

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc. BA No.2083-P/2017

Haider Zaman s/o Muhammad Zaman,
r/o Sawaryaan Miyar, District Mardan.

Petitioner (s)

Versus

The State etc

Respondents

For Petitioner :-

Mr. Shabbir Hussain Gigyani,
Advocate.

State :-

Syed Qaisar Ali Shah, AAG.

For Respondent :-

Sardar Ali father of complainant
Taseer along with Mr. Murad Ali,
Advocate, Junior of Mr. Yousaf Shah
Mohmand, Advocate.

Date of hearing:

09.10.2017

ORDER

ROOH-UL-AMIN KHAN, J:- Petitioner Haider Zaman, seeks his release on post arrest bail in case FIR No.44 dated 20.01.2015, registered under sections 302/324/114/34 PPC, in Police Station Hoti Mardan, on two fold grounds i.e. merits and statutory delay in conclusion of his trial.

2. As per contents of FIR, petitioner along with co-accused Gohar Ali, Wajid Ali and Tahir, is charged for committing the murder of Kashif deceased with firearm, an attempt to commit the murder of complainant Taseer as well as causing him firearm injuries on 20.01.2015 at 08.30 hours, near Mayar Pull, on a motive of previous blood feud.

3. Sardar Ali father of complainant Taseer along with Junior of Mr. Yousaf Shah Mohmand, Advocate, appeared before the Court, submitted Wakalat nama of his counsel and requested for adjournment on the ground of non-availability of his counsel. Since, time was already provided to the complainant on 04.10.2017 to engage a counsel, therefore, being a bail matter, cannot be kept pending for indefinite period on such pretext, hence, arguments of learned counsel for the petitioner and learned AAG for the State heard and record perused with their able assistance.

4. Since, trial of the petitioner and his co-accused is already in progress so much so that some of the prosecution evidence has also been recorded, therefore, this Court will not dilate upon the grounds for bail on merits agitated by learned counsel for the petitioner during his arguments lets it may prejudice the case of either side.

5. As regards the plea of bail of the petitioner on statutory ground, it appears from the record that the petitioner is behind the bars since 03.08.2015. Challan against him was submitted before the learned Trial Court on 17.09.2015, wherein he was charge sheeted on 28.10.2015. In the meantime, co-accused Gohar and Tahir were arrested and submission of supplementary challans against them led the learned trial Court to framing of fresh formal charge on 28.10.2015. Since, 28.10.2015, till date

only four PWs have been examined. The material prosecution evidence which also includes the testimony of complainant is yet to be recorded. Various order sheets of the learned Trial Court reveal that the trial of the petitioner is being delayed due to non-availability/ non-appearance of the complainant, who reportedly has proceeded abroad i.e. Saudi Arabi in connection with earning his livelihood. Perusal of the last order sheet of the learned Trial Court further reveals that that last opportunity was provided to the prosecution to produce complainant for recording his evidence but invain. Father of complainant present in the Court, when asked qua the whereabouts of complainant, he stated at the bar he is in Saudi Arabia, however, he did not give any reasonable time about his return to the country. The petitioner is behind the bars for the last more the two years awaiting conclusion of his trial. There seems no possibility rather probability of appearance of the complainant. Though, in such like circumstances the petitioner may recourse to the provisions of section 344 or 265-K etc of the Code of Criminal Procedure, before the learned Trial Court, especially enacted to meet such like situation, however, at the same time, the 3rd proviso to section 497 Cr.P.C. also gives right to him to ask for his bail on the ground of delay in conclusion of trial. Speedy trial is inalienable right of every accused. Unnecessary delay in trial of an accused would amount to denial of

justice. The Primary object behind the view is that a mistaken relief of bail can be repaired by convicting the accused at the end of trial, if proved guilty, but no proper reparation can be offered to an accused in case of his/her acquittal in the long run. Right of an accused to be enlarged on bail under 3rd proviso to section 497 Cr.P.C. is a statutory right and such right is left to the discretion of the Court which is to be exercised judiciously. No doubt, such discretion can be refused to an accused in the circumstances when the court reaches to the conclusion that the delay in the conclusion of the trial is occasioned by the accused or anybody acting on his behalf. However, if the delay alleged is not occasioned by the accused or any person acting on his/her behalf then the discretion of bail should be exercised in favour of the accused.

6. For the reasons discussed above, petitioner has made out a case of bail under 3rd Proviso to section 497 Cr.P.C., hence, this petition is allowed and he is admitted to bail provided he furnishes bail bonds in the sum of rupees three lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Trial Court.

Announced:
09.10.2017

Siraj Afridi P.S.

JUDGE

Mr. Justice Rooh-ul-Amin Khan.