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

Criminal Misc. No. 1381-B of 2022
Abbas Khan
Vs.
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.
	16.11.2022	M/s Ume Ruqiaya and Mr. Usman Nasir Khan, Advocates for petitioner. Mian Zain Qureshi, State counsel along with Zulfiqar Ali A.S.I.

ARBAB MUHAMMAD TAHIR, J: This is second post-arrest bail petition by accused/petitioner namely *(Abbas Khan)* in FIR No. 655, dated 20.07.2021, under section 392/411 PPC, Police Station Koral Islamabad. The first post-arrest bail petition of the petitioner (Crl. Misc. 577-B/2022) preferred on merits was dismissed by this Court vide order dated 16.05.2022 by observing as under:-

"6- Record reveals that during investigation in the subject FIR, the petitioner was duly identified by the complainant during identification parade held on 06.8.2021. In addition, petitioner also got recovered snatched mobile phone on 27.08.2021which is duly identified by the complainant while petitioner also pointed the place occurrence.

7- Record further reveals that petitioner is also involved in following cases:-

S.No.	F.I.R No.	Police Station	Offence under Section
1	288/2021	P.S. Koral	**392/411 PPC**
2	383/2021	P.S. Koral	**392/411 PPC**
3	592/2021	P.S. Koral	**392/411 PPC**
4	666/2021	P.S. Koral	13/20/65 A.O.

8- As mentioned above, the petitioner in involved in three other cases of like nature besides a case registered under Arms Ordinance. It is significant to note that all the cases pertain to a particular area falling within the territorial limits of Police Station Koral. The alleged occurrence took place within short span of time and the modus operandi reflects evil designs of the petitioner in committing the offence of mobile grabbing which is in rampant increase nowadays, which cannot be taken lightly.

9- In addition, the alleged offence is not only heinous but is an offence against the society and falls within the ambit of prohibitory clause of Section 497 Cr.P.C. The way the things have gone, it can easily be inferred that the petitioner is a habitual offender which disentitles the petitioner to pray for release on bail. Reliance is placed upon case law titled as ***Waqas-ur-Rehman alias Moon v. The State*** **(2021 SCMR 1899)**."

2. The petitioner 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 statutory ground of delay in conclusion of trial was turned down by the learned ASJ-I, Islamabad-East vide order dated 15.10.2022 with direction to the learned Trial Court *"to expedite the trial without giving unnecessary adjournments and after adopting coercive measures make sure the presence of the PWs."*

3. Heard the learned counsel for the petitioner, learned State Counsel and gone through the record with their able assistance. The learned counsel for the petitioner in support of his submissions relied upon case of ***Shakeel Shah v. The State & others (2022 SCMR 1), Javed Khan v. The State (2022 YLR 1655-Peshawar) and Muhammad Tanvir v.The State and another (2022 MLD 278-Lahore)***.

4. On the subject ***"grant of bail on statutory ground of delay in conclusion of trial***" the underlying principle set by the Hon'ble apex Court in the case of **Shakeel Shah supra** is to the effect that:-

> "The accused, thus, has a statutory right to be released on bail if his trial for such offence is not concluded within a period of one year from the date of his detention. **The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused** and it is of little importance as to when the charge is framed and the trial commenced. The purpose and objective of the provision is to ensure that the trial of an accused is conducted expeditiously and the pre-conviction detention of an accused does not extend beyond the period of one year, in cases involving offences not punishable with death. In such cases, if the trial of an accused is not concluded within a year of his detention, the statutory right to be released on bail ripens in his favour.

5. It is further held that the statutory right to be released on bail is, however, subject to two exceptions: one is embodied in the third proviso itself and the second is provided in the fourth proviso. As per these exceptions, the right to be released on bail on the ground of delay in conclusion of the trial is not available to an accused if: (i) ***the delay in conclusion of the trial is occasioned by an act or omission of the accused or by any other person acting on his behalf***, or (ii) ***the accused is a convicted offender for an offence punishable with death***

or imprisonment for life or ***is in the opinion of the court a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life***.

6. Under the principle *ibid*, statutory ground of delay in conclusion of trial would be available to an accused if the trial is not concluded within one year from the date of his detention and he has to explore that the delay in conclusion of trial is not occasioned by any of his act or omission or by any other person acting on his behalf, he is not a previous convict for an offence punishment with death or imprisonment for life and that his case did not fall within the ambit of *'hardened'*, *desperate*' or '*dangerous criminal'.*

7. In the present case, the petitioner was arrested on **26.07.2021**. The statutory ground of delay in conclusion of trail was, therefore, available to him after lapse of one year from the date of his arrest with effect from **27.07.2022**. The charge was framed on **13.11.2021**. The proceedings conducted subsequent to framing of the charge reveals that one most of the dates of hearing e.g. **27.11.2021. 11.12.2021, 24.02.2022, 25.03.2022, 06.06.2022, 04.07.2022**and **13.09.2002**, the prosecution witnesses were absent while on few occasions the Presiding Officer was on leave, therefore, it cannot be said that the delay in conclusion of trial is occasioned by any act or omission on the part of the petitioner.

8. Adverting to the exceptions to the rule on the subject, it is noticed that though petitioner appears to be a habitual offender as being involved in other cases of like nature, yet the fact remains that he retains no conviction at his credit; that except cases registered in the Month of March, April, June and July of 2021 under section 392 PPC, there is no record of his involvement in like cases previously i.e. prior to the year 2021 and his continuous detention for more than a year without any material or even remote progress in conclusion of trial, bring his case within the remit of third proviso to section 497(1) Cr P C. The petitioner is, therefore, held entitled to post-arrest bail at this stage on statutory ground of delay in conclusion of trial.

9. Before parting with the order, it is necessary to mention that the learned Judicial Magistrate Section-30 Islamabad-East while dismissing application on statutory ground of delay in conclusion of trial in its order dated 27.09.2002 observedin Paragraph-08 that *"there is no cavil to the proposition that trial commences after framing of charge and when reckoned on this touchstone, it is safe to say that one year has not passed to invoke the provision of law pertaining to statutory delay*." This observation, on the fact of it, is contrary to principle on the subject highlighted *ibid* while the learned ASJ in its order dated 15.10.2022 did not lay any comment upon the fresh ground i.e. statutory delay in conclusion of trial.

10. In view of above, instant bail petition is **allowed**. The petitioner *(Abbas Khan*) is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (one lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

(ARBAB MUHAMMAD TAHIR*)*
JUDGE

A.R.Ansari