

IN THE HIGH COURT OF SINDH AT KARACHI.

Cr. Bail Appln. No. 2226 of 2025.

Applicant : Yaseen through M/s.Muhammad Jameel and Sarosh Jamil, advocates.

Respondent : The State through Mr.Shoeb Safdar, Asstt: P.G. Sindh

Date of hearing : 21.01.2026..

Date of order :

ORDER.

TASNEEM SULTANA-J.:-Through this Criminal Bail Application, applicant Yaseen seeks post-arrest bail in Crime No.42/2023,for the offence under Sections 302, 324 and 34 P.P.C registered at Police Station Kalri, Karachi. Having been rejected his earlier application for grant of bail on statutory ground of delay in Sessions Case No.1224of 2023 by the 1st Additional Sessions Judge (Model Criminal Trial Court)Karachi, ("Trial Court"), vide order dated 21.08.2025. Earlier to this, his first CrI. Bail Application was dismissed on merit by the Trial Court, vide order dated 04.03.2024; his second CrI. Bail Application bearing No.698 of 2024 was dismissed by this Court, vide order dated 24.04.2024.Hence this bail application for same concession.

2. Brief facts, as set out in the FIR, are that complainant Qadir Bakhsh son of Karim Bakhsh reported that on 02.02.2023 at about 08:45 a.m., while he was present at his residence, his daughter-in-law Muskan came running in a frightened condition carrying minor Alizey and disclosed that four persons had forcibly entered the house of his son Bilal and inflicted knife blows upon him. The complainant, along with his sons Asim and Janjheeb and wife Yasmeen, immediately rushed to the flat of Bilal where they found him lying in injured condition with bleeding wounds caused by sharp-edged weapons. He was shifted to Civil Hospital, Karachi, where he succumbed to injuries. It was further alleged that earlier at about 07:30 a.m., four unknown persons had knocked the door, entered armed with knife and chhura, assaulted Bilal and fled away. The complainant asserted that the assailants could be identified if brought before him; hence the present case was registered.

3. Learned counsel for the applicant contends that he confines his submissions strictly to the statutory ground of delay in conclusion of trial and does not press the case on merits; that the applicant is in

continuous judicial custody and the trial has not concluded within the statutory period; that the delay is not attributable to any act or omission on the part of the applicant; that the trial proceedings were materially prolonged owing to the subsequent arrest of absconding co-accused namely Adnan s/o Abdul Kareem and Sameer s/o Abdul Kareem, whereafter supplementary challan was received and amended charge(s) were framed, and the case was again fixed for prosecution evidence; consequently, witnesses earlier examined were required to be examined/further examined afresh as a procedural requirement for a fair trial and to afford the right of cross-examination to the newly joined accused; therefore, the applicant is entitled to the concession contemplated by the third proviso to Section 497(1), Cr.P.C. In support of his submissions he has relied upon case of Noor Agha v. The State and another (2025 SCMR 1679) and Adnan Prince v. The State through P.G Sindh (PLD 2017 Supreme Court 147).

4. Conversely, learned Law Officer, duly assisted by learned counsel for the complainant, has opposed the application contending that the allegations are grave; that prosecution evidence has substantially progressed and several prosecution witnesses stand examined; therefore, the concession of bail may not be extended.

5. Heard. Record perused.

6. There is no cavil to the proposition that clause (a) of the third proviso to sub-section (1) of section 497, Cr. P.C. gives an independent right of bail to an accused of any offence not punishable with death, who has been detained for such offence for a continuous period exceeding one year or, in case of a woman, exceeding six months on the ground of statutory delay in conclusion of trial, subject to certain conditions i.e. (i) that the delay in conclusion of trial has not occasioned on account of an act or omission on the part of the accused or any person acting on his behalf; (ii) that the accused is not a previously convicted offender for an offence punishable with death or imprisonment for life; (iii) that in the opinion of the Court, the accused is not a hardened, desperate or dangerous criminal and is not involved in an act of terrorism punishable with death or imprisonment for life. If these conditions are not applicable to the case of an accused, he is entitled to the bail as a matter of right and since such rights are not left to the discretion of the Court, it cannot be denied under the discretionary power of the Court.

