HIGH COURT OF AZAD JAMMU & KASHMIR
[Shariat Appellate Bench]

Criminal revision No. 189/2024.
Date of institution .. 10.06.2024.
Date of decision .. 25.09.2024.

Muhammad Idrees S/o Muhammad Azad caste Sudhan R/o Dharer Tehsil Sehnsa District Kotli.

…..Accused/Petitioner

Versus

1. Shahzad Amin S/o Muhammad Amin.
2. Mst. Iqra D/o Muhammad Idrees.
3. Zeeshan S/o Muhammad Idrees.
4. Ikram S/o Muhammad Idrees caste Sudhan R/o Dharer Tehsil Sehnsa District Kotli.

….. Real-Respondents

5. Additional Advocate General

..Proforma-respondent

CRIMINAL REVISION PETITION

Before;- ***Justice Syed Shahid Bahar, J.***

PRESENT:
Abdul Aziz Ritalvi, Advocate for the accused/petitioner.
Syed Atif Mushtaq Gillani, Advocate for respondents No.1 to 4.
Haider Rasheed Mughal, A.A.G for the State.

ORDER:

The titled revision petition has been directed against the order dated 27.05.2024 passed by Additional District Court of Criminal Jurisdiction, Sehnsa, whereby bail application filed on statutory ground by the accused-petitioner was rejected by the said Court.

2. Brief facts of the instant revision are that a case bearing FIR No.62/2023 under Sections 337/F1 to F6, 337-A1 to

A-, 324, 337, 337/J, APC was registered against the accused-petitioner on at Police Station Sehnsa (Kotli). Later on due to death of the victim (Safeena Amin), section 302, APC was added against the accused/petitioner. Accuse/petitioner filed numerous applications to release him on bail, before the courts below as well as before this Court previously but all the bail applications were rejected. The accused/petitioner filed post arrest bail application before Additional District Criminal Court, Sehnsa on 29.04.2024. The learned Additional District Court of Criminal Jurisdiction after hearing arguments of the learned counsel for the parties rejected the bail application of the accused-petitioner vide impugned order dated 27.05.2024, hence, instant revision petition.

3. Mirza Abdul Aziz Ritalvi, the learned counsel for the accused-petitioner argued that learned Court below committed grave illegality while recording the impugned order. The learned counsel maintained that the petitioner is behind the bars for the period more than 01 year and he is no more required by the police for investigation purpose as after submission of challan evidence of prosecution witnesses have also been recorded and from scrutiny of said evidence reflects that the said witnesses negated the version of the prosecution. The learned counsel staunchly contended that after passing statutory period i.e. 01 year as the case of the accused petitioner does not fall in Section 302, APC rather Section 306 APC is attracted in the case of the

petitioner, whose punishment is provided in Section 308, APC which is the punishment of Diyat, thus, in this eventuality, the accused/petitioner who is detained in judicial lock up for more than 01 year is entitled to be released on bail. Finally, the learned counsel prayed that by accepting the revision petition, the impugned order may be set aside and accused-petitioner be released on bail. In support of his submission, the learned counsel referred to and relied upon the following case laws:-

i. 2023 SCR 442.
ii. 2010 SCR 402.

4. On the other hand, Syed Atif Mushtaq Gillani, the learned counsel for the complainant-respondents contended that the accused/petitioner is nominated in the alleged FIR with a specific role and due to alleged act of the accused-petitioner life of an innocent lady has been snatched. He staunchly contended that the act of the accused was in a brutal and harsh manner, thus, the accused-petitioner is not entitled for any concession of bail. The learned counsel defended the impugned order on all counts and prayed for dismissal of the petition and he referred to and placed reliance upon 1994 SCR 260 and 2002 SCR 173.

5. Haider Rasheed Mughal, the learned A.A.G, contended that the accused-petitioner is fully connected with the alleged offence, his role is specific and he is not entitled to be released on bail. The learned A.A.G defended the impugned order on all counts and prayed for dismissal of the revision petition.

6. I have heard the learned counsel for the parties, A.A.G appearing on behalf of State and gone through the record of the case with utmost care.

7. It may be stated here that at bail stage, deeper appreciation of record cannot be made and only a tentative assessment is permissible.[1] Credibility, scrutiny and truthfulness of the witnesses is to be adjudged by the trial Court at the time of the appreciation of evidence after the conclusion of trial. This Court while deciding bail application has to look into the FIR, the statement recorded under section 161, Cr.P.C of witnesses and other incriminating material brought by the prosecution including the recoveries etc.

