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PESHAWAR HIGH COURT

2021 YLR 2358

Afzal Khaliq VS NAB

Bail on statutory grounds.

QAISER RASHID KHAN, CJ.

In a situation, where the accused-petitioner has been in continuous detention since his arrest on 13.7.2014 and facing trial since the Reference was filed against him way back in July, 2014 and over the period of seven years, only 174 PWs have been examined, out of 513 witnesses mentioned in the calendar of witnesses and it would definitely take few more years by that count, then the early conclusion of the trial is not in sight in the foreseeable future. In that event, the accused-petitioner cannot be kept in jail for an indefinite period. Hence, we hold him entitled to the concession of bail only on the ground of statutory delay in the conclusion of the trial.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Almas-Ullah-dad-vs-the-STate-_BBA-dismissed-by-trial-court_.pdf

Almas Ullah Dad VS The State etc

Scope of 498-A Cr.PC after getting ad-interim pre-arrest bail and non-appearance of accused on subsequent date.

ROOH-UL-AMIN KHAN, J:-

3. The Hon'ble Supreme Court in a recent order/judgment dated 29.07.2021, passed in Crl. P. No.1075-L/2020, has exhaustively dealt with the procedure of deciding pre-arrest bail application in case the accused after getting ad interim pre-arrest bail, fails to appear before the court in light of the added section 498-A Cr.P.C.,. For the sake of convenience and guidance, relevant parts of the order are reproduced below: -

"After the insertion of section 498-A of the Code of Criminal Procedure, 1898 ("CrPC") if the accused, seeking pre-arrest bail, is not present before the Court, the Court is not authorized to grant bail to such an accused and therefore, the petition is liable to be dismissed in light of the said statutory provision. For convenience, section 498-A CrPC is reproduced hereunder: - "498-A. No bail to be granted to a person not in custody, in court or against whom no case is registered, etc:- Nothing in section 497 or section 498 shall be deemed to require or authorize a court to release on bail, or to direct to be admitted to bail, any person who is not in custody or is not present in court or against whom no case stands registered for the time being an order for the release of a person on bail, or a direction that a person be admitted to bail, shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction. Section 498-A CrPC creates a statutory fetter or a statutory pre-condition requiring the presence of the petitioner in person in Court for the exercise of jurisdiction by the Court for granting pre-arrest bail. In case the petitioner (accused) is not personally present in Court, the Court is not authorized to grant him bail and the petition is to be dismissed for his lack of presence in Court. However, in case some explanation is furnished for his non-appearance, the Court may, if it finds that explanation to be satisfactory, exempt his presence for 3 that day and adjourn the hearing of the petition for a short period. The Court cannot, in the absence of the personal appearance of the petitioner, travel further into the case and examine the merits of the case. In fact the examination of the merits of the case in absence of the accused totally defeats the intent and purpose of the aforementioned

statutory provision. This is because once the Court proceeds to examine the merits of the case, then the court has to opion to either dismiss or allow the bail petition while under section 498-A CRPC the Court is not authorized to admit the accused to bail in his absence. We are cognizant of the fact that before the addition of section 498-A in the CrPC, the view of the High Courts was that once a petition for pre-arrest bail is admitted for hearing and notice is given to State, it has to be decided on merits notwithstanding the absence of the petitioner on the date fixed for hearing the petition. However, after the addition of section 498-A in the CrPC, there are divergent views of the High Courts, on this point: one set of judgments still retain to the said view, while the other set of cases hold the view that the petition for pre-arrest bail is to be dismissed if the petitioner is not present in court on the date fixed for hearing the petition and it is not be decided on merits in his absence, unless the Court exempts his presence. We approve the judgments of the High Courts noted above, which have considered the change in the legal position after addition of Section 498-A in the CrPC and disapprove those that still retain the earlier view as they have not taken account of the true import and meaning of section 498-A CrPC. (Emphasis supplied). It is also clarified that in case the petition is dismissed for non-appearance of the accused in a pre-arrest bail matter under Section 498-A CrPC, the petitioner can file a fresh bail petition before the same court provided that he furnishes sufficient explanation for his non-appearance in the earlier bail petition and the Court is satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court 4 disentitling him to the grant of discretionary relief of prearrest bail. (Mukhtar Ahmad Vs State) 2016 SCMR 2064. It is also clarified that ad interim bail granted in a pre-arrest application on the first hearing is to simply ensure that the petitioner is present on all the subsequent dates of hearing in the pre-arrest bail matter. Petitioner's presence is, therefore, required throughout the proceedings of the prearrest bail petition and the fact that he appeared on the first date when ad-interim bail was granted does not in any manner lessen the rigours of Section 498-A CrPC or absolve the responsibility of the accused from appearing in person before the Court."

