

**SHARIAT APPELLATE BENCH OF THE HIGH COURT
OF AZAD JAMMU AND KASHMIR**

Cr. Revision Petition No.299/2021.
Date of Institution 27.10.2021.
Date of Decision 02.12.2021.

Sakina w/o Khaliq Mahmood, Caste Sudhan,
R/O Hillan-Tararkhal, Tehsil Tararkhal,
District Sudhnoti AK.

Petitioner-Accused.

To be reported.

Vs.

-Sd-

CHIEF JUSTICE

1. The State through Advocate General
AJ&K Muzaffarabad.
2. Idrees Ahmad s/o Babu Khan, Caste
Sudhan, R/O Hillan-Tararkhal,
District Sudhnoti AK.

Respondents.

**REVISION PETITION AGAINST THE IMPUGNED ORDER OF
DISTRICT COURT OF CRIMINAL JURISDICTION
SUDHNOTI DATED 27.09.2021**

BEFORE:- Justice Sadaqat Hussain Raja, C.J.

PRESENT :

Sardar Muhammad Ejaz Khan, Advocate, for
Petitioner-Accused.

Sardar Nisar Khan, Advocate, for
Complainant-Respondent No.2.

AAG for State.

ORDER :-

The captioned revision petition
has been preferred against the impugned
order of District Court of Criminal
Jurisdiction Sudhnoti dated 27.09.2021,
whereby bail, sought on statutory ground
of delay in conclusion of trial, was
declined to petitioner-accused.

2. The facts pithily stated are that Idrees Ahmad, complainant, lodged a report at Police Station Tararkhal on 17.07.2019, stating therein that marriage of his brother Imran Khan was to be solemnized on 20/21 July, 2019, due to which, his friends had gathered at his residence on the night of 17th July, 2019, and at about 1:00am Imran Khan, deceased, Tahir Bashir and Masood slept in the room of Imran Khan; however, in the morning at about 9:00am when he went in the room of Imran Khan, he was not present on the cot and his aforesaid friends were also not present over there rather they (friends) were taking breakfast. The complainant further stated that he was searching whereabouts of his brother Imran Khan through telephonic calls, meanwhile, his neighbour Muhammad Waheed Maroof shouted out that a dead body was lying there, on account of which, he alongwith other inhabitants

gathered over there and saw dead body of Imran Khan lying at the spot, who had been brutally killed by some unknown persons and his dead body had been set on fire. As per the aforesaid report, a case in offence under Section 302, APC was registered at Police Station Tararkhal on 17.07.2019, and during investigation petitioner-accused alongwith co-accused-persons (not before me) were traced out as killer of Imran Khan, deceased, therefore, offences under sections 34, 297, APC and 15(2)AA were added. The petitioner-accused, alongwith co-accused-persons, is facing trial for the murder of Imran Khan, deceased, before District Court of Criminal Jurisdiction Sudhnoti. Although F.I.R was lodged against some unknown persons, however, during investigation it was found that Sakina, petitioner-accused alongwith other co-accused-persons planned to commit murder of Imran Khan and she played role for

bringing Imran Khan at a deserted place, where he was done to death and his dead body was burnt.

3. Petitioner-accused, after completion of two years of trial, moved an application for bail on ground of statutory delay in trial before District Court of Criminal Jurisdiction Sudhnoti/Palandri on 13.09.2021, which was dismissed vide impugned order dated 27.09.2021; hence, the instant revision petition.

