ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No.S-09 of 2021

Applicant:	Saddam Hussain, through Mr. Ubedullah Ghoto, Advocate.
Complainant:	Muhammad Ayoub, through Mr. Amanullah g. Malik Advocate.
The State:	Through, Syed Sardar Ali Shah Rizvi, DPG.
Date of hearing:	**14.06.2021**
Date of Order:	**14.06.2021**

O R D E R

Khadim Hussain Tunio, J.- Through instant application under Section 497, Cr.P.C, applicant Saddam Hussain son of Muhammad Essa Khoso seeks post-arrest bail in Crime No.126/2019, registered with Police Station Pano Aqil, for offences punishable under Sections 324, 506/2, 337-H(ii), 504 PPC

2. It is alleged that the applicant is nephew of the complainant and was pressing the complainant and his brother for transfer of their properties in his favour and issued threats of dire consequences. On the fateful day applicant came at the shop of complainant party made straight firing at injured PW Haji Abdul Qayyum who received fire arm injuries, who was referred to the hospital then case was registered.

3. Learned counsel for applicant emphasized on the ground that the applicant, who was arrested on 29.09.2019 is languishing in jail; that the charge has been framed on 11.12.2019; that the applicant was not produced by the jail authorities due to COVID-19; that the PWs did not appear on many dates of hearing; that the trial has not been concluded as yet; that the matter is lingering on and there is no possibility of disposal of case in near future; that the delay in conclusion of trial is on the part of applicant, therefore, per learned counsel, the applicant is entitled for concession of bail.

4. Conversely, learned DPG assisted by learned Advocate for complainant, vehemently opposed the grant of bail to the applicant, *inter alia*,

on the grounds that he is nominated in promptly lodged F.I.R with specific role of attempt to commit the murder of injured PW Haji Abdul Qayyum brother of the complainant and the medical evidence fully supports the ocular version. Learned counsel for complainant has further contended that the bail plea applicant/accused has been declined by the learned trial court as well as by this court on merit; that the applicant is responsible for causing delay in conclusion of trial, therefore, he is not entitled for concession of bail.

5. I have heard learned counsel for the applicant, complainant and learned DPG for the state and perused the record.

6. So far the ground of hardship and/or delay in conclusion of trial is concerned, it is a matter of record that bail application filed by the applicant before this Court has been dismissed by this court. It appears that the charge has been framed in the matter on 11.12.2019 and PWs were attending the trial court regularly, more particularly i.e. but their evidence could not be recorded due to adjournment sought by the learned defence counsel; that out of 08 witnesses, the evidence of complainant and PW Haji Abdul Qayyum has been recorded and two PWs have been given up by the prosecution and only evidence of three witnesses i.e mashir, medico-legal officer and investigating officer is yet to be recorded by the trial court. More so, the delay in conclusion of trial is attributed on the part of applicant as the application u/s 540 Cr.P.C for recalling of the witnesses has been filed on behalf of the applicant and matter has been adjourned at the request of counsel for the applicant which was later on withdrawn by the learned defence counsel. The adjournments obtained by the complainant party are excluded even then the applicant is responsible for delay in conclusion of the trial. It has been held in case law reported in ***Farrukh Qadri v The State (2006 P.Cr.L.J 1256)*** which reads as under:

> *"When the 3rd and 4th proviso to section 497, Cr.P.C. were on the Statute Book, this point was considered by several superior Courts. Pre-dominant view was that if the witnesses appeared on several dates and were not examined, their subsequent absence, shall not justify the release of accused on bail as a matter of right and same principle is still applicable when the bail is not be granted as a matter of right but can be considered on the ground of inordinate delay in disposal of the case."*

7. Hon'ble Apex Court has time and again observed that delay in the conclusion of trial is in no way a ground for grant of bail as held in the case of *Nisar Ahmed v. The State and others* (**PLD 2016 Supreme Court 11**). The

Division Bench of this Court has also been pleased to observe in Criminal Bail Application No. D- 817 of 2001 Re: *Muhammad Nawaz alias Deno & another* Vs. The State that *It needs to be clarified that indulgence shown by the superior Courts by issuance of such directions for the trial Court to conclude cases within some specified period are only meant / aimed to expedite proceedings of the cases against the accused and not to arm them with so-called new ground for bail in case of non-compliance of such directions, as vehemently argued by Mr. Muhammad Ayaz Soomro. It will be seen that such a concept is totally alien to any statutory provision. Learned counsel, when asked to refer any provision of law in this context also failed to do so. As observed above in the cases referred by learned counsel also the question of grant of bail to an accused was taken into consideration on the principle of hardship, with reference to the nature of the offence and the period for which accused had remained in custody without conclusion of trial and not merely due to non-compliance of earlier directions.* Similar point was again considered and decided by this Court in case of *Abdul Qadir Sahar v. The State* (**SBLR 2004 Sindh 785**), wherein it was observed as under:

> "*In the first instance it was argued that failure to get the trial concluded within the period of two months undertaken in C.P. No. D- 739/2003 itself entitled the petitioner to bail. We regret we are unable to agree. It is well settled that such directions could only be treated as directory. In any event the order itself states that upon expiry of the said period the petitioner may be able to apply for bail. It does not state that the petitioner shall acquire a right to be enlarged on bail*."

12. Accordingly, the instant bail application being without substance stands dismissed. The system of law can work properly if all the stake-holders perform their duty properly and with due diligence. However, the trial Court is directed to pace-up with the case and record statement of witnesses keeping in view the convenience of the prosecutor and defence Advocates. The trial Court shall not issue warrants of arrest of the witnesses for the time being, to procure their attendance. The prosecution and defence are not supposed to test patience of the witnesses and when they lose it then start claiming concession. If the witnesses attend the proceedings in trial Court on several dates and thereafter remain absent on one or two dates then it is not desirable to issue their warrants. In case of failure, the learned trial Court is directed to submit a detailed report with reasons for non-compliance of the directions of this Court through Additional Registrar for perusal of the Court. It is further ordered that,

if any of accused creates hindrance to proceed with case, the trial Court may appoint counsel on State expenses and proceed with the matter.

JUDGE