

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1514 of 2025
[Akhtar Ali son of Ghulam Mustafa]
and
Criminal Bail Application No. 1519 of 2025
[Abdul Salam Mandhro son of Abdul Rahman Mandhro]

Date: Order with Signature of Judge

Mr. Nisar Ahmed Tarar, Advocate for the Applicants in Criminal Bail Application No.1514 of 2025.
Mr. Saad Fayaz, Advocate for the Applicant in Criminal Bail Application No.1519 of 2025.
Mr. Muhammad Najeeb Jamali, Advocate for the Complainant in Criminal Bail Application Nos.1514 & 1519 of 2025.
Mr. Muhammad Ahmed, Assistant Attorney General.

Date of Hearing : 21.08.2025
Date of Order : 12.09.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- Through this single order, both the subject bail applications are being decided which have been filed against the common order dated 02.06.2025 passed by learned Special Judge, `(Central-II), Karachi in FIR No.16/2024, registered under Section 409/419/420/468/471/472/473/109/34 PPC read with Section 5(2) PCA-II, 1947 at Police Station F.I.A ACC, Karachi, whereby post a risk bill to both the applicants has been rejected.

2. Brief facts of the case as narrated in the FIR are that an Enquiry No.48/2022 of FIA ACC Karachi was initiated in respect of Pakistan Audit Department Employees Cooperative Housing Society (PADECHS). Investigation established that after supersession of the Society in 2014, Administrators and officers of the Cooperative Societies Department, in active connivance with land grabber Abdul Salam Mandhro and his associates, illegally usurped the Society. They misplaced original records, filed fake memberships before Court, engineered elections in September 2020, and installed a dummy management. Thereafter, bogus plot files were prepared and sold to the public, crime proceeds of approx. Rs.130 million were laundered through various accounts, and two properties were purchased in

DHA Karachi. Cooperative Department officials, including Inspectors, Assistant Registrars and Registrars, were found deliberately facilitating these illegal activities by withholding genuine records, approving layout plans, and failing to act on members' complaints. Sub-Registrars also registered leases on fake documents. Accordingly, FIR was registered under sections 409, 419, 420, 468, 471, 109, 34 PPC against 23 accused.

3. Learned counsel for both the applicants argued that the instant bail application is on the sole ground of statutory delay in conclusion of trial since the applicants have remained in custody for more than a year, and the inordinate delay in trial, is not attributable to them, as evident from the certified copies of the Court diaries of the learned trial Court, which attracts the statutory ground under the third proviso of Section 497 Cr.P.C. Per counsel, in these circumstances, bail is a rule and jail, an exception, whereas the applicants' further incarceration would amount to punishment before conviction, violating their fundamental rights. Lastly contended that the impugned order is perverse and against the settled principles of the superior courts.

4. Heard learned counsel for the parties, learned AAG and have examined the record with their able assistance.

5. The instant bail application is on the sole ground of Statutory delay in conclusion of trial hence, to examine the extent and scope of the right of an accused to bail on the statutory ground of delay in conclusion of the trial under the third proviso to section 497(1), Cr.P.C. the relevant portions of section 497(1), Cr.P.C. are reproduced hereunder:

“497. When bail may be taken in case of non-bailable offence.

(1).....

Provided

Provided

(a) Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail- **Who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year** or in case of a woman exceeding six months and whose trial for such offence has not concluded' or

(b) Who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of woman exceeding one year and whose trial for such offence has not concluded:

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.”
[emphasis added]

6. In the instant case, the applicants are charged with offences punishable under sections 409/419/420/471/472/473/109/34 P.P.C. read with section 5(2) PCA-II, 1947, which are not punishable up to death, hence their bail plea is covered under part(a) of the third proviso to section 497(1), Cr.P.C. The above provision provides that if an accused remains detained exceeding one year without conclusion of trial, the law mandates his release on bail.

7. It is most pertinent to note there that while denying bail, the learned Special Judge Anti-Corruption (Central)-II Karachi observed at paragraph 5 of the impugned Order that,

“...After commencement of trial, period of detention for one year has to be completed, giving rise to statutory ground for bail.”

