

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

BCA No.94-B of 2017

Malik Zafrullah

Vs

The State and another.

JUDGMENT

Date of hearing _____ 31.01.2019 _____.

Appellant-Petitioner: ***By Pir Liaqat Ali Shah,***
Advocate.

Respondent : ***By Anwar-ul-Haq & Faqir Mehboob-***
ul-Hameed Advocate.
State By Qudrat Ullah Khan, AAG.

MUHAMMAD NASIR MAHFOOZ, J.--- The Petitioner seeks cancellation of bail granting order dated 14.11.2017, passed by learned Additional Sessions Judge-III, Lakki Marwat, whereby accused/ respondent Murad Ali, involved in case F.I.R No. 527 dated 09.08.2015 under sections 302/324/34 P.P.C, Police Station, Lakki Marwat, was admitted to bail on statutory ground.

2. I have heard arguments of learned counsel for the parties and perused the record. The judgments cited at the bar are distinguishable.

3. Perusal of record reveals that bail of accused/ respondent Murad Ali has been dismissed on merits up to this Court and his further bail application before apex court has been dismissed as withdrawn vide order dated 7.03.2016, therefore, on merits he was not entitled to the concession of bail. Plethora of case law could be cited for and against the grant and cancellation of bail, but the logic of words has to yield to the logic of realities. What has prevented the I.O from appearing in Court seems to be shrouded in mystery.

4. Accused/ respondent applied for post arrest bail before the learned trial Court/ Additional Sessions Judge- III, Lakki Marwat, on ground of statutory delay in conclusion of trial, which was granted vide impugned order. Eleven prosecution witnesses have been examined, while statement of single PW Investigation Officer of the case is yet to be recorded and at this stage release of accused would definitely prejudice the prosecution case. If this bail had not been granted the trial

would have concluded by now. The delay in conclusion of the trial has been occasioned due to submission of successive bail applications by the accused/ respondent and fresh investigation on his request. Trial Court has made consistent efforts to procure attendance of the I.O even some coercive measures have been adopted. The ground mentioned that the IO is not attending the Court and he has developed some grudges against the accused party is poignant reminder of ineffectiveness on part of trial court. The grant of bail on statutory delay could have been protected in case the respondent had not been denied bail after arrest by this court on 11.12.2015 in BA No.291-B of 2015. Para No.7 is quoted below.

“This court, while confirming bail before arrest of the co-accused in the same case has already given its findings on merits of the case, in regard to the petition in hand. In case in hand, one young innocent person has been murdered, while the other one was seriously injured and the petitioner has been attributed specific role of firing at the deceased. The medical as well as rest of the circumstantial evidence and ocular eye witness accounts of two persons, supports

and prima facie corroborate the prosecution version. Keeping in view, the evidence so far collected by the investigating agency, prima facie connect the petitioner with the commission of the offence of “Qatl-e-Amd” , which entails, capital punishment, squarely falls within prohibitory clause of section 497 Cr.PC.”

4. The delay caused in the trial of accused is equally on the part of prosecution and the accused as well. Charge is framed on 17.09.2016, but on the application of respondent for post arrest bail submitted on 17.08.2016, order was passed on 19.09.2016 by learned trial Court, while this court had earlier dealt with previous bail application. On 25.10.2017 again a fresh bail application on statutory delay was filed, which was allowed on 14.11.2017 after consuming two months. This bail cancellation application has consumed about 14 months after it was submitted on 24.11.2017. The robust interpretation of facts of each case must be aimed to suppress the mischief but advancing remedy so that justice should not only be done but should be seen to have been done.

5. Bail to an accused on completion of statutory period in conclusion of trial could only be granted

when there is no prospect of completion of trial in near future, while in the instant case trial is almost complete, hence, learned trial court has erred in law by granting same concession in favour of accused/ respondent. Though after three years absconsion of co-accused Taj Ali, trial may commence afresh.

6. For what has been discussed above, this petition is allowed, impugned order of learned lower court is recalled and bail of respondent is cancelled. As a consequence whereof, he is taken into custody and be sent to judicial lockup. However, learned trial court is directed to conclude the trial within a period of four months positively. Parties are expected to regularly attend the Court.

Announced.
31.01.2019

J U D G E