

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Cr. Bail Application No. 712 of 2023

Applicant	Aamir Rasheed son of Rasheed Alam through M/s. Humaira Junaid and Shahbuddin Ghouri, Advocates.
Complainant	Muhammad Shahabuddin son of Muhammad Salman through Mr. Zulfiqar Ali Shaikh, Advocate.
Respondent	The State through Ms. Shehzana Latif, Assistant Prosecutor General, Sindh.
Date of hearing	15.08.2023.
Date of order	15.08.2023.

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ORDER

Abdul Mobeen Lakho, J:- By means of listed bail application, Aamir Rasheed / Applicant, seeks post-arrest bail in a case bearing crime No. 165 of 2020, Police Station Shah Latif Town, Karachi, registered under Sections 406, 407, 420, 464, 468, 471, 473, 476 and 34 Pakistan Penal Code. The case has been challaned by the Police and the same is now pending trial before the trial Court.

2. The facts as narrated in the FIR read as under:-

The prosecution case as mentioned in the above-noted F.I.R. I, Muhammad Shahabuddin son of Muhammad Suleman after approval from high officials recorded the statement, that on dated 26/01/2020 of Muhammad Shahabuddin son of Muhammad Suleman official address M/s. Daewoo Pak Motors (Pvt) Limited, Main National Highway Razzaq Abad, Shah Lateef Town, Karachi, mobile No. 0321-2697620, who is working as a Manager, stated that Amir Rasheed son of Rasheed Alam appointed as Manager Marketing and Sales since 01.08.2016, while performing his job as Manager Amir Rasheed not only committed forgery, cheating in the company worth Rs.11,20,00,000/- but also defrauded, cheated by way of forgery, the customers of the company, thereafter, we investigated, and he admitted that he had committed fraud, forgery and cheating in accounts of company as well as customers and forged signatures of Company Directors and other person, further that all forged documents of the company are available and can be

produce later on, Amir Rasheed son of Rasheed Alam damaged the reputation M/s. Daewoo Pak Motors (Pvt) Limited, who paid huge amount in shape of revenue, Amir Rasheed prepared the forged documents, cheated and defrauded the company. Hence, request for lodging of FIR, it is my statement”.

3. At the outset the learned counsel appearing on behalf of the Applicant/accused pressed the bail application on the ground of statutory delay and filed a Statement dated 15.08.2023 showing the diary sheet of the trial Court argued that the applicant/accused is innocent and has falsely been implicated by the complainant with *mala fide* intention and ulterior motives just to secure the company Directors who have different financial issues with customers/transporters; on 05-01-2023 this Court issued direction to the learned trial Court to complete the recording of evidence within 15 days. The said Order dated 05-01-2023 was received in the office of the learned Trial Court on 11-01-2023, but inspite of passing a period of more than 30 Days evidence of the Complainant could not be concluded, *whereupon*, another Bail Application was filed on 04-2-2023 before the learned trial Court but the same got dismissed holding that the Presiding Officer of Court was transferred vide Notification No.REG(HD)/1- 579/2003, dated 02-03-2023; the learned Additional Sessions Judge failed to consider the bail on the ground of statutory delay. The learned counsel argued that after framing of charge on 04-12-2020, the case has not proceeded with the due pace and prosecution has resorted to delay tactics due to non-appearance of the complainant and or one or the other accused. The Applicant/Accused has not taken a single adjournment throughout the proceedings of this case which is pending for about 38 months [and it was also admitted by the prosecution;] the prosecution has failed to conclude the recording of evidence of the Complainant as was ordered by this Court on 05.01.2023. He further argued that during the period from 29-01-2020, till date about more than three years, only one witness the Complainant has ‘partly’ been examined so far, out of 25 Witnesses.

