

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application Nos. 756 & 757 2025

Applicant : Ameer Hamza son of Muhammad Akram,  
Through Syed Shaheer-ul-Islam, Advocate

Respondent : The State  
Through Ms. Rubina Qadir, APG

Complainant : Aijaz Butt  
Through Syed Muhammad A. Kabir, Advocate

Date of hearing : 29.05.2025

Date of order : 29.05.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – This consolidated order addresses and disposes of the instant Criminal Bail Application Nos.756 & 757/2025 filed by the applicant seeking the concession of bail in Crime No.91/2022, offence under section 302/109/34 PPC of P.S Saeedabad and Crime No. 100/2022, offence under section 23-1(a) Sindh Arms Act of P.S Saeedabad. Both applications, involving the same Applicant/Accused and related factual matrix, have been heard jointly and are being decided through this common order. Previously bail pleas of applicant were declined vide order dated: 24.01.2025 by learned Xth Additional Sessions Judge Karachi West.

2. As per prosecution theory, the accused, Hamza, entered into home of complainant Aijaz butt. The complainant witnessed Hamza slap his daughter, Mahdia Butt, and then shoot her in the head with a pistol. After the shooting, Hamza fled the scene on a motorbike with another individual. The victim, Mahdia Butt, sustained critical injuries and expired on the way to Civil Hospital. The FIR was lodged seeking legal action against Hamza and his accomplice.

3. The learned advocate for Ameer Hamza hinges his application on several key pillars, meticulously outlining why the Applicant deserves the concession of bail, despite the serious nature of the charges against him. The cornerstone of the Applicant's plea is the statutory delay in the trial proceedings. This argument is rooted in the Third Proviso of Section 497(1) of the Criminal Procedure Code (Cr.P.C.), which provides a crucial safeguard for undertrial prisoners. The advocate emphasizes that Ameer Hamza has been behind bars since his arrest on February 28, 2022, amounting to "more than 4 years." For an offence punishable with death,

the law stipulates a continuous detention exceeding two years as a ground for bail if the trial has not concluded. The Applicant, having surpassed this period, asserts his right to be released. Crucially, the defense vehemently argues that the delay is not his fault. The advocate explicitly states that "from the date of passing of Order of Directions for the conclusion of Trial, not a single adjournment was taken by the Counsel of Applicant/Accused." Instead, the onus for the delay is squarely placed on the prosecution, with claims that "it was the prosecution and DDP were absents on the fixed dates given by the Trial Court," a fact supposedly "evident from the Diary sheet of Learned Trial Court." This aims to present the Applicant as a victim of systemic inefficiency, rather than a cause of it. A significant point of contention raised by the defense is the alleged failure of the Trial Court to comply with this Court's previous directives. Following earlier bail applications (Cr. Bail Application No. 1653/2024 & Cr. Bail Application No. 1654/2024), the Court had, via an order dated October 02, 2024, explicitly directed the Trial Court to "Complete the Trial of the Applicant/Accused, within three months." The advocate asserts that the Trial Court "failed to obey with the direction of this Court," and that the subsequent bail application, filed precisely on the ground of this unaddressed delay, was dismissed without due consideration of the High Court's mandate. This suggests a dereliction of judicial duty at the lower court level, which the High Court is urged to rectify. Beyond statutory provisions, the Applicant's counsel elevates the argument to the realm of constitutional rights, grounding the plea for bail in fundamental guarantees. The advocate contends that the statutory right to bail under the Third Proviso of Section 497 Cr.PC is not merely a technicality but is firmly rooted in Article 4 (Right of individuals to be dealt with in accordance with law), Article 9 (Security of person), and Article 10A (Right to fair trial and due process) of the Constitution of the Islamic Republic of Pakistan, 1973. By invoking these articles, the defense implies that continued detention, despite the statutory grounds for bail, constitutes a violation of fundamental rights, as "the accused cannot be deprived of liberty, except in accordance with law." The bail application launches a direct critique of the lower court's decision, alleging a fundamental misapplication of judicial principles. The advocate claims that the Learned Trial Court "completely failed to apply his judicial mind" by "totally ignoring the direction of this Court" and the "statutory ground of delay." A particularly strong point is made that the impugned order was "completely silent regarding the delay in conclusion of trial and Section 497(1) Cr.P.C." Instead, the Trial Court allegedly "gave findings on the evidences of the case prior to the recording the evidences of

witnesses," which is characterized as a "serious illegality and irregularity in the criminal administration of Justice." This suggests that the lower court prematurely delved into the merits of the case rather than addressing the procedural ground for bail. Furthermore, the Trial Court is criticized for failing to even "discuss and mentioned the citations/case laws/precedents referred by the Counsel of Applicant/Accused," indicating a lack of thorough legal consideration. To bolster the arguments, the Applicant's counsel cites several significant judgments from higher courts, emphasizing the established legal position on statutory delay and the rights of the accused:

