

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Crl. Bail Application No. 837 of 2022

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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For hearing of bail application

**26-09-2022**

Mr. Farhan Sardar, Advocate for applicant.  
Mr. Altaf Hussain Khoso, Advocate for complainant.  
Mr. Talib Ali Memon, A.P.G.

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**Omar Sial, J:** Hameedullah has sought post arrest bail in crime number 57 of 2020 registered under sections 324, 302 and 34 P.P.C. at the Pak Colony police station. Earlier, his application seeking bail was dismissed on 22.04.2022 by the learned 1<sup>st</sup> Additional Sessions Judge, Karachi West.

2. The aforementioned F.I.R. was registered on 20.03.2020 on the complaint of one Fakir-ul-Islam. The complainant recorded that on 19.03.2020, he saw that he had 3 missed calls from his cousin Hameedullah. When he called back, Hameedullah asked him as to who all was present in his house. The complainant disclosed that apart from his family, one other cousin named Sher Ali and an uncle Abdul Ghafoor were present. At 9:00 p.m. Hameedullah, accompanied by one Umair Ali and another Umeed Ali came to his house. Hameedullah entered the house with a pistol and started randomly firing. One bullet hit Sher Ali in the stomach. All 3 men then left the house. Sher Ali died subsequently.

3. This is Hameedullah's 3<sup>rd</sup> application seeking bail filed in this Court. His first bail application (No. 2040 of 2020) was dismissed as not pressed on 08.03.2021, however, directions were given to the learned trial court to examine all material witnesses within a period of 4 months. The second bail application (No. 1625 of 2021) was dismissed on merits on 16.02.2022.

4. At the outset the learned counsel was asked as to what was the new ground he wished to agitate. The counsel replied that the only ground he had was that when the applicant's bail application was dismissed the first time, 4 months were given to the trial court to record the evidence of material witnesses. This was not done. He further submitted that he also sought bail on

grounds of statutory delay. To the contrary, the learned APG argued that the applicant was not entitled to the concession of bail on the ground of statutory delay simply because the delay cannot all be attributed to the prosecution.

5. I have heard the learned counsels as well as the learned APG.

6. The record reflects that the applicant was arrested on 19.03.2020. In accordance with the 3rd proviso to section 497 Cr.P.C. a person who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of woman exceeding one year and whose trial for such offence has not concluded, be entitled to release provided the court is satisfied that the delay was not caused on his part or any person acting for him and further provided that the concession 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.

7. The learned trial judge in his report dated 22.08.2022 has highlighted that the case was transferred to his court on 30.03.2022 and that 3 out of 9 witnesses have been examined. The learned trial judge has also pointed out that the delay in the conclusion of the trial has been caused due to non-appearance of prosecution witnesses, absence of defence counsel, frequent strikes of KBA, SBCA and PBC. Learned trial judge has also stated that there are 823 cases pending in his court and that a high volume of bail applications as well as urgent motions takes up a substantial time of the court.

8. It is clear from the report of the learned trial court that the applicant himself is partially responsible for the delay which has been occasioned. Further, there is a lot of weight in the learned trial judge's observation regarding delays on account of strikes as well as the extremely high volume of cases our learned trial courts are faced with. While courts are doing their best to provide speedy justice to all and in most situations go well beyond their duty to facilitate litigants, with the current workloads and non-cooperation of counsels as well as day long frequent strikes by the legal fraternity, courts simply cannot be expected to decide all trials within 2 years. Reality of delays in trial is not unknown to anybody. Notwithstanding the foregoing, in the present case, delay is also

attributable to the applicant's counsel himself. I am not inclined to grant the concession of bail in the circumstances.

9. The learned trial court has requested that 6 months time is granted for the conclusion of the trial. It is hoped however that the learned trial court shall use its best endeavors to conclude the trial within a period of 4 months from today. The bail application stands dismissed with the foregoing direction.

JUDGE