

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-897 OF 2025

Applicant : Ali Raza @ Babloo son of Ghulam Mustafa, Jatoi
Through M/s Mehfooz Ahmed Awan, Ateeq-ur-Rehman Shaikh, Farhan Ali Shaikh & Benazir Memon, Advocates for the applicant

Complainant : Niaz Ali son of Yaqoob Ali,
Through Mr. Altaf Hussain Shar, Advocate

The State : *Through* Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 20.10.2025

Date of order : 06.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.– Applicant Ali Raza @ Babloo, seeks post arrest bail in a case bearing crime No.08/2018, for offences under Sections 302, 109, 34 PPC, registered at Police Station Shaheed Illahi Bux Siyal, District Larkana.

2. The prosecution case, as per the FIR lodged by complainant Niaz Ali Jatoi at Police Station Shaheed Illahi Bux Siyal, alleges that about three to four years prior to the incident, the accused Ali Raza @ Babloo Jatoi had murdered his step-mother, namely Mst. Najma, on a baseless allegation of illicit relationship with the complainant's brother Ameer Bux @ Jhando. Although this matter was resolved through talks within the family, Gul Hassan Jatoi threatened that he would get murdered Ameer Bux @ Jhando and would not spare him. On 24th July, 2018 at about 04:00 pm, the complainant along with his brother Ameer Bux @ Jhando, his uncle Koral Khan and Masat Shah Bux were proceeding to their agricultural lands and were standing near their village beside the main road to look after their land when two persons riding on a motorcycle came from the direction of Larkana. These motorcyclists stopped their bike near the complainant party and alighted, whom they identified as Ali Raza @ Babloo (applicant) and Ghulam Ali. Both the accused persons took out pistols from their

garments and asked the complainant party to remain silent. Being unarmed and fearing for their lives, the complainant party remained quiet. In their presence, accused Ghulam Ali opened direct fire upon Ameer Bux @ Jhando on his left side of chest, right arm and left side of abdomen, while applicant also fired directly from his pistol upon Ameer Bux @ Jhando hitting him on his left arm, left side of chest and left side of abdomen. The deceased fell down crying in pain, and thereafter both accused fled away on the same motorcycle towards Khairpur side. Ameer Bux @ Jhando succumbed to his injuries and died on the spot in their presence. The complainant left other witnesses at the dead body and informed the police. The police arrived at the scene, completed the necessary legal formalities, conducted post-mortem examination and handed over the dead body to the family. After completion of funeral rites, the complainant approached the police station and lodged the FIR alleging that both accused had committed murder of his brother through pistol fires on the instigation of accused Gul Hassan Jatoi over the matter of false allegation of illicit relationship.

3. After registration of the FIR, police took up investigation and submitted challan against the accused. The applicant Ali Raza @ Babloo initially remained at large and was shown as absconder in the challan. Subsequently, the applicant surrendered before the Court at Sukkur on 14th November, 2020 and was formally arrested on 20th November, 2020. He was later shifted to Khairpur Jail and finally to Sukkur Jail. The charge was framed against the applicant on 26th January, 2022 by the learned trial court.

4. The learned counsel for the applicant has vehemently argued that his client is entitled to bail on the statutory ground of delay in conclusion of trial as envisaged under the third proviso to Section 497(1) of the Code of Criminal Procedure. The primary contentions advanced by the learned counsel are that the applicant was arrested on 23rd November, 2020, having surrendered voluntarily before the Court on 14th November, 2020, and since then has been languishing

