2015 M L D 515

[Sindh]

Before Shahab Sarki, J

SAQIB RAZA---Applicant

Versus

The STATE---Respondent

Criminal Bail Application No.919 of 2014, decided on 18th June, 2014.

Criminal Procedure Code (V of 1898)---

----S.497---Penal Code (XLV of 1860), Ss.324, 353 & 392---Attempt to commit Qatl-i-amd, assault or criminal force to deter public servant from discharge of his duty and robbery---Bail, grant of---Delay in trial---Effect---Accused was arrested on 15-8-2012, at the spot and since then he had been behind the bars---Effect---Expeditious and fair trial was a fundamental right of accused---Delay in disposal of case and imparting justice could reduce confidence of public in judicial system and would cause frustration and anguish---Object of criminal law was to bring accused to justice as speedily as possible and if they were found guilty, they could be punished and if they were innocent they should be acquitted from the case---Object of criminal prosecution was not to punish an undertrial prisoner for alleged offence and accused could not be detained for an indefinite period without remedy of trial---Accused was not in any way responsible for delay in conclusion of trial and neither accused nor any person acting on his behalf had been shown to be the cause of delay---Bail was allowed in circumstances.

1999 SCMR 2147; 1997 SCMR 436; 2003 MLD 19; 2009 YLR 2139; 2010 MLD 318; PLD 2012 Sindh 147 and 2014 MLD 633 rel.

Shamraiz Khan Tanoli for Applicant.

Abrar Khichi, A.P.G. for the State.

Date of hearing: 13th June, 2014.

ORDER

SHAHAB SARKI, J.---This bail application arises out of Crime No. 689 of 2012 registered under sections 353/324/392/34, P.P.C. at Police Station Shahrah-e-Faisal, Karachi.

2. Brief facts of the prosecution case as narrated in the F.I.R. are that on 15-8-2012 at about 2300 hours complainant Syed Irshad Ahmed was going from Johar Chowrangi on his motor cycle and when he reached near the street of Chappal Apartment one motor cycle bearing Registration No. KFO-7741 along with two boys appeared who upon show of fire arms stopped him and snatched his mobile phone and cash of Rs.2,000 and then they went away. The complainant saw a police mobile and informed them about the incident and the police cautioned the accused to stop but the two accused persons started firing upon the police party due to which one policeman Bashir Ahmed also got an injury on his face. One accused escaped taking advantage of darkness while the other accused (present applicant) along with motorcycle was arrested on the spot. From his possession one .30 bore pistol with two live rounds was recovered. From his personal search the robbed mobile phone and cash Rs.2,000 were also recovered.

3. After investigation the Investigating Officer submitted challan against the present applicant showing other accused as absconder. Such challan was submitted on 7-9-2012 before the Court. First bail application of the applicant was dismissed by the trial Court vide Order dated 22-1-2013. Thereafter the applicant preferred a bail application before the High Court vide Bail Application No. 130/2013 which was disposed of on 20-3-2013, wherein, directions were given to the trial Court to conclude the trial within a period of three months from the date of receipt of the order.

4. Since the trial could not be completed within the stipulated period, therefore, the applicant moved another bail application before the trial Court which was dismissed on 9-12-2013. Thereafter the applicant moved another Bail Application before the High Court being Bail Application No. 1593/2013 which was once again dismissed vide Order dated 31-1-2014 with specific directions to the trial Court to record the evidence of the prosecution witnesses within three months and submit the compliance report. Since the trial could not be concluded within the period of three months as directed, the present applicant, for the third time, filed his bail application before the trial Court which was once again dismissed vide Order dated 27-5-2014 and therefore, the applicant has been constrained to move the instant bail application.

5. Perusal of the record as well as the report of 1st Additional Sessions Judge, Karachi East dated 13-5-2014 state that Order dated 31-1-2014 was received by the Court on 15-2-2014 and the matter was already fixed on 20-2-2014. Thereafter, the matter was put off to 3-3-2014 but on both these dates the hearing could not take place due to strike call by the Karachi Bar Association. Thereafter, on 10-3-2014 and 22-3-2014, P.Ws. failed to appear and on the next date i.e. 5-4-2014 the DDPP was under training, therefore, the matter was adjourned to 14-4-2014 on which date the P.Ws. again failed to attend the Court. On the next date i.e. 28-4-2014, the Presiding Officer was on leave and on 16-5-2014, in spite of the presence of the Defence Counsel, the matter was adjourned and on the last date of hearing i.e. 3-6-2014 the presiding Officer was on leave.

6. It is contended by the counsel for the applicant that in spite of repeated efforts and directions by this Hon'ble Court, the trial Court has failed to conclude the trial and looking at the track record the end of the trial is not in sight. He has further argued that

the offences with which the applicant is charged are not punishable with imprisonment for life. He has pleaded his case on the ground of statutory delay as well as on the ground of non-compliance of directions of this Court. He has also placed on record the case-law 1999 SCMR 2147, 1997 SCMR 436, 2003 MLD 19, 2009 YLR 2139, 2010 MLD 318, PLD 2012 Sindh 147 and 2014 MLD 633.

7. The learned A.P.G. has objected to the grant of bail and has stated that the prosecution is not at fault for the delay in conclusion of trial.

8. I have heard the arguments, gone through the record as well as through the case-law submitted.

9. It is matter of record that twice directions were given to the trial Court but in spite of clear and specific directions no progress has been made. Since 15-2-2014, when the trial court received the order, four months have passed but due to no fault of the accused the matter has not proceeded at all. The learned A.P.G. has been able to explain or justify the delay caused in the disposal of the case nor has he been able to attribute any such delay to the accused.

10. Expeditious and fair trial is a fundamental right of an accused person. Delay in disposal of the case and imparting justice reduces the confidence of the public in the judicial system and causes frustration and anguish. The object of criminal law is to bring the accused to justice as speedily as possible and if they are found guilty they may be punished and if they are innocent they should be acquitted from the case. The object of criminal prosecution is not to punish an under trial prisoner for the alleged offence and the accused cannot be detained for an indefinite period without remedy of trial. In the instant case, the accused is not in any way responsible for delay in conclusion of trial and neither the accused nor any person acting on his behalf has been shown to be the cause of delay.

11. Fortified by the case-law relied upon by the learned counsel for the applicant, I am inclined to grant bail to the applicant and consequently, the applicant is granted bail subject to his furnishing solvent surety in the sum of Rs.200,000 (Rupees Two Hundred Thousand) and P.R. bond in the like amount to the satisfaction of trial Court.

MH/S-70/Sindh Bail allowed.

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