

**SHARIAT APPELLATE BENCH OF THE HIGH COURT OF AJ&K**

*Revision petition No.106/2023.*

*Date of institution 12.04.2023*

*Date of decision 11.05.2023*

Saqib Majeed Son of Abdul Majeed Caste Sudhan R/o near  
C.M.H Rawalakot, District Poonch.

*.....Accused-Petitioner*

**VERSUS.**

1. The State through Mohammad Altaf Khan and  
Mohammad Ashraf Khan Caste Sudhan R/o Bahi  
Rawalkot District Poonch.
2. Additional Advocate General AJ&K.

*.....Respondents.*

**POST ARREST BAIL APPLICATION IN OFFENCES UNDER  
SECTIONS 302, 341, 396 APC, 17(2) EHA, 15AA(2)**

***Before;- Justice Sadaqat Hussain Raja, C.J***

**PRESENT:**

*Sardar Javed Naz, Advocate for the applicant/ petitioner.*

*Raja Mohammad Ejaz, Advocate for the complainant.*

*Ch. Mohammad Manzoor, AAG for the State.*

**ORDER:**

The above titled post arrest bail application has  
been filed against the order of the Additional District Court  
of Criminal Jurisdiction, Rawalakot, dated 24.02.2023,  
whereby, the application filed by the applicant/petitioner for  
his release on bail on statutory ground was rejected.

Briefly stated facts of the case are that complainant;  
Muhammad Altaf, lodged a report at Police Station

Rawalakot, on 05.09.2022. For the sake of brevity, the averments of F.I.R. need not to be reiterated here because the same have sufficiently been incorporated by the Court below in the impugned judgment. Suffice it to observe that after registration of the case, the accused-petitioner was apprehended. After usual investigation, a challan was presented before the competent Court. The case was at the stage of recording the evidence, on 06.02.2023, accused-petitioner moved an application for bail on the ground that a period of two years has been elapsed and his trial has not yet been completed, thus he seeks bail on statutory ground. The learned trial Court after hearing the parties, rejected the same vide its order dated 24.02.2023, hence, this application/revision petition.

Sardar Javed Naz, the learned counsel for the accused-petitioner argued that period of more than two years has been elapsed and there is no fault of the accused-petitioner or his counsel for delay in the trial. He further submitted that Sardar Rebaz Khan Advocate was engaged by the petitioner, who remained ill and later on, he was passed away, so, accused cannot be penalized due to illness of his counsel. The learned counsel further maintained that the accused/petitioner has been detained for a continuous

period of more than two years and according to his estimation, one month and 4 days has further been passed away and in these circumstances the accused petitioner is entitled to be enlarged on bail. The learned counsel contended that as per amendment made in section 497 of Cr.P.C, if trial is not completed within two years then the accused should be released on bail on statutory ground. He further argued that only single fire has been attributed against the petitioner. He vehemently contended that by no means the petitioner can be termed as hardened or dangerous criminal. Finally, the learned counsel prayed that by accepting the revision petition, the impugned order may be set-aside and accused-petitioner may be released on bail. In support of his contentions, the learned counsel referred an unreported judgment of this Court titled "*Tanveer Aman Ullah Vs The State and others*" decided on 01.10.2020 and 1992 MLD 1814.

On the other hand, the learned counsel for the complainant stated that the delay occasioned in the trial was due to act of the accused-petitioner and his counsel, after excluding the period the delay is not more than two years. The learned further maintained that the petitioner engaged many counsel and one of them Sardar Rebaz was ill but no

explanation has been mentioned regarding other counsel. It is further averred that trail of the case is near to completion and the statements of few witnesses are to be recorded. The learned counsel lastly defended the impugned order on all counts and prayed for dismissal of the application.

The learned AAG, supported the arguments raised on behalf of the learned counsel for the complainant.

I have heard the learned counsel for the parties and gone through the record of the case.

The learned counsel for the petitioner submitted that the learned trial Court failed to calculate the statutory period. I have gone through the record of the trial Court and the impugned judgment. The learned trial Court rightly calculated the statutory period in the light of the proceedings. It is worthwhile to mention here that the opportunities were granted and the case was adjourned on behalf of accused petitioner which clearly reveals that the accused petitioner and other accused deliberately tried to prolong the case for grant of bail on statutory ground. This fact is proved from the interim orders of Court below which are as under:-

19.04.2023 پکارا کروایا گیا۔ نائب کورٹ حاضر۔ مستغیث معنوسل حاضر۔ ملازم محروسہ بخر است کمال حاضر۔ دیگر ملزمان اصلاً معنوسل حاضر۔ گواہ نمبر 22 حاضر۔ معنوسل ملزمان سردار نصیب آزا قلمبندی شہادت کے لیے مہلت طلب ہیں۔ حسب استدعا مہلت دی جاتی ہے۔ گواہ مذکورہ کو آئندہ کے لیے پابند کیا جاتا ہے۔ ملازم محروسہ بند حوالات جوڈیشل ہو۔ مسل بغرض شہادت استغاثہ تقرر 29.04.2023 پیش ہو۔ حکم سنایا گیا۔

