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

Criminal Misc. No. 1254-B of 2022

Faisal Yaseen

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.
	21.10.2022	Mr. Abdul Khaliq Thind & Sh. Umar Farooq, Advocates for the petitioner, Mr. Waqas Ahmad Abbasi, Advocate for respondent No.2/complainant, Mr. Zain Qureshi, State Counsel with Mian Zulfiqar Ali ASI.

ARBAB MUHAMMAD TAHIR, J:This is second post-arrest bail petition by accused/petitioner namely *Faisal Yaseen* in F.I.R No. 96, dated 30.01.2021, under Section 392, 411 PPC, Police Station Koral, Islamabad.

2. It is significant to note that first post-arrest bail petition of the petitioner (Crl. Misc. 509-B/2022) preferred both on merits and delay in conclusion of trial was dismissed vide order dated 14.06.2022 by observing as under:-

> "9. On merits, it is noticed that the petitioner was duly identified by the complainant with specific role on 16.07.2021. He also got recovered .30 pistol and robbed amount of Rs. 55,000/-.
>
> 10. The role of the present petitioner is identical to that of co-accused Husnain Akhtar whose bail petition was dismissed by this Court vide order dated 03.05.2021. There is also no denial that petitioner is involved in seven other cases of like nature----
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> 11. Adverting to the ground of delay in conclusion of trial, as apprised by the learned State Counsel, examination-in-chief of prosecution witnesses has since been recorded and now the case is set for cross examination, to be conducted by learned defence counsel, therefore, it cannot be said that the delay, if any, had been on the part of the prosecution/complainant. Even otherwise, 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).***

3. The petiotner is accused of commission of offence of robbery under section 392 read with section 411 PPC. The request of the petitioner for release on bail on the ground of delay in conclusion of trial was turned down by the learned ASJ-I, Islamabad-East vide order dated 07.09.2022 by observing that *"Evidently, delay in conclusion of trial, in the backdrop of current scenario, cannot be solely attributed to the prosecution, by now the delay seems to have been occur on account of conduct of accused facing trial, who seems reluctant to get the witnesses cross examined."*

4. The petition *ibid* was dismissed on 07.09.2022 while the petitioner preferred the instant petition on 04.10.2022, therefore, in order to appreciate the ground being reiterated i.e. delay in conclusion of trial, the proceedings-in-trial conducted thereafter, have been gone through. Heard the learned counsel for the petitioner, learned State Counsel and gone through the record with their able assistance. The learned counsel in support of his submissions refers the case of ***Shakeel Shah v. The State & others (2022 SCMR 1)***.

5. On 07.09.2022, the case was adjourned to 10.09.2022 for evidence when on the date fixed fresh power of attorney has been filed on behalf of the petitioner while his counsel completed cross examination upon PW-3. The other witness PW-1 though present but was not cross-examined by the defence on the ground that the latter intend to cross examine the two witnesses i.e. PW-1 & PW-2 at-once. The case was adjourned to 13.09.2022, but the witness PW-4 could not be cross-examined due to absence of co-accused Hasnain Akhtar who was then summoned through NBW for 24.09.2022. On the said date, the complainant along with the witnesses was present but the cross-examination could not be completed due to absence of co-accused. On the next date i.e. 29.09.2022 one of the prosecution witnesses namely Zulfiqar Ali, ASI was present but the accused persons could not be produced from jail and the case was adjourned to 06.10.2022. On the date fixed accused could not be produced

from the Jail and then the case was adjourned to 11.10.2022. On the said date, the witness was present but the senior defence counsel was not available and the case was adjourned to 18.10.2022. On 18.10.2022 the complainant along with the witness was present but one of the accused Hasnain Akhtar was not produced from the Jail and the case was adjourned to 25.10.2022.

6. From the proceedings *ibid* it is quite obvious that on most of the dates of hearing the complainant or the witnesses had been present, the defence counsel despite presence of one the prosecution witnesses opted to cross-examine the two witnesses at-once. At one occasion, the senior defence counsel was not present while on few dates, co-accused was not produced from the jail. It is thus obvious that the delay cannot be attributed to the prosecution/complainant and that the learned defence counsel opted not to cross examine the witness in attendance without any sufficient cause. The ground of delay in conclusion of trial is, therefore, not available to the petitioner

7. The ratio set in the case of **Shakeel Shah *Supra,*** relied upon by the learned counsel does not extend any help to the petitioner as it has graciously been held that *"merely some adjournments sought by the counsel of the accused could not be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments were sought* ***without any sufficient cause on crucial hearings i.e. the hearings fixed for examination or cross-examination of the prosecution witnesses*** *or the adjournments were repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial."*

8. Besides the above, it is also noticed that the petitioner is involved in various other cases of like nature, had been keeping himself away from the process of law and the mode and manner alleged adopted by him in the commission of the alleged offence i.e. commission of robbery at gun point, *prima facie*, reflects his evil designs which are enough to hold him disentitled for the concession of post-arrest bail at this stage.

9. The Hon'ble Apex Court in the case of *Tahir Batool v. The State* (**Crl. P 910 of2022**) and *Mst. Fursan v. The State* (**Crl P 994 of 2022**) has graciously held that "***the persons involved in the commission of offences of robbery or dacoity are usually the professional criminals and there is a likelihood that they would repeat the offence if enlarged on bail."***

10. In view of above, instant bail petition is **dismissed**. The learned trial Court shall make every endeavor to conclude the trial at the earliest in terms of directions pursuant to order dated 14.06.2022 passed in Crl. Misc. No. 509-B of 2022. Copy of this order be sent to the learned trial Court for compliance.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//*Kamran*//