4. This court has noted that tendency of non-appearance of accused, after getting ad-interim pre-arrest bail, particularly, on the date of final hearing of the application, is increasing day by day. The accused probably sensing dismissal of applications avoid appearance before the learned lower Courts or deliberately make their escape good and thereafter surrendered themselves before this court for the same relief. In the judgment (supra), the Hon'ble Supreme Court has discussed the procedure to be adopted by the courts in case the accused remains absent from the court in pre-arrest bail application.

5. In this particular case, in view of the judgment (supra) of the Hon'ble Supreme Court, I remit the instant application to the learned Additional Sessions Judge, Shabqadar for treating the same a fresh application and decide the same strictly in light of the guidelines given by the Hon'ble apex court. The petitioner shall furnish reasonable ground qua his absence on the day of decision of his earlier BBA application. Parties shall appear before the learned ASJ Shabqadar on 02.10.2021. In the meantime, the petitioner shall remain on ad-interim pre-arrest on the existing bail bonds.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/CR612-2019JUDGEMENT13.9.20210001.pdf

Mst. Khanam etc VS Mst. Fozia etc

Plaint cannot be rejected under Order VII rule 11 CPC and Order 2 rule 2 CPC, when cause of action in the subsequent suit is not the same.

LAL JAN KHATTAK J.-

Pertinent aspect of the case is that the cause of action in the earlier suit was qua the gift deed dated 06.11.1999 where under mother of the petitioner had gifted only 1/3 of her share in the suit property for a religious purpose and the remaining 2/3 shares were retained by her. It is the petitioner's case that on the death of her mother in the year, 2007, she has become entitled to inherit from her legacy qua the remaining 2/3 shares in the suit house. When seen in the context of the above, it would appear that on no count the provisions of Order 9 Rule 9 CPC are applicable to the petitioner's case and as such her plaint has wrongly been rejected under Order VII Rule 11 CPC by the learned trial court because the cause of action to sue the respondents for her rights in the 2/3 shares in the legacy of her mother was not accrued to her at the time when her earlier suit was filed and dismissed for non-prosecution. As per order 2 Rule 2 CPC, a person is debarred to file a subsequent suit in respect of any claim which at the time of filing of the earlier suit was available to him and for which he had not asked for which is not the case in hand as at the time of institution of the earlier suit the cause of action qua the 2/3 shares in the legacy of late mother of the petitioner was not available to her and in such a situation the plaint was not hit under Order VII Rule 11CPC.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Cr.-A-No.-468-2021-(Muhammad-Zabit).pdf

Muhammad Zabit VS the State

Duty of the court to apprise the accused pleading guilty about the consequences, where it does not want to take the lenient view.

MUSARRAT HILALI, J.

5. The procedure in cases where the accused "plead guilty" is different from the procedure adopted in the cases where the accused "plead not guilty". In cases where the accused pleads guilty, no further proceedings in respect of the offence is conducted and after looking into the nature of the offence by taking a lenient view the minimum sentence (if prescribed by the Statute) is awarded.

6. In cases where the Court intends to award maximum punishment, the accused shall before warned about the implication of the charge and the effect of plead guilty. The Court shall disclose its mind to the accused that even if he pleads guilty, the Court is not going to take lenient view and if the accused still stands by his position, then the Court shall decide the case according to the nature of the charge.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Cr.-R-No.-140-2021-Riaz-vs-Mst.-Raeela_.pdf

Riaz Vs Mst. Raeela etc

The Court shall not exercise its discretion of declaring a witness hostile unless the Court is satisfied that the elements of hostility are exhibited during examination-in-chief.

MUSARRAT HILALI, J.

No doubt, under Article150 of the Qanun-e-Shahadat Order, 1984, the prosecution has

the right to request the trial Court for declaring a witness as hostile if the witness resiles from his previous statement recorded during investigation or any other proceedings, however, the Court shall not exercise its discretion of declaring a witness hostile unless the Court is satisfied that the elements of hostility are exhibited during examination-in-chief or the witness is not speaking truth for the party he is deposing and his design is obvious then the Court by using its judicial discretion can permit cross examination of the said witness.

