

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.733 of 2026

Applicants : Ali Gul & Mst. Rehana, Through
Mr. Iftikhar Ahmed Shah, advocate

Complainant : Complainant through Mr. Sumair
S. Zaman, Advocate

The State : The State through Mr. Sharaf-ud-Din
Khan, A.P.G., Sindh

Date of hearing : 25.05.2026

Date of Order : 10.06.2026

ORDER

Jan Ali Junejo, J:-- Through this post-arrest bail application, the applicants/accused Ali Gul and Mst. Rehana seek their release on bail in Special Case No.1417 of 2024 arising out of FIR No.188 of 2023 registered under Sections 302, 109 and 34 PPC at Police Station Zaman Town, Karachi. Earlier, their bail application was declined by the learned Vth Additional Sessions Judge, Karachi East vide order dated 04.02.2026.

2. The brief facts of the case, as per the contents of the FIR, are that on 12.02.2023, the applicant No. 2, Mst. Rehana, initially appeared as the complainant, stating that while she and her husband, Muhammad Achar, were asleep, one Saddam Shah along with two unknown persons forcibly entered their house. She alleged that the assailants confined her in the washroom at knife-point and subsequently murdered her husband by inflicting sharp-edged injuries to his neck before fleeing the scene. However, the Investigating Officer's report indicates a significant shift in the

prosecution's stance. Upon analyzing the Call Data Record (CDR) and IMEI numbers of the mobile phones used by the applicants, the police found that Mst. Rehana and Ali Gul (Applicant No. 1), were in constant communication at the time of the incident. Furthermore, the investigation suggests that the applicants orchestrated the murder to fulfill personal motives, leading to their arrest on 26.02.2023. The police also reported the recovery of the alleged murder weapon (a knife with a wooden handle) based on a pointation by Ali Gul from a "nala" near Chakra Goth, while the originally named accused, Saddam Shah, was declared an absconder for lack of evidence of his presence at the scene.

3. The learned counsel for the applicants vehemently argued that the applicants have been falsely implicated due to investigative manipulation, highlighting that Applicant No.2 was the original complainant and Applicant No.1 was not even nominated in the FIR. He stressed that the entire case against the applicants rests on a purported confession before the police, which is inadmissible under Article 38 of the *Qanun-e-Shahadat Order 1984*, and that the alleged recovery of the weapon is a foisted one, having been made from a public "nala" twenty days after the incident. Most significantly, the learned counsel invoked the third proviso to Section 497(1) of the Cr.P.C., asserting that the applicants have been in continuous detention for over two years since 26.02.2023 without the trial concluding. He presented a comparative chart showing that out of 81 hearings, the delay is overwhelmingly attributable to the court's vacancy and the prosecution's failure to produce witnesses, rather

than any act of the accused; thus, he prayed for the grant of bail on both merits and statutory grounds.

4. Conversely, the learned counsel for the complainant strongly opposed the grant of bail, contending that the murder was committed in a brutal and cold-blooded manner within the four walls of the house. He heavily relied on the Investigating Officer's report, which highlights the technical evidence in the form of CDR data showing the applicants were in contact during the commission of the offence. He argued that the recovery of the murder weapon at the instance of Applicant No. 1 and the forensic link established through the investigation clearly connect the applicants to the crime. He maintained that the initial FIR was a calculated attempt by Mst. Rehana to shield herself and her accomplice by falsely nominating Saddam Shah. Given the gravity of the offence and the strength of the technical evidence, he prayed for the dismissal of the bail application.

5. The learned Additional Prosecutor General (A.P.G.) appearing for the State adopted the arguments of the complainant's counsel, further adding that the prosecution has sufficient incriminating material to connect the applicants with the commission of the offence. He submitted that the delay in the trial was partly due to the complex nature of the evidence and the non-availability of witnesses on certain dates, which should not be interpreted as a total failure of the prosecution. He emphasized that the applicants are charged with an offence falling within the prohibitory clause of Section 497 Cr.P.C. and, given the gravity of the allegations, they do

not deserve the concession of bail at this stage; hence, he prayed for the dismissal of the application.

