

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 975 of 2017

Applicant: Zeeshan @ Shani through Mr.Saathi M. Ishaque, Advocate.
State : Syed Zahoor Shah, D.P.G.
Complainant: Tayyab Ali Shah, son of Complainant.
Date of hearing: 21.07.2017.

ORDER

ADNAN-UL-KARIM MEMON,J: Applicant namely Zeeshan @ Shani is seeking release on bail in F.I.R. bearing No.148/2013 for offence under section 302 P.P.C registered at Police Station Garden, Karachi.

2. Facts of the prosecution case are that on 18.07.2013 Complainant namely Syed Peer Shah, son of Syed Ahmed Shah registered above specified F.I.R. stating therein that his son namely Syed Afsar Shah, aged about 34 years is constable in Police Department and was posted at Security Zone-I, Karachi, in Sindh High Court. Per Complainant on 18.07.2013 after Iftar his son left the house for duty and received injuries as disclosed by one Zahid and was shifted to Civil Hospital, Karachi. Complainant along with his relatives reached Civil Hospital and found that his son was in Operation Theatre and succumbed to his injuries. Per complainant, after inquiry he found out that his son was sitting with his friends namely Waqar Ahmed and Ghulam Mustafa for taking tea at Tea-Cabin, near Nishter Road, Shoe Market, near Nagori Milk Shop; that at about 8.30 pm all of sudden one person came and caused knife blows to his son on right side of his neck, who fell down. Per Complainant Zeeshan alias Shani, son of Suleman @ Chachoo (Applicant) caused fatal injuries to his son which resulted in his death. Thereafter, Complainant lodged above mentioned FIR.

3. Investigation Officer recorded statements of eye witnesses under Section 161 and 164 Cr.P.C. prepared Mushirnama of place of incident, arrested Applicant on 01.08.2013 and recovered knife, obtained Chemical Report of recovered Article and submitted Charge Sheet against Applicant before learned Judicial Magistrate on 22.08.2013. The Applicant moved Bail Application No.992 of 2013 in the court of learned VIII-Additional Sessions Judge, Karachi, South,

who dismissed the same vide Order dated 25.04.2017. Hence, the Applicant has approached this Court through instant Bail Application.

4. Mr. Saathi M. Ishaque, learned counsel for Applicant at the very outset, states at the bar that he does not intend to argue the instant bail application on merits but, is pressing the same on the ground of statutory delay. He contended that FIR was lodged on 19.07.2013; Applicant was arrested on 01.08.2013; that Challan was submitted on 22.08.2013 after delay of 34 days with the list of 13 prosecution witnesses; that charge was framed on 04.01.2014 and since the arrest of Applicant only P.W-1 namely ASI Akbar Ali has been examined; that Applicant is neither previously convicted nor involved in any other criminal case; that there is no role of Applicant in delay of the trial; that it is prosecution which has caused inordinate delay in conclusion of the case. He lastly prays that this is a case of hardship therefore; Applicant is entitled to concession of bail on statutory ground. Learned counsel in support of his contention has produced certified true copies of case diaries of the learned trial court, with effect from 2.8.2013 to 9.5.2017 and emphasized that applicant has not sought adjournments in the case in the trial court to cause delay in conclusion of the trial.

5. Mr. Zahoor Shah learned D.P.G. has opposed grant of bail on statutory ground. He emphasized that Applicant was nominated for murder of police constable namely Syed Afsar Shah; that Applicant was fully implicated by eye witnesses in 164 Cr.P.C. statements; that recovery has been made from the Applicant; that Chemical Examination Report of recovered knife is positive; that medical evidence supports the prosecution case; that there is nothing on record which could suggest or indicate false implication of Applicant in the present crime. He further added that there is no delay on the part of prosecution therefore; Applicant is not entitled to concession of bail on statutory ground.

6. Tayyab Ali Shah (son of Complainant) present in person states that his father who lodged the instant FIR died on 25.03.2016. Therefore, he adopts the arguments of learned DPG.

7. I have heard learned counsel for Applicant, learned D.P.G for the State as well as son of Complainant and perused the material available on record.

8. I am conscious of the fact that while deciding a bail application this court has to make tentative assessment of the record. In this regard I am fortified by the decision of Honorable Supreme Court of Pakistan rendered in the case of Shahzad Ahmed vs. The State (2010 SCMR 1221).

9. Tentative assessment of record reflects the following aspects of the case:

- (i) That the alleged incident took place on 18.07.2013, Applicant was arrested on 01.08.2013 and charge was framed by the learned Trial Court on 04.01.2014.
- (ii) Prosecution produced list of 13 witnesses and only one witness that is, P.W-1 ASI Ali Akbar has been examined on 02.03.2017 since framing of the charge.
- (iii) Case diaries of the learned trial court, with effect from 2.8.2013 to 9.5.2017 of Sessions Case No.992/2013 explicitly show that delay in conclusion of trial is not attributed, as a whole, on the part of Applicant.
- (iv) As per record, the Applicant is behind the bars since his arrest on 01.08.2013, without conclusion of trial in time.

10. I have noted that Applicant is in jail since 4 years, while conclusion of the trial is not in sight in near future because the prosecution witnesses are not turning up in spite coercive process has been issued against them. The applicant cannot be deprived from timely disposal of trial without any plausible justification. In such circumstances, keeping the Applicant in jail for an indefinite period shall not serve the purpose of justice. Besides, case of the Applicant falls within the ambit of section 497(1) Cr. P. C. I am fortified by the decision rendered by the Hon'ble Apex Court in the case of Imtiaz Ahmed vs. The State (2017 SCMR 1194).

11. I am of the view that timely and fair trial is statutory right of every accused who should not be deprived of same because of deliberate delay caused by complainant party or any act or omission of the Court. It is well settled that inordinate delay in commencement of a trial amounts to abuse of process of law.

12. In view of above facts, circumstances and law the Applicant has made out a case of bail on the ground of statutory delay. Accordingly, Applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.200, 000/-(Rupees two lacs only) and PR bond in the like amount to the satisfaction of Trial Court.

13. The above findings are tentative in nature which shall not prejudice the case of either party during the trial.

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