

THE HIGH COURT OF SINDH, CIRCUIT HYDERABAD

Present:

Mr.Justice Abdul Mobeen Lakho

Mr.Justice Zulfiqar Ali Sangi

Crl. Bail Application No. D-204 of 2026

Applicant : Kashif Raza Soomro s/o Abdul Rasheed
Through Mr.Farooq H. Naek, Advocate along
with Mr.Taimoor Ali Mangrio, Advocate

The State : Through Ms.Shahida Ghani, Special Prosecutor

Dates of hearing : **04.08.2026 & 06.08.2026**

Date of short order: **06.08.2026**

Date of reasons : **____.08.2026**

ORDER

ABDUL MOBEEN LAKHO, J:- Through the instant Criminal Bail Application, the applicant/accused Kashif Raza Soomro seeks the concession of post-arrest bail on the ground of statutory delay and hardship in Reference No.02 of 2021 (The State v. Munawar Ali Bozdar and others), under Sections 18(g) read with Sections 16(e) and 24(b) of the National Accountability Ordinance, 1999. His earlier bail plea for the same relief has been declined vide Order 07.05.2026, by the learned Accountability Court-I, Hyderabad.

2. Briefly stated, FIR No.GO-01/2020 was initially registered by Anti-Corruption Establishment, Sindh, regarding alleged misappropriation and embezzlement of public funds in the execution of flood-fighting and emergency works pertaining to RBOD-II Project. Subsequently, upon transfer of the matter to NAB jurisdiction, investigation culminated into Reference No.02 of 2021 before the Accountability Court. During investigation, it was alleged that the officers/officials of RBOD-II, in connivance with contractors and beneficiaries, caused huge financial loss to the national exchequer through bogus liabilities and

fictitious flood-fighting works. The present applicant was arrayed as accused No.14 in the Reference. The allegation attributed to him is that, being a private person and cousin of co-accused Muhammad Faheem Soomro, he allegedly acquired pecuniary advantage/crime proceeds to the tune of Rs.13,950,000/- from a contractor allegedly involved in the scam. Charge was framed against all accused persons on 30.04.2024, to which the applicant pleaded not guilty and claimed trial.

3. The applicant's pre-arrest bail was declined on 08.02.2025, whereafter he was taken into custody. His earlier post-arrest bail applications were also dismissed. Subsequently, after remaining incarcerated for more than one year, he moved the learned Accountability Court seeking bail on the statutory ground of delay under the third proviso to Section 497(1), Cr.P.C.; however, the same was dismissed vide order dated 07.05.2026, giving rise to the present bail application.

4. Learned counsel for the applicant, while candidly confining his case to the solitary ground of statutory delay envisaged under the third proviso to Section 497(1), Cr.P.C., submitted that the applicant has remained continuously incarcerated since 08.02.2025 and has thus undergone detention far exceeding the statutory period of one year, whereas the trial is still far from culmination. He contended that the alleged offences do not entail capital punishment, therefore, once the prescribed period of detention has expired without conclusion of trial, the applicant becomes entitled to the concession of bail unless the delay is demonstrably attributable to his own conduct. It was forcefully argued that the learned trial Court fell into patent error while attributing the delay to the defence in general without drawing a distinction between the present applicant and other co-accused persons. Learned counsel submitted that not a single adjournment was

ever sought by the present applicant or on his behalf after his arrest, nor was any prosecution witness prevented from being examined due to any act or omission attributable to him. According to the learned counsel, if any adjournments were sought by other co-accused persons or their respective counsel, the same could not legally be fastened upon the present applicant so as to deprive him of the statutory protection afforded by law. Learned counsel further contended that the case diaries would reveal that numerous adjournments were sought on behalf of the prosecution on account of non-availability or absence of prosecution witnesses. He submitted that approximately thirteen adjournments were occasioned due to the prosecution's inability to produce its witnesses and therefore, a substantial part of the delay is attributable to the prosecution itself and despite the lapse of a considerable period and the citation of a large number of prosecution witnesses, only a few witnesses have so far been examined, demonstrating that the conclusion of trial is not likely within the foreseeable future. Learned counsel maintained that the right flowing from the third proviso to Section 497(1) Cr.P.C. is an individual right available to each accused separately and his entitlement is to be examined on the basis of his own conduct. Lastly, he contended that since the applicant has remained in custody beyond the statutory period and no part of the delay can be attributed to him personally, he is fully entitled to the concession of post-arrest bail. In support of his submissions, he has placed reliance upon the case law reported as **2015 SCMR 1092, unreported Order dated 02.02.2022 passed in C.P. No.D-7103/2021, 2022 SCMR 1, 2022 P. Cr. LJ 883, 1998 SCMR 190, 2025 YLR 622, 2019 YLR 2357, PLD 1997 Karachi 172, 2024 SCMR 1543, 2016 SCMR 18, PLD 2020 Lahore 205, 2022 YLR 2046, 2001 SCMR 1040, PLD 2017 SC 147, 2019 P.Cr. LJ 370 and 2002 SCMR 1478.**

