

ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S- 12 of 2026
Criminal Appeal No.S- 15 of 2026
Criminal Appeal No.S- 16 of 2026
Criminal Appeal No.S- 17 of 2026

DATE ORDER WITH SIGNATURE OF JUDGE

11.05.2026.

Mr. Raja Jawad Ali Sahar, Advocate for appellants in Criminal Appeal Nos.S-12, 15 and 16 of 2026.

Mr. Abdul Jabbar Jamali, Advocate for appellant in Criminal Appeal No.S-17/2026.

Mr. Shahid Shaikh, Additional P.G for State along with Inspector Abdul Momin (Focal Person) on behalf of SSP Dadu and ASI Aqeel Ahmed PS B-Section, Dadu.

Appellants Nazeer, Dost Ali, Abdul Sattar, Imran Ali, Allah Bachayo, Ghulam Mustafa s/o Gul Hassan, Noor Mustafa, Ghulam Mustafa s/o Haji Essa and Ghulam Qadir are present.

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The issue before this bench today is whether an accused/convict who did not surrender before the trial Court and avoided being taken into custody is entitled to seek suspension of sentence before the appellate forum under Section 426 Cr.P.C., without undergoing the sentence first, by surrendering before the appellate Court.

2. A brief background of the appeals is that after a full-dress trial concerning Crime No.97/2022 and 98/2022 registered at P.S. B-Section Dadu, under sections 302, 344, 201, 109, 34 PPC and section 25 of the Sindh Arms Act, respectively, against the appellants/accused, the 1st Additional Sessions Judge, Dadu in the impugned Judgment dated 08.01.2026, based on the evidence recorded in the crime, acquitted the appellants/accused of the charge of the murder of the deceased u/s 265-H(i) Cr.P.C. but found each of the appellants/accused guilty of offence punishable u/s 201 PPC, and convicted u/s 265-H(ii) Cr.P.C. each of the appellants/accused, to sentence of seven years RI and to pay a fine of Rs.10,000/- each as well as under the provisions of section 544-A Cr.P.C. for causing

mental anguish and psychological damage to the legal heirs/relatives of the deceased, etc. liable to pay an amount of Rs.100,000/- each as compensation except Noor Mustafa Pathan was is liable to pay Rs.10,00,000/- as compensation.

3. On 20.01.2026, the accused-convicts aggrieved by the aforementioned Judgment dated 08.01.2026, passed by the 1st Addl. Sessions Judge, Dadu, preferred appeals to this (High) Court. On the very first date of hearing, on 04.02.2026, this bench admitted the appeals for regular hearing, with orders to prepare the paper books, etc., while observing that when the impugned judgment dated 08.01.2026 was announced, the appellants/accused-convicts neither surrendered themselves before the 1st Addl. Sessions Court, Dadu, nor were they taken into custody by the police authorities; however, they have now surrendered before the High Court, and passed ad-interim orders that the appellants/convicts may not be taken into custody until the next date of hearing. The ad-interim order dated 04.02.2026 has now been in effect for almost 90 days, and during this period, the appellants/accused-convicts have appeared on each and every date of hearing, and, once again today, they are in attendance.

4. Meanwhile, earlier, on 16.04.2026, this bench passed orders to affect notice of these appeals on the complainant and the legal heirs of the deceased, who are all residents of Islamabad. Notice was issued through S.S.P. Dadu, with the assistance of S.S.P. Islamabad, to the complainant, namely: Mumtaz Begum w/o Muhammad Riaz, r/o Charah Muhri, Taluka and District Islamabad (*details available at page No.125 of Criminal Appeal No.S-12 of 2026*); Mst. Asma Imraz w/o Imraz Hussain and sister of the deceased, r/o Charah Muhri, Taluka and District Islamabad (available at page No.113 of the appeal file); and Muhammad Ibran s/o Muhammad Riaz, r/o Charah Muhri, Taluka and District Islamabad (available at page No.107 of the appeal file).

5. The Senior Superintendent of Police Dadu has submitted the compliance report dated 11.05.2026, which is taken on record. As per the said report, notices have been affected on the complainant and the legal heirs of the deceased. Yet no one is in attendance today. No intimation is received. They have also been called in Court, but none has stepped forward on their behalf. Given the above, to bring finality

to the ad-interim order dated 04.02.2026, this bench has proceeded with the hearing of the application under section 426 Cr.P.C., in the first instance.

