

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.744 of 2022

Applicant : Ejaz Baloch S/o Aslam
through Mr. Mallag Assa Dasti, Advocate

Respondent : The State
through Ms. Abida Parveen Channar
Special Prosecutor ANF

Date of hearing : 05.01.2023

Date of order : 05.01.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in FIR No.10/2019 registered under Sections 6/9-C, 14/15 CNS Act, 1997 of PS ANF Gulshan-e-Iqbal, Karachi after his bail plea has been declined by the learned Incharge Judge, Special Court No.1 (C.N.S.), Karachi vide order dated 07.04.2022.

2. The details and particulars of the FIR are already available in bail application and the FIR, as such, need not to reproduce the same hereunder.

3. Per learned counsel, applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives; that the applicant/accused is in jail since 07.02.2019 and the trial has not yet been concluded and there is a delay in conclusion of trial as such the accused is facing hardship; that prior lodging of this FIR, FIR No.09/2019 was also registered against the applicant/accused; that lastly he prayed that he is pressing his bail application only on the ground of hardship, inordinate delay of conclusion of his trial. In support of his contention he has relied upon the case laws: 2017 SCMR 1194 (Imtiaz Ahmed vs. The State through Special Prosecutor ANF, 2022) SCMR 1 (Shakeel Shah vs. The State and others), PLD 2022 Supreme Court 112 (Nadeem Samson vs. The State and others), 2022 YLR 1655 (Javed Khan vs. The State), 2018 YLR Note 144 (Hassan Shah vs. The State), 2018

YLR Note 150 (Muhammad Zubair vs. The State), 2018 PCRLJ Note 123 (Muhammad Idrees vs. The State), 2018 PCRLJ Note 118 (Sabir Khan vs. The State), 2017 YLR Note 321 (Mir Hassan vs. The State), 2017 PCRLJ 1661 (Riaz ur Rehman vs. The State), 2019 YLR Note 68 (Sindh) (Amar Khan vs. The State), 2002 PCRLJ 186 Karachi (Anwar Ali and another vs. The State), 2001 YLR 743 Karachi (Iqbal vs. The State) and others.

4. On the other hand, learned Special Prosecutor ANF has vehemently opposed for grant of bail.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. It is not disputed that the applicant/accused was arrested on 07.02.2019 and he is in jail for about three (03) years and ten (10) months. Now the question before me is that whether the delay has been caused by the applicant/accused himself or anyone acting on his behalf. The case of the prosecution was that on 09.02.2019 during interrogation in Crime No.09/2019 accused disclosed that huge quantity of prohibited chemical for preparation of narcotic substance is lying at goods transport godown, thereafter complainant alongwith his subordinate staff and accused reached at pointed place and recovered 194 black colour batlies containing potassium permanganate, each batlies weighing 23 kilograms, accumulated weight of all batlies became 4850 kilograms potassium permanganate, four nylon sack containing Ephedrine tablets, accumulated weight of Ephedrine tablets became 80 kilograms and one cardboard cartons contained 3600 intoxicant injection. In the instant case, the charge was framed against the present applicant/accused on 27.02.2019; however, after framing the charge, unfortunately no prosecution witness has been examined as the Court remained vacant for more than nine months so also non-availability of sufficient Court's supporting staff. Such a long delay does constitute **“inordinate and unconscionable delay”**. In the identical situation the Honourable Supreme Court of Pakistan has granted bail to the accused on the ground that the Petitioner was arrested on 10.06.2014 and he is behind the bars since then and inspite of efforts made by the trial Court, the prosecution has failed to produce his witnesses. It is therefore appropriate to reproduce herein-below relevant paragraph of the unreported case of Hon'ble Supreme Court of