7. It may be observed that a right of an accused to an expeditious and fair trial has been enshrined in the Constitution of Islamic Republic of Pakistan, 1973. The object of criminal law is to prepare the accused to face the trial and not to punish him as under trial prisoner. The intention of law is that a criminal case must be disposed of without unnecessary delay. It will not be difficult to comprehend that inordinate delay in imparting justice is likely to cause erosion of public confidence in the judicial system on one hand, and on the other hand, it is bound to create a sense of helplessness and despair and fillings of frustration and anguish apart from adding to their woes and miseries. The accused cannot be deprived of liberty without due process of law. If any delay occurs in trial due to the act of the court or prosecution, then the liberty of accused cannot be curtailed for the fault on the part of the court and prosecution.

8. In the case of **Muhammad Usman vs. The State and another (2024 SCMR 28)** the Apex Court have held as under:

“7. The object of recognition of a right to be released on bail on statutory ground, subject to meeting the conditions described under the third and fourth provisos of section 497(1) of the Cr.P.C. is to ensure that criminal trials are not unnecessarily delayed and that the prosecution is not enabled to prolong the incarceration or hardship of an accused awaiting trial. The right of an accused to seek bail on statutory grounds cannot be defeated for any other reason except on the ground as has been explicitly described under the third and fourth provisos to section 497(1) of Cr.P.C. The accused becomes entitled to bail as of right after the statutory period expressly stated in clauses (a) and (b), as the case may be, have expired and the trial has not been concluded. This accrual of right is manifest from the language of the third proviso. Such a right can only be defeated if the prosecution is able to show that the delay in the trial was attributable to an act or omission of the accused or a person acting on his behalf. If the prosecution succeeds in showing to the satisfaction of the court that the accused was at fault, then the right stands forfeited. It has been held by this Court that the right recognized under the third proviso of section 497(1) cannot be denied to an accused on the basis of discretionary powers of the court to grant bail. The right has not been left to the discretion of the court, rather, its accrual is subject to the fulfillment of the conditions mentioned under the third proviso of section 497(1) of the Cr.P.C. Moreover, while calculating the quantum of delay attributable to an accused, the court is required to consider whether or not the progress and conclusion of the trial was in any manner delayed by the act and omission on the part of the accused. While ascertaining the delay, the cumulative effect in disposal of the case has to be considered and its assessment cannot be determined on the basis of mathematical calculations by excluding those dates for which adjournments had been sought by the accused or the latter’s counsel. The main factor for consideration is the attendance of the witnesses and whether, despite the matter having become ripe for the recording of evidence, whether the delay was caused

by the defence. The recording of the statement of a last witness would also not defeat the right recognized under the third proviso and it would be unreasonable to conclude that the trial has been completed.”

9. In another case of *Syeda Ayesha Subhani vs. The State and others (PLD 2023 Supreme Court 648)*, the Apex Court of Pakistan has observed as under:

“9 The purpose and objective of the 3rd proviso, as observed by this Court in *Shakeel Shah*, is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a fresh right, that is to say, a fresh ground, would accrue in his favour. The 3rd proviso to Section 497, CrPC, thus, becomes operative as and when a period of one-year passes but the trial is not concluded for no fault of the accused.”

10. Similarly, in the case of *Syed Raza Hussain Bukhari v. The State (PLD 2022 SC 43)*, it has been observed by the Hon’ble Supreme Court that:

“Thus, in appropriate cases, a High Court can grant bail on the ground of delay in conclusion of the trial, similar to that which is available under the third proviso to section 497(1), Cr.P.C., under its inherent powers under section 561-A, Cr.P.C. to secure the ends of justice or to prevent the abuse of the process of court as held in *Khalid Farooq* but going further, a High Court also enjoys constitutional jurisdiction under Article 199(1)(c) of the Constitution for the enforcement of fundamental rights. This constitutional jurisdiction of High Courts cannot be abridged by any sub-constitutional legislation. So, while section 5(6) of the Ordinance is binding on the Special Court, it is not so on a High Court which fashions its jurisdiction on the basis of the enforcement of the fundamental rights under the Constitution. Undue delay in the trial of the accused infringes his fundamental rights to liberty, fair trial and dignity under Articles 9, 10A and 14 of the Constitution, if the delay cannot be attributed to him.”