6. Learned counsel for the appellants/accused-convicts, relying on the Judgment of the Supreme Court in Mazhar Ahmed v. The State and Others, 2012 SCMR 997 (“the Mazhar Ahmed case”), has attempted to make out a case that although, at the time of announcement of judgment, the appellants were not taken into custody, they have now surrendered before this Court within the stipulated period for filing the appeal. Therefore, in view of the Mazhar Ahmed case, this (High) Court should decide the application under Section 426 Cr.P.C. in favor of the appellants/convicts, and suspend their sentence till the appeals are finally decided.

7. Learned A.P.G. has vehemently opposed the arguments of the Counsel for the appellant/accused-convicts. He has relied on the larger bench Judgment of the Supreme Court in Muhammad Adnan alias Dana v. The State and others, 2015 SCMR 1570 (“the Muhammad Adnan case”). The sentence of the appellant/convict was not suspended in the Muhammad Adnan case, because he had not surrendered to the lower forum. Learned A.P.G. submits that whereas the concession of bail is a right; however, once a judgment is passed and the accused is convicted, thereafter, without committing the convict to legal confinement, no application under Section 426 Cr.P.C. can be entertained and/or maintained. Hence, the application under Section 426 Cr.P.C. filed by the appellants/accused-convicts is liable to be dismissed.

8. Heard learned counsel, A.P.G. and perused the material available on record. The entire controversy has been well-settled in the two judgments being relied upon. As such, it would be prudent to discuss the two Supreme Court cases decided almost a decade ago and apply the principles laid down to the case in hand.

9. The brief facts of the Mazhar Ahmed case were that even after filing the criminal appeal in the High Court, the appellant/convict had neither surrendered before the trial Court nor before the competent authority, and remained an absconder before the High Court, when he

filed an application under section 426 Cr.P.C. The High Court dismissed the application on technical grounds without giving reasons, observing that he may move the application for suspension of his sentence on merits only after his arrest. When the applicant/convict filed a petition in the Supreme Court, the office did not entertain the petition on the grounds that since the petitioner had not surrendered pursuant to the judgment of the learned trial Court, the petition was not entertainable in view of Rule 8, Order 23 of the Supreme Court Rules, 1980.

10. The two-member bench of the Supreme Court in the Mazhar Ahmed case, observed as follows:

“8. The afore-referred provision has two parts. One part is relatable to a situation when a petition for suspension of sentence is filed along with appeal and the convict has not surrendered before the police but appears before the Court. The Court in such a situation may "order that the execution of the sentence or order appealed against be suspended" whereas the second part is relatable to a situation when the convict has already been arrested and the said section stipulates that "and, also, if he is in confinement, that he be released on bail or on his own bond". The argument that the appearance before the Court in a petition under section 426, Cr.P.C. is not surrender or that the principles for the grant of bail under sections 497 and 426, Cr.P.C. are entirely distinct is not tenable because both are analogous provisions and this Court in Shamshad Hussain v. Gulraiz Akhtar (PLD 2007 SC 564) has held that in absence of any guideline, the principles which govern section 497, Cr.P.C. may guide the exercise of discretion under section 426, Cr.P.C. The Court observed as follows:--

"Section 426(1) though has made essential the recording of reasons in case of suspension of sentence but has not prescribed any guideline or the manner in which such a discretion is to be exercised as how and what would be the criteria for the recording of the reasons. Since these provisions, under section 426(1) are analogous to the one contained in section 497, Cr.P.C. as in both the cases the sentence or detention is to be suspended pending hearing of the appeal/trial and the convict or the detinue is to be released on bail with only difference that in the former case the person is a convict one, already found guilty, while in the latter he has been charged only and to face trial and is still to be proved guilty. It would be appropriate, in the absence of any guideline, to follow 'the one provided under section 497, Cr.P.C. on the principle that where a Statute lays down certain principles for doing 'some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the court as held in the case of Maqsood v. Ali Muhammad, 1971 SCMR 657 and which principle, as later on, was reaffirmed by this Court in the case of Peer Mukaram-ul-Haq v. National Accountability Bureau NAB through Chairman and others, 2006 SCMR 1225. In section

497, Cr.P.C., the existence and non-existence of the reasonable grounds for believing that the person is guilty of the offence and the scope of further inquiry are the criteria/hallmarks and for arriving at such conclusion the tentative assessment and not the minute or detailed assessment of the evidence has been made permissible, the principle laid down by this Court and reaffirming repeatedly. Similarly, the same guidelines have been laid down by the superior Courts that in case of suspension of sentence, only the tentative assessment of the material available evidence and of the judgments has been made permissible and the detailed appraisal of evidence was held to be avoided as held by this Court in the cases of Allah Ditta Khan (supra) and Farhat Azeem (supra). However, the principles laid down by this Court in the aforesaid judgments qua following the guidelines prescribed under section 497, Cr.P.C. while deciding application under section 426(1), Cr.P.C. but without being controlled by the aforesaid section i.e., 497, Cr.P.C, as held in the case of The State v. Shah Sawar, 1969 SCMR 151 and such powers i.e., the suspension of sentences and the grant of bail under section 426, Cr.P.C. are not wider than the power to release a person on bail under section 497, Cr.P.C. as held in the case of Bahar Khan v. The State, 1969 SCMR 81 but rather narrower."

