

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No.1088 of 2025

Applicant : Sohail Mehmood son of Fateh Khan,  
through Mr. Sardar Mushtaq, Advocate

Complainant : Mst. Shazia  
Through Mr. Mujeer Ali Mangi, Advocate.

Respondent : The State  
Ms. Rahat Ahsan, Addl. P. G. Sindh.

Date of hearing : 22.05.2025

Date of order : 30.05.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – Applicant Sohail Mehmood, seeks post arrest bail in a case bearing Crime No.689/2022 registered at P.S. Zaman Town, for offence under Sections 354, 377-B, 509, 376, 511 PPC. Being aggrieved and dissatisfied with the impugned order dated 10.04.2025 passed by the learned Vth Additional Sessions Judge, Malir, Karachi, dismissing his bail application in Session Case No.1186/2023, the applicant has preferred the instant application.

2. The brief facts as per the complainant, Mst. Shazia Ameer, are that she is the wife of the accused Sohail Mehmood. From their wedlock, they have two daughters and two sons. The elder daughter, Zoha, aged about 15 years, became a victim of the accused's alleged indecent behavior and attempts to commit Zina since she was eleven years old. It is alleged that on 27.06.2022, the accused again attempted to commit Zina with his daughter, forcibly removing her shalwar, prompting her to raise an alarm, after which the accused fled. The complainant claims the accused threatened to kill her and her other children if Zoha revealed his actions.

3. Learned counsel argued that this is the applicant's third bail application, but the first on statutory grounds. He contended that the accused was arrested on 17.04.2023, and despite the passage of over two years and a month (exceeding the one-year statutory period for non-death penalty offenses or two years for death penalty offenses as per Section 497(1), first proviso, clauses (a) and (b) Cr.P.C. for a male accused), the trial has not been concluded. He specifically highlighted that there has been no act or omission on the part of the counsel for the

accused causing any delay. He further submitted that the right of cross-examination was curtailed, leading to an approach to the Supreme Court, which, vide order dated 26-09-2023, directed the conclusion of the trial within four months. However, despite these directions, the trial has not been concluded. He also submitted that Constitutional Petition No. 393/2024 was filed, due to which the cross-examination was reserved. The learned counsel also touched upon the discrepancies in the FIR and the amended charge regarding the date of occurrence and the nature of the offense (attempt vs. commission). He asserted that the medical reports, including DNA and clothes DNA, were negative for sexual assault, and the victim's hymen was intact. He relied upon the case law cited at 2022 P.Cr.L.J 83.

4. Conversely, learned counsel for the complainant strongly opposed the bail application. He contended that the examination-in-chief of Victim Zoha was completed on 12-02-2024, and thereafter, Complainant Shazia Ameer's examination-in-chief was recorded on the same date. He argued that the cross-examination of the complainant was reserved solely at the request of the learned advocate for the applicant. He submitted that this led to revision applications up to the Honorable Supreme Court of Pakistan, which, indeed, gave a four-month timeframe for trial conclusion. However, he argued that the learned advocate for the applicant played "hide and seek" and deliberately avoided cross-examining the complainant on various pretexts, as reflected in the case diaries. He asserted that there has been no delay on the part of the prosecution. He also stated that previous bail applications of the accused were dismissed twice. He relied on the Supreme Court directions for expeditious trial, arguing that any delay is attributable to the defense.

5. Learned APG vehemently opposed the bail application, echoing the arguments of the complainant's counsel regarding the defense's role in causing delay. She submitted that two material witnesses have already been examined. She relied upon the case laws cited at 2011 SCMR 1332, 2010 SCMR 144, and 2002 SCMR 138.

6. Upon careful perusal of the case diaries and considering the arguments advanced by learned counsels for both sides, this Court finds the following relevant entries pertinent to the issue of statutory delay, specifically concerning the first proviso to Section 497 Cr.P.C.

7. This Court, in the case of Shakeel Shah versus State and others, 2022 SCMR 1, elaborately explained the concept of bail on statutory

grounds and ruled that it is subject to two exceptions: (a) delay in conclusion of the trial if occasioned by an act or omission of the accused or by any other person acting on his behalf; and (b) the accused, a hardened, desperate or dangerous criminal, in the opinion of the Court.

8. Now proceed to examine the instant case on the touchstone of Shakeel Shah case (supra) to determine whether it falls in any of the exceptions laid down therein, particularly regarding delay in the conclusion of the trial occasioned by an act or omission of the accused or by any other person acting on his behalf.