4. The learned counsel relied upon the case diaries which were filed along with the Statement is reproduced for ready reference:

S	Date of hearing	Status/case status	Remarks
1.	16-10-2020	Supply of Copies	R & Ps received without Police file from JM Malir
2.	19-10-2020	Supply of Copies	Copies Supplied
3.	29-10-2020	for Charge	Charge not framed
4.	13-11-2020	For Charge	Charge not framed
5.	24-11-2020	For charge	Charged not framed
6.	07-12-2020	For Charge	Charge not framed, Police file not available
7.	21-12-2020	For charge	Charge framed
8.	05-01-2021	For evidence	Complainant called absent
9.	18-01-2021	For evidence	Not progress
10.	01-02-2021	For evidence	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P.0
11.	15-02-2021	For Charge	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P.0
12.	01-03-2021	For Charge	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P.0
13.	15-03-2021	For charge	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P.0
14.	31-03-2021	For Charge	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P.0
15.	13-04-2021	For charge	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P
16.	26-04-2021	For evidence	Directed the prosecution to supply of copies to accused U/s. 265-C, Cr.P
17.	06-05-2021	For charge	Charge not framed
18.	24-05-2021	For charge	Amended charge
19.	05-06-2021	For evidence	Accused Saifuddin absent
20.	09-06-2021	For evidence	Amended charge framed
21.	24-06-2021	For evidence	P.O on leave

22.	12-07-2021	For evidence	Evidence not recorded
23.	28-07-2021	For evidence	Work suspended due to strike
24.	31-08-2021	For evidence	Adjourned on request of complainant
25.	11-09-2021	For evidence	Adjourned on request of complainant
26.	28-09-2021	For evidence	Work suspended
27.	01-10-2021	For evidence	Accused Sohail absent
28.	11-10-2021	For evidence	Work suspended
29.	21-10-2021	For evidence	Accused Saifuddin called absent
30.	08.11.2021	For evidence	Reserved on request of complainant
31.	11-11-2021	For evidence	reserved for want of documents
32.	26-11-2021	For evidence	Complainant directed to supply of copies
33.	09-12-2021	For evidence	For supply of copies
34.	23-12-2021	For evidence	Complainant failed to file complete copies
35.	03-01-2022	For evidence	Complainant failed to file complete copies
36.	11-01-2022	For evidence	Complainant directed to supply of copies
37.	19-01-2022	For evidence	Complainant directed to supply of copies
38.	09-02-2022	For evidence	Complainant directed to supply of copies
39.	16-02-2022	For evidence	Accused Saifuddin absent and Complainant directed to supply of copies
40	24-02-2022	For evidence/hearing on bail Application 497 Cr. P. C	Hearing on bail Application and Complainant directed to supply of copies
41	28-02-2022	For evidence	For examination recorded
42	04-03-2022	For evidence/hearing on bail Application 497 Cr. P. C	Counsel for Complainant absent, Junior Counsel for complainant request the date, request allowed
43	08-03-2022	Hearing on bail Application 497 Cr.P.C	For arguments

44	16-03-2022	For evidence/hearing on bail Application 497 Cr. P. C	For further arguments
45	18-03-2022	For evidence	Accused saifuddin absent Complainant directed to supply of copies
46	25-03-2022	Hearing on Bail Application	By consent adjourned
47	31-03-2022	For evidence	Complainant directed to supply of copies
48	2-4-2022	For Evidence	Complainant directed to supply copies Work Suspend
49	15-04-2022	For evidence	Accused Saifuddin absent and Complainant directed to supply of copies to remaining Accused
50	22-04-2022	For evidence	Accused Saifuddin absent and Complainant directed to supply of copies to remaining Accused
51	10-05-2022	For evidence	Work suspended and Complainant directed to supply of copies to
52	24-05-2022	For evidence	Accused Saifuddin absent and Complainant directed to supply of copies to remaining Accused
53	06-06-2022	For evidence	Work suspended
54	13-06-2022	For evidence	Arguments of Bail Application and Accused Saifuddin absent and Complainant directed to supply of copies to remaining Accused
55.	27-06-2022	For evidence	P.O. on leave and Accused Saifuudin called absent
56.	07-07-2021	For evidence	For orders and Accused Saifuddin absent and Complainant directed to supply of copies to
57.	16-07-2022	For hearing on bail Application	P.O. on leave