6. In the instant case, the prosecution witness in an unguarded moment deposed something which is un favorable to the prosecution, however, no such material exists on the record showing that the witness was deliberately suppressing the truth or has changed his loyalty and the intention was clear, in absence of all these circumstances, the discretion to allow the party to reexamine his own witness cannot be allowed.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/_Rprtd_wp-4174-p-2020-diposed-of-one-month-direction-to-Secretary-Home-to-decide-the-appeal-of-petitioner.pdf

Salamatullah VS the State

Right of Representation, appeal and review in Islam

SHAKEEL AHMAD, J.-

We observe that Islamic Injunctions and teachings grant to every aggrieved person the freedom to lodge protest. Every aggrieved person has a right of representation. He is free to lodge an appeal against an order affecting him adversely and it is his right that his appeal will be adjudicated upon without inordinate delay by an independent tribunal. He can, under no circumstances be stopped from exercising his basic right. In this context reference may be made to the following two Ayaats of Holy Quran: --

i. Ayat No.148 Sura 4 Al-Nisa of Holy Quran:
"Allah does not love the public utterance of hurtful speech, unless (it be) by one to whom injustice has been done."

ii. Ayat No.1 Sura 58 Al-Mujadilah (The Pleading one) of Holy Quran
: "Allah indeed knows the plea of the woman who pleads with you about her husband and complains to Allah, and Allah knows the contentions of both of you; Surely Allah is Hearing, Seeing."

Ayat No.1 of Sura Mujadilah, quoted above, has a reference to one Khaula, wife of Aus bin Samit, who had been separated by her husband on account of an old but a degrading custom whereby the husband could, with impunity, exercise Zihar i.e. he would compare the wife to the back of his mother and thereby succeed in denuding her of her marital status. The consequence of this declaration was a total estrangement between the spouses. The aggrieved women henceforth was neither a wife nor a divorcee. Her rights were held in abeyance. Khaula, a genuinely aggrieved spouse, injured on account of the prevailing but inhuman custom, appeared before the Holy Prophet (p.b.u.h.) and lodged her protest. Her legal entity was at stake. Who was she? Neither a wife nor a divorcee. She could not withstand such a humiliating situation. In fact, she demanded review of the custom which had the force of law. This is probably the only instance in human history when a time-honoured custom, having the force of law, was reviewed by Almighty Allah on the protest of a lady. Quick came the response through the medium of revelation. It is significant that Quran, which is a source of

guidance till eternity, preserves this particular incident of violation of human right for the benefit of future generations. This episode brings into prominence inter-alia the following principles:

a. There exists in the aggrieved person the unfettered right to lodge a protest or prefer an appeal before a higher authority with the object of seeking redressal of grievance;

b. The authority hearing the appeal is under obligation to decide the same;

c. The arbiter is required to give due weight to violation of human rights and human dignity;

d. The authority may, where necessary, impose a penalty upon the violator of human rights (reference Ayat No.4 of same Sura), and

e. Even a law can be amended/repealed on account of a protest and

f. The right of an individual to initiate proceedings cannot be circumscribed.

7. Islam has conferred upon human beings the freedom of expression. Grievances have to be redressed. Any bar on this right is negation of the divine principle of human dignity. A portion of the famous Khutba known as Khutba-e-Ajeeba (a wonderful sermon) and Khutba-e-Ghurra (an eminent sermon) mentioned in Nahjul Balega as Khutba No.86, delivered by Imam Ali R.A. the fourth Caliph, is illustrative of this point:

"He has given ears to you so that you may hear and preserve in. mind things useful to you. He has given eyes to you so that you may acquire such knowledge which will bring you out of the darkness of ignorance and make you see the light of reasoning and wisdom. He has also given to you so many useful organs of body, each of which is composed of many parts, their functioning depends upon their interdependence and their symmetry; their forms and periods of their utility, their coordinated action to serve the body, their connection with a heart which is properly fed (with blood) and nourished, in fact this perfectly expedient body and mind are the blessings bestowed upon you besides so many other bounties and thank-worthy boons and protections. He then fixed a limit of life for every one of you and has kept it a secret from you. In the histories of the past nations and lives of individuals, He provided opportunities for you to study the foot-prints on the sands of time and to be warned of the consequences of evil deeds. Lives of men, who were enjoying themselves to their hearts' contents and had perfect freedom of action, have such useful lessons in them to teach. Just read them over and over again and see how quickly death overtook them. They did not get time to satisfy their desires fully before death put an end to their lives and placed them beyond and further possibility of fulfillment of those wishes." This sermon appears to be a commentary upon the Ayat No.257 of Sura 2, Al-Baqra which declares as follows: "Allah is the Guardian of those who believe, He brings them out of every darkness into light. And those who disbelieve, their guardians are the evil ones; they bring them out of light into all kinds of darkness. These are destined for the Fire, and there shall they abide."

