

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench - III:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Irfan Saadat Khan

CrI.P.172-L/2023

(Against the order of Lahore High Court, Lahore,
dated 30.01.2023, passed in Cr. Revision No.6092 of 2023)

Zagham Hassan Khan

... **Petitioner**

Versus

The State, etc.

... **Respondents**

For the petitioner: Mr. Abdul Hameed Khan Rana, ASC.

For the State: Mirza Abid Majeed, DPG, Punjab.
a/w Ghulam Rasool, I.O.

For the complainant: Ghulam Mustafa Ch. ASC.
(Through V.L. from Lahore Registry)

Date of hearing: 7 November 2023

JUDGMENT

Syed Mansoor Ali Shah, J.- The present case of an accused person suffering from 'schizophrenia' and aged about 60 years prompts us to examine, whether the trial court has reasonably exercised the discretion vested in it under Section 466 of the Code of Criminal Procedure 1898 ("CrPC") in declining to release him on sufficient security after postponing the further proceedings in the case under Section 465, CrPC, and also to enunciate the principles that should guide the reasonable exercise of this discretion.

2. Briefly, the facts necessary to state for the decision of the present petition are that a case¹ was registered against the petitioner on the allegation of his having spoken derogatory remarks against the Holy Prophet (peace be upon him), punishable under Section 295-C of the Pakistan Penal Code 1860 ("PPC"). The petitioner was arrested, and after investigation, was sent for trial. Before the framing of the charge against the petitioner, his counsel made an application to the trial court averring that the petitioner was a person with mental disability, and was thus unfit to stand trial. The trial court conducted an inquiry into the matter, got the petitioner examined by a medical board, recorded the statements

¹ FIR No.227/21, Police Station, Shafiq Abad, Lahore.

of two doctors on that board, and concluded that the petitioner was suffering from 'schizophrenia' and was thus not fit to stand trial and make his defence. Upon this finding, the trial court postponed the proceedings of the case, under Section 465, CrPC, till recovery of the petitioner from that mental disease. On the question of whether after postponing the proceedings of the case the petitioner was to be released on bail or to be detained in some Mental Health Hospital under Section 466, CrPC, the trial court chose the second option. By its order dated 21.12.2022, the trial court directed to shift the petitioner from the prison to the Punjab Institute of Mental Health, Lahore. This order was challenged in revision before the High Court, but by the impugned order dated 30.01.2023 the High Court declined to interfere therewith; hence, the present petition for leave to appeal.

3. We have heard the arguments of the learned counsel for the parties, read the cases cited by them and examined the record of the case.

4. As the matter under consideration requires the interpretation of the provisions of Section 466, CrPC, we find it appropriate to reproduce them here for ease of reference:

466. Release of lunatic pending investigation or trial: (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) Custody of lunatic: If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall, order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the provincial Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Provincial Government may have made under the Lunacy Act, 1912.

A bare reading of Section 466, CrPC, shows that in cases where the accused person is found to be of unsound mind and incapable of making his defence, the court has been conferred with special power to release him on sufficient security, notwithstanding whether the case is one in which bail may be taken or not. The sufficient security required is that of a person who binds himself (i) to properly take care of the accused, which includes his proper medical treatment, (ii) to prevent the accused from doing injury to himself or any other person, and (iii) to produce the accused when required before the court or before such officer as ordered

by the court. If in the opinion of the court, bail should not be taken, i.e., the accused should not be released, or if the required sufficient security is not given, the court can order the accused to be detained in safe custody in such place and manner as it thinks fit.

5. From the reading of Section 466, CrPC, it transpires that the primary course prescribed is to release the accused, who is of unsound mind and incapable of making his defence, on sufficient security while detaining him in safe custody secondary to the primary course. It, therefore, follows that the course of releasing such an accused on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception. With the deduction of this principle, the matter however does not end. Next comes the question: what may be the circumstances that can justify adopting the exceptional course of detaining the accused in safe custody? The answer to this question also lies within the provisions of Section 466. The noticeable point is that while conferring the discretion on the court, by using the word 'may', Section 466 provides an inbuilt guidance for the exercise of that discretion by making it conditional on giving sufficient security to properly take care of the accused and to prevent him from doing injury to himself or any other person. These two conditions are the touchstone on the basis of which the court is to exercise its discretion in either way. If keeping in view the facts and circumstances the court forms an opinion that in releasing the accused on bail, there is an apprehension that he would not be properly taken care of or prevented from doing injury to himself or any other person, it can then decline to release him on bail and direct for keeping him in safe custody in such place and manner as it may think fit. The facts and circumstances that are relevant in forming such an opinion by the court may be that no one from the kith and kin of the accused comes forward to give sufficient security for the fulfillment of the said conditions, or that his kith and kin have previously remained unsuccessful in preventing him from doing injury to other persons.

6. In applying the above principles to the facts and circumstances of the present case, we find that the family members of the petitioner are pursuing the legal remedies for the accused and are ready to give the requisite sufficient security for the fulfillment of the conditions that they would properly take care of the petitioner and prevent him from doing any injury to the body or property of other persons, and there is no past record of the petitioner to have done any such injury to other persons which may show that his family members have previously remained

unsuccessful in preventing him from doing injury to other persons. The incident involved in the present case is also not of a violent nature involving any injury to the body or property of other persons. There are thus no such exceptional facts and circumstances that may justify departure from the rule of releasing the petitioner on sufficient security under Section 466, CrPC, and adopting the exceptional course of detaining him in some Mental Health Hospital instead of handing him over to his family for his proper care and treatment. In its order, the trial court has not given any justifiable reason for the exercise of its discretion in detaining the petitioner in the Mental Health Institute. The discretion is found to have been exercised unreasonably and capriciously. It was a fit case for interference by the High Court in its revisional jurisdiction, to correct the error committed by the trial court; but the High Court failed to do so.

7. For the above reasons, we convert the present petition into an appeal and allow the same. By setting aside the order of the High Court, dated 30.01.2023, the revision petition of the petitioner is accepted. The order of the trial court, dated 21.12.2022, is set aside and the petitioner is ordered to be released on bail subject to furnishing of a bond by any family member of the petitioner who binds himself (i) to properly take care of the petitioner, (ii) to prevent the petitioner from doing injury to himself or any other person, (iii) to produce the petitioner before the court when required, and (iv) to produce the petitioner before the Medical Board of the Punjab Institute of Mental Health, Lahore, after every three months for his medical examination as to his recovery from the mental disease and fitness to stand trial, and to submit the report of the Board to the trial court for information and appropriate order. The bond shall be supplemented by two sureties in the sum of Rs.100,000/- to the satisfaction of the trial court.

Judge

Judge

Islamabad,
7 November 2023.
Approved for reporting
Iqbal

Judge