8. In the case of ***Shakeel Shah***¹ the principle settled by the Supreme Court is, that for the purposes of commencement of time under the third proviso to section 497(1) Cr.P.C., period for the conclusion of the trial is to be calculated **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.** Again in the case of ***Nadeem Samson***², at paragraph 8(ii) it has been expounded that:

“8. The scope of the 3rd proviso to section 497(1), Cr.P.C. has recently been expounded by this Court in the Shakeel Shah case, cited by the counsel for the petitioner, by examining and interpreting its provisions as well as the provisions of the related 4th proviso, in detail. We, therefore, think it unnecessary to re-examine the scope of those provisos again in this case, especially when we find ourselves in agreement with what has been held in that case. What we consider appropriate to do is to recapitulate the main principles enunciated therein, as to the meaning, extent and scope of the 3rd proviso, for clear understanding of, and compliance by, all the other courts in the country in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan 1973. They are:

(i) The purpose and object of the 3rd proviso to section 497(1), Cr.P.C. is to ensure that the trial of an accused is conducted and concluded expeditiously, and that the pre-conviction detention of an accused does

not extend beyond the period of two years in cases involving an offence punishable with death, or one year in other cases;

(ii) The period of one year or two years, as the case may be, for the conclusion of the trial begins from the date of the detention of the accused in the case, not from the date when the charge is framed and trial commenced;

(iii) A statutory right to be released on bail accrues in favour of the accused if his trial is not concluded within the specified period, i.e., exceeding one year or two years as the case may be, from the date of his detention;

(iv) This statutory right of the accused to be released on bail is, however, subject to two exceptions: one is embodied in the 3rd proviso itself and the second is provided in the 4th proviso, which are: (a) 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, and (b) 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.

(v) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel for the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are 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 are repetitive reflecting a design or pattern to consciously delay the conclusion of the trial; and

(vi) The phrase "a hardened, desperate or dangerous criminal" denotes an accused who is likely to seriously injure and hurt others without caring for the consequences of his violent act and will pose a serious threat to the society if set free on bail. Such tentative finding as to character of the accused must be based upon careful examination of the facts and circumstances of the case, supported by sufficient incriminating material."

[emphasis added]

9. Based upon the ratios settled in the above referred two Judgments, it appears that the observations and reasoning of the learned trial Court while rejecting the bail applications in the impugned Order, as reproduced at paragraph 7 *ibid* are not in consonance with the principles settled by the Honourable Supreme Court on the subject.

10. The second objection raised by the learned counsel for the complainant was that the case of the applicant falls under the fourth Proviso to section 497(1) Cr.P.C. as according to him, the applicants fall under the category of hardened, desperate, and dangerous criminals. The terms 'hardened', 'desperate' or

‘**dangerous**’ criminal, as provided in the fourth proviso to section 497(1) Cr.P.C., have been dilated upon by the Honourable Supreme Court in the cases of **Nadeem Samson**² and **Shakeel Shah**¹ *ibid* wherein the following ratio has been settled:

“7. The second exception to the right of the accused to be released on bail on the ground of delay in conclusion of the trial is provided in the fourth proviso. According to which the provisions of the third proviso do not apply to the accused who is:

- (i) a convicted offender for an offence punishable with death or imprisonment for life; or
- (ii) a hardened, desperate or dangerous criminal, in the opinion of the Court; or
- (iii) an accused of an act of terrorism punishable with death or imprisonment for life.

Conditions (i) and (iii) are self-explanatory and must be borne out from the record. Under condition (i), the accused must have been earlier convicted by a court of law for an offence punishable with death or imprisonment for life. Under condition (iii), the accused must be accused of an act of terrorism punishable with death or imprisonment for life. It is condition (ii) which requires the Court to apply its judicious mind to the facts and circumstances of the case and make an opinion as to whether or not the accused is a hardened, desperate or dangerous criminal. The words hardened, desperate or dangerous have been couched in between conditions (i) and (iii) and therefore signify the same sense of gravity and seriousness as to the nature of the offence and character of the accused. The principle that the meaning of a word is recognized by its associates is traditionally expressed in the Latin maxim *noscitur a sociis*. A word or phrase in an enactment must always be construed in the light of the surrounding text, and their colour and meaning must be derived from their context.

8. Further, the words hardened, desperate or dangerous are to be understood collectively. The *ejusdem generis* principle is a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. For the said principle to apply, there must be sufficient indication of the category or word that can be properly described as the class or genus, which is to control the general words. The genus must be narrower than the general words it is to regulate. Applying this principle to the phrase a hardened, desperate or dangerous criminal, it is the word dangerous which not only meets the requirements of conditions (i) and (iii) discussed above, it is also precise and narrow in order to regulate the meaning of the other two words. **"Dangerous"** means harmful, perilous, hazardous or unsafe - someone who can cause physical harm or injury or death. **"Hardened"** is someone who is pitiless, hard hearted, callous or unfeeling and set in his bad ways and no longer likely to change, having a tendency of repeating the offence and is, thus, dangerous to the society. **"Desperate"** is someone who is reckless, violent and ready to risk or do anything; such person is, therefore, also dangerous to society. All the three words paint a picture of a person, who is likely to seriously injure and hurt others without caring for the consequences of his violent act. Therefore, for this exception to apply, there has to be material to show that the accused is such a person who will pose a serious threat to the society if set free on bail. In the absence of any such material, bail cannot be denied to an accused on the statutory ground of delay in conclusion of the trial. (See *Moundar v. State* (PLD 1990 SC 934).”