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/C.R-No.495-P2021-Mst.-Hussna-Bibi-through-LRs-Vs-Ubaid-ur-Rehman-&-others.-_Dismissed_-Orphan-frivolous.pdf

Mst. Hussna Bibi through LRs VS Ubaid-Ur- Rehman & others.

Usurping the property of orphans is against all norms of ethos. Exemplary cost should be imposed.

SYED ARSHAD ALI, J.

11. Indeed, it is settled law that the Executing Court has no mandate to go beyond the decree and once the rights of the parties are settled by the Court of first instance and later was affirmed by the appellate or further fora, then objection petition during the execution proceedings on the same ground is not only misconceived but should be summarily dismissed, enabling the decree holder to reap the fruits of their decree.

12. In the instant case the respondents are/were minors orphans and the present petitioner being their uncle has legal and religious duty to look after the orphans but instead he is adamant to swallow the orphans property which is against all norms of ethos. Indeed, it is such a case where exemplary cost should be imposed on the petitioner, however, keeping in view his financial position this petition is dismissed with cost of Rs.50,000/- payable by the petitioner to the minors/respondents. The said amount shall be recovered by the executing court in addition to the amount which is payable by the present petitioner on account of the original decree/order.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/C.R-No.--681-P-of-2021.pdf

Bahadar Hilal VS Anwar Hayat through Legal Heirs etc

Rule 15 of order XLV CPC is directory in nature and its non-compliance cannot be considered for stopping the period of limitation.

WIQAR AHMAD, J.-

7. Rule 15 of order XLV CPC is also directory in nature and its non-compliance cannot be taken to the effect that an application for execution filed without its compliance would be non est to the extent that it cannot even be considered for stopping the period of limitation. When due diligence is there, then the time consumed in pursuing a remedy before a wrong forum may even be condoned under section 14 of the Limitation Act. Pursuing of a remedy before a wrong forum has been a much graver case of incompetent proceedings. When time can be relaxed under section 14 of the Limitation Act on the ground of pursuing a remedy before a wrong forum, despite the fact that such proceedings had totally been invalid and without jurisdiction, then an action initiated before a competent Court of law (but suffering from some technical defect) may easily be considered to be proceedings valid for the purpose of counting the period of limitation. The irregularity shall not come in the way of counting the period of limitation. Such application for execution filed directly before the learned civil Court cannot be considered to be totally non est and none considerable for the purpose of determining the question of limitation. In the case in hand, even the execution applications filed without compliance of the provision of Order XLV Rule 15 CPC shall be taken as sufficient for the purpose of bringing the pending proceedings within the prescribed period of limitation. The defect if any, has also been removed subsequently and therefore the objection relating to limitation has rightly been discarded by the two Courts below.

SUPREME COURT OF PAKISTAN

P L D 2021 Supreme Court 812

Ghulam Qasim and others VERSUS Mst. Razia Begum and others

Inheritance rights of females---Practice of male legal heirs depriving their sisters of their share of inheritance.

Qazi Faez Isa, J.

6. It is extremely regrettable that in the Islamic Republic of Pakistan, male heirs continue to deprive female heirs of their inheritance by resorting to different tactics and by employing dubious devices as was done in the instant case. The shares in the property of a deceased Muslim are prescribed in the Holy Qur'an and Shari'ah. Allah Almighty commands in the Holy Qur'an:

> From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large - a determinate share.
>
> Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females; if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. To deny an heir his/her share in the property left by the deceased is disobedience to Almighty Allah's decree and those who do so, while they may obtain a temporary benefit in this world, leave themselves accountable to divine punishment in the Hereafter. The verses dealing with the laws of inheritance are followed by two verses, the first which gives good tidings to those who abide by the 'limits set by Allah' followed by the verse prescribing the torment of Hell for those who disobey: 'But those who disobey Allah and His Apostle and transgress His limits will be admitted to a fire, to abide therein: And they shall have a humiliating punishment.'