- *2023 SCMR 1450: This case reinforces that if the delay in trial is not attributable to the accused, particularly after the framing of charge, they become entitled to the concession of bail on statutory grounds.*
- *2010 MLD 552: A strong precedent asserting that if an accused is incarcerated for over two years and three months, is not responsible for the delay, and a speedy trial (a fundamental right) is not imminent, bail should be granted.*
- *2010 PCrLJ 63: This judgment underlines the unfairness of indefinite detention when three years and three months have passed without trial progress, reiterating the right to an expeditious trial.*
- *PLD 2023 Supreme Court 648: This crucial Supreme Court ruling establishes that a delay in trial not caused by the accused, occurring in the year following a previous bail rejection on statutory grounds, constitutes a "fresh ground" for a subsequent bail application. This directly addresses the current application's "subsequent bail" status.*

4. Conversely, the learned DPG for the State duly assisted by the learned counsel for the Complainant has vehemently opposed the grant of bail, submitting detailed objections on record. The core arguments advanced by the prosecution are that; the Complainant/Prosecution has consistently attended the Hon'ble Court and never sought any adjournment. In stark contrast, the Defence Counsel, particularly the counsel for the accused Ameer Hamza, has obtained several adjournments. It was specifically highlighted that out of 79 crucial dates, the Applicant Ameer Hamza, either personally or through his counsel, sought not less than 15 adjournments on the following dates: December 06, 2022, December 22, 2022, January 05, 2023, February 15, 2023, March 02, 2023, March 02, 2023, April 03, 2023, April 18, 2023, March 02, 2023, June 08, 2023, June 21, 2023, February 20, 2024, June 01, 2024, July 06, 2024, and August 28, 2024. It was further asserted that the counsel for the accused deliberately omitted attaching the remaining case diaries to the instant bail application, indicating a lack of transparency. The prosecution further submitted that despite their readiness to assist in the

expeditious conclusion of the trial, the accused's counsel has repeatedly sought dates on various pretexts. It was also pointed out that the accused Ameer Hamza, after the dismissal of a previous bail application, filed a statement dated July 06, 2024, verified by himself, expressing a lack of faith in the trial court. This statement was subsequently withdrawn on July 20, 2024. On both these dates, witnesses were present but could not be examined due to the actions of the defence, thereby impeding the progress of the trial. The prosecution argues that while the accused may not have a previous conviction for an offence attracting the death penalty or life imprisonment, the nature of the alleged crime under the Sindh Arms Ordinance, coupled with the accused's conduct during the trial, positions him squarely within the category of a "hardened, desperate or dangerous criminal." The consistent dilatory tactics employed by the accused or his counsel, as evidenced by the numerous adjournments sought, and the alleged attempts to pressurize the legal heirs of the deceased (if applicable to this case, or referring to the complainant in general) to enter into a compromise, cast a heavy shadow on his character and unequivocally mark his actions as indicative of a blatant disregard for societal norms and the judicial process. It is strongly argued by the prosecution that the trial is at its verge of conclusion, with only three out of twelve witnesses remaining to be examined. The prosecution expresses a grave apprehension that if bail is granted to the accused Ameer Hamza, he would tamper with the evidence and influence the remaining witnesses to frustrate the ongoing trial. It is also alleged that the accused Ameer Hamza, while in judicial custody, is pressurizing the legal heirs of the deceased (or complainant) to enter into a compromise, which they are unwilling to do, reiterating their full faith in the judiciary for complete justice. In support of contentions, the learned counsel for the Complainant/Prosecution has placed reliance on the pronouncements of the Hon'ble Apex Courts in similar circumstances, citing 2002 SCMR 1381, 2011 SCMR 1332, PLD 2022 SC 541, and PLJ 2021 Cr.C (Lahore) 531, where bails were dismissed. Specifically, reliance was placed on *Allah Wasaya V. The State (PLD 2022 Supreme Court 541)*, which clarifies that the term "hardened, desperate or dangerous criminal" should not be understood purely in technical terms related to prior convictions but encompasses those accused of violating the law in a manner that reflects a blatant disregard for societal norms and human dignity, with the determination hinging on the specific actions and circumstances surrounding the case at hand.