in jail for a period of about four years and ten months without any conclusion of the trial proceedings. The charge was framed against the applicant on 26th January, 2022, and despite the passage of nearly three years since the framing of charge, the prosecution has been able to examine only six witnesses out of the total fourteen prosecution witnesses. The witnesses examined include SIP Muhammad Ayoub who is the Investigating Officer, Dr. Gul Hassan the Medical Officer, Tapedar Muhammad Bachal examined on 29th February, 2024, PC Ashiq Ali examined on 8th March, 2022, and PW Mansoor. The learned counsel emphasized that not a single adjournment has been sought by the accused or his counsel, and the case diaries produced before the Court reflect this fact. The trial court has issued proclamation under Sections 87/88 of the Code of Criminal Procedure for the attendance of prosecution witnesses who have been reluctant to appear before the court. The notification for inside trial was challenged in Constitutional Petition No. D-523 of 2024 filed by the complainant himself. The learned counsel further submitted that the complainant has filed multiple transfer applications, first before the Larkana Circuit Court and then before this Court, which were either dismissed or withdrawn, clearly demonstrating the malafide intention of the complainant to prolong the trial proceedings. On some dates of hearing, the applicant was not produced by the Sukkur Jail authorities, which was beyond the control of the accused, as it is the statutory duty of jail authorities to produce the accused on each date of hearing. The learned counsel contended that the prolonged detention of the applicant without trial violates his fundamental right to speedy trial guaranteed under Article 10-A of the Constitution, and keeping him in jail for such an extended period would not serve any useful purpose. Therefore, he prayed that the applicant may be enlarged on bail as per the envisagement of the third proviso to Section 497(1) of the Code of Criminal Procedure on the statutory ground of delay in conclusion of trial.

5. The learned counsel for the complainant has strenuously opposed the bail application on several grounds. He argued that the accused Ali Raza @ Babloo is involved in three other murder cases and had remained absconding until his arrest on 20th November, 2020, which clearly establishes him as a habitual and hardened criminal. The complainant party belongs to Larkana and apprehends serious danger to their lives if the accused is released on bail, as there is a real threat that he might intimidate or harm the prosecution witnesses or attempt to tamper with the evidence. The learned counsel submitted that a transfer application No. CP No. D-523 of 2023 was filed for transfer of the case, which was fixed for hearing on 5th November, 2025. He further contended that the accused is a desperate and dangerous criminal who poses a threat to society and his release on bail would be prejudicial to the interests of justice. In support of his contentions, the learned counsel relied upon various case laws reported at 1991 P.Cr.L.J 26, 1991 MLD 781, 1991 P.Cr.L.J 734, and 1991 MLD 1877, arguing that these precedents support the denial of bail to habitual and dangerous criminals even on the ground of statutory delay. The learned counsel emphasized that the heinous nature of the offense, being a cold-blooded murder committed in broad daylight, and the criminal antecedents of the accused disentitle him from the concession of bail, and therefore the application should be dismissed.

6. The learned Deputy Prosecutor General for the State opposed the grant of bail and submitted that PW Mansoor has also been examined as a prosecution witness. He informed the Court that the transfer application earlier filed by the complainant has been withdrawn. The State counsel argued that out of fourteen prosecution witnesses, six have already been examined, and the trial is progressing, albeit slowly. He contended that on some dates the applicant Ali Raza was not produced by the Sukkur Jail authorities, which caused delay in the proceedings, but this should not be attributed to the prosecution or the State. The learned DPG submitted that instead of granting bail to the accused, it would be

more appropriate for the Court to issue directions for the expeditious conclusion of the trial. He maintained that the accused being involved in multiple murder cases and having a criminal background, his release on bail would not be in the interest of justice and public safety.

7. Having heard the learned counsel for the parties and having carefully examined the record, let proceed to examine the legal and factual position of the case. The applicant seeks post-arrest bail primarily on the statutory ground of delay in conclusion of trial under the third proviso to Section 497(1) of the Code of Criminal Procedure, 1898. This provision grants a statutory right to bail to an accused person if his trial is not concluded within a specified period from the date of his arrest, provided certain conditions are fulfilled.

8. The factual matrix of the case reveals that the applicant was arrested on 23rd November, 2020, and has been in continuous custody since then, making it approximately five years of incarceration. The charge was framed against the applicant on 26th January, 2022, and despite the lapse of nearly three years thereafter, the prosecution has been able to examine only six witnesses out of fourteen. The case diaries produced before the Court demonstrate that no adjournment has been sought by the accused or his counsel, and the delay appears to be primarily attributable to the reluctance of prosecution witnesses to appear before the trial court, administrative issues including transfer applications filed by the complainant himself, and on certain occasions, the non-production of the accused by jail authorities.

