

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Athar Minallah, JJ

ROHAN AHMAD---Petitioner

Versus

The STATE and others---Respondents

Crl. P. No. 894-L of 2023, decided on 15th January, 2024.

(Against the order of Lahore High Court, Lahore dated 22.08.2023, passed in Crl. Misc.No.12650-B of 2023).

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

---S. 497(1), third proviso---Constitution of Pakistan, Arts. 4, 9, 10A & 185(3)---Bail---Delay in conclusion of trial---Grant of statutory bail where the delay in the conclusion of the trial is due to the act of the Court---Principles stated.

According to the third proviso to Section 497(1), Cr.P.C. a court shall release the accused on bail in an offence punishable with death if he has been detained for a continuous period exceeding two years, unless the delay in the trial has been occasioned by an act or omission of the accused or any other person on his behalf or the conditions mentioned in the fourth proviso are attracted. The statutory right to be released on bail under the third proviso to Section 497, Cr.P.C. is not merely a statutory right but also stands firmly on constitutional guarantees under Articles 4, 9 and 10A of the Constitution. Under the said Articles the accused, like any other citizen enjoys the protection of law and to be treated in accordance with law; the accused cannot be deprived of liberty, except in accordance with law; and in determination of any criminal charge against him the accused shall be entitled to a fair trial and due process. These basket of rights are available to an accused who enjoys a presumption of innocence in his favour and understandably cannot be subjected to an indefinite pre-trial detention and therefore cannot be denied bail under the third proviso to section 497(1), Cr.P.C unless there is convincing material that the delay has been occasioned by the act or omission of the accused himself or if his case falls under any of the exceptions under the fourth proviso to section 497, Cr.P.C.

For an accused to be denied statutory bail, it must be demonstrated that his act or omission, was intentionally aimed at prolonging the trial. It must show a deliberate pattern of seeking adjournments without valid reasons during key hearings such as the examination or cross-examination of prosecution witnesses. Mere counting the number of adjournment requests alone is not enough to justify withholding bail. The application of the third proviso to Section 497(1) of the Cr.P.C when interpreted in the light of Articles 9 and 10A of the Constitution, broadens and enhances the rights of an accused who is presumed innocent during trial. The prosecution must present clear evidence that the accused or his counsel was actively trying to delay the trial through unnecessary adjournments or irrelevant applications, in order to justify denying bail. The act or omission on the part of the accused to delay of the timely conclusion of the trial must be an outcome of a concerted and consistent effort of the accused orchestrated to delay the trial.

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

In the present case the record showed that the delay has been due to the act of the court. The trial has been suspended by the High Court on the filing of the Criminal Revision by the petitioner and during the continuum of the said suspension, the statutory period of delay i.e., continuous period exceeding two years under clause (b) of the third proviso to Section 497(1), Cr.P.C. has lapsed. The Criminal Revision is still pending before the High Court and it has been over three years since the petitioner (accused) was arrested. The Criminal Revision has not progressed for no fault of the petitioner, there is nothing on the record that the delay has been occasioned by the act or omission of the petitioner. The delay has been mainly due to the act of the High Court as the case was repeatedly relisted and not taken up on several hearings for no fault of the accused and thus the indefinite delay in the trial has been due to the act of the High Court which cannot be attributed to the accused in any circumstance. Petition was converted into appeal and allowed; and petitioner was admitted to bail.

Fida Hussain v. State PLD 2002 SC 46; Sher Ahmed v. State 1995 SCMR 1944 and Zahir Hussain Shah v. State PLD 1995 SC 49 ref.

(b) Administration of justice---

---Criminal trial---High Court staying or suspending proceedings of Trial Court---Expeditious disposal by the High Court---While the High Court enjoys the authority to order stay or suspend the proceedings in a criminal trial, in a deserving case, it is equally important that such an exercise of authority must be carried out with caution and circumspection, ensuring expeditious disposal of the case after the grant of injunctive relief---High Court should not lose sight of the case where it has exercised its extraordinary power of staying or suspending the proceeding of a criminal trial but should make it a point of finally disposing of such proceedings as early as possible.

Imtiyaz Ahmad v. State of Uttar Pradesh AIR 2012 SC 642 ref.

Sh. Usman Karim-ud-Din, Advocate Supreme Court for Petitioner.

Shahid Tasawar Rao, Advocate Supreme Court for the Complainant along with Complainant.

Raja M. Shafqat Khan Abbasi, D.A.G. along with Naveed, I.O. for the State.

Date of hearing: 15th January, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---The Petitioner seeks leave to appeal against the order dated 22.08.2023, whereby his second post-arrest bail in case FIR No.C-29/2020 dated 26.05.2020, under Section 11, PECA, 2016 read with sections 295-B, 298-C, 120-B, 34 and 109 P.P.C. at the FIA Cybercrime Reporting Centre, Police Station FIA Cybercrime Wing, Lahore was declined.