8. The allegation attributed against the accused/petitioner in the case/ F.I.R No.62/23 dated 25.03.2023 is that he tortured/beaten his wife and after that an Acid was forcibly given to the victim-deceased (corrosive intake forcefully) by the accused/petitioner. She remained in Hospital and at last she was died on 20.08.2023, thus, a criminal case was registered against the accused/petitioner and after usual investigation, challan in offences under Sections 302, 337-F(2), 337/J, APC was submitted before trial Court, which is at the verge of recording of evidence.

09. Accused petitioner is detained in judicial lock-up for the last more than 1 and half year.

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[1] . PLD 2023 High Court (AJK) 11 --- Muhammad Waseem Mughal v. The State.

10. The accused-petitioner is seeking bail on merit as well as on statutory ground as more than one year and 06 months has elapsed after his detention, while the trial of the case has also yet not been concluded. The accused/petitioner moved for bail on merit as well as on the statutory ground on 29.04.2024 before the learned Additional District Criminal Court, Sehnsa, but the said application was finally rejected through the impugned order dated 27.05.2024.

11. A perusal of record shows that the victim/deceased was the wife of the accused/petitioner. After the alleged incident, the accused-petitioner is behind the bars for about last 01 year and 06 months. Investigation of the case has completed and accused-petitioner is now facing trial; evidence of two prosecution witnesses have been recorded as yet. The allegation of murder of his wife is upon the shoulder of accused/petitioner, herein, thus, apparently and as per law his case falls in Section 306(c) and punishment provided under Section 308, APC is "diyat" in Taazir.

12. The Hon'ble Apex Court in a case titled reported as 2010 SCR 402, while dealing such like proposition held as infra:-

> "Before analyzing the evidence it will be appropriate to first deal with the question in question in respect of Section 306 and 308 APC. The appellant claims that his daughter is the heir of deceased as such under the provisions of sections 306 and 308, if the case is proved then too only a sentence of Diyat can be awarded and in such an eventuality he is entitled to bail as of right. It is useful to

reproduce sections 306 and 308 APC which are as under:-

"**306. Qatl-i-amd not liable to qisas**.--- Qatl-i-amd shall not liable to qisas in the following cases, namely:-

(a) ……

(b) …….

(c) When any wali of the victim is a direct descendant, how lowsoever, of the offender.

308. Punishment in qatl-i-amd not liable to qisas, etc. --- (1) Where an offender guilty of qatl-i-amd is not liable to Qisas under section 306 or the Qisas is not enforceable under clause (c) of section 307, he shall be liable to diyyat.

Provided ……

Provided ……..

Provided ……..

(2) Notwithstanding anything contained in subsection (1) the Court having regard to the facts and circumstances o the case in addition to the punishment of Diyyat, may punish the offender with imprisonment of either description for a term which may extend to fourteen years as tazir."

The analysis of above provisions of law leads us to the conclusion that if the wali of the victim is a direct descendant of the offender then the sentence of Qisas cannot be imposed and the offender can be awarded punishment of Diyyat or any other appropriate sentence. In the present case the appellant is undoubtedly direct descendent of the legal heir of deceased. He will be liable to sentence under sub-section (1) or sub-section (2) of section 308 APC. At this stage it cannot be said that in the facts and circumstances of the case the appellant can be awarded sentence of 14 years apart from Diayyat or not. On this score the case becomes one of further inquiry."

13. In my opinion, the matter of death of the victim Safeena is of further probe and inquiry.

14. Principle of law as laid down by the Apex Court of Pakistan[2] divides non-bailable offence into two categories, i.e.

> (i) Offences punishable with death, imprisonment for life or imprisonment for ten years; and
> (ii) offences punishable with imprisonment for less than ten years, grant of bail in non-bailable offences falling in second category punishable with imprisonment for less than ten years is a rule and refusal an exception bail in cases falling in the second category will be declined only in extra ordinary and exceptional cases i.e.
>
> (a). where there is likelihood of abscondence of accused.
> (b). where there is apprehension of the accused tampering with the prosecution evidence.
> (c). where there is danger of the offence being repeated if the accused is released on bail..
> (d). where the accused is a previous convict.