7. This Court has repeatedly castigated attempts to deprive female heirs of their right to inheritance. In the case of Atta Muhammad v. Mst. Munir Sultan this Court noted that depriving female heirs of their inheritance has become 'all too common' and directed the revenue authorities to be extra vigilant. In Islam-ud-Din v. Mst. Noor Jahan the suffering and agony imposed upon female heirs was found to be most unfortunate. And, in Khair Din v. Mst. Salaman it was held that no benefit could be derived by those claiming rights against female heirs based on fraudulent transactions.

P L D 2021 Supreme Court 761

Rai Muhammad Riaz (decd) through L.Rs. and others Vs Ejaz Ahmed etc

Where revival of the suit is based upon a conditional order and such condition is not fulfilled by the applicant, the suit does not get restored.

IJAZ UL AHSAN, J.

10. As noted above, in the first instance, the suit of the petitioners was dismissed for non-prosecution on 28.01.2014 and was conditionally restored vide order dated 19.01.2016 on the basis of a conceding statement of the Respondents. However, such restoration was conditional upon payment of costs which were admittedly never paid by the petitioners. Further, at no stage was any application moved seeking extension of time for payment of costs. Strictly

speaking and on the basis of principles of law laid down by this Court in Muhammad Arshad & Co v. Zila Council (2006 SCMR 1450), it is settled law that where revival of the suit is based upon a conditional order and such condition is not fulfilled by the Applicant, for all intents and purposes the suit does not get restored. Even if we were to ignore this lapse on part of the petitioners as well as the learned trial Court which failed to notice the non-fulfillment of the condition imposed in its order, the lack of diligence on the part of the petitioners in pursing their suit is self-evident from the fact that the suit was dismissed for non-prosecution again, a second time, on 21.12.2016. Although as pointed out by learned ASC for the petitioners, the restoration application was filed within time but mere filing of a restoration application was in our view not sufficient. It was incumbent upon the petitioners to satisfy the Court that they were prevented by sufficient cause to attend the Court on the day that the case was fixed for hearing.

P L D 2021 Supreme Court 809

Muhammad Nawaz Versus the State and others

Original and concurrent jurisdiction on the High Court and Court of Session to grant bail---discussed.

SYED MANSOOR ALI SHAH, J.--

3. Section 498, Cr.P.C. confers original and concurrent jurisdiction on the High Court and Court of Session to grant bail, by stating that "the High Court or Court of Session may in any case ... direct that any person be admitted to bail". That is why when a trial court, for instance, a Court of Magistrate, declines to grant post arrest bail under section 497, Cr.P.C. to a person accused of having committed a non-bailable offence, the accused files a fresh petition under section 498, Cr.P.C. in the Court of Session and, in case of failure to obtain the relief once again approaches the High Court. The Court of Session and the High Court have original jurisdiction to grant bail and they make their own independent orders on the said petitions without commenting upon and setting aside the order of the trial court. The power of the High Court and the Court of Session, under section 498, Cr.P.C., to grant post arrest bail is thus co-extensive and concurrent with that of the trial court under section 497, Cr.P.C., while the power to grant pre-arrest bail under the said Section is exclusive to them.

4. The appellate jurisdiction of this Court, under Article 185(3), in bail matters is quite distinct from the original jurisdiction of the High Court and Court of Session under section 498, Cr.P.C. The essential criterion of appellate jurisdiction is that it examines and if required corrects the errors, if any, of a lower forum. That being the nature of appellate jurisdiction, this Court examines the legality of the orders passed by the High Court in bail matters and corrects those orders in appellate jurisdiction under Article 185 (3) of the Constitution only when it finds that the High Court has exercised the discretion in granting or declining bail arbitrarily, perversely or contrary to the settled principles of law, regulating bail matters.

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._893_2020.pdf

Haji Shah Behram VS the State & others

Criminal cases, invariably resting upon vastly distinguishable facts, do not admit space for hard and fast rules, empirically applicable with any degree of unanimity

in every situation; in each case culpability of an accused is to be assessed, having regard to its own peculiar facts and circumstances

QAZI MUHAMMAD AMIN AHMED, J.