2. Briefly, according to the crime report, the petitioner disseminated blasphemous content to the complainant through whats app/SMS using the mobile network and later on upon raid conducted at the residence of the petitioner blasphemous material was recovered.
3. We have heard the arguments of learned counsel for the parties and gone through the record of the case.
4. The first post arrest bail petition of the petitioner was dismissed on merits on 26.08.2021. The second bail petition was preferred by the petitioner on statutory ground, as well as, on fresh grounds, which too was dismissed by the High Court vide impugned order dated 22.08.2023. Hence this petition for leave to appeal.
5. Taking up the ground of statutory bail, the record reveals that the petitioner was arrested on 26.05.2020. During the proceedings before the trial court, the petitioner moved an application under Section 265-C, Cr.P.C. for providing him documents mentioned in the police report. The said application of the petitioner was dismissed by the trial court on 28.05.2021. The petitioner challenged the said order before the High Court through Criminal Revision¹ and the High Court was pleased to suspend the proceedings before the trial court vide order dated 07.09.2021. The said Criminal Revision is still pending and the injunctive relief granted continues.
6. According to the third proviso to Section 497, Cr.P.C. a court shall release the accused on bail in an offence punishable with death if he has been detained for a continuous period exceeding two years, unless the delay in the trial has been occasioned by an act or omission of the accused or any other person on his behalf or the conditions mentioned in the fourth proviso are attracted, which is not so in the present case. In our view the statutory right to be released on bail under the third proviso to Section 497, Cr.P.C. is not merely a statutory right but also stands firmly on constitutional guarantees under Articles 4, 9 and 10A of the Constitution. Under the said Articles the accused, like any other citizen enjoys the protection of law and to be treated in accordance with law; the accused cannot be deprived of liberty, except in accordance with law; and in determination of any criminal charge against him the accused shall be entitled to a fair trial and due process. These basket of rights are available to an accused who enjoys a presumption of innocence in his favour and understandably cannot be subjected to an indefinite pre-trial detention and therefore cannot be denied bail under the third proviso to section 497(1), Cr.P.C. unless there is convincing material that the delay has been occasioned by the act or omission of the accused himself or if his case falls under any of the exceptions under the fourth proviso to section 497, Cr.P.C.
7. For an accused to be denied statutory bail, it must be demonstrated that his act or omission, was intentionally aimed at prolonging the trial. It must show a deliberate pattern of seeking adjournments without valid reasons during key hearings such as the examination or cross-examination of prosecution witnesses.

Mere counting the number of adjournment requests alone is not enough to justify withholding bail. The application of the third proviso to Section 497(1) of the Cr.P.C when interpreted in the light of Articles 9 and 10A of the Constitution, broadens and enhances the rights of an accused who is presumed innocent during trial. The prosecution must present clear evidence that the accused or his counsel was actively trying to delay the trial through unnecessary adjournments or irrelevant applications, in order to justify denying bail. As already held by this Court, the act or omission on the part of the accused to delay of the timely conclusion of the trial must be an outcome of a concerted and consistent effort of the accused orchestrated to delay the trial. See Shakeel Shah and Nadeem Samson.² Learned counsel for the complainant, as well as, learned DAG have failed to establish that the delay in the trial was due to the act or omission of the accused whereas, as discussed hereunder, the record reveals that the delay has been due to the act of the court.

8. In this case the trial has been suspended by the High Court on the filing of the Criminal Revision by the petitioner and during the continuum of the said suspension, the statutory period of delay i.e., continuous period exceeding two years under clause (b) of the third proviso to Section 497(1), Cr.P.C. has lapsed. We have gone through the order sheet of the proceedings in the Criminal Revision which is still pending before the High Court and it has been over three years since the petitioner was arrested. The Criminal Revision has not progressed for no fault of the petitioner, there is nothing on the record that the delay has been occasioned by the act or omission of the petitioner. The delay has been mainly due to the act of the High Court as the case was repeatedly relisted and not taken up on several hearings for no fault of the accused and thus the indefinite delay in the trial has been due to the act of the High Court which cannot be attributed to the accused in any circumstance.³

9. While the High Court enjoys the authority to order stay or suspend the proceedings in a criminal trial, in a deserving case, it is equally important that such an exercise of authority must be carried out with caution and circumspection, ensuring expeditious disposal of the case after the grant of injunctive relief. High Court should not lose sight of the case where it has exercised its extraordinary power of staying or suspending the proceeding of a criminal trial but should make it a point of finally disposing of such proceedings as early as possible.⁴ Public interest necessitates that the administration of justice is improved for sustaining the faith of a common man in rule of law and justice delivery system, which are closely and inextricably linked.

10. For the above reasons, this petition is converted into appeal and allowed. The impugned order of the High Court dated 22.08.2023 is set aside. The petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs.100,000/- with two sureties in the like amount to the satisfaction of the trial Court.

11. A copy of this Order be dispatched to the Registrar of the Lahore High Court to be placed before the Chief Justice for improving the administration of criminal justice in such like matters.

MWA/R-2/SC

Bail granted.