

Criminal Bail Application No.267 of 2016

Date _____ Order with signature of Judge _____

Present: **Abdul Maalik Gaddi, J.**

1. For orders on M.A. No.6337/2016
2. For orders on M.A. No.1846/2016
3. For hearing of Bail Application.

Date of hearing : 28.06.2016

Date of Order : 01.07.2016

Mr. Muhammad Akbar Khan Advocate for Applicant
M/s. Tariq Qureshi & Saima Advocates for Complainant
Ms. Seema Zaidi APG

ORDER

1. Urgent application is granted.
2. Exemption application is disposed of having become infructuous.
3. Applicant Tauseef Riaz son of Riaz Muhammad seeks post arrest bail in case under FIR No.641/2012 dated 26.07.2012 registered under Section 302/34 PPC at police station Jackson, Karachi.

4. The brief facts of the prosecution case are that complainant Muhammad Amjad on 26.07.2012 stated in his statement under Section 154 Cr.P.C. that on 26.07.2012 his sister Saima proceeded to her job at 0900 hours. He was available at his house. His elder sister informed him by telephone that brother of Tauseef informed her on telephone from village that Tauseef had committed murder of Saima. On such information he alongwith his friend Muhammad Saleem proceeded to the house of Tauseef, situated near Riaz

Hotel, Sultanabad, Karachi and saw inside the house that his sister Saima was lying dead inside the room on ground and her neck was cut out by some sharp edge weapon. He informed the police and shifted the dead body of his sister to Jinnah Hospital by ambulance where postmortem of dead body was conducted. He also nominated the accused Tauseef in his statement for committing murder of his sister Saima at his house by sharp edge weapon due to some unknown reasons. Such statement was later on incorporated in FIR. After investigation case was challaned against the accused Tauseef Riaz in which he was shown as absconder. Thereafter, on 06.09.2013, he surrendered himself before trial Court.

5. After usual investigation, challan was submitted against the accused under the above referred Sections.

6. Bail applications were moved on behalf of applicant/accused before the trial Courts, the same were rejected vide orders dated 04.02.2015 and 19.09.2015, thereafter, the applicant/accused approached this Court for grant of bail on merits as well as on statutory ground of delay in non-conclusion of trial within the period of two years.

7. I have heard learned counsel for respective parties and perused the material placed on record. It has been argued by learned counsel for applicant that the case against the applicant is false and has been registered due to enmity; that it is blind murder case and there is no eye witness of the incident to connect the applicant/accused with the alleged offence and the entire prosecution case is based on surmises and conjectures; that no

incriminating article has been recovered from his possession nor on his pointation; that applicant is in continuous custody since 06.09.2013 but the trial of the case has not been concluded despite of expiry of two years; that as per Gazette of Pakistan dated 21.04.2011, the amendment was made in Section 497 Act-V, 1898 of Criminal Procedure Code to the effect that the accused could only be released on the sole ground of hardship, if the accused is in continuous custody for more than two years but the trial has not been concluded. According to him, as per diary sheets available on record delay, if any, however, is not to be attributed on the part of applicant; that according to record, the applicant is neither previous convict nor desperate, hardened or dangerous criminal, therefore, under the aforesaid circumstances, applicant is entitled for bail. In support of his arguments, learned counsel for applicant has also reiterated the same facts and grounds, which have been urged in the bail application and also cited the following case laws:-

- i. Zaigham Ashraf ..vs.. The State and others reported in 2016 SCMR 18 (Supreme Court of Pakistan).
- ii. Chairman NAB through PGA NAB Islamabad ..vs.. Muhammad Khalid reported in 2016 SCMR 676 (Supreme Court of Pakistan).
- iii. Muhammad Nadeem Anwar and another ..vs.. National Accountability Bureau and others reported in PLD 2008 Supreme Court 645.
- iv. Sher Ali alias Sheri ..vs.. The State reported in 1998 SCMR 190.
- v. Ghulam Sarwar ..vs.. The State reported in 1990 SCMR 1045.
- vi. Nazir Hussain ..vs.. Ziaul Haq and others reported in 1983 SCMR 72.
- vii. Jaggat Ram ..vs.. The State reported in 1997 SCMR 361.

- viii. Shaukat Ali ..vs.. Ghulam Abbas and other reported in PLJ 1997 SC 1426.