5. Conversely, learned Special Prosecutor, NAB, opposed the application and submitted that the allegations against the applicant arise out of a massive corruption scam involving huge loss to the national exchequer, therefore, the matter is of a serious nature. She argued that the prosecution has been diligently pursuing the trial and evidence is being recorded before the learned Accountability Court. However, learned Special Prosecutor fairly conceded that the present applicant/accused has not personally sought any adjournment. She nevertheless submitted that the proceedings in the Reference involve a large number of accused persons represented through different counsel and on several occasions, adjournments were sought by co-accused persons or cross-examination of prosecution witnesses was reserved at the request of defence counsel appearing for other accused. According to her, such adjournments inevitably affected the overall progress of the trial. She further conceded that on certain dates the prosecution witnesses remained absent and adjournments were necessitated on that score; however, she maintained that the mere passage of time or completion of the statutory period does not automatically entitle an accused to bail where the Court, in the overall facts and circumstances of the case, finds justifiable reasons for the delayed progress of the trial. She, therefore, contended that notwithstanding the fact that no adjournment had been sought by the present applicant himself, the nature of the allegations, the complexity of the Reference and the overall circumstances of the case disentitle him from the extraordinary concession of post-arrest bail and as such, the application merits dismissal.

6. We have heard the learned counsel for the applicant/accused and learned Special Prosecutor for NAB as well as perused material

available on record including case law relied upon by the learned counsel for the applicant/accused.

7. Learned counsel for the applicant has consciously confined his claim to the statutory ground incorporated in the third proviso to Section 497(1), Cr.P.C. and has not pressed the case on merits. Therefore, the controversy requiring determination is narrow in compass that is whether the applicant has completed the statutory period of detention and whether the delay in conclusion of trial is attributable to him.

8. The admitted position emerging from the record is that the applicant was taken into custody on 08.02.2025 after dismissal of his pre-arrest bail application and since then has continuously remained behind bars. Thus, by the time the present bail application came up for consideration, he had undergone incarceration well beyond the statutory period of one year contemplated by the third proviso to Section 497(1), Cr.P.C. The offences alleged against him admittedly do not entail punishment of death. Therefore, the principal question is whether the delay in conclusion of trial can be attributed to his own conduct.

9. Before advertng to the legal position governing the field, it would be advantageous to examine the progress of trial from the diary sheets placed on record. A careful scrutiny thereof reflects that after the arrest of the present applicant on 08.02.2025, the proceedings remained occupied on numerous dates by miscellaneous matters relating to plea bargain applications, freezing of properties, service of process upon absconding accused persons, medical issues of co-accused and bail applications of various accused persons. The record further reveals that on several occasions the Investigating Officer remained absent and his absence was condoned through applications moved on behalf of the prosecution. On 16.06.2025, despite the

presence of PW Jalil Ahmed Soomro, the learned Prosecutor sought adjournment on the ground of non-availability of the original record, as a result whereof the evidence could not proceed. Similarly, on 04.06.2026, PW-Iqbal Ahmed Shaikh remained absent and the matter was again adjourned. The diary sheets further demonstrate that only a few prosecution witnesses out of the large number cited in the Reference have so far entered the witness box and even their evidence could not be completed in one stretch. Significantly, learned Special Prosecutor, NAB, fairly conceded during arguments that the present applicant himself has not sought any adjournment after his incarceration. Thus, prima facie, the record does not suggest that the delay in conclusion of trial is attributable to any act or omission on the part of the present applicant.