29.04.2023 پکارا کروایا گیا۔ نائب کورٹ حاضر۔ معنوسل مستغیث حاضر۔ ملازم محروسہ بخر است کمال حاضر۔ دیگر ملزمان معنوسل حاضر۔ گواہ نمبر 22 حاضر۔ معنوسل ملزمان سردار نصیب آزا داؤد کویت بوجہ شدید بخا قلمبندی شہادت کے لیے مہلت طلب ہیں۔ حسب استدعا مہلت دی جاتی ہے۔ گواہ نمبر 22 کو آئندہ کے لیے پابند کیا جاتا ہے۔ ملازم محروسہ بدستور بند حوالات جوڈیشل ہو۔ مسل بغرض شہادت استغاثہ تقرر 11.05.2023 پیش ہو۔ حکم سنایا گیا۔

It is pertinent to mention here that the right of an accused to be enlarged on bail under the 3<sup>rd</sup> proviso to Section 497(1) of Cr.P.C is a statutory right which cannot ordinarily be denied to grant bail under the discretionary powers of the Court, however, I am also aware of the fact that the bail under the said proviso to Section 497(1) of Cr.P.C can be refused to an accused by the Court 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 in the opinion of the Court that the accused is hardened, desperate or dangerous criminal or he is a previously convicted offender or involved in terrorism.

Statutory ground is recognized by law and judgments of superior Courts but this right has become a tool for granting of bail in favour of accused persons especially when many person are involved and every accused has engaged his counsel and all the Advocates appearing on

behalf of the accused persons deliberately avoid to appear before the Court on the date fixed for proceedings. No doubt, it has been held that the accused person is a favourite child of law but it does not mean that the Court should ignore the right of prosecution or any victim. Refusing of bail can be cured at any stage by granting of bail or by acquittal of the accused person but where a life of victim has been snatched cannot be cured by any mean except to punish the accused person. The accused person and prosecution should be treated equally during the trial and no one should be given preference over the other by any means. The statutory period for granting of bail is fixed for 2 years and it is very astonishing that the trial is not completed within a period of two years despite the fact that in Azad Jammu and Kashmir District Criminal Court and Additional District Criminal Court consisting of two members, conduct the trial of murder and one member of the said Court is authorized to record evidence and other proceedings except final judgment of the case. It is also another aspect of the murder case in Azad Jammu and Kashmir that one member (District Qazi) has no other work/business except to conduct trial of the offences under Islamic Penal Law (IPL) and no case can be adjourned or prolong if the counsel of the parties assist the court

properly. While deciding the bail matter in statutory ground this aspect of the case is always ignored by the Courts. In the instant case, the point argued by the learned counsel for the petitioner that the counsel for the petitioner became ill during the trial and later on he was passed away. In this regard it is relevant to mention here that according to record the accused petitioner has engaged more than one counsel during the trial and one of them became ill and no explanation has been mentioned regarding other counsel, thus, the contention of learned counsel for the petitioner is repelled.

Even otherwise, the counsel for the petitioner or any party became ill or suffer any unavoidable circumstances to appear before the Court, the case could not be adjourned for a long period to get benefit of statutory ground. The Code of Criminal Procedure Code, 1898, Section 344 empowers to postpone or adjourn proceedings. The relevant section is reproduced as under:

344. Power to postpone or adjourn proceedings.  
(1) if from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial the Court may, if it thinks fit, by order in writing, stating the reasons therefore from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable

and may by a warrant remand the accused if in custody.

A bare reading of this section reveals that the trial Court must conduct the case according to the statutory provision of law and not in casual manner and frequent adjournment shall be avoided without any reason recording in writing and good cause. So, it is directed all the Criminal Courts shall abide the statutory provisions especially in murder case.

Furthermore, the statements of only few witnesses are yet to be recorded by the trial Court, therefore, in this view of the matter, as the trial of the case is near to completion, thus, the post arrest application/revision petition also merits no consideration. The trial Court is directed to conclude the case within two months positively.

For the reasons listed above, finding no force in this revision petition, it is hereby dismissed. Copy of this order shall be sent to all the District Courts of Criminal Jurisdiction and Additional District Courts of Criminal Jurisdiction forthwith for compliance.

Muzaffarabad;  
11.05.2023

**CHIEF JUSTICE**

***Approved for reporting.***

**CHIEF JUSTICE**