1. ‘*Shakeel Shah V. The State and others*’ (2022 SCMR 1)

2. ‘*Nadeem Samson v. The State and others*’ (PLD 2022 Supreme Court 112)

11. Applying the above principles settled by the Supreme Court to the facts of the present case and in the absence of any material to the effect that the applicants are previously convicted, on a tentative assessment, the applicants do not appear to fall under the parameters of hardened, desperate, or dangerous criminals. Lastly, the certified copies of diaries of the trial court as available on record also clearly depict that delay has not been caused in trial due to act or omission from the side of the applicant/ accused, hence the principles settled by the Supreme Court in the cases of **Muhammad Usman**³, **Nazir Hussain**⁴, **Moundar**⁵ are also fully attracted.

12. Both the Applicants were arrested on 16.05.2024 and have remained detained since past more than one year and three months. The learned AAG further informs that there a total number of 26 accused are involved in this case out of which 6 have absconded whereas 18 accused persons have already been granted bails on different grounds and only these two applicants are presently behind bars. He further informs about the position of the trial that 'Charge' has not been framed as yet, whereas the Court is presently vacant. In these circumstances it appears that the trial has not even commenced as yet, and the same is not likely to conclude in near future. As regards the Judgments relied upon by the complainant's counsel, with all due respect, the same are distinguishable to the facts of the present case. The allegations in **Allah Wasaya**⁶ was that the petitioner cut the nose of his brother's wife and her alleged paramour causing bodily harm hence the terms hardened and dangerous were applicable to him, whereas the allegations in the present case are of documentary and monetary fraud in Cooperative Societies. The bail applications in the cases of **Shahzad Ahmad**⁷ and **Shameel Ahmad**⁸ were decided on merits. Lastly, **Riaz Ahmad**⁹ was a case under the National Accountability Ordinance 1999 and the bail was refused by applying the principles settled in the case of **Tallat Ishaq**¹⁰ wherein section 497 Cr.P.C. was not applicable at that time, rather the criteria of "extraordinary circumstances" under Article 199 of the Constitution of Pakistan 1973 were applicable. On the contrary, the instant bail applications are under section 497 Cr.P.C., parameters whereof are completely different.

13. In view of what has been discussed above, and on a tentative assessment, a case for grant of bail on the ground of statutory delay in the conclusion of trial is *prima facie* made out within the remit of Section 497 Cr.P.C. in light of the *dicta* laid down in the above discussed Judgments. This application is therefore allowed, and both the applicants Akhtar Ali son of Ghulam Mustafa [Cr. Bail Application No.1514 of 2025] and Abdul Salam Mandhro son of Abdul Rahman Mandhro [Cr. Bail Application No.1519 of 2025] are admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/- each, with one surety each in the like amount, to the satisfaction of the Trial Court. The applicants shall cooperate with the trial Court; no unnecessary adjournment shall be granted; and in case of misuse of concession of bail, the complainant may avail remedy in accordance with the law. The observations made hereinabove being tentative in nature, shall not influence the learned trial Court to independently adjudicate the case on its own merits. The bail application stands allowed in the above terms.

J U D G E

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3. *'Muhammad Usman v. The State and another' (2024 SCMR 28)*
 4. *Nazir Hussain v. Zia-ul-Haq and others (1983 SCMR 72),*
 5. *Moundar and others v. The State (PLD 1990 SC 934), Sher Ali alias Sheri v. The State (1998 SCMR 190), Akhtar Abbas v. State (PLD 1982 SC 424), Abdul Rashid v. The State (1998 SCMR 897), Zahid Hussain Shah v. The State (PLD 1995 SC 49) and Muhammad Siddique v. Muhammad Behram and another (1998 PCr.LJ 358)*
 6. *'Allah Wasaya V. The State and others' (PLD 2022 Supreme Court 541)*
 7. *'Shahzad Ahmed V. The State through F.I.A. Islamabad' (2010 SCMR 1221)*
 8. *'Shameel Ahmed V. The State' (2009 SCMR 174)*
 9. *'Riaz Ahmed And Others V. Federation of Pakistan through Chairman, National Accountability Bureau (NAB) and others (2021 PCr.LJ 1182)*
 10. *'Tallat Ishaq v. National Accountability Bureau through Chairman' (PLD 2019 SC 112)*