58.	29-07-2022	For evidence	P. 0 on leave
59.	06-08-2022	For evidence	Accused Agha tariq absent and Accused Saifuddin absent and Complainant directed to supply
60.	20-08-2022	For evidence	Accused saifuddin absent and Accused Saifuddin absent and Complainant directed to supply of copies to remaining Accused
61.	24-08-2022	For bail Application	Bail Application heard and for order
62.	31-08-2022	For evidence	Adjourned by Court
63.	12-09-2022	Bail Application	Adjourned by Court
64.	14-09-2022	Bail Application	Bail Application dismissed
65.	14-09-2022	For evidence	Accused saifuddin absent and matter is adjourned by court
66.	28-9-2022	For evidence	Adjourned by Court
67.	12-10-2022	For evidence	Accused saifuddin absent and adjourned by Court.
68.	25-10-2022	For evidence	P. O. on leave
69.	02-11-2022	For evidence	P. 0 on leave
70.	15-11-2022	For evidence	P. 0. on leave
71.	24-11-2022	For evidence	P. 0. on leave
72.	06-12-2022	For evidence	P. 0. on leave
71.	20-12-2022	For evidence	Adjourned by Court.
72.	03-01-2023	For evidence	Adjourned by Court.
73.	16-01-2023	For evidence	Accused saifuddin absent and adjourned by Court
74.	18-01-2023	For evidence	Adjourned due to absence of DDPP
75.	25-01-2023	For evidence	Police papers are not available
76.	30-01-2023	For evidence	P.O. on leave
77.	04-02-2023	For evidence	P.O. on leave
	08-02-2023	For evidence	Court vacant and incharge of Court dismissed the bail Application.

5. The learned counsel further argued that the Applicant/Accused during such period has not taken a single adjournment; therefore, the Applicant/Accused on the ground of inordinate/ statutory delay is entitled for the grant of bail; In addition to the above argument he argued that in view of the allegations levelled against the applicant/accused which are yet to be determined by a competent Court. Even otherwise such offences are not punishable with death, life imprisonment or ten years and falls outside the ambit of prohibitory clause of section 497 Cr.P.C. The settled proposition of law is that grant of bail in such cases is a rule and refusal is an exception; according to FIR the date of incident is from 01-08-2016 to 20-01-2020. As per the contents of the FIR there is no specific allegations particularly with regard to date or time. No Audit Report of the Company has been produced to prove the alleged allegations against the Applicant/Accused which makes the case of prosecution on face of it very doubtful and requires further enquiry; the Applicant/Accused is not a hardened, desperate or dangerous criminal nor has previously been convicted for any offence. In view of Article 10-A of the Constitution of Pakistan the Applicant/Accused has fundamental right for speedy and fair trial; the Company namely M/s. Daewoo Pak Motors (Pvt) Limited is registered body under the Companies Act and it is governed by its Articles of Association. The complainant is not competent person to lodge instant FIR No. 165/2020, under Sections 406/407/420/464/468/471/473/474/476 PPC on his own accord and without any authority from the said Company. The learned counsel while summing up the submissions, submitted that the Applicant is only pressing for grant of post-arrest bail on the grounds of hardship and delay in the trial. Reliance has been placed on the cases of *Shakeel Shah v The STATE and others* {2022 SCMR 1}, *Naimat Khan v The STATE* {2013 P.Cr.L.J 1162}, *Muhammad Tanveer v The STATE and another* {PLD 2017 Supreme Court 733}, *Nadeem Samson v The STATE and others* {PLD 2022 Supreme Court 112} and *Kaleem Ullah v The STATE and others* {2017 SCMR 19}.

