

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 112 of 2020

Khawar Burni.....Applicant

Versus

The State.....Respondent

Criminal Bail Application No. 604 of 2019

Abdul Rehman.....Applicant

Versus

The State.....Respondent

Criminal Bail Application No. 438 of 2018

Hammad Khan.....Applicant

Versus

The State.....Respondent

Date of Hearing :- **29.07.2020**

M/s. Aamir Mansoob Qureshi & Iftikhar Ahmed Shah,
advocates for applicants in BA 112/2020 & 438/2018

Mr. Muhammad Hanif Samma, advocate for applicant
in BA 604/19

Mr. Muhammad Hatif Khudai Ansari,
advocate for complainant

Mr. Sagheer Abbasi, APG for the State

ORDER

Fahim Ahmed Siddiqui, J: I consider that it will be appropriate to dispose of all the captioned bail applications with this single order, as all of them pertain to the same criminal case and based on the same facts. Amongst the applicants, applicant Hammad Shah (B.A. No. 438/2018) is

present in Court on interim anticipatory bail, which is fixed for final disposal while the remaining applicants are confined in jail and intend to get themselves releases on bail during the trial. In this case, the criminal law was put in motion by reporting the incident at Police Station Sahil through F.I.R. No. 122/2017 lodged u/s 302, 324, 397, 427 & 34 PPC. The matter was reported to police by one Fahim Ahmed Zubairi who is the father of Zafir Zubairi (deceased), who died in the alleged incident.

2. I have heard the arguments advanced and have gone through the available records with the assistance provided by the learned officers of the Court appearing for the respective parties. From whatever articulated or placed before me, I have gathered the following annotations.

(a). The allegations against the applicant Khawar Burni are that he had made a straight fire upon the deceased and injured persons, while the rest of the applicants have also provided assistance to the main accused and also caused injuries to the victims. The allegations against the other applicants are that they are in association with the principal accused Khawar Burni and also caused injuries to the deceased and others while the injured have already received firearm injuries.

(b). The motive of the incident is a collision between the victims' car and the motorbike of applicant Khawar Burni, which, at the respective time, was driven by one Abdul Rahim alias Doctor.

(c). The bail applications of the applicants Khawar Burni and Abdul Rehman were already declined on merits and the present bail plea for them is raised on the ground of statutory delay.

(d). Albeit, the bail pleas of applicants Abdul Rehman and Khawar Burni were declined on merits but this fact needs not

to be considered as the present bail applications for them are solely on the ground of statutory delay.

(e). It reflects from the records that the applicants were arrested in this case, in the first week of December 2017 and since then they are in custody.

(f). From the diary sheets, it reflects that the accused in custody have sought adjournment on different dates of hearing but there are only a few adjournments on behalf of the principal accused Khawar Burni.

(g). It also reflects from the records that all the accused persons are friends, as such it appears that the adjournments were sought by co-accused with a scheme and planning to surpass the statutory period.

(h). The collaborative scheme of delay is also manifested from the response of the learned Counsel for applicant Khawar Burni to a query. He frankly retorted that his client did not seek transfer of case when the trial Court became vacant just because he intended to surpass the statutory period of delay.

(i). From the diary sheet, it reflects that after examination of the complainant, on behalf of the principal accused, the efforts of trial Court were hampered by requesting to examine the learned Judicial Magistrate preceding to the other witnesses.

(j). It is a practice in the criminal trial that the Magistrate comes after examination of the material witnesses. Besides, the order of examination of witnesses cannot be set as per wishes and whims of a party but according to Article 130 of the Qanoon-e-Shahadat Order; it will be decided as per practice, law, or under the discretion of the Court.

(k). By making such maladroit requests on behalf of the applicant Khawar Burni regarding the order of examination of witnesses, the said applicant has added some extra days towards the line of disposal of the case.

(l). For deciding whether the accused occasioned delay in the trial, it is not necessary to count and consider entire docket and segregate such dates to calculate the days of delay with mathematical precision. The overall act and conduct of the accused persons to frustrate trial through a planned and predetermined scheme are sufficient to divest them.

(m). Although, the statute has given a right under the Third Proviso of Section 497(1) of CrPC; but the Fourth Proviso is a controlling proviso, which prevents from pervasive misuse by zealous judicial vigilance at the time of extending benefit under the Third Proviso by using a frightening expression as “desperate or dangerous criminal”.

(n). The jail authorities have stated that the conduct of the principal accused is satisfactory during his confinement but his conduct is to be seen in whole especially during the commission of offence.

(o). There is evidence on the records regarding the conduct of applicants, which is sufficient to say that the applicants are desperate. The applicants are desperate in the sense that during alleged incident, reportedly, they were extremely rash and acted without any regard for the consequences of their actions. Any person who comes out in such a state of mind that he readily resorts to beating those who do not act according to his wishes and desires and commits mischief is

certainly a person desperate and dangerous to the community.

(p). So far as to the case of co-accused Junaid is concerned, whom bail has been granted by the Hon'ble Supreme Court, I am of the view that his case is distinguishing and squirrely covers under further probe. The Hon'ble Supreme Court while extending bail to co-accused Junaid Shah has observed as:

“The petitioner had been implicated in this case on the basis of exculpatory confessional statement made by a co-accused namely Abdul Rehman. The evidentiary value of such an exculpatory confessional statement made by the said co-accused vis-à-vis the role of the petitioner shall be attended to by the trial court during trial.”

(q). Because of the aforesaid observation of the Hon'ble Supreme Court, it can be said that the case of applicants Khawar Burni and Abdul Rehman is completely distinguishing to the case of Junaid Shah as his case was on different footings.

(r). The exculpatory confession of applicant Abdul Rehman is sufficient to corroborate the identification and complainant's version in respect of the happening of incident and part assigned to applicant Abdul Rehman.

(s). Nevertheless, the case of applicant Hammad Khan is fairly identical to the case of co-accused Junaid Shah besides he is continuously in attendance since getting interim relief, while a plea of juvenility at the time of the

commission of the alleged offence is also raised in his favour.

3. Ergo, keeping in view of the above annotations, I am confident to hold that applicants Abdul Rehman (BA # 604/2019) and Khawer Burni (BA # 112/2020) are not entitled to bail even on statutory delay ground, while a case of anticipatory bail has been successfully made out in favour of applicant Hammad Khan (BA # 438/2018).

4. I would like to add further that the speedy disposal of a criminal case is the right of the accused and victim both. There are several factors in the delay of this case amongst them some have been highlighted in the foregoing paragraphs. However, to avoid further delay, I consider it appropriate to entrust this case to a Model Court for Criminal Trial (MCTC) after withdrawing the same from the present trial Court. I, therefore, direct the learned Sessions Judge, Karachi South to immediately withdraw the instant Sessions Case (S.C. No. 127/2018) and to entrust the same to any MCTC in his sessions division, having jurisdiction while the transferee Model Court is directed to make sure that the instant case should be disposed of as soon as possible preferably within two months from the date of receipt of this order. The jail authorities are directed to produce the UTPs of this case before the said Model Court on every date of hearing without fail.

5. The upshot of the entire above discussion is that the post-arrest bail applications of applicants Khawar Burni (BA # 112/2020) and Abdul Rehman (BA # 604/2019) are declined while interim-anticipatory bail of applicant Hammad Khan (BA # 438/2018) is confirmed on the same terms and conditions.

J U D G E