

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

ALLAH WASAYA---Petitioner

Versus

The STATE and others---Respondents

Crl. P. No. 440 of 2022, decided on 22nd June, 2022.

(Against the order of Lahore High Court, Multan Bench, dated 24.11.2021 passed in Crl. Misc.

No.7332-B of 2021)

(a) Criminal Procedure Code (V of 1898)---

---S. 497(1), fourth proviso---Bail---Expression "hardened, desperate or dangerous criminal" as used in the fourth proviso to Section 497(1) Cr.P.C.---Scope of the expression "hardened, desperate or dangerous criminal" explained.

The word "criminal" in the phrase "hardened, desperate or dangerous criminal" of the fourth proviso to Section 497(1), Cr.P.C., is not to be construed in the technical sense for a person who has been adjudged guilty of a charge in a Court of law, i.e., a convicted person; it has rather been used in its ordinary sense for a person who violates the law of the land and is accused of committing a crime. Further, the fourth proviso to section 497(1), Cr.P.C. deals with the previously convicted offenders separately. Therefore, in order to bring an accused within the compass of a hardened, desperate or dangerous criminal, it is not necessary to prove that he has a previous criminal record of conviction. It is thus obvious that the previous criminal record of convictions or of pendency of other criminal cases, though may be taken into consideration as a supporting material, is not an exclusive deciding factor to form an opinion as to whether the accused is a hardened, desperate or dangerous criminal. Such an opinion is to be formed by the court mainly on basis of the facts and circumstances of the case, borne out from the material available on record, wherein the bail is applied on the ground of delay in conclusion of the trial, by considering inter alia, the nature of the offence involved, its effects on the victims or the society at large, the role attributed to the accused, the manner in which the offence was committed and the conduct of the accused. The formation and recording of such opinion as to the character of the accused, like the opinion as to reasonable grounds for believing his involvement in the commission of the offence, is of tentative nature, and is thus open to reexamination and final determination on conclusion of the trial.

Moundar v. State PLD 1990 SC 934; Sher Ali v. State 1998 SCMR 190; Jalal v. Allahyar 1993 SCMR 525; Umar Draz v.

State 1997 SCMR 885; Muhammad Hanif v. State PLD 1986 Kar. 437; Hussain v. State 1991 PCr.LJ 26; Sultan Ali v. State 1999 MLD 454; Omair Ahmed v. State 1996 PCr.LJ 22; Ghulam Rasool v. State

1998 MLD 1344; Muhammad Asif v. State PLD 1996 Kar. 385; Shah Nawaz v. State 2000 PCr.LJ 630 and Anwar Beg v. State 1999 PCr.LJ 1450 ref.

The words "hardened, desperate or dangerous" point towards a person who is likely to seriously injure and hurt others without caring for the consequences of his violent act and can pose a serious threat to the society if set free on bail, and such tentative opinion as to the character of the accused is to be formed by the court upon careful examination of the facts and circumstances of the case. The court may also refer to any previous criminal record, if available, for forming such opinion but it matters little if the accused does not have a previous criminal record. The very gravity and severity of the act alleged to have been committed by the accused, even though for the first time, may be sufficient to attract the fourth proviso to section 497(1) Cr.P.C. in the peculiar facts and circumstances of a case and may lead the court to form opinion that the accused is a hardened, desperate or a dangerous criminal.

Shakeel Shah v. State 2022 SCMR 1 and Nadeem Samson v. State PLD 2022 SC 112 ref.

(b) Criminal Procedure Code (V of 1898)---

---S. 497(1), third & fourth proviso---Penal Code (XLV of 1860), Ss. 336, 334, 367, 354, 342, 148 & 149--Constitution of Pakistan, Art. 185(3)---Cutting of a person's nose--- Bail, refusal of---Delay in conclusion of trial---"Hardened, desperate or dangerous criminal"---In the present case, the nature and manner of the

commission of offence and the role attributed to the accused of cutting the nose of his sister-in-law and her alleged paramour were the circumstances which described him as a person who could be harmful and dangerous for the society if released on bail and thus made him to fall within the scope of the expression of "a hardened, desperate or dangerous criminal" as used in the fourth proviso to Section 497(1), Cr.P.C.--Accused was therefore not entitled to the benefit of bail on statutory ground of delay in conclusion of his trial, under the third proviso to Section 497(1), Cr.P.C.---Petition for leave to appeal was dismissed, and accused was refused bail.

M. Usman Sharif Khosa, Advocate Supreme Court for Petitioner.

Ch. M. Sarwar Sandhu, Addl. P.G., Punjab, Muhammad Ijaz, D.S.P. and Ali Abbas, S.I. for the State.

Complainant in person.

Date of hearing: 22nd June, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks leave to appeal against the order dated 24.11.2021, whereby post-arrest bail was denied to him in case FIR No. 180/2020, dated 20.07.2020, registered at Police Station, Shah Saddar Din, District, Dera Ghazi Khan for offences punishable under Sections 336, 334, 367, 354, 342, 148 and 149 of P.P.C.