15. Right of fair trial is now constitutionally guaranteed fundaments right. Criminal law is aimed to bring accused person to justice as speedy as possible, so that if he is found guilty he may be punished and if he is found innocent he may be acquitted and discharged.

16. Statutory recognition of concession of bail on the basis of delay in trial to the accused is as per aesthetical standards of the philosophy of bail and beautifies the right to fair trial. Progressive juristic approach favours the liberties providing much vagour and strength to extending and enlarging the accused to bail rather than to withheld and decline the same.

(Underlining is mine)

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[2]. PLD 1995 SC 34.

17. Decades back the Apex Court of Pakistan in the case of “Riasat Ali vs. Ghulam Muhammad (PLD 1968 SC 353) chalked out guiding principles qua trial of criminal cases as infra:-

> “Delay in prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out accused, however delay in prosecution of case as a ground for bail is to be weighted and judges in each case on its merits”

18. The third proviso to section 497 (1) Cr.P.C was later on brought to the Statute book which reads as under:-

> “Provided further that the Court shall, except where it is of the 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.
>
> (2) ……..

19. The Apex Court while dealing with the similar proposition in the reported case titled *Jahanzeb vs. State 2014 SCR 75* held as under:-

> "It is settled that while making any opinion the Court has to take into consideration the material place before it."

20. Same view was taken in the case titled Muhammad Mumtaz vs. The State 2012 YLR 1603.

21. Thus, no opinion can be drawn without having any record/ material available.

22. The word shall employed in the above proviso means that where statutory period is complete the delay is not on the part of the accused and where his case does not fall under any of the categories of the fourth proviso then the Court is left with no choice but to release him on bail.

23. Trite that if a case has been made out on statutory delay, bail should be granted as a rule.

24. The above provision takes breath from the analogy that ultimately if an accused after facing trial is exonerated and given clean chit the period he remained behind the bar neither can be justified nor he can be compensated but in case of he is convicted then he has to be re-arrested in order to undergo the sentence so awarded.

25. Above juristic approach is progressive and takes colours from right to fair trial.

26. Thus, delay in conclusion of trial would enable accused person for his post arrest bail subject to qualifying the litmus test provided in the law in this regard.

27. It is crystal clear that bail in bailable offences is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession / grace.

28. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by mistaken interim relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run, so whenever reasonable doubt arises with regard to the participation of an accused in the crime, he should not be deprived of the benefit of bail, the bail can never be withheld nor cancelled as punishment.

29. Question of benefit of reasonable doubt is necessary to be determined not only where considering the question of guilt of an accused but also while considering the question of bail because there is a wide difference between the Jail life and a free life.[3]

30. Philosophy of bail is to take back the custody from police and hand over the same to the sureties. Bail is neither exoneration from the charges nor put any shadow upon the final fate of the case. This concession is provided by law subject to certain conditions and eventualities.

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[3]. Tariq Bashir vs. State PLD 1995 SC 34 + Abdullah v. State 2008 YLR 2717.

31. Accused is behind the bars since last more than 01 year and 06 months. Continuous incarceration of accused in Jail would not serve any beneficial purpose.[4]

32. **Accused petitioner who is a Jail bird cannot be kept behind the bars if he make out a case for a concession of law. All the loopholes, dents and lapses in the case of prosecution are taken as premium in favour of the accused, and he enjoys the right to pick his defence from weakness of the prosecution case, that is why he is called a favourite child of law**.

(Underlining is mine)

33. By taking into consideration all the above circumstances and seeking wisdom form the supra case law, I am of the view that the petitioner has made out a case for his release on bail. In sequel to what has been discussed above, the petition in hand is accepted as a consequence whereof, the petitioner is admitted to bail after arrest subject to his furnishing bail bonds in the sum of Rs.10,00,000/- (Ten Lac Rupees) with two sureties each in the like amount to the satisfaction of the trial Court or any Magistrate 1st Class, Sehnsa/Kotli.

34. Before parting with the order trial Court seized of the matter is directed to expedite the proceedings of trial and ensure its conclusion in the shortest possible time. It is made clear that if the accused-petitioner misuses the concession of bail or delay in the conclusion of trial is caused by him or anyone else

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[4]. **2017 P.Cr.LJ Note 50.**

acting on his behalf, the learned trial Court is competent to recall the bail granted to him after hearing the parties as per law.

Muzaffarabad:
25.09.2024. ***JUDGE***

Approved for reporting

JUDGE