9. In the instant case, admittedly the petitioner had appeared before the High Court which amounted to surrender and the Court could not have dismissed the petition merely because a petitioner/convict had not surrendered before the police. This is in line with the law laid down by this Court in Bakhta v. State (1985 SCMR 97) to which reference has been made by Sardar Muhammad Ishaque. In the said case, this Court dismissed the petition seeking suspension of sentence because the convict did not surrender before the Court despite two opportunities given. The court held as follows:--

"As the petitioners had not surrendered themselves in pursuance of the order of the High Court, the petition could be heard only if they surrendered themselves before this Court. When this case came up for hearing on the first occasion, the petitioners were not present and their learned counsel sought adjournment on the ground that he could not inform the petitioners of the date of hearing, for which reason they could not be present before the Court. Accordingly, the case was adjourned for today. The petitioners are however not present before the Court even today and counsel again prays for adjournment.

We are not inclined to again adjourn the case. In the circumstances noted above, this petition cannot be heard. It is, therefore, dismissed hereby."

10. In Musharaf Khan v. The State (1985 SCMR 900) the bail had been cancelled by the High Court, the petitioner did not surrender before the police and instead surrendered before this Court and his petition was not only entertained but he was allowed to remain on bail on the bail bonds furnished by him in pursuance of the order of the Sessions Court. In Zahid v. The State (PLD 1991 SC 379), the trial Court had allowed bail to the petitioner which was set aside by the learned High Court. The petitioner moved this Court and the Assistant Registrar did not entertain the petition on the ground that "this petition is hit by the second proviso to Rule 8, Order XXIII of the Supreme Court

Rules, 1980. Therefore, it cannot be entertained and the same is hereby returned to the A.O.R." Petitioner's appeal under Order V, Rule 3 of the Supreme Court Rules was allowed by this Court and the office was directed to entertain the petition and for placing it before the Court.

11.. In the instant case, the petitioner had surrendered before the High Court. The said Court could have allowed the petition or could have dismissed it on merit, but could not have refused to even consider his prayer. In these circumstances, the petition is converted into appeal and allowed. The impugned Order of the High Court is set aside. Consequently, the petitioner's criminal misc. bearing no.1 of 2011 (in criminal appeal no.264/2011) shall be deemed to be pending before the learned High Court to be decided afresh within two weeks of the petitioner's appearance before it. The petitioner is directed to appear before the learned High Court on 10.05.2010."

11. The upshot of the Mazhar Ahmed case is that the two-member bench decided that the first part of section 426 Cr.P.C. is relatable to a situation, such as the one present in the case in hand, that is, when an application for suspension of sentence is filed along with the appeal, and the appellant/convict has not surrendered before the police but appears before the Court. As per the Supreme Court, the High Court in such a situation may "order that the execution of the sentence or order appealed against be suspended."

12. I now turn to the three-member bench Judgment of the Supreme Court in the Muhammad Adnan case, relied upon by the learned A.P.G. Learned A.P.G. has contended that as the appellant-convicts' application under section 426 Cr.P.C. was dismissed by the bench in Muhammad Adnan; therefore, the two-member bench judgment in the Mazhar Ahmed case carries no weight, and, on this score, the appellant/accused-convicts application based on the same section, too, is liable to be dismissed by the (High) Court. While it is true that the Supreme Court in the Muhammad Adnan case did not entertain the petition, the factual background of the Muhammad Adnan case appears different from that of the Mazhar Ahmed case.