4. Sardar Muhammad Ejaz Khan, the learned Counsel for the petitioner-accused vehemently argued that his client is behind the bars since 25.07.2019 and she being a woman is entitled to be released on bail in the light of amendment made in section 497(1), Cr.P.C, which postulates that in case of a woman being accused of an offence punishable with death, whose trial has not been concluded within a period of one year, is

entitled to be released on bail. The learned Counsel submitted that if the delay attributed to the accused-petitioner in conclusion of trial is concluded, even then her detention is more than one year; therefore, she is entitled to be allowed bail on the ground of delay in conclusion of trial. The learned Counsel stressed on the point that the instant case is a blind murder and petitioner is not nominated in the F.I.R but the Court below while declining bail has astonishingly declared her as hardened, desperate and dangerous criminal whereas she is neither previously convicted nor she played an extraordinary role in the incident rather during investigation she has been alleged to abet the offence of murder. The learned Counsel finally prayed that by accepting the instant revision petition, the impugned order dated 27.09.2021 may be set-aside and petitioner-accused be

released on bail. The learned Counsel in support of his arguments placed reliance upon 1998 SCR 146 and 2015 P.Cr.L.J (SC AJK) 134.

5. Conversely, Sardar Nisar Ahmad, the learned Counsel for the complainant-respondent No.2, vigorously opposed arguments of the learned Counsel for petitioner-accused and submitted that the bail application has been correctly dismissed by the learned trial Court on statutory ground by declaring the petitioner as hardened, desperate and dangerous criminal because she, as per planning, brought the deceased from his home to a deserted place at late hours of night of 17th July, 2019, where he was brutally done to death by the accused-persons in a pre-planned manner and his dead body was burnt. The learned Counsel submitted that one year of detention of petitioner completed on 25.07.2020 and statutory ground was available to

petitioner but she did not avail the same in previous bail application; hence, the ground which was left in earlier round cannot be availed in second round. The learned Counsel contended that all available evidence on record connected the petitioner-accused with the commission of murder; therefore, the Court below while declining bail did not commit any illegality. The learned Counsel finally craved for dismissal of revision petition and cited a plethora of case law in support of his arguments.

6. The learned A.A.G appearing on behalf of the State fully owned and supported the arguments advanced by the learned Counsel for complainant-respondent No.2 and craved for dismissal of revision petition.

7. I have heard the learned Advocates for the parties and cursorily gone through the record.

8. The petitioner-accused, alongwith co-accused-persons (not before me), is facing trial for the murder of Imran Khan, deceased, before District Court of Criminal Jurisdiction Sudhnoti/Palandri in offences under section 302, 34, 297,APC and 15(2)AA. Although F.I.R was lodged against some unknown persons, however, during investigation it was found that Sakina, petitioner-accused alongwith other co-accused-persons planned to commit murder of Imran Khan and she played an active role for bringing Imran Khan at a deserted place, where he was done to death and his dead body was burnt. Now, petitioner through the instant revision petition seeks bail under 3rd proviso clause (b) of Section 497,Cr.P.C on statutory ground of delay in conclusion of trial. It would be useful to reproduce Section 497(1),Cr.P.C, which reads as follows:-

"Section 497. When bail may be taken in cases of non-bailable

offence. (I) When any person accused of non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show-cause why he should not be so released:

Provided further that the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail..

(a) Who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding

six months and whose trial for such offence has not concluded; or

*(b) Who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years **and in case of a woman exceeding one year and whose trial for such offence has not concluded.***

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."

9. It is pertinent to mention here that the right of an accused to be enlarged on bail under the provisions of Section 497(1), Cr.P.C is a statutory right which cannot be denied to grant bail under the discretionary powers of the Court, but I am cognizant of the fact that the bail under the 3rd proviso to Section 497(1) Cr.P.C can be refused to an

accused by the Court only on two grounds that (1) if the delay in the conclusion of the trial occasioned on account of any act or omission of the accused or any other person acting on his behalf and (2) if the case of the accused fell under the 4th proviso to Section 497(1), Cr.P.C. There is no cavil with the fact that an accused can claim bail on the ground of statutory delay in trial, but it is incumbent upon the Courts to determine the heinousness, gravity and brutality of offence while allowing bail to an accused. In the case in hand, no doubt, petitioner-accused being a woman can claim bail under the amendment of Section 497, Cr.P.C after detention of one year, but in the same amendment the following words have been used:-

"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, dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life."