9. The Shakeel Shah case (supra) expounded this exception, explaining it in the following terms:

*"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 of 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. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.<sup>1</sup> The statutory right to be released on bail flows from the constitutional right to liberty and fair trial under Articles 9 and 10A of the Constitution. Hence, the provisions of the third and fourth provisos to section 497(1), Cr.P.C must be examined through the constitutional lens and fashioned in a manner that is progressive and expansive of the rights of an accused, who is still under trial and has the presumption of innocence in his favour. To convince the court for denying bail to the accused, the prosecution must show, on the basis of the record, that there is a concerted effort on the part of the accused or his counsel to delay the conclusion of the trial by seeking adjournments without sufficient cause on crucial hearings and/or by making frivolous miscellaneous applications."*

10. The applicant's argument for statutory bail hinges on the contention that the trial has not concluded within the stipulated time and that there is no act or omission on his part causing delay. However, a close examination of the case diaries, when viewed through the lens of the Shakeel Shah judgment, reveals a pattern of conduct by the defense counsel that appears to fall within the exception.

- February 7, 2024: The diary entry explicitly states: "Note- At this stage, the learned defense counsel wants to seek alternate remedy before the Higher Forum regarding such objections. Cross reserved, present complainant Mst. Shazia Ameer is bound down for next date of hearing." This is a crucial hearing fixed for the cross-examination of a key prosecution witness, the complainant Mst. Shazia Ameer (whose examination-in-chief was recorded on 12-02-2024). The reservation of cross-examination at the defense counsel's request, to pursue "alternate remedy before the Higher Forum," directly impeded the progress of the trial and is a conscious act to delay the conclusion of the trial, as it led to further proceedings in higher courts.
- December 19, 2023: The diary entry states: "Complainant Mst. Shazia and PW Faisal Ameer are present. The associate of Advocate for accused is present and verbally requested for adjourning the matter till next date of hearing, request allowed." On this date, two material prosecution witnesses (complainant and PW Faisal Ameer) were present, and the hearing was fixed for "evidence and hearing on bail application." The request for adjournment by the associate of the defense counsel, on a crucial hearing where witnesses were available, directly contributed to the delay. This reflects a deviation from the prompt conduct of the trial.
- September 16, 2023: The diary entry indicates: "Jr. Advocate for the accused filed an application for adjournment. Order passed thereon. Case is adjourned to 07-10-2023 for Charge." While this was for "Charge" and not directly for evidence, it signifies an instance where the defense counsel, through a junior, sought and obtained an adjournment, contributing to the overall timeline of the trial.
- Furthermore, the learned counsel for the applicant himself explicitly admitted the filing of Constitutional Petition No. 393/2024, which, as per his own submission, led to the reservation of the cross-examination. Such initiation of judicial proceedings in a higher forum, directly impacting the ongoing trial proceedings and causing a halt at a crucial stage (cross-examination), unequivocally constitutes an "act or omission" on the part of the accused's representative to delay the conclusion of the trial. This is not merely "some adjournments," but a conscious legal strategy that undeniably prolonged the trial.

11. The Honorable Supreme Court of Pakistan, vide order dated 26.09.2023, had already directed the conclusion of the trial within four months. While the trial has not concluded within this timeframe, the case diaries, read in light of the Shakeel Shah precedent, demonstrate that the delay cannot be solely attributed to the prosecution or the court. The actions of the defense counsel, particularly the reservation of cross-examination to pursue remedies in higher forums, represent a "concerted effort orchestrated by the accused" (through his counsel) to delay the timely conclusion of the trial on crucial hearings. These are not merely "frivolous miscellaneous applications" but judicial challenges that, by their nature, paused the trial proceedings.

12. Without delving into the merits of the case, which might prejudice the rights of either party, and solely on the ground of statutory delay, this Court finds that the exception to the first proviso of Section 497(1) Cr.P.C., as elaborated in the Shakeel Shah case (supra), is applicable. The delay in the conclusion of the trial cannot be attributed solely to the prosecution or the court, as there are clear instances of acts and omissions on the part of the learned advocate for the applicant/accused, including seeking adjournments on crucial hearings and initiating revisional proceedings up to the Honorable Supreme Court of Pakistan, which has resulted in the delay.

13. Therefore, the present bail application, being primarily based on the statutory ground of delay, is hereby dismissed. However, given the directions of the Honorable Supreme Court for an expeditious trial, the learned trial court is hereby directed to decide the matter within 60 days from the date of receipt of this order. In case the trial is not concluded within the stipulated period of 60 days, the learned advocate for the applicant shall be at liberty to seek bail before the learned trial court on the same statutory ground.

**J U D G E**