

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S-592 of 2025

Applicant: Muhammad Salameen Jatoi,  
Through Mr. Mehfooz Ahmed Awan, Advocate

The State: Through Mr. Mansoor Ahmed Shaikh, Deputy  
Prosecutor General Sindh

Date of Hearing 04-08-2025  
Date of Order: 08-08-2025

### ORDER

**Khalid Hussain Shahani, J.:**— Applicant Muhammad Saleem Jatoi seeks post-arrest bail in a case bearing crime No. 17/2022, registered at Police Station Airport, Sukkur, for offences punishable under Sections 302, 114, 147, 148 & 149 PPC. A previous application for the same relief was considered and dismissed by this Court vide order dated 06-03-2025.

2. The prosecution's case, in brief, is that on 23-02-2022, the complainant, Ashfaq Ahmed Shar, along with his relatives, was intercepted by the applicant Muhammad Saleem, and several co-accused, all allegedly armed with pistols. On the instigation of co-accused Abdul Hakeem, the applicant and others are said to have fired upon the complainant's brother, Bashir Ahmed, causing his death.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated. He primarily argues that the applicant is entitled to bail on the statutory ground of delay in the conclusion of the trial. He submits that the applicant was arrested on 26-02-2022 and has been incarcerated since, for a period exceeding two years, without substantive progress in the trial. It is argued that the delay is not attributable to the applicant but to the prosecution's failure to produce its witnesses, specifically the complainant and others, who are reportedly absconding and have been declared proclaimed offenders in other criminal cases. In support of his contentions, learned counsel places reliance on the judgment of the Hon'ble Supreme Court in the case of *Muhammad Usman v. The State and*

*another* (2024 S C M R 28) and an order dated 05.07.2012 passed by Honorable Supreme Court in a CR. Petition No. 08-K/2012.

4. Conversely, the learned Deputy Prosecutor General has vehemently opposed the grant of bail, arguing that the applicant is nominated in a heinous offence punishable with death and that he is not entitled to the concession of bail on the ground of hardship, alleging his involvement in causing the trial's delay.

5. It is an undisputed fact that the applicant was arrested on 26-02-2022 and has remained in custody for a period significantly exceeding the two year threshold stipulated in the third proviso to Section 497(1) of the Criminal Procedure Code, 1898. The record reveals that although the charge was framed on 06.08.2022, the trial has since remained stagnant. The primary cause for this delay is the persistent non-appearance of the complainant and other prosecution witnesses. It has been brought on record that these witnesses are themselves nominated as accused in other criminal cases (Crime No. 24/2022, Crime No. 36/2022, and Crime No. 07/2023) and have been declared proclaimed offenders. Consequently, the delay in the conclusion of the trial is manifestly not attributable to any act or omission on the part of the applicant or any person acting on his behalf. The applicant has been made to suffer the rigours of prolonged incarceration without fault of his own.

6. The principles governing the grant of bail on statutory grounds have been authoritatively settled by the Hon'ble Supreme Court in the case of *Muhammad Usman* (supra), which has been relied upon by the applicant's counsel. In the said judgment, the Apex Court held that the right to be released on bail on statutory grounds is not a matter of discretion but an entitlement that accrues once the conditions specified in the third proviso to Section 497(1), Cr.P.C. are fulfilled. This right can only be forfeited if the prosecution successfully demonstrates that the delay in the trial was occasioned by an act or omission of the accused or someone acting on his behalf. The Court lucidly clarified that the object of this provision is to ensure that criminal trials are not unduly delayed and to prevent the prosecution from prolonging the hardship of an accused awaiting trial. It was further

established that an accused cannot be held liable for delays caused by others, such as the abscondence of a co-accused. This principle applies with even greater force where the delay is caused by the non-availability of prosecution witnesses, especially when their absence is due to their own status as absconders in other legal proceedings.

