

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

Syeda AYESHA SUBHANI---Petitioner

Versus

The STATE and others---Respondents

Crl. P. 588-L of 2023, decided on 28th August, 2023.

(Against the order of Lahore High Court, Lahore dated 17.04.2023, passed in Crl. Misc. No.77194-B of 2022)

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

---S. 497(1), third proviso---Constitution of Pakistan, Arts. 9, 10A & 14---Second bail application/petition---Maintainability---Fresh grounds---Scope---Delay in trial that occurs after rejection of first bail application on statutory ground of delay in conclusion of trial---Delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his bail application on the statutory ground of delay, is to be considered a "fresh ground", not earlier available to him, for entertaining his second bail application, within the meaning and scope of that term.

As the statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial and dignity guaranteed under Articles 9, 10A and 14 of the Constitution, the provisions of the 3rd proviso to section 497(1), Cr.P.C. must be fashioned in a manner that is progressive and expansive of these rights of the accused, who is still under trial, and his guilt being not yet proven, has in his favour the presumption of innocence.

The entitlement of an accused to post-arrest bail on the statutory ground of delay in the conclusion of the trial is time-based. If the delay exceeds a year for no fault of the accused, in offences punishable other than death, the right of the accused to post-arrest bail ripens. This right continues to ripen for each period of one year starting from the arrest of the accused if he satisfies the court that he is not at fault for the delay in a particular period of one year unless his case falls within the 4th proviso to Section 497(1), Cr.P.C. Denying this recurring right to post-arrest bail to the accused would amount to giving the prosecution a license to delay the conclusion of the trial for an unlimited period of time after the dismissal of the first bail application of the accused on the statutory ground of delay. The accused would, in such an eventuality, be left confined as an under trial prisoner for an unlimited period of time at the mercy of the prosecution to conclude the trial as and when it pleases to do so. The accused shall have no incentive to attend the trial regularly and cooperate in the early conclusion thereof, after the dismissal of his first bail application, if his subsequent orderly conduct cannot entitle him to post-arrest bail despite non-conclusion of the trial for no fault of his in the next one year. Such a situation would be absolutely antithetical to the constitutional scheme of fundamental rights and make a mockery of the rights to liberty, fair trial and dignity of the accused guaranteed under the Constitution.

The purpose and objective of the 3rd proviso to section 497(1), is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a fresh right, that is to say, a fresh ground, would accrue in his favour. The 3rd proviso to Section 497, Cr.P.C., thus, becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused. Therefore, the delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his bail application on the statutory ground of delay, is to be considered a "fresh

ground", not earlier available to him, for entertaining his second bail application, within the meaning and scope of that term as elaborated in the case reported as Nazir Ahmed v. State PLD 2014 SC 241

Shakeel Shah v. State 2022 SCMR 1 ref.

(b) Interpretation of statutes---

---Criminal statute---If two interpretations of a provision of a criminal statute are reasonably possible, the one that is favourable to the accused, not the prosecution, should be preferred.

Bashir v. State 1998 SCMR 1794; Shahista Bibi v. Superintendent Jail PLD 2015 SC 15; Waris Ali v. State 2017 SCMR 1572; Province of Punjab v. Muhammad Rafique PLD 2018 SC 178 and Sahib Ulah v. State 2022 SCMR 1806 ref.

Jawad Zafar, Advocate Supreme Court for Petitioner/ Complainant.

Raja Shafqat Khan Abbasi, DAG, Saqib Hafeez, A.D. FIA, Cyber Crimes, Lahore for the State.

Munir Ahmed Bhatti, Advocate Supreme Court for Respondent along with Syed Junaid Arshad, the respondent/accused, in person.

Date of hearing: 28th August 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---Through this petition, the petitioner/complainant seeks leave to appeal against an order of the Lahore High Court, dated 17.04.2023, whereby the High Court has allowed the post-arrest bail application of the respondent/ accused and granted him bail on the statutory ground of delay in the conclusion of the trial. The petitioner prays for setting aside the order of the High Court and cancellation of the bail granted to the respondent.

2. Briefly, the factual background of the case is that in the earlier round, the post-arrest bail application of the respondent was dismissed by the Lahore High Court by its order dated 11.01.2021, on merits as well as on the statutory ground of delay. The High Court, however, also directed the trial court to conclude the trial within a period of 30 days from the date of receipt of that order. The respondent, through a petition for leave to appeal, challenged the said order of the High Court before this Court, but on perusing the report of the trial court as to who caused the delay in the conclusion of the trial, learned counsel for the respondent did not press the petition, and the same was disposed of by this Court on 24 February 2021 with the observation that the trial court would decide the case expeditiously.

3. The trial of the respondent, however, could not be concluded till 15 September, 2022, when the respondent filed a fresh post-arrest bail application in the trial court, on the statutory ground of delay in the conclusion of the trial. The trial court dismissed the application of the respondent on 11 November 2022, with the observation that the earlier post-arrest bail application on the statutory ground of delay stood dismissed by the High Court as well as by the Supreme Court; therefore, the fresh application on the same ground was not maintainable. The respondent then went up to the High Court, and by the impugned order of 17 April 2023, the High Court allowed the second post-arrest bail application of the respondent on the statutory ground of delay in the conclusion of the trial; hence, the present petition.

