

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

(Judicial Department)

**Cr. Misc: BA No.292-B of 2017-08-30**

**Shahzad Khan**

**Vs**

**The State**

**JUDGMENT**

Date of hearing 30.08.2017.

Appellant-Petitioner: **By Mr. Farooq Khan Sokari,**  
**Advocate.**

Respondent: **By Mr. M. Rasheed Khan Dirma**  
**Khel Advocate & State By Mr.**  
**Shahid Hameed Qureshi, Addl.**  
**AG.**

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**ABDUL SHAKOOR, J.**—The accused/ petitioner

Shahzad Khan seeks his release on bail in case F.I.R No.

95 dated 24.07.2002 under section 302/324/34 P.P.C,

Police Station Domel, Bannu.

2. The facts in brief, as per F.I.R mentioned above, are that on 24.07.2002 at about 05.00 hours, the complainant Madaras Khan in injured condition at

Causality of Civil Hospital, Bannu reported the matter to the effect that he alongwith his cousins Mohabat Khan, Banaras Khan and Saadullah were sleeping in the fields, in the meantime accused Wali Khan alongwith unknown person, whom if brought before him can be identified, armed with Kalashnikovs came there, both of them started firing at them with murderous intention as a result of which complainant, Saadullah and Banaras Khan were hit and got seriously injured, whereas Mohabat Khan luckily escaped unhurt. The accused after commission of the offence decamped from the spot. Motive for the occurrence is stated to be dispute over landed property. Complainant charged the accused for the offence. The accused/ petitioner was charged in supplementary statement on the same day. Later on complainant and injured Banaras Khan succumbed to the injuries and section 302 P.P.C was added in the case. The accused/ petitioner after his arrest filed bail

application before the learned Additional Sessions Judge-II, Bannu, which was turned down vide order dated 06.05.2015, thereafter the trial was commenced and till now eleven (11) witnesses have been examined. The accused/ petitioner moved bail application before the learned trial Court on the fresh ground of statutory delay in conclusion of trial, which was turned down vide order dated 12.07.2017, hence, this bail application.

3. Learned counsel for the accused/ petitioner argued that the accused/ petitioner has been arrested on 23.04.2015 and after lapse of about two years and three months trial of the petitioner has not yet been concluded nor there exists any probability of its conclusion in near future, as out of 19 witnesses up till now 11 witnesses have been examined. He next argued that there is no laxity on the part of accused/ petitioner, while the prosecution lingering on the case on one pretext or other, due to which the petitioner has earned statutory

right of bail. He next argued that the petitioner has not been charged in the F.I.R while he has been charged later on, without any source of information mere on suspicion. He went on to say that the evidence up till now recorded is contradictory to the prosecution version and on the basis of the same the accused/ petitioner is entitled for the concession of bail.

4. On the other hand learned A.A.G appearing on behalf of the state assisted by learned counsel for the complainant vehemently opposed the arguments advanced by learned counsel for the accused and contended that accused/ petitioner is directly charged for the offence of double murder and attempt to murder. They next argued that once on merits bail of accused/ petitioner has been rejected by the learned lower Court, trial is in progress which shall be concluded in near future, as almost eleven witnesses have been examined. They went on to say that accused/ petitioner remained

absconder for a sufficient long time and if he is released on bail there is apprehension of his again abscondence.

They lastly argued that delay in conclusion of the trial occurred due to nonappearance of PWs as well as non appearance of defence counsel, hence, on the ground of statutory period, the accused/ petitioner is not entitled to be released on bail.

5. Arguments heard and record perused.

6. Perusal of the record reveals that once bail application of accused/ petitioner has been rejected by the learned Additional Sessions Judge-II, Bannu vide order dated 06.05.2015 on merits, thereafter the accused/ petitioner did not approach to this Court and trial was commenced. The petitioner has again agitated concession of bail on fresh ground of statutory delay in conclusion of trial before the learned trial court, which was rejected vide order dated 12.07.2017. As the trial has been commenced and as many as eleven PWs have

been recorded, I would refrain to give finding on merits of the case, lest it may prejudice the case of either side.

7. The main contention of learned counsel for petitioner was that the accused/ petitioner is entitled for concession of bail on the ground of statutory ground.

The relevant portion of the third Proviso of Section 497

(1) Cr.PC is reproduced hereunder:

*“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 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 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.”*

8. Bare reading of the above proviso shows that this proviso demands release of the accused, who being accused of an offence per condition (a) and (b) as the case may be, has been detained for such offence for a continuous period exceeding one year or two years, as the case may be (per condition (a) and (b)) but whose trial for such offence has not been concluded within such period, however, the demand of release is subject to satisfaction of the Court that ‘delay in conclusion of trial was not occasioned by any act or omission of the

accused or any other person acting on behalf of such accused.

9. While in the instant case, the accused/ petitioner was arrested on 23.04.2015 and since then the petitioner is behind the bars for more than two years, whereas eleven PWs have been examined so far, while eight material PWs are remaining, and there is no likelihood of its conclusion in near future, hence, the petitioner has earned the right of his release on bail on the ground of statutory delay as provided in third proviso (b) of section 497 (1) Cr.PC.

10. The contention of learned counsel for the complainant that the delay occurred due to fault of accused/ petitioner. I have gone through the brief summary / list of the order sheets of the learned trial court, where delay has mainly been caused by the prosecution or the Court itself, and even if adjournments sought by the accused/ petitioner due to absence of his



counsel or his non-availability is excluded, even then he would be entitled to the concession of bail because in that case too his total detention during the trial becomes more than two years. It has been consistently held by the apex Court that if a case on such statutory delay in the conclusion of trial is made out then, ordinarily bail should not be refused on hyper technical ground. Reliance is placed on case a recent judgment of august Supreme court delivered in case titled **“Adnan Prince Vs the State through P.G, Punjab and another”** decided on 01.02.2017, wherein on the ground of statutory delay in trial bail has been granted to the accused and copy of judgment has been ordered to be sent to the all concerned for compliance.

11. There is nothing on record which may suggest that the accused/petitioner is previous convicted for an offence punishable which death or imprisonment for life nor he is hardened, desperate or dangerous

criminal nor he is charged for an offence of terrorism punishable with death or imprisonment for life. The petitioner does not come within the exception provided under the third proviso of section 497 (1) Cr.PC.

12. The contention of learned counsel for respondent regarding abscondence is concerned, suffice it to say that abscondence of accused will not disentitle him to claim bail on the ground of statutory delay, which right accrues to him after he has been arrested and the statutory period mentioned in clause (a) or (b) of the third proviso to section 497 (1) Cr.PC, has expired. The gravity of offence or abscondance, all such objections are alien to the statutory right of bail, as in the statute no exception has been provided in this respect.

13. For what has been discussed above, I am of the view that the petitioner has made a case of bail on the ground of statutory delay in trial, therefore, instant bail is accepted, accused/petitioner is admitted to bail,

subject to furnishing bail bonds amounting to Rs.400000/- (four lac) with two sureties each in the like amount to the satisfaction of learned trial court. The sureties must be local, reliable and men of means.

**Announced.**

30.08.2017

**J U D G E**