9. The Supreme Court of Pakistan in the landmark judgment of *Syeda Ayesha Subhani v. The State and others* (PLD 2023 Supreme Court 648) has categorically held that the entitlement of an accused to post-arrest bail on the statutory ground of delay in the conclusion of the trial is time-based. If the delay exceeds a year for no fault of the accused, in offenses punishable other than death, the right of the accused to post-arrest bail ripens. This right continues to

ripen for each period of one year starting from the arrest of the accused if he satisfies the court that he is not at fault for the delay in a particular period of one year. The apex court further observed that denying this recurring right to post-arrest bail to the accused would amount to giving the prosecution a license to delay the conclusion of the trial for an unlimited period of time, and the accused would be left confined as an under-trial prisoner for an unlimited period at the mercy of the prosecution.

10. In another significant precedent, the Supreme Court in *Saleem Khan v. State* (PLD 2020 Supreme Court 356) established that the period of delay in conclusion of the trial is calculated from the date of arrest of an accused person. Similarly, in *Mehran v. Ubaid Ullah* (PLD 2024 Supreme Court 843), it was held that when the prerequisites contained in clause (b) of section 497(1) of the Code of Criminal Procedure are fulfilled, then the accused would be entitled to the grant of bail as a matter of right on the statutory ground of delay in the conclusion of the trial.

11. The Supreme Court in *Shakeel Shah v. The State and others* (2022 SCMR 1) has laid down the fundamental principle that the accused has a statutory right to be released on bail if his trial for such offense is not concluded within a period of one year from the date of his detention. The period of one year for the conclusion of the trial begins from the date of arrest or detention of the accused, and it is of little importance as to when the charge is framed and the trial commenced. The purpose and objective of this provision is to ensure that the trial of an accused is conducted expeditiously and the pre-conviction detention of an accused does not extend beyond the period of one year in cases involving offenses not punishable with death.

12. In the present case, the applicant has been in custody for nearly five years, which constitutes a shocking delay that demands immediate judicial intervention. The Supreme Court in *Muhammad Usman v. The State* (2024

SCMR 5) has observed that if any act or omission of the accused has hindered the conclusion of trial within the period specified in the third proviso of section 497(1) of the Code of Criminal Procedure, then the right will not accrue in the accused's favor. However, if after the rejection of the plea of bail on statutory grounds, the trial is further delayed for no fault of the accused, then such delay would entitle him to fresh consideration for bail on statutory grounds.

13. The learned counsel for the complainant has relied upon case laws from 1991 P.Cr.L.J 26, 1991 MLD 781, 1991 P.Cr.L.J 734, and 1991 MLD 1877. However, these cases are clearly distinguishable from the present matter and do not apply to the current legal position. The case reported as 1991 P.Cr.L.J 734 involved one Mumtaz Ali who was denied bail under the fourth proviso to Section 497(1) of the Code of Criminal Procedure on the ground that he was a desperate and dangerous criminal. The court in that case held that a person being desperate and dangerous is a personal attribute, and in arriving at such opinion, the court takes into consideration the nature of accusation, conduct of the accused at the time of alleged incident, previous record of the accused including his earlier prosecutions, and the material before the trial court and investigating agency. However, this precedent is not applicable to the present case for several reasons.

14. Firstly, the cited cases were decided more than three decades ago and do not reflect the current jurisprudence developed by the Supreme Court of Pakistan regarding statutory bail rights. The legal landscape has evolved significantly since 1991, and the Supreme Court has consistently expanded the scope of statutory bail rights in favor of accused persons who face inordinate delays in trial proceedings. Secondly, none of the cited cases specifically dealt with the statutory right to bail under the third proviso to Section 497(1) of the Code of Criminal Procedure based on delay in conclusion of trial. The cases primarily dealt with the denial of bail to desperate and dangerous criminals under

the fourth proviso, which is a separate and distinct consideration. Thirdly, the Supreme Court's recent pronouncements in Syeda Ayesha Subhani, Saleem Khan, Shakeel Shah, and Mehran cases have categorically established that statutory bail on the ground of delay is a right that accrues to an accused person, and this right cannot be denied merely on the basis of the nature of the offense or the criminal antecedents of the accused, provided the delay is not attributable to the accused himself.