13. In the Muhammad Adnan case, the trial Court had convicted and sentenced the petitioner for an offence under section 9(b) of the Control of Narcotics Substances Act, 1997 and had simultaneously passed an order that the petitioner, who was on bail till then, was to be arrested and lodged in jail to serve the sentence of imprisonment. Yet upon the petitioner slipping away from the trial court on that occasion, the trial court also issued perpetual non-bailable warrants for the petitioner's arrest. Thus, not one but two orders of imprisonment stood

outstanding against the petitioner. Further, when he approached the High Court, and, once again, when he preferred an appeal to the Supreme Court, the appellant/convict had not surrendered to the aforesaid two orders of the trial Court for his imprisonment. Thus, the three-member bench took notice of this background and observed, in the facts and circumstances of the case, that:

“It goes without saying that surrender to an order of imprisonment is not the same thing as surrendering before a higher court without actually being imprisoned in compliance of a judicial order passed in that regard. In this view of the matter we have entertained no manner of doubt that the present petition filed by the petitioner is not entertainable till he surrenders to the above mentioned orders of imprisonment, as made explicit by the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980. Reliance placed by the learned counsel for the petitioner upon the case of Mazhar Ahmed v. The State and another (supra) has been found by us to be inapt because in that case no discussion was made about the provisions of the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 and at the fag end of the judgment passed by this Court in that case a reference was made to the second proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 in the context of a precedent case cited before the Court. The judgment passed by this Court in that case is not relevant to the point in issue in the present petition because what is relevant to the present petition is the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 and not the second proviso to the said Rule. . . .”

14. In view of the above, the three-member bench in the Muhammad Adnan case did not entertain the petition. Yet, at the same time, the three-member bench did not disagree with the earlier observations made by the two-member bench in the Mazhar Ahmed case. To this end, the three-member bench, neither set-aside nor distinguished nor differed with the reasoning of the two-member bench's decision, except to observe that the Mazhar Ahmed case was “not relevant”. The three-member bench proceeded to decide the matter, turning only to the Supreme Court Rules, 1980, to dismiss Muhammad Adnan's petition.

15. In the present case, this appeal has been filed in the High Court and is regulated by the Criminal Procedure Code. Further, it is being heard by the High Court, and not the Supreme Court. Thus, the observations made in the Mazhar Ahmed case are more relevant and relatable to the case in hand as they involve the interpretation of Section 426 Cr.P.C.; as opposed to the observations made in the Muhammad Adnan case, concerning the procedural requirements of the Supreme Court, which mandate that when a petition is filed in the Supreme Court, the convict has to first surrender to undergo the term of sentence awarded, so as to render petition (before the Supreme

Court) as maintainable. Incidentally, the Muhammad Adnan case, was reaffirmed in the Mehboob-ur-Rehman and Jawar v. The State through Prosecutor General, Balochistan, PLD 2024 SC 639, too, and continues to apply to proceedings before the Supreme Court under the Supreme Court Rules, 1980.

16. Both the Mazhar Ahmed and the Muhammad Adnan cases are different from the case at hand. In the present case, the appellants/accused-convicts, prior to their conviction, were said to be present on bail and were ordered to be taken into custody and remanded to jail with conviction warrants, etc. Equally, this situation in the present case is also different from the factual background of the Muhammad Adnan case, wherein, the trial court had also issued perpetual non-bailable warrants for the petitioner's arrest. Thus, there was not one but two orders of imprisonment outstanding against the petitioner [Muhammad Adnan], and he had disobeyed both the judicial orders. Further, he did not appear before the High Court promptly and on each and every hearing date. This is clearly not the case at hand. The appellants/accused-convicts entered an appearance on the first date of hearing in the appeal and have been regularly attending each and every date of hearing since the appeal was admitted, except for Nazeer Panhwar, who is/has been in custody.

17. Surrendering before the police or undergoing the term of the sentence is not always a condition precedent for hearing of an application under section 426 Cr.P.C. filed by a convict. The same depends on the facts and circumstances of the case. In view of the above discussion, I find that no case is made out for the technical and/or simpliciter dismissal of the appellants/accused-convicts application under section 426 Cr.P.C. I now turn to the merits of the said application.

18. As observed in the Mazhar Ahmed case, no hard and fast rule can be laid down for suspension of sentence under section 426 Cr.P.C., except that such a decision remains in the discretion of the Court, it must be supported by reasons, it is analogous to the criterion contained under section 497 Cr.P.C. (but not quite) and, it is not wider than the powers to release a person on bail under section 497 Cr.P.C. (but rather narrower). Indeed, in Mian Muhammad Nawaz Sharif v.

The State, reported in PLD 2019 Islamabad 38, the Islamabad High Court exercised such powers under section 426 Cr.P.C., read with Article 199 of the Constitution of Pakistan, to suspend the sentence without requiring prior surrender to the police. The Islamabad High Court focused on the short sentence, the delay, and the prima facie merits. In another unreported case, namely, C.P. No.D-870/2018, a Division Bench of the Sindh High Court, Circuit Court, Hyderabad, also granted suspension of sentence in a post-conviction NAB matter.