In afore quoted lines, the words "**or to a person who, in the opinion of the Court, is a hardened, desperate, dangerous criminal**" clearly show discretion of the Court to refuse bail to a hardened, desperate or dangerous criminal. In the light of above discretion, a Court can refuse bail to an accused whether he has suffered any previous conviction or not and whether he has been previously adjudicated to be guilty or not. My aforementioned view is fortified from a case reported as **Qadir Bux V. The State (NLR 1987 SD 274)**, whereby, in a case of robbery, bail application was dismissed and it was held by the learned Judge as under:-

"In this view of the matter in my humble opinion it would be open to the Court to examine each case on its own facts. If the accused person applying for bail has during

commission of crime shown extra-ordinary and unusual courage and determination and has exhibited a beastly and cruel instinct of character, he can be described as "desperate and dangerous criminal" and the Court can refuse to admit him bail whether he has suffered any previous conviction or not and whether he has been previously adjudicated to be guilty or not?"

10. The Apex Court of AJ&K in a case reported as **Shaukat Aziz and another v. Ansar Ali and another [2015 P.Cr.L.J (SC AJ&K) 134]** has laid down that the Court while attending the question of hardened, desperate and dangerous criminal, shall take into consideration three factors. The relevant portion/factors is/are reproduced as under:-

"After detailed survey of the case law referred to hereinabove, it may be observed that while attending the question whether the accused is hardened, desperate and dangerous criminal shall take into consideration the following three factors; (i) previous record of the accused which may include his earlier prosecution, (ii) the nature

of accusation and conduct of the accused at the time of alleged occurrence, which has been committed in a heinous manner, and (iii) the element of brutality indicated that the accused were hardened, desperate and dangerous criminal and such act of the accused amounts to terrorism and such act of the accused create a sense of fear or insecurity among the public at large."

11. Coming to the case in hand, although F.I.R was lodged against some unknown persons, however, during investigation it was found that Khaliq, co-accused, had suspicion that Imran Khan forcibly committed 'Zina' with his wife Sakina, on account of which, he alongwith petitioner-accused and other co-accused-persons planned to commit murder of Imran Khan. It was further found during investigation that marriage of Imran Khan, deceased, was to be solemnized on 20/21 July, 2019, upon the pretext of which, Khaliq and Sakina both accused on the night of occurrence, i.e. 17th July, 2019, went at the residence of deceased;

however, Khaliq co-accused came back home at about 11:30pm while Sakina, petitioner-accused, kept stayed over there and at about 1:30am she asked deceased to leave her at home, who went with her and did not come back. According to investigation, she played an active role for bringing Imran Khan, deceased, at a deserted place, where he was done to death by strangulation and some parts of his body were removed and his dead body was burnt. In such state of affairs, it, prima-facie, appears that murder was committed in a heinous brutal manner. Thus, in my opinion, the manner of occurrence is dangerous one and the role played by the petitioner-accused during the occurrence does not seem ordinary; therefore, the third proviso to section 497(1), Cr.P.C shall not apply to her case and I do not find any illegality in the impugned order dated 27.09.2021, which

does not warrant any interference by this Court.

12. As far as the authorities, 1998 SCR 146 and 2015 P.Cr.L.J (SC AJ&K) 134, cited by the learned Counsel for petitioner-accused are concerned, in these cases accused were not declared hardened, desperate or dangerous criminals, whereas in the case in hand, on the basis of brutal manner of occurrence, petitioner-accused has been declared hardened, desperate and dangerous criminal; therefore, the aforesaid authorities are distinguishable from the facts of present case.

13. Consequently, the instant revision petition stands dismissed; however, the trial Court is directed to expedite the proceedings and conclude the trial as soon as possible.

Muzaffarabad,
02.12.2021. (RAH) .

-Sd-
CHIEF JUSTICE