

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 129 of 2022

Applicants : (1) Muhammad Hassan s/o Aftab Alam and
(2) Talha Hassan s/o Mehmood Hassan, through
Mr. Tariq Mehmood A. Khan, advocate

Respondent : The State, through Ms. Rahat Ehsan, Additional
Prosecutor General.

Date of hearing : 25.05.2022
Date of order : 25.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through this application applicants/accused Muhammad Hassan s/o. Aftab Alam and Talha Hassan s/o. Mehmood Hassan seek post-arrest bail in Crime/F.I.R. No. 305/2020, registered at P.S. Landhi, Karachi under sections 365, 377, 511, 292-C, 367-A, 34 P.P.C. read with sections 21(b), (c) & (d), 21(2) of Prevention of Electronic Crimes Act, 2016.

2. It is alleged that on 17.06.2020 at about 7:00 p.m. at an unknown place applicant Muhammad Hassan put his penis into the mouth of victim Muhammad Abdullah, while applicant Talha recorded such video clip and then they made it viral.

3. First applications of the applicants seeking pre-arrest bail bearing No. 3006 & 3015 of 2020 were dismissed by the learned Additional Sessions Judge-VII, Karachi-East, vide order dated 04.09.2020, whereafter they filed second application i.e. Cr. Bail Application No. 1413/2020 before this Court and vide order dated 17.09.2020 they were admitted to interim pre-arrest bail; however, later on, vide order dated 22.09.2020, their said bail application was dismissed by recalling interim pre-arrest bail. On 22.09.2020 the applicants were arrested, whereafter they filed third bail application in Sessions Case No. 1683/2020, which was also dismissed by the learned Additional Sessions Judge-VII, Karachi-East, vide order dated 22.04.2021, whereafter they filed fourth application i.e. Cr. Bail Application No.834/2021 before this Court; however, the

same was disposed by this Court vide order dated 30.09.2021, whereby the aforesaid case was transferred to the Court of learned District and Sessions Judge, Karachi-East to try himself or transfer the same to 1st or 2nd Additional District & Sessions Judge of the said district established under Juvenile Justice System Act, 2018. After transfer of the aforesaid case to learned 2nd Additional Sessions Judge, Karachi-East the applicants filed their 5th bail application in the aforementioned case; however, the same was also dismissed by the trial Court vide order dated 24.12.2021; hence, instant application has been filed.

4. Learned counsel for the applicants has contended that the applicants were arrested on 22.09.2020 and since then they are behind the bars; however, the trial has yet not been concluded and the delay in trial cannot be attributed to them; hence, they are entitled for the bail as a right under third proviso to sub-section (1) of Section 497, Cr. P.C. In support of his contentions, learned counsel has placed his reliance on the cases of *Saleem Khan v. The State and others* (PLD 2020 S.C. 356) and *Muhammad Tanveed v. The State and another* (2022 MLD 278).

5. On the other hand, the learned Addl. P.G has opposed this application on the ground that the applicants are involved in a heinous offence, which brings their case within the exception of third proviso to sub-section (1) of Section 497 Cr. P.C.; that three prosecution witnesses, including complainant and victim have been examined, who have fully supported the prosecution case; that the trial is likely to be concluded in near future; hence, applicants are not entitled to the concession of bail on statutory ground of delay.

6. Heard, record perused.

7. It appears from the perusal of record that the alleged offence took place on 17.06.2020, while supplementary challan was submitted by the police against the applicants on 01.01.2020 showing them on bail; however, later on they were arrested by the police on 22.09.2020 and since then they are behind the bars.

8. Third proviso of sub-section (1) of Section 497 Cr. P.C. provides to accused an independent right for grant of bail on the ground of statutory delay in conclusion of trial provided (i) that the delay in conclusion of trial had not occasioned on account of an act or omission on the part of the accused or any person acting on his behalf; (ii) that the accused is not a previously convicted offender for an offence punishable with death or imprisonment for life; (iii) that in the opinion of the Court, the accused is not a hardened, desperate or dangerous criminal; and (iv) that the accused is not involved in an act of terrorism punishable with death or imprisonment for life. Since such right is not left to the discretion of the Court, it cannot be denied under the discretionary power of the Court.

9. It an admitted position in the instant case that the applicants are behind the bars for last about 20 months from the date of their arrest. The charge was framed against them by the trial Court on 20.10.2020 but their trial could not be concluded for want of PWs. The delay in conclusion of trial cannot be attributed to applicants and not a single ground, as discussed above, is available with prosecution to decline the bail to accused on the statutory ground.

10. Accordingly, I allow this application and in result thereof applicants are admitted to bail subject to their furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Lac only) each and P.R. bond in the like amount to the satisfaction of the trial Court.

11. Needless to mention here that if applicant(s) in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

12. Above are the reasons of my short order, dated 25.05.2022.

JUDGE