“4. Perusal of the record would reveal that a huge quantity of 256 Kilograms of charas was recovered from the joint possession of the present petitioner alongwith others. The request for concession of post arrest bail on merits in the above noted case was turned down earlier and now in the present round the petitioner has sought his release on bail only on the ground of delay in conclusion of his trial. Report was sought from the Director General, ANF regarding delay in conclusion of trial which was accordingly submitted and the learned Special Prosecutor General, ANF had no words to defend the delay on the part of ANF in conclusion of trial of the case. The petitioner in the above noted case was arrested on 10.6.2014 and is behind the bars since then and in spite of efforts made by the trial court, the prosecution has failed to produce its witnesses. We were also informed that the Court is lying vacant since long after the retirement of the Judge, Special Court and the vacancy has not been filled so far. The request of learned counsel for transfer of the case by this Court cannot be accorded to in this way for which he has to apply accordingly.

5. So in view of the above discussion, we in the peculiar circumstances of the case, have no other option but to extend the concession of post arrest bail to the accused/petitioner only on the ground of delay.”

7. I am of the considered view that in the period of three years and ten months, no prosecution witness has been examined. Article 10(A) of the Constitution of Islamic Republic of Pakistan, 1973, which includes the right to expeditious trial should be meaningful and should be fully applied to protect an under trial prisoner from prolonged period of incarceration during his trial but no fault of his own. In the case of **IMTIAZ AHMED vs. The State through Special Prosecutor ANF**, the Honourable Supreme Court of Pakistan has granted bail to the accused on the ground that a speedy trial is fundamental right of accused being universally acknowledged. It is therefore, appropriate to reproduce the relevant paragraph herein-below:-

“17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is

provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial”

8. In the case of SHAKEEL SHAH vs. The State and others, bail granted to the Petitioner on the ground that merely some adjournment sought by the learned counsel of the accused cannot be counted as an act or omission on behalf of the accused the delay in conclusion of the trial. It is appropriate to reproduce paragraph-5 which is reproduced herein-below:-

“5. The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso. The statutory right to be released on bail flows from the constitutional right to liberty and fair trial under Articles 9 and 10-A of the Constitution. Hence, the provisions of the third and fourth provisos to section 497(1), Cr.P.C must be examined through the constitutional lens and fashioned in a manner that is progressive and expansive of the rights of an accused, who is still under trial and has the presumption of innocence in his favour. To convince the court for denying bail to the accused, the prosecution must show, on the basis of the record, that there is a concerted effort on the part of the accused

or his counsel to delay the conclusion of the trial by seeking adjournments without sufficient cause on crucial hearings and/or by making frivolous miscellaneous applications.

9. During pendency of this bail application, the progress report submitted in Criminal Bail Application No.743 of 2022 filed by the same accused is perused which reflect that from 07.12.2021 to 16.09.2022, the Court was lying vacant and the learned Judge assumed the charge of this Court on 17.09.2022. Thereafter, as per report, the posts of Registrar, APS (Steno) and Nazir in the said Court are still vacant, as such, the Court could not proceed with the matter further. The report further reflects that due to non-availability of witness, the evidence in this case has not been recorded up-till now. No material has been brought on the record that the applicant was previously hardened, desperate or dangerous criminal. In my view Article 10-A of the Constitution which includes the right to an expeditious trial should be meaningful and should be fully applied to protect an under trial prisoner from prolonged period of incarceration during his/her trial due to no fault of his own. In view of above and by taking guideline from above cited supra cases, learned counsel for the applicant/accused has succeeded to make out a case for grant of post-arrest bail and as a matter of right under the 3rd proviso of Section 497(1) Cr.P.C. Accordingly, the instant bail application is allowed. The applicant/accused named above is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.500,000/= (Rupees Five Lacs Only) in the like amount to the satisfaction of the learned trial Court. In case, the applicant/accused misuses the concession of bail, the learned trial Court would be at liberty to take appropriate action against him in accordance with law.

10. The observations made supra are tentative in nature and learned trial Court shall decide the case of the applicant/accused specifically on merits.

JUDGE