6. On the contrary, the Assistant Prosecutor General, Sindh, representing the State, argued that the applicant / accused has been rightly booked in the present case with specific role together “with documentary evidences”; she further contended that there is sufficient material available with the prosecution to connect the accused with the crime; that the applicant / accused knowingly, intentionally and deliberately cheated the company; learned APG

opposes the grant of post arrest bail and contends that the post arrest bail plea of the applicant / accused may be dismissed. Reliance has been placed on the cases of *Tahir Jameel Durrani through his Wife v NAB* {2018 P.Cr.L.J 1171}, *Saif Ullah v The State and others* {PLD 2017 Islamabad 143}, *Muhammad Ali v The STATE and another* {2023 SCMR 1131}, *Fahad Hussain and another v STATE* {2023 SCMR 364}, and *Nisar Ahmed v The STATE and others* {PLD 2016 Supreme Court 11}.

7. The learned counsel appearing on behalf of the Complainant has adopted the same arguments as advanced by the Assistant Prosecutor General, Sindh.

8. Heard and record perused minutely.

9. It is observed that applicant/accused was arrested on 29.01.2020 since then more than three years elapsed there is no progress in the trial. Undisputedly, the inquiry started in the year 2020 and since then the petitioner is facing the consequences of the inquiry as well as of the trial. Upon perusal of the case diaries which were filed along with the Statement of counsel of the applicant/accused which goes to show that the delay in conclusion of the trial was not due to adjournment sought on behalf of the present applicant/accused. On specific query at the time of arguments the learned APG admitted that the delay in the trial is not on part of the applicant/accused. Keeping in view the number of witnesses and with pace of trial, there can be no two opinions but that conclusion of trial may take sufficient time. Though the 3rd proviso to Section 497 Cr.P.C. is not attracted in cases where accused is facing charges under Sections 406, 407, 420, 464, 468, 471, 473, 476 and 34 Pakistan Penal Code but an unreasonable delay in conclusion of trial could be treated as a valid ground and cause of hardship for the purposes of granting bail. It is also not the scheme of law to keep an accused in jail for an indefinite period. Reference may well be made to an unreported order delivered by Hon'ble Supreme Court of Pakistan in Cr. Petition No.1072 of 2021 {*Shakeel Shah v The State, etc*, wherein it has been observed as under:-

"We have, therefore, come to the conclusion that the delay in concluding the trial of the petitioner beyond the period of one year from the date of his arrest/detention has not been occasioned by an act or omission of the petitioner or any other person acting on his behalf, and that in the facts and circumstances of the case the accused does not appear to be a hardened, desperate or dangerous criminal. The petitioner has, thus, made out a case for grant of bail

as a matter of right under the third proviso to section 497(1) Cr.P.C. The High Court has failed to correctly appreciate the scope of the third and fourth proviso to section 497(1) Cr.P.C in the light of the fundamental rights guaranteed by the constitution. This petition is, therefore, converted into appeal and allowed: the impugned order is set aside, the application of the petitioner for grant of post arrest bail is accepted and he is admitted to post-arrest bail subject to his furnishing bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the trial Court".

10. Having reviewed the principles outlined above, the excessive delay in completing the trial of a detained prisoner cannot be lightly ignored. The purpose of the trial is to try an accused, not to punish a prisoner who is on trial. The basic idea is to enable the accused to stand trial against him in criminal proceedings rather than let him rot behind bars. Delaying the prosecution is an abuse of process and is valid grounds for the release of an accused. In such an eventuality, I am of the view that the accused has made out a case for grant of post-arrest bail on the ground of delay. The applicant /accused Aamir Rasheed is, therefore, admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.10,00,000/- [Rupees One Million] and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

11. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the applicant if he will be found misusing the concession of bail.

12. This Criminal Bail Application stands dismissed in the above terms. These are the reasons of my short order dated 15.08.2023.

JUDGE