**ORDER SHEET**
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**
**JUDICIAL DEPARTMENT**.

**Criminal Misc. No. 508-B of 2022**
Shams-ur-Rehman
**Versus**
The State& another

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | 29.04.2022 | Mr. Muhammad Shahzad Siddiq, Advocate, for the petitioner.<br>Mr. Hammad Saeed, Advocate for the respondent<br>Syed Shahbaz Shah, State Counsel with Iftikhar Ahmed ASI. |

This is second post arrest bail petition by accused/petitioner (*Shams-ur-Rehman*) in F.I.R No. 926, dated 27.12.2021, registered under Section 489-F PPC, at Police Station Kohsar, Islamabad.

2. According to the allegations set-forth in the FIR, petitioner lured the complainant to invest the money in property business and used to return the same with profit till 2016. In furtherance, the complainant also invested Rs. 3,15,00,000/- and for return of the said amount, petitioner issued cheque No. 61276873 which, on presentation, stood dishonored by the concerned bank, due to insufficient funds.

3. Learned counsel contends that earlier bail petition (*Crl. Misc. No.106-B of 2022*) filed by the petitioner was dismissed on merits by this Court vide order dated 10.02.2022 with direction to the Trial Court to conclude the trial within one month but the needful could not be done which necessitated instant petition; that after taking cognizance by the learned Trial Court, the complainant, in order to caused delay in conclusion of trial, filed an application u/s 540 Cr.P.C. read with Article 76 of the Qanoon-e-Shahadat Order, 1984 for summoning of two witnesses which was allowed vide order dated 17.03.2022; that petitioner being aggrieved of the said order filed Revision Petition which was allowed vide order dated 08.04.2022 with

the observations that it was filed only to prolong the case and to fill in the lacunas; therefore, petitioner is entitled to post arrest bail at this stage. Learned counsel relied upon case law reported in **2021 SCMR 822 and 2011 SCMR 870.**

4. Conversely, learned State Counsel assisted by learned counsel for the complainant passionately contested the bail petition and argued that challan has been submitted before the concerned Judicial Magistrate, charge has been framed and the trial is in progress. Learned State Counsel further submits that the complainant is ready to produce all the witnesses before the Trial Court for early conclusion of the Trial. Learned counsel relied upon case law reported in **PLD 2016 Supreme Court 11 and 2018 MLD 1975 (Islamabad).**

5. Heard, record perused.

6. Perusal of record reveals that this Court while deciding first bail application of the petitioner had passed directions for early conclusion of the trial vide order dated 10.02.2022 in following terms:-

> ***"I am not inclined to grant the concession of bail under the circumstances. Instead, the learned Trial Court is directed to conclude the trial within one month to which end the State is directed to submit the challan forthwith if not submitted already."***

7. During hearing of the instant bail application, report was sought from the State Counsel as to compliance of the orders in respect to the submission of challan within the stipulated period. As per report, the challan was forwarded to the Prosecution Branch on 27.01.2022 for scrutiny wherein the learned ADPP raised objections as to missing of complainant's signatures on the recovery memo. On 04.02.2022, the challan was again handed over to the Investigating Officer for removal of the discrepancy. The Investigating Officer made efforts to procure attendance of the complainant but to no avail and finally on 07.03.2022, challan was again submitted without removal of the discrepancies as pointed out by the learned ADPP.

8. After receipt of the challan, the Trial Court proceeded with the matter by delivering copies in terms of Section 241-A Cr.P.C to the accused/petitioner. The charge was framed on 10.03.2022 and the case was fixed for prosecution evidence. On the next date of hearing i.e. 15.0.3.2022, the complainant filed application under Section 540 Cr.P.C. read with Article 76 of the Qanoon-e-Shahadat Order, 1984 which was allowed vide order dated 17.03.2022.

The case was then fixed for 19.03.2022 for prosecution evidence. The order allowing the application under Section 540 Cr.P.C was assailed by the petitioner through Criminal Revision No.126 of 2022, wherein record of the Trial Court was also requisitioned. The revision petition was accepted vide order dated 08.04.2022. During the intervening period, the trial remained at-halt awaiting the record, summoned by the learned Revisional Court and on receipt of the same, the learned Judicial Magistrate commenced with the proceedings in the case.

9. The aspect of consideration of merits is out of question as the first bail application was decided by this Court on tentative evaluation of the same by the instant application only alleges non-compliance of the direction for conclusion of the trial within one month.

10. Undoubtedly, it is inalienable right of an accused to be dealt in accordance with law and timely conclusion of trial particularly when directions in this regard have already been issued. However, non-compliance of the direction cannot itself be a ground for the grant of post arrest bail. Reliance is placed upon ***PLD 2016 SC 11 (Nisar Ahmed vs. The state& others).***, wherein it has been held that **"*non-compliance of direction issued by the High Court(to the trial Court) to conclude the trial expeditiously or within specified time... non-compliance with such direction could not be considered a valid ground to grant bail to the accused.*"**

11. The wisdom laid down in the case laws guides to observe that the ground i.e. *Non-compliance of the orders passed by this Court and non-conclusion of the trial within time frame fixed by this Court in the first bail application* cannot be agitated as a ground for the reason that the same is not embodied in Section 497 Cr.P.C. Mere delay in conclusion of the trial or longevity of the period of incarceration could not by itself entitle an accused person to be enlarged on bail. This aspect of the matter was dealt with by the Hon'ble Apex Court in the case of ***Talat Ishaq v. National Accountability Bureau*** **(PLD 2019 SC 112)**.

12. The directions to conclude the trial within a specific time frame were administrative in nature, and non-compliance of the same for whatever reasons, may not be a ground to seek bail as of right. Reliance is placed upon ***Nisar Ahmed v. The State & others*** **(PLD 2016 SC 11)**.

13. Another important aspect of the matter is that ordinarily bail is to be allowed to an accused person on the ground of delay in conclusion of trial where the period of custody is shocking, unconscionable or inordinate and not otherwise. The prime consideration is to remedy undue hardship and more often than not *prima facie* merits of the case are also to be looked into while deciding bail application on the ground supra. The Court has also to look for the reasons of delay and if some significant or noticeable part of it is towards accused, the relief of bail may be withheld.

14. In the present case, as noted above, after the directions passed by this Court, the delay if any cannot be termed "shocking". Even otherwise, as committed by the learned counsel for the complainant, the complainant is ready to produce all the witnesses on the next date of hearing before the learned Trial Court. It is expected that the complainant shall honour his commitment enabling the Trial Court to comply with the direction without further loss of time.

15 After examining the case of the petitioner and the law laid down on the subject, in the attending circumstances of the case, the ground of delay in conclusion of trial pursuant to the directions by this Court, which by itself is not a valid ground. The delay made basis to ask for post arrest bail, through this second petition, is not "shocking" and, therefore, cannot be made basis as a "fresh ground" to ask for post-arrest bail at this stage. Consequently, for reasons mentioned above, the instant bail petition is accordingly ***dismissed***. However, the petitioner has a legitimate right that his case is to be decided as early as possible, therefore, while placing reliance upon the case law reported as ***"2011 SCMR 1332 (Rehmatullah and another Vs. the State)***, the learned Trial Court is directed to conclude the trial at the earliest.

**(ARBAB MUHAMMAD TAHIR)**
**JUDGE**

ISLAMABAD | 10.05.2022
APPROVED FOR REPORTING

**//Kamran//**