15. The Supreme Court in Criminal Petition No.105/2017 observed that in view of the legal and factual position, the petitioner had become entitled to grant of bail as of right on the basis of shocking delay in the conclusion of the trial. The court emphasized that prolonged detention without trial violates the fundamental right to due process and speedy trial guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

16. While the learned counsel for the complainant has raised concerns about the applicant being involved in other cases and being a habitual criminal, the Supreme Court has consistently held that such considerations cannot override the statutory right to bail based on delay. In *Babar Hussain v. State* (2016 SCMR 1538), it was clarified that even if an accused is responsible for some delays, the court must examine whether the overall delay is attributable to the accused. The court must conduct a holistic assessment of the delay and determine whether the cumulative effect of the delay can be attributed to the accused or his counsel.

17. In the present case, the record clearly establishes that the applicant has not sought any adjournments, and the delay is primarily due to systemic and administrative factors beyond his control. The complainant himself filed transfer applications which contributed to the delay, and the prosecution witnesses have been reluctant to appear before the trial court despite the issuance of coercive process. The non-production of the accused by jail authorities on certain dates cannot be attributed to the accused as he has no control over the administrative

functioning of the jail authorities. The Supreme Court in *Tariq Bashir and others v. The State* (PLD 1995 SC 34) has established the fundamental principle that in non-bailable offenses punishable with imprisonment for less than ten years, the grant of bail is a rule and refusal an exception. The court held that bail will be declined only in extraordinary and exceptional cases, such as where there is likelihood of abscondence of the accused, where there is apprehension of the accused tampering with prosecution evidence, where there is danger of the offense being repeated if the accused is released on bail, and where the accused is a previous convict. However, even these considerations must be balanced against the statutory right to bail based on delay in conclusion of trial.

18. The right to speedy trial is a fundamental aspect of due process guaranteed under Article 10-A of the Constitution. The Supreme Court has repeatedly emphasized that liberty of an individual is a precious right, and its denial should only occur when guilt is established beyond reasonable doubt through fair and expeditious trial proceedings. Prolonged detention without trial not only violates constitutional guarantees but also undermines public confidence in the justice system.

19. In the circumstances of this case, *prima facie* the applicant has established his statutory right to bail under the third proviso to Section 497(1) of the Code of Criminal Procedure based on inordinate delay in conclusion of trial. The delay of nearly five years is shocking and constitutes a clear violation of the applicant's fundamental right to speedy trial. The delay is primarily attributable to factors beyond the control of the applicant, including the reluctance of prosecution witnesses to appear before the trial court, administrative issues, and transfer applications filed by the complainant himself. The case laws cited by the complainant are distinguishable and do not apply to the present factual and legal matrix. The recent jurisprudence of the Supreme Court of Pakistan strongly

supports the grant of bail in such circumstances where there is inordinate delay in trial proceedings for no fault of the accused.

20. Accordingly, this bail application is allowed, and the applicant Ali Raza @ Babloo is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.500,000 (Five Hundred Thousand Rupees only) with two reliable sureties in the like amount to the satisfaction of the learned trial court. The applicant shall not tamper with prosecution evidence or influence witnesses and shall provide his permanent address to the trial court, informing of any change of address. The applicant shall not violate any law while on bail, and compliance with these conditions shall be strictly monitored by the trial court. The trial court is hereby directed to conclude the trial expeditiously, preferably within six months from the date of this order, and to issue coercive process against the remaining prosecution witnesses to ensure their attendance. The trial court shall not grant unnecessary adjournments to any party and shall recall the bail immediately if any condition is violated or if the applicant misuses the concession of bail. All observations made herein are tentative and shall have no bearing on the final determination of guilt or innocence by the trial court, and this order shall not prejudice the prosecution's case or influence the trial court's final decision on merits.

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