

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

ZAFAR IQBAL---Petitioner

Versus

The STATE and others---Respondents

CrI. P. No. 497-L of 2023, decided on 31st July, 2021.

(Against the order of Lahore High Court, Lahore dated 04.01.2023, passed in CrI. Misc. No. 8873-B of 2022).

Criminal Procedure Code (V of 1898)---

---Ss. 497 & 498---Supreme Court Rules, 1980, O. XXIII, R.2---Constitution of Pakistan, Arts. 9, 10A, 14 & 185(3)---Pre-arrest bail, petition for---Limitation---Scope---Law of limitation is fully applicable to petitions for leave to appeal in matters relating to pre-arrest bail and there is no relaxation as far as the period of limitation is concerned unless sufficient cause is shown for the delay, as required under the law---After dismissal of the petition for pre-arrest bail by the High Court, the Supreme Court should be approached promptly in a pre-arrest bail matter to avail the remedy available under the law and to actualize the right of access to justice.

The law of limitation is fully applicable to petitions for leave to appeal in matters related to pre-arrest bail like in other criminal petitions filed under Article 185(3) of the Constitution, and a delay in a petition filed beyond the limitation period must be supported by an application for condonation of delay which is to be examined by the Court on its own merits. Even though sufficient cause for condoning delay in criminal matters has been interpreted liberally and leniently by the Supreme Court while dealing with petitions and appeals filed by those incarcerated, this view is rooted in the objective to ensure that those incarcerated have equal opportunities of access to justice, and for safe administration of criminal justice. A person behind bars faces numerous hindrances in pursuing his legal remedies because of restricted access to the outside world, and therefore, suffers a disability in comparison to those who enjoy liberty and freedom. The delay, therefore, is usually because of the constraints due to being imprisoned and not because of any ulterior motive. As such, condonation of delay in such petitions is viewed leniently through the lens of fundamental rights, particularly the right to liberty, dignity and fair trial guaranteed under Articles 9, 14 and 10A of the Constitution, with the purpose to provide those incarcerated with equal access to courts, and equal and proper opportunities to defend themselves and to avail remedies available under the law. It is for this reason that, by following the practice of taking a lenient and permissive view in cases of those incarcerated, the Supreme Court has held that the incarceration of a petitioner seeking post arrest bail itself constitutes sufficient cause to allow condonation of delay, unless the delay was caused due to some ulterior motive of the said petitioner himself.

Muhammad Arshad v. The State PLD 2021 SC 927; Sikandar Hayat v. The State PLD 2020 SC 559 and Bashir Ahmed v. The State 1996 SCMR 308 ref.

However, the above ground is not available to condone delay in a petition for leave to appeal related to prearrest bail as the petitioner is not incarcerated and therefore, suffers no such disability. Failure to surrender before the authorities after dismissal of the pre-arrest bail petition by the High Court and then filing a time barred petition, impugning the decision of the High Court and seeking pre-arrest bail, before this Court could be indicative of an intent to remain a fugitive from the law. Such conduct could also be considered as a deliberate attempt to thwart the investigation, resulting in the loss of valuable evidence which is now simply lost or is impossible to collect due to afflux of time by failing to join the investigation. As such, failing to file a pre-arrest bail petition before this Court within the limitation period could either be intentional with ulterior purposes or, in the very least, due to the negligence of the petitioner, for which no reprieve can be granted by condoning delay without any sufficient cause. This Court should be approached promptly in a pre-arrest bail matter to avail the remedy available under the law and to actualize the right of access to justice. Therefore, the law of limitation is applicable to such petitions for leave to appeal in matters related to pre-arrest bail with its full rigour and there is no relaxation as far as the period of limitation is concerned unless sufficient cause is shown for the delay, as required under Rule 2 of Order XXIII of the Supreme Court Rules, 1980.

Awal Gul v. Zawar PLD 1985 SC 402 ref.

Zubair Afzal Rana, Advocate Supreme Court for Petitioner along with Petitioner.

Muhammad Jaffar, Addl. P.G. Pb. for the State along with Saadat Hussain, DSP and Yasir Nawaz, S.I.

Assisted by Muhammad Hassan Ali, Law Clerk, Supreme Court.