10. A careful examination of the case diaries and the material produced by both sides reveals that the Reference involves a large number of accused persons represented by different counsel. The record further reflects that on various dates adjournments were sought by co-accused persons and their respective counsel, whereas learned Special Prosecutor, NAB, fairly conceded that the present applicant himself did not seek any adjournment. The concession made by the learned Prosecutor assumes significance because the entitlement of an accused under the third proviso is to be examined on the basis of his individual conduct and not on the conduct of other co-accused persons.

11. Learned trial Court appears to have proceeded on the premise that since certain defence counsel had sought adjournments or reserved cross-examination of prosecution witnesses, the resultant delay was attributable to the entire defence side including the present applicant. With utmost respect, such an approach does not appear to be in consonance with the settled principles governing statutory delay.

The law consistently recognizes that the conduct of one accused cannot automatically prejudice another accused seeking relief under the third proviso to Section 497(1) Cr.P.C.

12. There is yet another aspect of the matter which deserves due consideration. The diary sheets repeatedly record that the Accountability Court at Hyderabad remained vacant and the proceedings were being conducted by an Incharge or Link Judge. During the course of arguments, learned counsel for the applicant specifically pointed out that even presently the Accountability Court at Hyderabad is lying vacant, therefore, the trial is not likely to attain finality within a foreseeable period. Learned Special Prosecutor, NAB, did not dispute the factual position. Needless to say, delay occasioned by non-availability of a regular Presiding Officer or other institutional constraints can never be attributed to an accused person who is otherwise regularly attending the proceedings and awaiting conclusion of his trial. Rather, such circumstance fortifies the plea of hardship and prolonged incarceration raised by the applicant.

13. In this regard valuable guidance is available from the unreported order passed by a Division Bench of this Court in **C.P. No.D-7103 of 2021 (Abdul Latif v. Chairman, NAB and others)**, decided on 02.02.2022, wherein it was categorically held that adjournments sought by co-accused cannot be attributed to an accused seeking bail on the ground of hardship and delay and that mathematical calculation of dates obtained by either side is not the determinative test for deciding a plea based upon statutory delay. The Court further observed that where the prosecution fails to bring the trial to a meaningful conclusion within a reasonable period, the accused cannot be indefinitely detained merely because other accused persons had sought adjournments.

14. The above principle finds support from the judgment of the Honourable Supreme Court of Pakistan reported as **2015 SCMR 1092**, wherein it was held that for purposes of the third proviso to Section 497(1) Cr.P.C, the delay attributable to co-accused persons is not to be counted against the accused claiming the benefit of statutory delay.

15. It is also not without significance that despite passage of a considerable period after the arrest of the applicant, only a handful of prosecution witnesses have been examined out of the large number of witnesses cited in the Reference. The record placed before the Court indicates that approximately seventy-two prosecution witnesses have been cited and the trial is nowhere near conclusion. Consequently, there appears little likelihood that the proceedings shall attain finality within the immediate future.

16. The philosophy behind the third proviso to Section 497(1) Cr.P.C. is rooted in the constitutional guarantee of liberty and fair trial. It serves as a legislative safeguard against indefinite pre-conviction detention. The proviso recognizes that while the State possesses an unquestionable right to prosecute offenders, such right cannot be exercised at the cost of prolonged incarceration without timely conclusion of trial. The criminal justice system does not countenance a situation where pre-trial detention itself assumes the character of punishment.

17. Viewed from every possible angle, the material presently available does not suggest that the applicant has adopted dilatory tactics or contributed towards the delay in conclusion of the trial. On the contrary, the record shows that the proceedings have progressed at a slow pace for reasons not exclusively attributable to him. Therefore, withholding the concession contemplated by the third proviso to Section 497(1), Cr.P.C. would not be legally justified.

18. For the foregoing reasons, the instant Criminal Bail Application is **allowed**. The applicant/accused Kashif Raza Soomro is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court. The applicant shall regularly attend the trial proceedings and shall not, directly or indirectly, hamper the progress of the trial. In case of misuse of the concession of bail or deliberate obstruction in expeditious disposal of the Reference, the prosecution shall be at liberty to seek appropriate remedy in accordance with law.

19. The observations made herein are purely tentative in nature and confined to the determination of the present bail petition. They shall neither constitute an expression on the merits of the case nor influence the learned trial Court while deciding the Reference.

20. The above are the reasons of our short order dated 06.08.2026.

JUDGE

JUDGE

AHSAN K. ABRO