

ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI

**Crl. Bail Application No. 1636 of 2024**

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Date:                      Order with signature(s) of the Judge(s)  
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For hearing of bail application

**Date of hearing: 29<sup>th</sup> August 2024**

Mr. Ghulam Muhammad Khan, advocate for applicant/accused  
Mr. Mumtaz Ali Shah Assistant Prosecutor General Sindh  
Mr. Sikandar Hayat Khattak advocate for the complainant

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**Salahuddin Panhwar, J.-** Through instant bail application, applicant/accused Farroq son of Taj Muhammad sought post arrest bail in FIR No.285/2020 for offences under Sections 302/34 PPC registered at P.S Ittehad Town, Karachi. Prior to this applicant/accused moved bail application on merits before this Court, but the same was not pressed by learned counsel for the applicant/accused on the ground that trial Court may be directed to conclude trial within four months, but case could not be concluded within the stipulated period, hence the applicant/accused firstly moved bail application before learned trial Court on the statutory ground, but it was declined vide order dated 03.07.2024, hence applicant/accused has approached this Court only on statutory ground.

2. It is alleged that applicant/accused along with co-accused Dilawar in furtherance of their common intention, committed murder of Arshad, hence the present case is registered against them.

3. Heard and perused the record.

4. Learned counsel for the applicant/accused, inter alia, contended that applicant/accused is behind the bars since the date of his arrest i.e. 26.08.2020 and the trial has yet not been concluded and the delay in trial cannot be attributed to the applicant/accused, hence applicant/accused is entitled for the bail.

5. On the other hand, learned Assistant Prosecutor General Sindh duly assisted by learned counsel for the complainant opposed the grant of bail to

applicant/accused on the ground that the accused is involved in pre-planned murder of deceased Arshad; that evidence of two witnesses have already been recorded and the trial has commenced and it is likely that it will be concluded within shortest period.

6. Before proceeding further, it would be pertinent to mention here that grant of bail on statutory ground can only be declined (a) if the delay in conclusion of the trial had been occasioned by an act or omission of the accused or by any other person acting on his behalf, and (b) if the accused was found to be a convicted offender for an offence punishable with death or imprisonment for life, or was in the opinion of the court a hardened, desperate or dangerous criminal, or was accused of an act of terrorism punishable with death or imprisonment for life. However, in the case in hand, record reflects that applicant/accused was arrested on 26.08.2020. The charge was framed on 04.12.2020 and thereafter, two witnesses i.e. complainant Imran and P.W Waseem have been examined and one P.W Rustam has been given up by the prosecution. However, admittedly, since the date of arrest, the applicant/accused is in custody exceeding two years without conclusion of trial. Addl. P.G, who was duly assisted by counsel for the complainant was asked whether delay in conclusion of trial is attributable to the applicant/accused, he contended that on two occasions when the prosecution witnesses were present, adjournment applications were moved by the applicant/accused. It appears on two occasions, i.e. 21.12.2021 and 01.01.2022, adjournments were sought by the accused and if such periods are excluded, even then the applicant/accused would be entitled to the concession of bail because, in that case too, his total detention during the trial becomes more than two years. It has been consistently held by the apex Courts that if a case on such statutory delay in the conclusion of trial is made out then, ordinarily bail should not be refused on hyper technical ground. With regard to the commencement of the trial, recording of evidence of two prosecution witnesses could not be treated conclusion of trial, so as to defeat the right enshrined under third provision of Section 497(1) Cr.P.C. Trial Court also reported that neither any case is pending against the applicant/accused nor he is convicted in any case. In the case of **Muhammad Usman vs. The State and another (2024 SCMR 28)** the Apex Court has held as under:

“7. The object of recognition of a right to be released on bail on statutory ground, subject to meeting the conditions described under the third and fourth provisos of section 497(1) of the Cr.P.C. is to

ensure that criminal trials are not unnecessarily delayed and that the prosecution is not enabled to prolong the incarceration or hardship of an accused awaiting trial. The right of an accused to seek bail on statutory grounds cannot be defeated for any other reason except on the ground as has been explicitly described under the third and fourth provisos to section 497(1) of Cr.P.C. The accused becomes entitled to bail as of right after the statutory period expressly stated in clauses (a) and (b), as the case may be, have expired and the trial has not concluded. This accrual of right is manifest from the language of the third proviso. Such a right can only be defeated if the prosecution is able to show that the delay in the trial was attributable to an act or omission of the accused or a person acting on his behalf. If the prosecution succeeds in showing to the satisfaction of the court that the accused was at fault then the right stands forfeited. It has been held by this Court that the right recognized under the third proviso of section 497(1) cannot be denied to an accused on the basis of discretionary powers of the court to grant bail. The right has not been left to the discretion of the court, rather, its accrual is subject to the fulfillment of the conditions mentioned under the third proviso of section 497(1) of the Cr.P.C. Moreover, while calculating the quantum of delay attributable to an accused, the court is required to consider whether or not the progress and conclusion of the trial was in any manner delayed by the act and omission on the part of the accused. While ascertaining the delay, the cumulative effect in disposal of the case has to be considered and its assessment cannot be determined on the basis of mathematical calculations by excluding those dates for which adjournments had been sought by the accused or the latter's counsel. The main factor for consideration is the attendance of the witnesses and whether, despite the matter having become ripe for the recording of evidence, whether the delay was caused by the defence. The recording of the statement of a last witness would also not defeat the right recognized under the third proviso and it would be unreasonable to conclude that the trial has been completed."

7. For the above stated reasons, concession of bail is extended to the applicant/accused Farooq son of Taj Muhammad, subject to his furnishing surety in the sum of Rs. 200,000/- (rupees two hundred thousands) and P.R bond in the like amount to the satisfaction of the trial court.

8. Needless to mention here that observations recorded in this order are based on the tentative assessment of the record, therefore, it shall not in any manner prejudice the proceedings pending before the trial court.

8. These are the reasons for the short order announced on 29.08.2024.

J U D G E