Date of hearing: 31st July, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks leave to appeal against the impugned order dated 04.01.2023, whereby pre-arrest bail in case FIR No.438/2022 dated 03.11.2022, under Section 379, P.P.C., registered at Police Station Mitro, District Vehari, was denied to the petitioner.

2. At the very outset we have noted that the instant petition has been filed after a delay of 74 days from the expiry of the limitation period. Rule 2 of Order XXIII of the Supreme Court Rules, 1980 ("Supreme Court Rules") provides that a petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") in criminal matters has to be filed within thirty days from the judgment or final order sought to be appealed from. The second proviso to the said Rule provides that the Court may condone delay if "sufficient cause" is shown. However, to this effect, no application for condonation of delay has been filed with the instant petition.

3. Before deciding the matter at hand, we deem it necessary to first cater to a contention raised by the counsel of the petitioner during his arguments. The learned counsel for the petitioner has tried to argue that no limitation period is applicable for filing the instant petition dealing with pre-arrest bail because the matter involves the liberty and freedom of a person. We are not impressed by the said contention. The law of limitation is fully applicable to petitions for leave to appeal in matters related to pre-arrest bail like in other criminal petitions filed under Article 185(3) of the Constitution, and a delay in a petition filed beyond the limitation period must be supported by an application for condonation of delay which is to be examined by the Court on its own merits. Even though sufficient cause for condoning delay in criminal matters has been interpreted liberally and leniently by this Court while dealing with petitions and appeals filed by those incarcerated, this view is rooted in the objective to ensure that those incarcerated have equal opportunities of access to justice¹, and for safe administration of criminal justice². A person behind bars faces numerous hindrances in pursuing his legal remedies because of restricted access to the outside world, and therefore, suffers a disability in comparison to those who enjoy liberty and freedom. The delay, therefore, is usually because of the constraints due to being imprisoned and not because of any ulterior motive. As such, condonation of delay in such petitions is viewed leniently through the lens of fundamental rights, particularly the right to liberty, dignity and fair trial guaranteed under Articles 9, 14 and 10A of the Constitution, with the purpose to provide those incarcerated with equal access to courts, and equal and proper opportunities to defend themselves and to avail remedies available under the law. It is for this reason that, by following the practice of taking a lenient and permissive view in cases of those incarcerated, this Court has held that the incarceration of a petitioner seeking post arrest bail itself constitutes sufficient cause to allow condonation of delay, unless the delay was caused due to some ulterior motive of the said petitioner himself.³

4. However, the above ground is not available to condone delay in a petition for leave to appeal related to pre-arrest bail as the petitioner is not incarcerated and therefore, suffers no such disability. Failure to surrender before the authorities after dismissal of the pre-arrest bail petition by the High Court and then filing a time barred petition, impugning the decision of the High Court and seeking pre-arrest bail, before this Court could be indicative of an intent to remain a fugitive from the law. Such conduct could also be considered as a deliberate attempt to thwart the investigation, resulting in the loss of valuable evidence which is now simply lost or is impossible to collect due to afflux of time by failing to join the investigation.⁴ As such, failing to file a pre-arrest bail petition before this Court within the limitation period could either be intentional with ulterior purposes or, in the very least, due to the negligence of the petitioner, for which no reprieve can be granted by condoning delay without any sufficient cause. This Court should be approached promptly in a pre-arrest bail matter to avail the remedy available under the law and to actualize the right of access to justice. Therefore, the law of limitation is applicable to such petitions for leave to appeal in matters related to pre-arrest bail with its full rigour and there is no relaxation as far as the period of limitation is concerned unless sufficient cause is shown for the delay, as required under Rule 2, of Order XXIII of the Supreme Court Rules.

5. In the instant case, as pointed out above, the petition has been filed after a delay of 74 days and no application for condonation has been filed to show sufficient cause for condonation of the said delay. After dismissal of his pre-arrest bail petition by the High Court, the petitioner should have approached this Court within the period of limitation. Faced with this situation, the learned counsel for the petitioner after arguing the matter at some length wished to withdraw the titled petition. Therefore, with the above observations, the instant petition is dismissed as withdrawn.

MWA/Z-6/SC Petition dismissed.