

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application No. 90 of 2024

[Zulfiqar v. The State]

Applicant : Zulfiqar son of Mumtaz Hussain through
Mr. Shaukat Ali Shehroze, Advocate.

Respondent : The State, through Ghulam Asghar Pathan,
Special Prosecutor, along with I.O. Zia-ul-
Hassan.

Ms. Rabia Khalid, Assistant Attorney
General for Pakistan.

Date of hearing : 02-10-2024

Date of decision : 02-10-2024

*Complaint No.22/2022
u/s: 3, 4, 8, 20, 21 & 22 XIA of
1st Schedule of AML Act, 2010
P.S. Directorate of Intelligence &
Investigation (IR), Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-I), Karachi by order dated 17.08.2024.

2. Heard learned counsel and perused the record.

3. Bail is sought under the third proviso to section 497(1) Cr.P.C. viz. the statutory ground of delay of one year provided in clause (a) of said proviso. Section 21(4) of the Anti-Money Laundering Act, 2010 includes the power and discretion available for granting bail under the Cr.P.C.

4. The Applicant was arrested on 06.04.2023. Charge was framed on 26.04.2024, and up till now, no prosecution witness has been examined by the trial court. The Applicant has been in custody for more than one year. As discussed by the Supreme Court in *Shakeel Shah v. The State* (2022 SCMR 1), reiterated in *Nadeem Samson v. The*

State (PLD 2022 SC 112), the statutory ground of delay is to be considered from the date of arrest/detention, and that the date of framing charge is of little importance, the intent being that the trial should be conducted expeditiously and pre-conviction detention should not exceed the time-frame provided in the third proviso to section 497(1) Cr.P.C.

5. There are two exceptions to the ground of statutory delay provided in section 497(1) Cr.P.C. The first is in the third-proviso itself *viz.* where delay in the trial has been occasioned by an act or omission of the accused or any other person acting on his behalf. The second exception is in the fourth-proviso *viz.* where the accused is a previously convicted offender for an offence punishable with death or imprisonment for life, or a hardened, desperate or dangerous criminal, or is accused of an act of terrorism punishable with death or imprisonment for life. The scope of these exceptions is also discussed in the case of *Shakeel Shah*. As regards the first exception, it was observed that the act or omission by the accused to delay trial must be a visible concerted effort orchestrated by the accused. As regards the second exception, it was observed that the words 'hardened, desperate or dangerous' mean a person who would be a serious threat to society if set on bail.

6. Copy of the diary of the trial has been placed on the record. The diary reflects around 38 dates of hearing since the Applicant's detention, out of which the Applicant's counsel was absent only on 5 occasions. A number of adjournments were granted to the prosecution to supply copies, and then the trial court put off the case on a number of dates for hearing the bail application, apparently due to the work load. Nevertheless, such delay cannot be attributed to the Applicant. Therefore, in the circumstances of the case, the first exception to the ground of statutory delay cannot be urged by the prosecution.

7. The Applicant is not a previously convicted offender for an offence punishable with death or imprisonment for life, nor is this case of a nature where it can be alleged that he is a hardened, desperate or dangerous criminal. It is also not alleged that he is booked for any other crime. Hence, the second exception to the statutory ground of delay is also not attracted to deny bail.

8. It is settled law that bail on the statutory ground of delay is of right and not by way of discretion, and that it cannot be defeated but for the exceptions discussed in the third and fourth proviso to section 497(1) Cr.P.C. In that regard reliance can be placed on the cases of *Zahid Hussain Shah v. The State* (PLD 1995 SC 49) and *Muhammad Usman v. The State* (2024 SCMR 28).

9. In view of the foregoing, the Applicant Zulfiqar is granted bail in the aforesaid Complaint/crime No. 22/2022 subject to furnishing solvent surety in the sum of Rs. 1,000,000/- [Rupees One Million only] alongwith P.R. Bond in like amount to the satisfaction of the trial court.

Needless to state that the observations herein are tentative, and shall not be construed to prejudice the case of either side at trial.

JUDGE

Karachi
Dated: 02-10-2024

*PA/SADAM