3. Section 497 of the Code of Criminal Procedure, 1898 places an unambiguous bar on grant of bail to an accused, *"……if* there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for a term for ten years": However, subsection 2 thereof provides an escape route to him if, at any stage of the investigation, inquiry or trial, it is observed that there are no reasonable grounds for believing that he had committed a non-billable offence and instead there were sufficient grounds for *'further inquiry'* into his guilt. It is in this clearly demarcated statutory framework that an accused charged with an offence punishable with a term of 10 years or above has to make out a plea for his release on bail. Criminal cases, invariably resting upon vastly distinguishable facts, do not admit space for hard and fast rules, empirically applicable with any degree of unanimity in every situation; in each case culpability of an accused is to be assessed, having regard to its own peculiar facts and circumstances, therefore, determination of "*sufficient grounds"* in contradistinction to "*further inquiry"* has to be essentially assessed, with a fair degree of objectivity on the basis of evidence collected during the investigation; wording employed as *"there are no reasonable grounds for believing that the accused has committed a non-bailable offence"* is an expression of higher of import and, thus, cannot be readily construed in the face of material, *prima facie,* constituting the offence complained. "*Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial subsequently after evaluation of evidence".* Similarly, "*mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection 2 of section 497 Cr.P.C..* It clearly manifests that expression "*further inquiry"* is a concept far from being confounded in subjectivity or to be founded upon denials or parallel stories by the defence; it requires a clear finding deducible from the record so as to be structured upon a visible/verifiable void, necessitating a future probe on the basis of material hitherto unavailable. With the available statement of the injured supported by the eye witnesses, "*who cannot be stamped as false witnesses* at bail stage", confirmed by medical evidence.

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._927_l_2021.pdf

Ihtisham Ali Cheema VS the State etc

Benefit of doubt can even be extended at bail stage is an established principle of law

SAYYED MAZAHAR ALI AKBAR NAQVI, J.

It is an admitted position that the petitioner has assailed the jurisdiction of this Court for the grant of pre-arrest bail, which is extraordinary in nature. The superior courts of this country have repeatedly held that the premium of pre-arrest bail is to be extended sparingly. However, if the facts and circumstances do warrant that the person seeking such relief is falsely implicated and there is likelihood of being injustice committed to him, this Court is under obligation to come for the rescue of innocent person while granting the said extraordinary relief. In the instant case, there is no denial to this fact that the case was registered after

lapse of 24 hours whereas the distance between the place of occurrence and the Police Station is hardly four miles on a metal road. The inordinate delay per se in this particular case is to be evaluated with care and caution. No doubt the petitioner is assigned the role of causing firearm injury on the right side of chest of the brother of the complainant but this aspect has been found false during the course of investigation, which remained unchallenged. During the course of investigation, it was further found that in-fact it was co-accused of the petitioner who fired at the injured and as such he was taken into custody and pistol has been recovered from him. During the course of investigation, it was further found that though the petitioner was present at the place of occurrence but he was empty handed and no overt act is ascribed to him. Apart from this it is an admitted fact that the petitioner was taken to hospital after the lapse of three hours and still fresh blood was oozing from the wound whereas the Glasgow Conscious Scale (GCS) was found to be 15/15. All these aspects when taken into consideration conjointly create doubt in the genuineness of the prosecution case. It is established principle of law that the benefit of doubt can even be extended at bail stage. It is an admitted fact that the parties are resident of the same area, known to each other and the occurrence has taken place in the broad day light. As a consequence of all facts and circumstances, we are of the view that putting the petitioner behind the bars at this stage perhaps would result into undue incarceration prior to establishing the guilt of the petitioner, which is to be avoided because of the reason that the liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.

PLD 2021 Supreme Court 898

Sajid Hussain @ JOJI VS The State and Other

Denial of liberty of a person is a serious step in law, therefore, the Courts should apply judicial mind with deep thought for reaching at a fair and proper conclusion-confirmation of pre arrest bail.

SAYYED MAZAHAR ALI AKBAR NAQVI, J.

7. This Court in the above-referred salutary judgment rendered by a five members' bench has broadened the scope of pre arrest bail and held that while granting extraordinary relief of pre arrest bail, merits of the case can be touched upon. Hence, virtually the scope of pre-arrest bail has been extended by this Court while rendering the afore-referred judgment. Even otherwise, this aspect of the law further lends support from the bare reading of provisions of Section 497/498 Cr.P.C. The word 'further inquiry' has wide connotation. Interpretation of criminal law requires that the same should be interpreted in the way it defined the object and not to construe in a manner that could defeat the ends of justice. Otherwise, an accused is always considered a 'favorite child of law'. When all these aspects are considered conjointly on the touchstone of principles of criminal jurisprudence enunciated by superior courtsfrom time to time, there is no second thought to this proposition that the scope of pre-arrest bail indeed has been stretched out further which impliedly persuade the courts to decide such like matters in more liberal manner. Because basic law is bail not jail. Otherwise, the liberty of a person is a precious right, which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Denial of liberty of a person is a serious step in law, therefore, the Courts should apply judicial mind with deep

thought for reaching at a fair and proper conclusion. Such exercise should not be carried out in vacuum or in a flimsy or casual manner as that would defeat the ends of justice because if the accused is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration he had already suffered. Even none of the provisions of Cr.P.C provide any remedy to be claimed by the petitioner for its compensation.