2. Briefly, the allegation as per the crime report is that the petitioner cut the nose of his bhabi, namely, Haseena Bibi, as well as, Abdul Rasheed, her alleged paramour. Unable to convince us on the merits of the case, the learned counsel mainly sought bail on the statutory ground of delay in conclusion of the trial, under the third proviso to Section 497(1), Cr.P.C. He submitted that the petitioner was arrested on 20.07.2020 and more than two years have passed but the trial has not yet been concluded for no fault of the petitioner. The learned State counsel opposed the grant of bail to the petitioner on this ground with the submission that the petitioner is a hardened, desperate and dangerous criminal and is therefore not entitled to the grant of bail, as per the fourth proviso to Section 497(1), Cr.P.C. Learned counsel for the petitioner, in rebuttal, submitted that the petitioner has no previous criminal record, therefore, he cannot be treated as a hardened, desperate or dangerous criminal.

3. We have heard the learned counsel for the parties and have examined the record of the case with their able assistance.

4. The sole question that needs consideration and determination by us, in the present case, is: whether an accused person may be treated as a hardened, desperate or dangerous criminal, within the meaning of that expression as used in the fourth proviso to Section 497(1), Cr.P.C., on the basis of the facts and circumstances of the case, when he applies for bail on the statutory ground of delay in conclusion of the trial, or there must necessarily be some previous criminal record of the accused to form such an opinion by the court about him.

5. In order to determine the above question, it is important to revisit the fourth proviso to section 497(1), Cr.P.C., which is reproduced hereunder for ready reference:

497. When bail may be taken in case of nonbailable offence. (1)

Provided

Provided

Provided

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

The third proviso to Section 497(1) thus does not apply to an accused who is:

- (i) a previously convicted offender for an offence punishable with death or imprisonment for life; or
- (ii) a hardened, desperate or dangerous criminal, in the opinion of the Court; or
- (iii) an accused of an act of terrorism punishable with death or imprisonment for life.

Condition (i) denies the relief of statutory bail to the accused because of his previous conviction for an offence punishable with death or life imprisonment. Condition (iii) is also self-explanatory and is attracted when the petitioner is accused of an act of terrorism punishable with death or imprisonment for life. So while condition (i) is about the past conviction of the accused and condition (iii) deals with the specific act of terrorism, it is condition (ii) which allows the court to make a contemporary assessment of the character of the accused to arrive at an opinion whether he is a hardened, desperate or dangerous criminal.

6. The word "criminal" in the phrase "hardened, desperate or dangerous criminal" of the fourth proviso to Section 497(1), Cr.P.C., as held by a five member bench of this Court in *Moundar v. State*,¹ is not to be construed in the technical sense for a person who has been adjudged guilty of a charge in a Court of law, i.e., a convicted person; it has rather been used in its ordinary sense for a person who violates the law of the land and is accused of committing a crime. Further, the fourth proviso to section 497(1), Cr.P.C. deals with the previously convicted offenders separately. Therefore, in order to bring an accused within the compass of a hardened, desperate or dangerous criminal, it is not necessary to prove that he has a previous criminal record of conviction.² It is thus obvious that the previous criminal record of convictions or of pendency of other criminal cases, though may be taken into consideration as a supporting material, is not an exclusive deciding factor to form an opinion as to whether the accused is a hardened, desperate or dangerous criminal. Such an opinion is to be formed by the court mainly on basis of the facts and circumstances of the case, borne out from the material available on record, wherein the bail is applied on the ground of delay in conclusion of the trial,³ by considering inter alia, the nature of the offence involved,⁴ its effects on the victims or the society at large,⁵ the role attributed to the accused,⁶ the manner in which the offence was committed⁷ and the conduct of the accused.⁸ Needless to mention that the formation and recording of such opinion as to the character of the accused, like the opinion as to reasonable grounds for believing his involvement in the commission of the offence, is of tentative nature, and is thus open to re-examination and final determination on conclusion of the trial.

7. The meaning and scope of the phrase "hardened, desperate or dangerous criminal" have also been explained in *Shakeel Shah*,⁹ wherein this Court held that the words "hardened, desperate or dangerous" point towards a person who is likely to seriously injure and hurt others without caring for the consequences of his violent act and can pose a serious threat to the society if set free on bail, and such tentative opinion as to the character of the accused is to be formed by the court upon careful examination of the facts and circumstances of the case. We are of the considered view that the court may also refer to any previous criminal record, if available, for forming such opinion but it matters little if the accused does not have a previous criminal record. The very gravity and severity of the act alleged to have been committed by the accused, even though for the first time, may be sufficient to attract the fourth proviso to section 497(1) Cr.P.C. in the peculiar facts and circumstances of a case and may lead the court to form opinion that the accused is a hardened, desperate or a dangerous criminal.

8. In the present case, the nature and manner of the commission of offence and the role attributed to the petitioner of cutting the nose of his bhabhi and her alleged paramour are the circumstances which, in our opinion, describe him as a person who can be harmful and dangerous for the society if released on bail and thus makes him to fall within the scope of the expression of "a hardened, desperate or dangerous criminal" as used in the fourth proviso to Section 497(1), Cr.P.C. He is therefore not entitled to the benefit of the third proviso to Section 497(1), Cr.P.C. Hence, we are not inclined to interfere in the impugned order. Leave to appeal is declined and the petition is dismissed. We, however, direct the trial court to expedite the proceedings of the case and conclude the trial at the earliest.

MWA/A-29/SC Bail refuse