8. Conversely, learned APG assisted by learned counsel for complainant has opposed this bail application on the ground that the applicant/accused is nominated in FIR with specific allegations of committing murder of deceased Saima; that out of thirteen witnesses, eight witnesses have been examined, whereas four witnesses have been given up by the prosecution and there left only Investigating Officer of the case to examine in this case, the witnesses examined in this case have supported the prosecution case but this bail application has been filed in order to delay/prolong the conclusion of trial. During the course of arguments, she draws the attention of this Court towards diary sheets maintained by the trial Court available on record showing that during the proceedings before trial Court on number of occasions, when witnesses were present, the case had been adjourned on account of none-appearance of defence counsel to proceed the matter, therefore, according to her, the delay is partly attributed on the part of applicant. In support of her arguments she has relied upon the following case laws:-

- i. Haji Muhammad Siddique and others ..vs.. The State reported in 1993 PSC (CrI.) 1137.
- ii. Muhammad Ismail ..vs.. Muhammad Rafique and another reported in PLD 1989 Supreme Court 585.
- iii. Abdur Rashid ..vs.. The State reported in 1998 SCMR 897 (Supreme Court of Pakistan)
- iv. Sher Ali alias Sheri ..vs.. The State reported in 1998 SCMR 190.
- v. Muhammad Yaqoob alias Qoobi ..vs.. The State reported in PLD 1984 Supreme Court 1.

vi. Mohib Syed ..vs.. The State reported in 2001 P.Cr.L.J 1908.

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

10. On perusal of case papers, it appears that applicant is nominated in FIR with specific allegations that on the day and time of the incident, the applicant/accused had allegedly committed the murder of deceased Saima. This fact has been find supported from the statement of prosecution witnesses recorded under Section 161 Cr.P.C. Nothing on record that prosecution witnesses have any ill will or grudge against the applicant, prima facie shows involvement of the applicant/accused in this case of serious and heinous in nature and the punishment of offence under which present applicant is booked falls under the prohibitory clause of Section 497 Cr.P.C.

11. Applicant also 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 been 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 thirteen prosecution witnesses, eight material witnesses including complainant have been examined. Their evidence are on record, which are self-explanatory. Whereas, the four prosecution witnesses have given up by the prosecution. It appears that substantial progress has been made by the trial Court and there left only evidence of investigation officer of the case. 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 15.03.2014, 29.03.2014, 15.04.2014, 26.04.2014, 10.05.2014, 24.05.2014, 22.07.2014, 13.09.2014, 29.09.2014, 23.10.2014, 26.10.2014, 09.12.2014 and 10.08.2015, although prosecution witnesses were present in Court for recording of evidence but case could not be proceeded on account of non-availability of defence counsel or adjourned at the requests of defence counsel. As per case diaries of trial Court available on record, the adjournment were sought almost on thirteen occasions, which shows that defence was responsible for causing delay in finalization of trial within the period of two years. The intention of law is to see that whether finalization of the trial has taken place on account of the delay caused by the defence. In the case of **Akhtar Abbas ..vs.. The State** reported in **PLD 1982 SC 424**, adjournments were sought on eight occasions and it was observed that all that is necessary to be seen whether the delay in finalization of the trial has, in any manner, been delayed by an act or omission on the part of the prosecution or defence. In the case

in hand, delay was partly attributed to the applicant, which was clear from the diary sheet of the trial Court. Again in another case of **Muhammad Younis ..vs.. The State** reported in **1995 SCMR 1087**, it was held that the defence on four occasions had requested for adjournment and the accused, therefore, was not entitled to concession of bail. Also 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.

12. As observed above, all the material witnesses have been examined in this case. There left only the evidence of Investigating Officer of the case. In these situation, I have gone through the case of **Haji Muhammad Siddique and others ..vs.. The State** reported in **1993 PSC (Crl.) 1137 (Supreme Court of Pakistan)**; in this authority, bail was refused to accused in which the Investigating Officer was only required for evidence. The substantial progress has been made in this case and trial of the accused is near completion, therefore, under the circumstances, deeper appreciation of evidence is not permissible at bail stage. Proper course in such a situation for this Court would be to direct the trial Court to decide the cases within a specified period. Prima facie, there appears reasonable grounds for believing that applicant/accused has committed the alleged offence.

13. For the above stated reasons, bail application is **dismissed**. However, trial Court is directed to decide the case within the period

of two months' time and its compliance report be submitted to this Court through learned MIT-II.

14. 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.

15. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence trial Court while deciding the case of applicant/accused on merits.

JUDGE

Faizan/