

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Criminal Bail Application No.D-16 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

**25.09.2019.**

Mr. Ishrat Ali Lohar along with Mr. Adnan Shakeel Shaikh, Advocates for applicant.

Mr. Aijaz Shaikh, Advocate for complainant.

Ms. Rameshan Oad, A.P.G.

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Applicant is accused in Crime no. 183 of 2015 registered at P.S Sanghar on 17.12.2015 u/s 302, 324, 395, 337-H(ii), 427, 120(b), 114, 147, 148, 149, PPC r/w section 6/7 Anti-Terrorism Act, 1997.

2. As per allegation, the applicant led a mob which waylaid the complainant party at Naka No.4, Sanghar Bakhoro Road, Sanghar City and resorted to firing at his instigation killing four people including two police constables and injuring six people on account of political rivalry.

3. After usual investigation, the applicant has been challaned along with 24 c-accused out of whom four accused including applicant having been assigned specific role are in custody. Previous to this, the applicant had filed a Criminal Bail Application No.D-26/2017, for post arrest bail before this court, which was dismissed vide an order dated 04.07.2019. The applicant, however, through a Criminal Petition No.66-K of 2017, approached the Honourable Supreme Court for same relief but that too was dismissed on 22.08.2019. However, the Honourable Supreme Court allowed the applicant to repeat his bail application after evidence of complainant and material witnesses to be recorded within a period of three months.

This bail application has been filed mainly on the ground of hardship and noncompliance of the aforesaid directions.

4. Learned Counsel for the applicant has relied upon the following case law besides referring to the case diaries to emphasize that the applicant is not at fault in delay of the trial or for noncompliance of the direction and is, therefore, entitled to grant of bail; and that the charge was framed on 15.11.2018 and so far only examination-in-chief of the complainant has been recorded.

1. 2015 SCMR 1696.
2. 2007 SCMR 1254.
3. 2009 P.Cr.L.J 1314.
4. 2010 YLR 2693.
5. 2002 P.Cr.L.J 186

5. On the other hand, complainant's Counsel and learned Assistant Prosecutor General Sindh have opposed grant of bail to the applicant and have further argued that on each and every date of hearing the complainant and other witnesses are present but either some of the accused or their counsel are absent causing delay in the trial.

6. We have considered submissions of the parties and taken guidance from the case law cited at bar. A mathematical calculation of each and every date of hearing to determine delinquent party causing delay in the trial is not permitted at bail stage. In several case diaries it is obvious that the adjournment was sought by some of the defense counsel including applicant's counsel or the trial could not proceed due to absence of some of the accused. However, one thing is conspicuous, the complainant and witnesses have always remained present for their evidence. The trial is mainly not proceeding on account of either absence of co-accused, who are on bail, or their counsel. Such delay would not be ascribed to the prosecution or to the complainant. On merits, the bail application of the applicant has been declined up to the Honourable Supreme Court and, therefore, we are of the view that he is not entitled to said relief on merits. Noncompliance /direction to the trial court to conclude a trial within a stipulated period would neither form an additional ground for the accused to apply for bail nor on the same ground he would be entitled

to grant of bail. For a reference, the case law reported in 2003 MLD (Karachi) 80, PLD 2019 Supreme Court 112 and PLD 2016 Supreme Court 11 can be cited. We, therefore, are of the view that applicant is not entitled to bail.

7. However, in order to ensure expeditious trial, we direct the trial court to make sure that no adjournment is granted to either side save it is inevitable on some cogent ground. Even in the event of absence of any accused, the trial court shall proceed with the trial by resorting to the provisions of section 540, Cr.P.C and in case the Counsel of any accused is absent it shall appoint a Counsel at State expenses and proceed with the trial without adjourning it. Further, the trial court would be competent to proceed against the co-accused, who are on bail, and are causing delay in the trial by remaining absent on some excuse, and cancel their bail on such a ground in accordance with law. The trial court is also directed to examine at least complainant and material witnesses within a period of two months and shall file compliance report in this regard. The applicant would be at liberty to repeat bail application after such exercise is completed by the trial court, which, if filed, shall however be decided on its own merits.

8. With the above observations, which are tentative in nature and shall not prejudice the case of either party before the trial court, the bail application is dismissed.

JUDGE

JUDGE