applicant as such he is not entitled for grant of bail even on the statutory ground. In support of her arguments, she has relied upon the case of **Javid-ur-Rehman and another ..vs.. The State** reported in **2010 SCMR 1744**.

6. I have given my anxious thoughts to the contentions raised at the bar and have gone through the case papers available on record.

7. Applicant seeks bail on the ground of statutory delay in non-conclusion of trial within the period of two years, therefore, I have gone through the newly amended provision in Section 497 Cr.P.C., which says that where Court is of the opinion that delay in trial of

the accused has not been occasioned by an act or omission of the accused or any person acting on his behalf, direct that such accused persons be released on bail, who is accused of an offence punishable with death, has been detained for such offence for continuous period exceeding two years and trial has not concluded provided that the above benefit will not be available 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. However, in the case in hand, out of twenty six witnesses, two material witnesses including complainant have been examined. Their evidence are on record, which are self-explanatory. It appears that progress has been made by the trial Court and trial has already been commenced. As far as the delay for non-conclusion of trial within the period of two years is concerned, it is to be noted that on 10.10.2015 and 19.10.2015, although the prosecution witness namely ASI Aslam was present in Court for recording of his evidence but learned counsel for applicant did not appear, as it is evident from the diary sheets maintained by the trial Court, which has been produced for my perusal as such, the delay is also partly attributed to the applicant, which disentitled him to bail on this ground. In the case of **Javid-ur-Rehman & another ..vs.. The State** reported in **2010 SCMR 1744**, although on one date, prosecution witnesses were present in Court but counsel for accused did not appear for recording of evidence, bail was refused by Hon'ble Supreme Court. It is contended by learned counsel for applicant that as per the Gazette of Pakistan dated 21.04.2011, the amendment were made

in Section 497 Act V 1898 of Criminal Procedure Code and cited case pertains to year 2010 could not be applied. Reverting to the contention as raised by learned counsel for applicant, it is suffice to say that the analogy in previous and present amendment in Section 497 Cr.P.C. are almost same, therefore, the cited case law is very much applicable in the circumstances of the case.

8. It is pertinent to mention here that in this case, prosecution has brought on record list of twenty four criminal cases through a statement of police Inspector Ijaz Ahmed Mughal, CTD, Karachi, registered with different police stations against the applicant regarding murder, robbery and keeping of unlicensed weapons so also his involvement in cases of police encounter. Learned counsel for applicant failed to rebut the list of the cases satisfactorily. As per list of the cases brought on record by prosecution, it appears that applicant/accused is a hardened, desperate and dangerous criminal so also involved in number of serious and heinous cases against the public individual and State. The accused has been found to be connected with the commission of offence during investigation. Therefore, the proviso of amended Section of 497 Cr.P.C. does not apply in this case for applicant.

9. As observed above, as many as two witnesses have been examined and progress has been made in the case and trial has also commenced, therefore, without dilating upon the merits of the case, this bail application is dismissed with direction to the trial Court to expedite the proceedings and conclude the same within three (03) months and its compliance report be submitted to this Court through learned MIT-II. It is settled position of law that in criminal administration of justice, each case has to be decided on

its own facts and circumstances and Courts are required to exercise jurisdiction independently. Reliance in this respect is placed on a case of **The State ..vs.. Haji Kabeer Khan** reported in **PLD 2005 Supreme Court 364** and in case of **Muhammad Faiz alias Bhoora ..vs.. The State and another** reported in **2015 SCMR 655**, it has been held as under:-

> *"S. 497(2)---Bail---Case-law cited by counsel for accused in support of bail---Relevance---Precedents in bail matters were of no help to a party, as it varied from case to case depending upon the facts of each case---Court had to examine as to whether accused had made out a case of further inquiry or not."*

As far as citations referred by learned counsel for applicant at bar is concerned, the same have been perused and considered by me but the said citations are distinguishable from the facts of the case in hand.

10. Before parting with the order, I would like to make it clear that the observations made hereinabove are tentative in nature and would not influence to trial Court while deciding the case of applicant on merits.

JUDGE

Faizan/