7. The law is settled that a subsequent bail petition moved on grounds that were available at the time of a previously decided application is generally not competent. However, the Hon'ble Supreme Court has consistently held that an exception to this rule exists for the entitlement to bail on statutory grounds. The ground of statutory delay, as provided under the third proviso to Section 497(1) of the Cr.P.C., constitutes a fresh ground. In the instant matter, the applicant's earlier bail application was dismissed by this court on merits as well as considering statutory delay ground; however, with directions to the learned trial court to conclude trial within two months vide order dated 06.03.2025, and sufficient record has been produced to suggest that in the intervening period, the delay has not been occasioned on the part of applicant, but the prosecution for the obvious reason of complainant and eye witnesses absconding in cases referred herein above. It is only now that the period specified under the third proviso has ripened, giving rise to a fresh ground for seeking the concession of bail. Therefore, the present application is competent and maintainable for adjudication on this new ground. The next crucial question is whether a right to be released on bail has accrued in favour of the applicant due to the inordinate delay in the trial's conclusion. It is an undisputed fact, borne out by the record, that the two-year period specified in the third proviso to Section 497(1), Cr.P.C. has long since passed. Despite the applicant's continuous incarceration since 26.02.2022, the trial has failed to conclude.

8. The prosecution has not been able to persuade this Court that the delay is in any manner attributable to an act or omission of the applicant or any person acting on his behalf. On the contrary, the record clearly indicates that the trial has stalled due to the abscondence of the complainant and the prime prosecution witnesses, who are themselves reportedly fugitives from the law in other criminal cases. The legislature has expressly confined the disentitling delay to the 'accused' or someone acting for him. The law does

not contemplate making an accused suffer for the acts of a co-accused, let alone for the non-availability of the prosecution's own witnesses. If the delay caused by a co-accused's abscondence cannot be attributed to an applicant, it is inconceivable that he could be penalized for the prosecution's inability to produce its witnesses, especially when their absence stems from their own unlawful conduct. The applicant is not at fault, yet he has been compelled to suffer the hardship of prolonged incarceration, which contravenes the spirit of justice.

9. The very object of recognizing a right to bail on statutory grounds is to safeguard against unnecessarily delayed trials and to prevent the State from prolonging the incarceration and hardship of an undertrial prisoner. The right of an accused to seek bail on this ground cannot be defeated for any reason other than those explicitly described in the third and fourth provisos to Section 497(1), Cr.P.C. Once the statutory period has expired without the trial concluding, the accused becomes entitled to bail as of right. This accrual is not left to the discretion of the Court; it is a legal entitlement subject only to the condition that the delay is not of the accused's own making. The assessment of delay is not a mechanical or mathematical exercise of excluding adjournment dates; rather, it requires a consideration of the cumulative effect on the case's disposal and whether the offence caused any delay when the matter was ripe for evidence. In this case, the main factor impeding the trial is the non-attendance of witnesses, a failure squarely on the part of the prosecution.

10. On the touchstone of the principles highlighted hereinabove, a right under the third proviso of Section 497(1), Cr.P.C. has unequivocally accrued in favour of the applicant. The necessary conditions have been met, his incarceration has exceeded the statutory period, the trial has not concluded, and the prosecution has failed to demonstrate that the delay can be attributed to the applicant or that the mischief contemplated under the fourth proviso is attracted. After applying the aforementioned legal principles to the facts of the instant case, it is evident that a right has accrued in favour of the applicant. He has been continuously incarcerated for over three years, the trial has not concluded, and the prosecution has failed to attribute the delay to him. The fourth proviso to Section 497(1), Cr.P.C. is not attracted as

there is nothing on record to suggest that the applicant is a hardened, desperate, or dangerous criminal. Therefore, denying him bail would amount to punishing him as an undertrial prisoner for the fault of the prosecution.

11. For the foregoing reasons, the instant bail application is allowed. The applicant, Muhammad Saleem Jatoi, is admitted to bail subject to his furnishing a solvent surety in the sum of Rs. 500,000/- (Rupees Five Lacs only) and a Personal Recognizance bond in the like amount, to the satisfaction of the learned Trial Court.

12. It is made clear that these observations are tentative in nature and shall not influence the outcome of the trial. Furthermore, should the applicant misuse the concession of bail in any manner, the Trial Court shall be at liberty to cancel his bail in accordance with the law.

**J U D G E**