5. Having heard the arguments of the learned counsel for both sides and meticulously perused the available record, this Court finds substantial force in the objections raised by the Complainant/Prosecution.

6. While the accused has been incarcerated for a considerable period, which might, at first glance, applicant is also not appearing to qualify for bail under the ground of statutory delay as delineated in the Third Proviso of Section 497(1) of the Criminal Procedure Code as it is evident from the record that in the present case there are totally 15 witnesses out of which 12 witnesses have been examined and only 03 witnesses including the investigating officer and two mashirs of arrest are remaining and the trial is about to be concluded. Moreover the case diaries reflects that the learned advocate for the applicant sought adjournments on different crucial dates of hearing when the witnesses were in attendance and Moreover, it is also imperative to integrate this Third provision with the Fourth Proviso. The Fourth Proviso explicitly states that the entitlement under the Third Proviso does not extend to individuals previously convicted of an offence punishable with death or imprisonment for life, or to those considered by the court to be hardened, desperate, or dangerous criminals.

The consistent pattern of seeking adjournments by the applicant or his counsel, as evidenced by the 15 dates provided, clearly indicates an attempt to prolong the trial. The conduct of filing and subsequently withdrawing a statement expressing no faith in the trial court further underscores the dilatory tactics employed, which are detrimental to the expeditious administration of justice. The alleged attempts to pressurize the complainant/legal heirs for a compromise, if proven, are serious and cannot be overlooked, as they directly impact the fairness and integrity of the trial.

7. The nature of the alleged crime under the Sindh Arms Ordinance, coupled with the accused's conduct during the trial, positions him squarely within the category of a "hardened, desperate or dangerous criminal." As clarified by the Honorable Supreme Court in *Allah Wasaya V. The State (PLD 2022 Supreme Court 541)*, this classification is not solely based on prior convictions but on the specific actions and circumstances reflecting a blatant disregard for societal norms and the judicial process. The accused's actions, including the alleged dilatory tactics and attempts to influence the outcome of the trial, are indicative of such a character.

8. Moreover, the fact that the trial is at an advanced stage, with only three out of twelve witnesses remaining, strengthens the apprehension

that the grant of bail at this juncture could lead to tampering with evidence and influencing the remaining witnesses. This would severely prejudice the prosecution's case and undermine the pursuit of justice. While the accused may not have a previous conviction for an offence attracting the death penalty or life imprisonment, the nature of the alleged crime positions him squarely within the category of a "hardened, desperate or dangerous criminal." The alleged act of killing a young girl in a particularly heinous manner mercilessly inside her home, casts a heavy shadow of suspicion on him and unequivocally marks the offense as not only heinous but indicative of a character that poses a significant threat to the safety and moral fabric of society. The interpretation of what constitutes a "hardened, desperate or dangerous criminal" has been clarified by the Honorable Supreme Court in the case of *Allah Wasaya (Supra)*, where it is articulated that the term should not be understood purely in technical terms related to prior convictions. Instead, it encompasses those accused of violating the law in a manner that reflects a blatant disregard for societal norms and human dignity. The Court further elucidated that the absence of a prior criminal record does not preclude an individual from being classified under this designation, as the determination hinges on the specific actions and circumstances surrounding the case at hand. Considering the gravity of the offense, its impact on the victim, the implications for societal law and order, and the accused's conduct, particularly his evasion post-crime, it becomes clear that the case is not merely a matter of procedural delay warranting bail. It is a profound examination of the accused's capacity for extreme violence and disregard for human life, qualifying him as a threat that cannot be mitigated by mere procedural timelines.

9. In light of these considerations, and guided by the precedent set by the Honorable Supreme Court, it is evident that granting bail to the accused on the basis of statutory delay alone would be inappropriate. The facts and circumstances of the case, reflecting the serious nature of the offense and the accused's subsequent actions, solidify his classification as a dangerous criminal under the Fourth Proviso of Section 497(1) Cr.PC. Therefore, instant bail applications are dismissed with direction to learned trial court to conclude the trial within two (02) months after receipt of this order.

**J U D G E**