6. I have heard the learned counsel for the parties and perused the record with their assistance. On tentative assessment of the material available on record, it appears that the Investigating Officer has relied on CDR data and the recovery of a weapon, the defense's contention that the recovery was from an open, accessible "nala" twenty days after the incident raises questions regarding its evidentiary value at this stage. The transformation of *Mst. Rehana's* status from a complainant seeking justice to that of a principal accused, primarily on the basis of circumstantial technical evidence and a purported police confession, necessitates a full-fledged trial for the ascertainment of truth. Furthermore, the exclusion of Saddam Shah, the principal accused nominated in the FIR, from the trial, notwithstanding the complainant's specific allegations regarding prior enmity and threats against him, adds a further layer of complexity to the case, which, at this stage, operates in favour of the applicants for the purpose of bail. This Court cannot undertake a deeper examination of the prosecution evidence at this stage, as such an exercise falls within the exclusive domain of the learned trial Court during the trial proceedings.

7. It is an admitted fact that the applicants were arrested on 26.02.2023 and have remained in judicial custody for a continuous period exceeding two years. The right to a speedy trial is a fundamental right, and the third proviso to Section 497(1) Cr.P.C. creates a statutory entitlement for bail if the trial for an offence

punishable with death does not conclude within two years, provided the delay is not occasioned by the accused. It would be expedient to examine and reproduce the relevant Provisos to Section 497(1), Cr.P.C. as follows:

“497. When bail may be taken in case of non-bailable offence.— (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years [or any woman] or any sick or infirm person accused of such an offence be released on bail:

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—

(a) 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”.

8. The second proviso embodies the constitutional and statutory recognition of the right to a speedy trial. It mandates the grant of bail where an accused has remained in continuous detention beyond the prescribed period and the trial has not concluded, provided that the delay is not attributable to any act or omission of the accused or

of any person acting on his behalf. Under clause (a), an accused charged with an offence not punishable with death becomes entitled to bail upon completion of one year of continuous detention, whereas, in the case of a woman, the corresponding period is reduced to six months. Under clause (b), where the accusation relates to an offence punishable with death, bail becomes a statutory right after two years of continuous detention, and in the case of a woman, after one year, subject always to the condition that the trial remains uncompleted and that the delay has not been occasioned by the accused. The third proviso places limitations upon the operation of the second proviso and excludes certain categories of accused from claiming the benefit of statutory bail on the ground of delay alone. The benefit is not available to a previously convicted offender for an offence punishable with death or imprisonment for life, a person who, in the opinion of the Court, is a hardened, desperate, or dangerous criminal, or a person accused of an act of terrorism punishable with death or imprisonment for life.

9. A perusal of the detailed hearing chart/diary sheet reveals that the trial has been adjourned on numerous occasions for reasons beyond the control of the applicants. The record reflects that on certain dates the Court was lying vacant, on others the learned Presiding Officer was on leave, and on some occasions the applicants were not produced before the Court, either physically or through video link. Significantly, only on one date was an adjournment sought on behalf of the applicants. These circumstances clearly demonstrate that the delay in the conclusion of

the trial is not attributable to the applicants or to any person acting on their behalf. Furthermore, Applicant No. 2, being a woman, is entitled to the benefit of Proviso (b) to Section 497(1), Cr.P.C., which extends the concession of bail to a woman who has remained in custody for a period exceeding one year and whose trial for the alleged offence has not yet concluded. Nothing has been brought on record to suggest that either of the applicants is a previously convicted offender for an offence punishable with death or imprisonment for life, or that they are hardened, desperate, or dangerous criminals, or are accused of an act of terrorism punishable with death or imprisonment for life. Consequently, the case of the applicants does not fall within the mischief of Proviso III to Section 497(1), Cr.P.C. In analogous circumstances, the Honourable Supreme Court of Pakistan, in the case of *Adnan Shafai v. The State and another (2024 SCMR 1479)*, held as follows:

“Grant of bail on the statutory ground of delay in the conclusion of trial is a right of accused unless such delay has been occasioned as a result of his own conduct. This Court in the case of Shakeel Shah v. State and others (2022 SCMR 1) has elaborately discussed the bail on statutory ground of delay... ..”

10. In light of the above findings, particularly the statutory ground of delay which has remained un-rebutted by the prosecution, the applicants have made out a case for the grant of bail. Consequently, the instant application is allowed. Applicants Ali Gul and Mst. Rehana are admitted to bail subject to their furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) each, with a P.R. bond in the like amount to the satisfaction of the learned Trial Court. It is clarified that the

observations made hereinabove are tentative in nature and shall not prejudice the final outcome of the trial.

JUDGE