8. In view of the facts and circumstances and the spirit of the law as stated above, we are of the considered view that the petitioner has made out a case for grant of extraordinary relief of pre arrest bail. Resultantly, we convert this petition into appeal, allow it and set aside the impugned order. The ad-interim pre-arrest bail granted to the petitioner by this Court vide order dated 15.06.2021 is hereby confirmed.

https://www.supremecourt.gov.pk/downloads_judgements/c.a._389_2015.pdf

Bahar Shah And Others VERSUS Manzoor Ahmad

The burden of proof of good faith is on the subsequent buyer, who moves forward a plea that he is an innocent purchaser.

MUHAMMAD ALI MAZHAR, J.

8. The burden of proof of good faith is on the subsequent buyer, who moves forward a plea that he is an innocent purchaser. Here the vendor and subsequent vendee are real brother and sister so It was not difficult at all to make some due diligence, on the contrary, it appears that the entire move was ventured to conceive an artificial plea of bona fide purchaser. If the subsequent buyer failed to take routine cautionary and preventive measure, which an ordinary purchaser will have to take, then his conduct cannot be considered bona fide or acted with fairness and uprightness. Whether in a particular case a person acted with honesty or not will obviously depend on the facts of each case. The good faith entails righteous and rational approach with good sense of right and wrong which excludes the element of deceitfulness, lack off air-mindedness and uprightness and or willful negligence. The 9th Edition of Black's Law Dictionary **(page 1355) defines a** "bona fide purchaser" **as "**one who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims".

FEDERAL SHARIAT COURT

https://www.federalshariatcourt.gov.pk/Judgments/Judgment%20on%20Swara%20(Shariat%20Petition%2025.10.2021).pdf

Mst. Sakeena Bibi daughter of Syed Bakir Hussain, Caste Syed, Qubad Shah Khel, and Others VERSUS Secretary Law, Government of Pakistan, Islamabad and Other

The concept of Swara / Vani as custom in Kurram Agency (erstwhile FATA) being repugnant to the injunctions of Islam.

DR. SYED MUHAMMAD ANWER, J:

13. This nefarious practice of Swara has been in vogue in different parts of Pakistan under different names and different pretexts; according to such practice girls or females are given and taken in Nikah or otherwise as consideration for compromise. This evil practice of forced marriages

of girls in the name of compensation of murder, raping and settling of other disputes has been in prevalence in different parts of Pakistan by different names like vani, swara, sharam, khoonbaha, sang chatti and karo-kari, etc. All such evil practices in which females are given in Nikah or otherwise to the victim party in the name of consideration for compromise or badal-i-sulha are un-Islamic and against the principles of Holy Quran and Sunnah for the following reasons irrespective of the fact whatever name they are called: ---

14. On the basis of these Quranic verses and Ahadith all or any such evil practice of this type, which is being conducted by any segment of our society anywhere in Pakistan and is called by different names in different parts of the country like Swara or Vani, etc., or is given any other name under any garb or pretext of custom or tradition is un-Islamic and against the injunctions of Quran and Sunna. There is a consensus of all the Muslim Jurist on this issue.

16.Forthe reasons stated herein above and after the promulgation of 25th Constitutional amendment resultantly the erstwhile Federally Administration Tribunal Areas has already been merged into Khyber Pakhtunkhwa Province of Pakistan. Consequently, the constitutional and legal status of the Kurram Agency is changed. The Frontier Crime Regulations are abrogated from FATA, Pakistan Penal Code, 1860 and other laws are now applicable in that area. Hence, the instant petition is accordingly disposed of.

https://www.federalshariatcourt.gov.pk/Judgments/J.Cr.A.No.1-I 2021%20M.Fazil.pdf

Muhammad Fazil Son of Abdul Hameed, Caste Jalalzai Kamaldinzai, Resident of Killi Abdul Karez, Killa Saifullah……. APPELLANT VERSUS THE State RESPONDENT

