

ORDER SHEET**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN
(JUDICIAL DEPARTMENT)****Case No. Crl. Misc. No.6138-B/2017***Bashir Ahmad***Versus***The State etc.*

Sr. No. of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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14.02.2018

Mian Khalid Hussain Mitru, Advocate for the petitioner.
Rana Muhammad Nadeem Kanju, Advocates for the complainant.
Mr. Ishfaq Ahmad Malik, Deputy Prosecutor General
alongwith Ramzan, ASI.

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Through this petitioner under Section 497 Cr.P.C., petitioner Bashir Ahmad has sought post arrest bail in case FIR No.270 dated 30.05.2015, in respect of offences under Sections 302, 109 & 34 PPC, registered at Police Station, Alpa District Multan.

2. The allegation against the petitioner, as contained in the crime report, is that on 29.05.2015 at Maghrib time, he alongwith his co-accused Shaukat alias Kalu, while armed with clubs, launched murderous assault upon Khadim Hussain, father of the complainant giving club blows on different parts of his body. Khadim Hussain succumbed to the injuries on the same day. Hence, this case was registered.

3. I have heard learned counsel for the petitioner, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant and have perused the record with their able assistance.

4. It would not be out of place to mention here that this is the 2nd petition on the subject, earlier

Crl. Misc. No.4784-B of 2016 was dismissed for non-prosecution vide order dated 25.10.2016. The petitioner has sought his release on bail on merits as well as on the statutory ground of delay in conclusion of the trial.

5. The occurrence in issue had taken place on 29.05.2015, which was reported to the police on the next day on 30.05.2015 without any plausible explanation. The petitioner was saddled with the responsibility of giving club blows at the head, left arm, left shoulder and left forearm of deceased Khadim Hussain whereas co-accused Shaukat alias Kalu had allegedly given a club blow at his left side of neck. The post mortem examination report shows three injuries on the dead body and the opinion with regard to the cause of death remained uncertain even after receiving the report of Punjab Forensic Science Agency. The petitioner was arrested in this case on 15.07.2015 after 1 ½ months of the occurrence and during investigation, the recovery of a club is shown to have been effected at his instance, which was neither blood stained nor tainted one and, thus, its evidentiary value will be determined by the learned trial court after recording the evidence. The complicity of the petitioner, in the commending circumstances, requires further probe and inquiry into his guilt under subsection (2) of Section 497 Cr.P.C.

6. In compliance of this Court's order dated 13.11.2017, learned trial Court has submitted a report dated 21.11.2017, stating that the challan was submitted for trial on 02.03.2016 wherein after availing a number of opportunities, the prosecution got recorded the examination-in-chief of three witnesses but they did not turn up for the purpose of cross-examination on two dates of hearing. Thereafter, the complainant filed a private complaint on 21.04.2017 with the delay of about two years of the occurrence wherein, after framing of the charge on 29.06.2017, the case remained adjourned due to the non-availability of the prosecution witnesses and once on account of non-availability of the learned defence counsel i.e. 28.10.2017. Now the case is being fixed for recording the statements of prosecution witnesses. Learned counsel for the complainant submits that the trial

is at the advance stage as only the statement of investigating officer is left to be recorded. The grant of bail to an accused, even at an advance stage of the trial, has no bar and the accused cannot be kept in the incarceration even for a moment, if he is otherwise entitled to the relief claimed for because the liberty is a fundamental right of every citizen, which cannot be curtailed merely on the ground of technicalities. The petitioner is behind the bars for a continuous period of more than 2 ½ years from the date of his arrest i.e. 15.07.2015. The delay of more than 2 ½ years by itself is a sufficient and tenable ground to release the petitioner on bail. Considering the above noted facts and circumstances of the case, besides merits, the petitioner has earned the right of his release on post arrest bail on the ground of statutory delay in the conclusion of trial.

In view of what has been discussed above, the petition in hand is **allowed** and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of **Rs.200,000/-** (rupees two lac) with two sureties in the like amount to the satisfaction of the trial Court.

(Asjad Javaid Ghural)
Judge

Approved for Reporting.

JUDGE