11. In the instant case, it is an admitted position borne out from the record that the applicant/accused, facing allegations punishable inter alia under Section 302, P.P.C., has remained in continuous judicial custody since his arrest on 08.02.2023. The interim charge-sheet was

submitted on 03.02.2023 and the final charge-sheet on 13.04.2023, whereafter formal charge was framed by the learned trial Court on 24.07.2023 and prosecution evidence commenced. In due course, the prosecution examined as many as nine witnesses, thereby substantially advancing the trial proceedings; however, the trial could not culminate within the statutory period. The record further reflects that absconding co-accused Adil was arrested in the present case on 28.06.2025 while already confined in another case at Central Prison, followed by submission of supplementary challan against him on 14.07.2025. Thereafter, co-accused Sumair was arrested on 29.10.2025, likewise while confined in another case, and supplementary challan qua him was submitted on 06.11.2025. Consequent upon their joinder, the learned trial Court framed amended charge on 24.11.2025, whereafter the case was again fixed for prosecution evidence and witnesses already examined were required to be recalled and, where necessary, further examined so as to afford the newly joined accused their right of cross-examination a safeguard flowing from the mandate of fair trial. The re-opening of prosecution evidence thus being a procedural necessity arising from the subsequent arrests, supplementary challans and amended charge, the delay occasioned thereby is institutional and procedural in character and cannot be attributed to any act or omission on the part of the present applicant. The statutory command embodied in the third proviso to Section 497(1), Cr.P.C. cannot be neutralized by such procedural vicissitudes, and the right having accrued upon expiry of the prescribed period, its enforcement follows as a matter of legal entitlement rather than judicial discretion.

12. The learned A.P.G., duly assisted by learned counsel for the complainant, was specifically confronted with the query whether delay in conclusion of trial was attributable to the applicant; however, apart from referring to isolated adjournments, no material was pointed out demonstrating that progress of trial was impeded on account of the applicant. It is well settled by now that sporadic adjournments or routine procedural delays do not ipso facto defeat the statutory entitlement once accrued, particularly where cumulative detention exceeds the statutory threshold.

13. Applying the ratio laid down in the supra case law to the facts of the present case, the detention of the applicant having exceeded the statutory period and the trial having not concluded for reasons not attributable to him particularly where proceedings were prolonged

owing to subsequent arrest of absconding accused and consequential procedural developments brings the case within the ambit of the third proviso to Section 497(1), Cr.P.C., while none of the disqualifications contemplated under the fourth proviso have been shown to exist. No material has been pointed out enabling this Court to form an opinion that the applicant is a previously convicted offender for an offence punishable with death or imprisonment for life, or that he is a hardened, desperate or dangerous criminal within the meaning of the fourth proviso. It has been consistently held by the apex Courts that if a case on such statutory delay in the conclusion of trial is made out then, ordinarily bail should not be refused on hyper technical ground. With regard to the commencement of the trial, recording of evidence of nine prosecution witnesses could not be treated conclusion of trial, so as to defeat the right enshrined under third provision of Section 497(1) Cr.P.C.

14. For the above stated reasons, concession of bail is extended to the applicant/accused Yaseen s\o Nadeem, subject to his furnishing surety in the sum of Rs. 1000000/- (rupees one million) and P.R bond in the like amount to the satisfaction of the trial court.

15. Needless to mention here that observations recorded in this order are based on the tentative assessment of the record, therefore, it shall not in any manner prejudice the proceedings pending before the trial court.

JUDGE

Shabir/PS