

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

Cr. Misc.BA No.2374-P/2024

Usama s/o Muhammad Raheem,
r/o Khalid Bin Waleed Colony Peshawar

Peshawar (s)

VERSUS

The State etc

Respondent (s)

For Petitioner (s) :-	<u>Mr. Mohsin Ali Khan, Advocate.</u>
For State :-	<u>Mr. Nauman-ul-Haq Kakakhel,</u>
	<u>AAG.</u>
For Respondent No.2	<u>In person</u>
Date of hearing:	<u>23.07.2024</u>

ORDER

ISHTIAQ IBRAHIM, CJ.- Petitioner Usama seeks post arrest bail in case FIR No.917 dated 15.07.2023, registered under section 324 PPC at Police Station Faqir Abad, Peshawar, on the ground of failure of the learned Trial Court to conclude his trial as per direction of this court ordained in order dated 01.12.2023, rendered in Cr.Misc.BA No.4311-P of 2023, operative part of which is reproduced below:-

“AT the moment, the tentative assessment of the material on record leads me to the conclusion that there exist a prima facie case against the petitioner, which falls within the prohibition contained in Section 497 Cr.P.C., therefore, I am not inclined to release him on bail. However, the prosecution is directed to submit complete challan against the petitioner within one week from the date of receipt of this order **and the learned trial Court is directed to conclude the**

trial within 02 months as and when challan is given.

2. The petitioner initially approached the learned trial court for his release on bail on the basis of the aforesaid direction but his request was turned down vide order dated 11.06.2024, and then to this court through the instant bail application.

3. Complainant present in the court does not want to engage counsel. Arguments of learned counsel for the petitioner and worthy AAG for the State heard and record perused.

4. It is to be noted that this court while dismissing earlier bail application of the petitioner on merit vide order dated 01.12.2023, directed the prosecution to submit challan against the petitioner within a week time and the learned trial court to conclude the trial within two months. The order of this court is completely silent about the consequences in case of failure in non-conclusion of trial. If this court in its order had passed any such direction that in case of failure to conclude the trial within the stipulated period then the petitioner may file an application for bail or that he would be entitled to bail, then the situation would have been different, however, such is not the case herein. As per arrest card the petitioner is shown arrested on 16.07.2023, challan against him was put in court on 18.11.2023 and on

06.12.2023 he was formally charge sheeted to which he pleaded not guilty and claimed trial. No doubt, no prosecution witness has been examined, but since the date of arrest of the petitioner i.e. 16.07.2023, the statutory period for the purpose of bail under 3rd proviso to section 497 Cr.P.C. was to be completed on 16.07.2024 but the petitioner without adhering to the relevant provision of section 497 Cr.P.C., haphazardly approached the learned trial court and then to this court for bail on the ground of non-conclusion of trial within a period of two months as directed by this court vide order dated 01.12.2023. Admittedly, non-compliance of the direction issued by the high court for conclusion of trial within certain period, unless the statutory period has not been completed, cannot be a ground entitling the petitioner for bail, when such direction is alien to the Statute governing the grant of bail on statutory ground. Controversy in respect of grant of bail on the ground of failure of the Trial Court to conclude the trial within the stipulated period directed by superior courts, came up before the Hon'ble Supreme Court in case titled, **"Nisar Ahmed Versus the State and others"** **(PLD 2016 Supreme Court 11)**, and the same was dealt with as under:-

“We have scanned the material placed on record and are unable to subscribe to such submissions of the learned ASC. **Neither non-compliance of the directions issued to the Trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provision of section 497 Cr.P.C.** nor filing of direct complaint will have any bearing as regard earlier bail refusing orders which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case.”

Similarly, in case titled, “Tallat Ishaq vs National Accountability Bureau” (PLD 2019 Supreme Court 112), it has been held by the Hon’ble Apex Court **that direction issued by the High Court or supreme Court to the Trial Court to conclude trial within a specific time limit, such direction was an administrative direction and non-compliance of such direction by the Trial Court for whatever reason may not entitle the accused person to claim bail as of right.** The aforesaid view has been reaffirmed by the Hon’ble Supreme Court in case titled, “Nadeem Samson vs the State and others” (PLD 2022 Supreme Court 112).

5. Admittedly, the statutory period for bail under 3rd proviso to section 497 Cr.P.C. of the petitioner ripe

during pendency of the instant bail application before this court, therefore, the learned trial court has rightly turned down the request of the petitioner.

6. In view of the above, the instant bail application being filed at premature stage is also dismissed, however, the petitioner would be at liberty to approach the learned trial court for bail on statutory ground of delay in conclusion of trial under the relevant provision of Section 497 Cr.P.C. and the learned trial court shall decide application of the petitioner independently in accordance with law on merit without being influenced by this order.

7. This court has taken serious notice of the practice of filing bail application(s) by the accused person(s) on the ground of non-conclusion of trial within the period directed by the higher and superior courts while dismissing bail application of accused person(s) on merit. Admittedly, filing of such bail application(s), on one hand, cause unnecessary delay in conclusion of trial(s), while on the other hand, increase unnecessary burden of pendency on the shoulders of the courts, hence, it is high time to discourage this practice. The Additional Registrar (Judicial) of this court, therefore, shall transmit copy of this order to the learned Sessions Judges of the Province, who shall onward circulate copy thereof amongst all the criminal Courts of his/her concerned District, for guidance and compliance. Similarly, copy of

the order shall also be transmitted to the learned Presiding Officers of the Special Criminal Trial Courts, established/constituted under different Special Laws as well as the President of the Bar Associations throughout the province.

Announced:
23.07.2024
M. Siraj Afridi CS



CHIEF JUSTICE

SB of Hon'ble Mr. Justice Ishtiaq Ibrahim Chief Justice