19. Learned Counsel for the appellants/accused-convicts has contended that the offence under section 201 PPC is a bailable offence and the appeal filed by the appellant has already been admitted for regular hearing vide order dated 04.02.2026. Relying on several reported cases of this (High) Court, namely in 2012 YLR 2779, 2001 MLD 1577, and PLD 1995 Karachi 209, Counsel has argued that if the offence committed is a bailable offence, and the appeal is admitted, then the convicted person is entitled to be released on bail as a matter of right.

20. As mentioned above, the appellants/accused-convicts have been convicted under section 471 PPC and sentenced to seven years RI and to pay a fine of Rs.10,000/- each as well as in light of provisions of section 544-A Cr.P.C. for causing mental anguish and psychological damage to the legal heirs/relatives, etc. are liable to pay an amount of Rs.100,000/- each as compensation except Noor Mustafa Pathan is to be Rs.10,00,000/- as compensation. According to the Second Schedule to the Criminal Procedure Code, the offence under Section 201 PPC is bailable. The appeal has been admitted for regular hearing, and the issues concerning the applicability of Section 201 PPC or whether a case is made out in the criminal appeal based on the evidence require reappraisal of the evidence, which is only possible at the time of the final hearing of the appeal. At this stage, this bench would clearly not like to comment on the merits of the findings rendered by the learned trial Court lest it may prejudice the case of either side during the hearing of the appeal. Further, given the present congestion in the Circuit Court docket in Hyderabad, it does not appear likely that these four criminal appeals involving nine (9) accused will be heard and decided anytime soon. The appellants were on bail before the trial Court and had regularly attended the Court. Moreover, since

the first date of hearing of this appeal, the appellants have been in attendance at each and every hearing for the past four months.

21. Given the above, without commenting upon the merits of the criminal appeals, the application under section 426 Cr.P.C. is allowed. The operation of the impugned judgment dated 08.01.2026 is suspended till the final disposal of the criminal appeal(s) and

(a) in Criminal Appeal No.12/2026, the six appellant(s), namely:

- (i) ASI Ghulam Qadir Gopang s/o Murad Ali;
- (ii) PC-3397 Ghulam Mustafa s/o Gul Hassan Khoso;
- (iii) PC-2250 Allah Bachayo s/o Khurram Ali Qambrani;
- (iv) PC-2124 Imran Ali s/o Muhammad Siddiqui;
- (v) HC Dost Muhammad Ali Lund s/o Misri Khan Lund;
- (vi) HC-3241 Abdul Sattar s/o Shafi Muhammad Panhwar;

and

(b) in Criminal Appeal No.16/2026, the appellant, namely, ASI Nazeer Ahmed Panhwar of PS B-Section Dadu s/o Jan Muhammad Panhwar;

and

(c) in Criminal Appeal No.17/2026, the appellant, namely, as mentioned above;

are all granted bail subject to each one of them furnishing a solvent surety in the sum of **Rupees Three Lac only (Rs.300,000/-) and P.R. bond** in the like amount to the satisfaction of the Additional Registrar of this Court.

It is clarified that in the case of ASI Nazeer Ahmed Panhwar, as he is already in custody, he shall be released on bail provided he is not under arrest and/or being detained in any other crime.

(d) In Criminal Appeal No.15/2026, the appellant, namely, Inspector Noor Mustafa Pathan s/o Sulleman Khan, as per the impugned judgment, was imposed fine and compensation of a higher amount of Rs.10,00,000/- (as opposed to the lower fine of Rs.1,00,000/- for the other appellants-convicts), therefore the accused/convict-Noor Mustafa Pathan is granted bail subject to furnishing a solvent surety in the sum of **Rupees Thirteen Lac only (Rs.13,00,000/-) and P.R. bond** in the like amount to the satisfaction of the Additional Registrar of this Court.

The appellants/accused-convicts shall remain present before this Court on each and every date of hearing fixed in the main appeal.

In the event that any of the appellant/accused-convicts do not furnish their bail bond and solvent surety in the like amount to the satisfaction of the Addl. Registrar, as mentioned above, this Court will be constrained to automatically withdraw the order of suspension of sentence as granted by this (High Court) today concerning the said appellant-convict found in violation of this order, and issue BWs and/or take any other penal and/or punitive action against the particular appellant/convict.

Relist on **04.06.2026**.

JUDGE

Tufail