

1998 S C M R 190

[Supreme Court of Pakistan]

Present: Ajmal Mian and Nasir Aslam Zahid, JJ

SHER ALI alias SHERI ---Petitioner

versus

THE STATE---Respondent

Criminal Petition for Leave to Appeal No. 204-L of 1997, decided on 19th November, 1997.

(On appeal from the order dated 30-4-1997 of the Lahore High Court, Lahore, passed in Criminal Misc. No. 5284/B/96).

(a) Criminal Procedure Code (V of 1898)---

---S. 497(1), third proviso---Bail on the ground of statutory delay---Right of accused---Exception---Accused under third proviso to subsection (1) of S. 497, Cr.P.C. is entitled to bail as a matter of right if the statutory period mentioned either in Cl.(a) or Cl.(b) has expired and the trial has not been concluded, in view of the use of the word "shall "---Such right can be defeated only if the State or the complainant shows that the delay in trial is attributable to the accused--Once it is shown, such right is forfeited.

Riasat Ali and another v. The State PLD 1977 SC 480; Barkhurdar v. Liaqat Ali and 2 others PLD 1977 SC 434; Abdul Rehman v. The State 1978 PCr.LJ 589;. Nazir Hussain v. Ziaul Haq and others 1983 SCMR 72; Saleh Muhammad v. The State and another 1983 SCMR 341; Zahid Hussain Shah v. The State PLD 1995 SC 49; Wazir Khan v. State 1983 SCMR 427; Umar Draz and another v. State 1997 SCMR 885 and Akhtar Abbas v. State PLD 1982 SC 424 ref.

(b) Criminal Procedure Code (V of 1898)---

---S. 497(1), third & fourth provisos---Bail on the ground of statutory delay--Right of accused for bail under the third proviso to S. 497(1), Cr.P.C. cannot be defeated on any other ground except the delay mentioned in the relevant clause and the grounds provided in the fourth proviso thereof.

Riasat Ali and another v. The State PLD 1977 SC 480; Barkhurdar v. Liaqat Ali and 2 others PLD 1977 SC 434; Abdul Rehman v. The State 1978 PCr.LJ 589; Nazir Hussain v. Ziaul Haq and others 1983 SCMR 72; Saleh Muhammad v. The State and another 1983 SCMR 341; Zahid Hussain Shah v. The State PLD 1995 SC 49; Wazir Khan v. State 1983 SCMR 427; Umar Draz and another v. State 1997 SCMR 885 and Akhtar Abbas v. State PLD 1982 SC 424 ref.

(c) Criminal Procedure Code (V of 1898)---

---S. 497(1), fourth proviso---In order to bring an accused person within the compass of a hardened, desperate or dangerous criminal it is not necessary to prove that he had been previously convicted, for the reason that previously convicted persons are separately dealt with in the fourth proviso to S. 497(1), Cr.P.C.

(d) Criminal Procedure Code (V of 1898)---

---S. 497---Bail---Absconder---Fugitive from law and Courts loses some of the normal rights granted by the procedural as also substantive law.---[Absconder].

Awal Gul v. Zawar Khan and others PLD 1985 SC 402 ref.

(e) Criminal Procedure Code (V of 1898)---

---S. 497---Bail---Abscondence of accused---Effect---Unexplained noticeable abscondence of accused disentitles him to the concession of bail notwithstanding the merits of the case. ---[Abscondence].

Awal Gul v. Zawar Khan and others PLD 1985 SC 402 ref.

(f) Criminal Procedure Code (V of 1898)---

---S. 497(1), third proviso---Bail on the ground of statutory delay--Abscondence of accused ---Effect---Abscondence of accused will not disentitle him to claim bail on the ground of statutory delay, which right accrues to him after he has been arrested and the statutory period mentioned in Cl. (a) or Cl. (b) of the third proviso to S. 497(1), Cr.P.C. has expired---Where, however, the abscondence of accused has contributed towards the delay of the trial, then he would not be entitled to seek bail on the ground of statutory delay.--[Abscondence].

(g) Criminal Procedure Code (V of 1898)---

---S. 497(1), third proviso---Penal Code (XLV of 1860), S.302/148/149--Constitution of Pakistan (1973), Art.185(3)---Bail on the ground of statutory delay---Had the accused not absconded he would have been tried with the other co-accused whose trial was concluded by the Sessions Court on 31-10-1991 and their appeal was disposed of by High Court on 16-7-1995---Four of the co-accused were granted leave to appeal by Supreme Court on 24-10-1995---Case against the accused could not be proceeded with as Trial Court could not get the record of the case from High Court till 2-1-1997 and such period of delay was attributable to the accused---There would not have been any occasion to summon the aforesaid record for proceeding with the trial against the accused if he had not absconded and he could not take advantage of his own wrong---Delay in the trial up to 2-1-1997 being attributable to the accused, the period of two years specified in Cl. (b) of third proviso to S. 497(1), Cr.P.C. had not expired---Bail was declined to accused in circumstances and leave to appeal was refused accordingly.

Riasat Ali and another v. The State PLD 1977 SC 480; Barkhurdar v. Liaqat Ali and 2 others PLD 1977 SC 434; Abdul Rehman v. The State 1978 PCr.LJ 589; Nazir Hussain v. Ziaul Haq and others 1983 SCMR 72; Saleh Muhammad v. The State and another 1983 SCMR 341; Zahid Hussain Shah v. The State PLD 1995 SC 49; Wazir Khan v. State 1983 SCMR 427; Umar Draz and another v. State 1997 SCMR 885; Akhtar Abbas v. State PLD 1982 SC 424; Moundar and others v. State PLD 1990 SC 934; Awal Gul v. Zawar Khan and others PLD 1985 SC 402; Muhammad Sadiq v. Sadiq and others PLD 1985 SC 182; Najeeb Gul v. Khalid Khan and another 1989 SCMR 899; Rais Khan v. Said Hanif and another 1979 SCMR 90; Rao Qadeer Khan v. State PLD 1981 SC 93; Hayat Bakhsh and others v. State PLD 1981 SC 265 and Kh. Azhar Hussain and another v. State 1983 SCMR 978 ref.

Dr. A. Basit, Advocate Supreme Court and Mehdi Khan Mehtab, Advocate-on-Record for Petitioner. .

R.A. Awan, Advocate Supreme Court and Muhammad Aslam Ch., Advocate-on-Record for the Complainant.

Faizur Rehman, Advocate Supreme Court for the State.

Date of hearing: 6th November, 1997.