

IN THE LAHORE HIGH COURT, LAHORE.

Before **SYED MAZAHAR ALI AKBAR NAQVI, J**

Crl. Misc. No.7923-B/2016

ADNAN PRINCE Petitioner

Versus

THE STATE & ANOTHER Respondents

POLICE STATION : Township, District Lahore.
FIR No.675/2013 Dated 09.10.2013

OFFENCE : Under Section 295-A, 295-B & 295-C PPC
PETITION : Under Section 497 Cr.P.C. for grant of bail
after arrest.

DECISION : Bail petition was dismissed on 27.10.2016

27.10.2016 Ms. Asma Jahangir, Advocate for the petitioner.
Mian Muhammad Awais Mazhar, Deputy Prosecutor
General.
Mr. Ghulam Mustafa Chaudhry, Advocate for the
complainant.
Muhammad Akram, S.I., with record.

Through this petition filed under section 497 Cr.P.C.
the petitioner, seeks his

497 (20)

Form No:HCJD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: Crl. Misc. No. 7923-B of 2016.

Adnan Prince.

Versus

The State & another.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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27.10.2016

*Ms. Asma Jahangir, Advocate for the petitioner.
Mian Muhammad Awais Mazhar, Deputy Prosecutor-
General.
Mr. Ghulam Mustafa Chaudhary, Advocate for the
complainant.
Muhammad Akram, S.I., with record.*

*Through this petition filed under section 497 Cr.P.C.
the petitioner seeks his post arrest bail in case FIR
No.675/2013, dated 09.10.2013, offence under sections, 295-
A, B, C P.P.C., registered with Police Station, Township,
Lahore, at the instant of Abid Mahmood,
complainant/respondent No.2. This petition has been moved
by the petitioner on the ground of elapse of statutory period.*

2. *It is pertinent to mention here that this is the second
petition for grant of post arrest bail, whereas, earlier petition
of the petitioner bearing Crl.Misc.No.8759-B of 2014 seeking
his post arrest bail was dismissed while touching upon the
merits of the case vide order dated 06.08.2014.*

3. *Allegation against the petitioner, in brief, as per
contents of crime report is that the petitioner made some
endorsement in the personal book of the complainant with
pencil on different pages while indicating and using abusive
language with the words of Muslims and the most reverent
personality of Universe, hence the case.*

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4. At the very outset, it has been argued by the learned counsel for the petitioner that the petitioner is behind the bars since 08.11.2013 and as such he has already exhausted statutory period, therefore, he is entitled to be released on bail, keeping in view the statutory delay. Further contends that though a number of adjournments had been sought by the accused, but the same cannot be attributed to him by any stretch of imagination, as the petitioner is behind the bars more than the period of statutory delay, hence, he can claim bail as a matter of right. Further contends that there is no chance of early conclusion of the trial in near future.

5. On the other hand, learned Deputy Prosecutor General assisted by the learned counsel for the complainant has opposed this petition with vehemence. It is argued that it is a case in which charge has already been framed under Section 295-C P.P.C., which entails punishment of death sentence. Further contends that the report of hand-writing expert is positive. Also contends that bail of the petitioner has already been dismissed while touching upon the merits of the case vide order dated 06.08.2014. It is further argued that as far as delay in conclusion of trial is concerned, that is squarely ascribed to the petitioner, hence, he is not entitled to be released on bail.

6. I have heard the learned counsel for the petitioner as well as the learned Deputy Prosecutor General assisted by learned counsel for the complainant and have gone through the available record.

7. As far as the ground of statutory delay for grant of post arrest bail is concerned, the same has been provided

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under section 497 of Criminal Procedure Code, 1898, which provides that;

"497. When bail may be taken in cases of non-bailable offence. (1) When any person accused of non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years].

Provided that the Court may direct any person under the age of sixteen years [or any woman] or any sick or infirm person accused of such an offence be released on bail.

Second, third and fourth provisos as added by Ordi. V of 2010 omitted by Act VIII of 2011.

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless prosecution has been given notice to show cause why he should not be so released.

[Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail.

(a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or

(b) who, being accused of an offence punishable with death, has been detained for

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such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded.

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life."

8. This Court while dealing with the instant matter, requisitioned report from the learned trial court. The same has been received through letter No.103, dated 26.10.2016. The crux of the report reveals that the learned trial court has ascribed the responsibility to the petitioner being instrumental regarding delay in conclusion of the trial. The report of the learned trial court is reproduced as under:-

"It is submitted that delay in non-conclusion of trial is attributed to the accused".