Evaluation and legal requirements of Dying Declaration

DR. SYED MUHAMMAD ANWER, J

15. In order to treat any statement as "Dying Declaration", it must be proved that declaration was made in extremity, at the point of death, having no hope of this world, compelling the maker to speak truth and nothing but the truth "NIAZ-UD-DIN and another v. THE STATE and another" (2011 SCMR 725) and "MUSHTAQ AHMAD AND ANOTHER v. THE STATE" (1973 PCr.L.J. 1075). In "SIRAJUDDIN v. THE STATE" (1990 SCMR 588), the deceased himself lodged F.I.R., which was treated as dying declaration after his death. Similar isthe situation in the case of "NIAZ AHMAD v. THE STATE" (PLD 2003 SC 635). In addition to these citations, there are certain judgments of the Apex Court in which it is held that dying declaration is a substantive piece of evidence, if court is satisfied about its genuineness, it can be acted upon without any corroboration, however, some of the tests for determining its veracity are that whether it intrinsically rings true; whether there is no chance of mistaken on the part of dying man in identifying or naming his assailant; whether it is free from prompting any outside quarter and whether it is consistent with other evidence and circumstances of the case, Reference: "Mst. AMINA and another Vs. The STATE" (2013 PCr.L.J 962). This aspect of evaluating dying declaration is also

discussed in "HAZOOR BUX and 5 others Vs. S.I.O. POLICE STATION KHANPUR MAHAR and 3 others" (2011 PCr.L.J. 1454) [Karachi] and "SHAHBAN BHERI Vs. The STATE" (2014 MLD 663) [Sindh].
17. Appeal being without force is hereby dismissed.

FOREIGN JURISDICTIONS

https://www.latestlaws.com/latest-caselaw/2021/september/2021-latest-caselaw-452-sc/

SUPREME COURT OF INDIA

Citation: 2021 Latest Caselaw 452 SC
Judgement Date: ***29 Sep 2021***
Case No: C.A. No.-006094-006095 / 2021

Vishwabandhu Vs. Sri Krishna and Anr.

Effect of Section 27 of the General Clauses Act, 1897,

UDAY UMESH LALIT, J.

19. The summons issued by registered post was received back with postal endorsement of refusal, as would be clear from the order dated 19.02.1997. Sub-Rule (5) of Order V Rule 9 of the Code states inter alia that if the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons shall declare that the summons had been duly served on the defendant.

The order dated 19.02.1997 was thus completely in conformity with the legal requirements. In a slightly different context, while considering the effect of Section 27 of the General Clauses Act, 1897, a Bench of three Judges of this Court in C.C. Alavi Haji vs. Palapetty Muhammed an d Anr2 made following observations: -

"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice.

Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. [Vide Jagdish Singh v. Natthu Singh3: State of M.P. vs. Hiralal & Ors.4 and V. Raja Kumari vs. P. Subbarama Naidu & Anr.5]."

https://www.supremecourt.gov/opinions/21pdf/20-1539_09m1.pdf

SUPREME COURT UNITED STATES

595 U. S. ____ (2021)

Daniel Rivas-Villegas v. Ramon Cortesluna

Concept of qualified immunity.

"Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." White v. Pauly, 580 U. S. ___, ___ (2017) (per curiam) (slip op., at 6) (internal quotation marks omitted). A right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates

that right." Mullenix v. Luna, 577 U. S. 7, 11 (2015) (per curiam) (internal quotation marks omitted). Although "this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." White, 580 U. S., at ___ (slip op., at 6) (alterations and internal quotation marks omitted). This inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." Brosseau v. Haugen, 543 U. S. 194, 198 (2004) (per curiam) (internal quotation marks omitted). "[S]pecificity is especially important in the Fourth Amendment context, where . . . it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." Mullenix, 577 U. S., at 12 (alterations and internal quotation marks omitted). Whether an officer has used excessive force depends on "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham v. Connor, 490 U. S. 386, 396 (1989); also Tennessee v. Garner, 471 U. S. 1, 11 (1985) ("Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force"). However, Graham's and Garner's standards are cast "at a high level of generality." Brosseau, 543 U. S., at 199. "[I]n an obvious case, these standards can 'clearly establish' the answer, even without a body of relevant case law." Ibid. But this is not an obvious case. Thus, to show a violation of clearly established law, Cortesluna must identify a case that put Rivas-Villegas on notice that his specific conduct was unlawful.

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