4. We have heard the arguments of the learned counsel for the parties and examined the cases cited by them, as well as, the record of the case.

5. The report of the trial court submitted to the High Court shows that from April 2022 to April 2023 when the High Court granted the respondent bail, for a period of one year, the conclusion of the trial was mainly hindered by a defect in the functioning of the video-link system in the jail through which the respondent had to appear before the trial court. Other than this, on a few hearings during this year, the respondent could not appear because he was seriously ill and was hospitalized while on some other hearings when the respondent appeared the witnesses of the prosecution were not present. Thus, the respondent was not at fault for the delay in the conclusion of the trial at least in the year preceding the date on which he was granted bail by the High Court. The only question of law that requires determination, therefore, is whether the delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his first bail application on the statutory ground of delay, can be considered a "fresh ground", not earlier available to him, for

entertaining his second bail application, within the meaning and scope of that term as elaborated in Nazir Ahmed¹.

6. The present case does not involve any offence punishable with death.² And as per the 3rd proviso to Section 497(1), Cr.P.C., which provides the statutory ground of delay in the conclusion of the trial for granting post-arrest bail, a person accused of any offence not punishable with death is to be released on bail as of right if he has been detained for such offence for a continuous period exceeding one year and the delay in the conclusion of the trial has not been occasioned by his any act or omission or any other person acting on his behalf nor does his case fall within the 4th proviso to Section 497(1), Cr.P.C.

7. The argument of the learned counsel for the petitioner is that once a bail application of the accused on the statutory ground of delay is dismissed, holding the accused responsible for causing the delay in the conclusion of the trial, his second bail application on the same ground for any subsequent period cannot be entertained. The argument does not appeal to us. Firstly, the entitlement of an accused to post-arrest bail on the statutory ground of delay in the conclusion of the trial is time-based. If the delay exceeds a year for no fault of the accused, in offences punishable other than death, the right of the accused to post-arrest bail ripens. This right continues to ripen for each period of one year starting from the arrest of the accused if he satisfies the court that he is not at fault for the delay in a particular period of one year unless his case falls within the 4th proviso to Section 497(1), Cr.P.C. Secondly, denying this recurring right to post-arrest bail to the accused would, in our opinion, amount to giving the prosecution a license to delay the conclusion of the trial for an unlimited period of time after the dismissal of the first bail application of the accused on the statutory ground of delay. The accused would, in such an eventuality, be left confined as an undertrial prisoner for an unlimited period of time at the mercy of the prosecution to conclude the trial as and when it pleases to do so. Thirdly, the accused shall have no incentive to attend the trial regularly and cooperate in the early conclusion thereof, after the dismissal of his first bail application, if his subsequent orderly conduct cannot entitle him to post-arrest bail despite non-conclusion of the trial for no fault of his in the next one year. Such a situation would be absolutely antithetical to the constitutional scheme of fundamental rights and make a mockery of the rights to liberty, fair trial and dignity of the accused guaranteed under the Constitution.

8. It is a well-settled principle of interpretation in our jurisdiction that if two interpretations of a provision of a criminal statute are reasonably possible, the one that is favourable to the accused, not the prosecution, should be preferred.³ As the statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial and dignity guaranteed under Articles 9, 10A and 14 of the Constitution of Pakistan, the provisions of the 3rd proviso must be fashioned in a manner that is progressive and expansive of these rights of the accused, who is still under trial, and his guilt being not yet proven, has in his favour the presumption of innocence.

9. The purpose and objective of the 3rd proviso, as observed by this Court in Shakeel Shah⁴, is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a fresh right, that is to say, a fresh ground, would accrue in his favour. The 3rd proviso to Section 497, Cr.P.C., thus, becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused. We are, therefore, of the opinion that the delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his bail application on the statutory ground of

delay, is to be considered a "fresh ground", not earlier available to him, for entertaining his second bail application, within the meaning and scope of that term as elaborated in Nazir Ahmed.

10. The High Court has arrived at the right decision but has been rather remiss in elaborating the entitlement of the respondent to maintain a second post-arrest bail on the fresh statutory ground of delay that had arisen due to the delay in the conclusion of the trial for his no fault in a subsequent period of one year, which was earlier found not available to him for a previous period of one year. However, for the above reason, we find that the High Court has acted correctly in entertaining the second bail application of the respondent on the fresh ground of delay in the conclusion of the trial for a period of one year after the dismissal of his earlier bail application. There is no legal justification for interference by this Court in the impugned order. The petition is found meritless; it is therefore dismissed and the leave to appeal is declined. However, as the trial in the case has been pending for long, we direct the trial court to conclude the trial within a period of three months from the date of receipt of this order.

MWA/A-35/SC

Petition dismissed.