While elaborating this conclusion, the learned trial court has further mentioned in the report that examination in chief of two star witnesses has already been recorded, whereas, there are ten witnesses mentioned in the calendar of witnesses appended with the report under Section, 173 Cr.P.C. The learned trial court has further undertaken to conclude the trial within three months, subject to the assistance provided from both the sides.

9. As far as merits of the case are concerned, there is no denial to this fact that the petitioner is behind the bars and the period of two years has already been elapsed, but the fact remained that on a number of occasions, all the prosecution

witnesses were present and the adjournment was sought by the petitioner due to one reason or the other. The learned counsel for the complainant has stated at Bar that he may finish the prosecution evidence within one month, if defence cooperate during the trial. The offer was not acceded to; however, the fact remained that the petitioner cannot claim bail on statutory delay as a matter of right. It is always within the discretion of the Court, after evaluating the conduct of the petitioner during proceedings before the learned trial court.

10. In a recent judgment of the august Supreme Court of Pakistan reported as Babar Hussain versus The State and others (2016 SCMR 1538), same principle was enunciated, which is reproduced as under:-

"--S. 497-Bail-Scope--Delay of more than two years in conclusion of trial---Even after lapse of two years, the conduct of an accused seeking adjournments could be taken note of and bail could be denied by a court even on the statutory ground."

Hence, keeping in view all the facts and circumstances as reported by the learned trial court, while seeking guidance from the judgment, referred above, this Court is of the opinion that the delay in conclusion of trial is squarely ascribed to the petitioner, therefore, no exception can be taken.

11. Resultantly, this petition is devoid of any force and the same is dismissed.

(SAYYED MAZHAR ALI AKBAR NAQVI)
JUDGE

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IN THE LAHORE HIGH COURT AT LAHORE.

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Crl Misc No. _____ B/2016

Adnan Prince son of Parvaiz Shahid r/o 617-B, Sher Shah Colony, Raiwind Lahore
Presently confined at Central Jail Kot Lakhpat Lahore. /Petitioner

Versus

1. The State
2. Abid Mahmood s/o Muhammad Ashraf r/o 153-A, Lala Zar Colony, Bhaghat Pura, Shad Bagh, Lahore.Respondents

FIR No. 675/2013 dated 9.10.2013
Offence: 295-A, B, C, PPC
Police Station: Township, Lahore.

BAIL APPLICATION UNDER SECTION 497 CrPC FOR POST ARREST BAIL

Respectfully Sheweth:

1. That the complainant has registered the above titled FIR against the petitioner that some words were allegedly written alongwith a few signs of arrows and lines marked by the petitioner on a religious book allegedly owned and kept by the complainant at the time of alleged offence. Furthermore according to the complaint the words so written and signs of arrows and lines made outraged the feelings of Muslims, even though there is no evidence on record to prove such allegations. Copy of FIR is attached.
2. That the petitioner submitted his first bail application before the learned additional and sessions judge Lahore but the same was dismissed on 22.4.2014. Order is

f. That the petitioner is a Christian and the complainant harbours extreme prejudice towards non-Muslim although the petitioner has utmost regard for all religions and for the holy Prophet Muhammad (Peace be upon him) and on all holy books.

g. That the petitioner is in judicial lockup since his arrest and his trial has not been concluded yet even after the lapse of more than two years, hence he is entitled for bail on the statutory ground under amended proviso of section 497 Cr.P.C. which stipulates that who has been refused, bail shall be released if he has been detained for a continuous period of two years. The delay is not attributed to the petitioner.

h. That the petitioner is no more required for further investigation as no recovery is yet to be made from him.

i. That there is no apprehension of tampering with the prosecution evidence by the present petitioner hence he may be release on bail.

j. That the petitioner is a law abiding citizen and is ready to furnish surety upon the satisfaction of this honourable court.

It is therefore respectfully prayed that this honourable court may be pleased to grant post arrest bail to the petitioner till the final disposal of the case.

Petitioner
Through Counsel
Asma Jahangir
Asma Jahangir

Mian Liaqat Ali
Mian Liaqat Ali
Advocates
AGHS Law Associates
131 E/1 Gulberg III
Lahore.

certificate
18/6/16

Certified as per indirection of the petitioner
this is second petition

Note:
First Bail Petition Crl. Misc. No. 8759-B/2014 Titled Adnan Masih vs. The State has been Dismissed on 6.8.2014.

Certificate:

As per instructions of the petitioner this is the ^{first} petition on the statutory ground before this honourable court.

Mian Liaqat Ali
Advocate

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Constitution of Pakistan 1973
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