

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2318 of 2025

Applicant : Muhammad Tariq S/o Abdul Sattar
through Mr. Aamir Mansoob Qureshi,
Advocate

Complainant : Muhammad Atif S/o Muhammad
Azam Khan through Syed Tahir Abbas,
Advocate

Respondent : The State
through Mr. Zahoor Shah, Addl.
Prosecutor General, Sindh

Date of hearing : 09.03.2026

Date of order : 12.03.2026

ORDER

AMJAD ALI SAHITO, J - Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.189/2023 registered under Sections 302, 324, 34 PPC at PS K.I.A., after his bail plea has been declined by the Additional District & Sessions Judge-I, Karachi East vide order dated 13.08.2025.

2. The details and particulars of the FIR are already available in the bail application and memo of FIR, therefore, the same need not to be reproduced hereunder.

3. Learned counsel for the applicant mainly pressed the instant bail application on the statutory ground, contending that the applicant has remained behind the bar for more than three years and despite such prolonged incarceration, the trial has not made any meaningful progress. He contended that the delay in the proceedings is solely on the part of the complainant side, as the complainant has repeatedly failed to produce his witnesses before the trial Court and has been

seeking frequent adjournments, thereby unnecessarily prolonging the trial. Learned counsel further argued that these facts can be verified from the progress report submitted by the learned trial Court on the directions of this Court. He pointed out that the case has been fixed before the trial Court on as many as sixty-four occasions; however, the applicant had never sought any adjournment; that the applicant has been attending the Court and is ready to face the trial, but the prosecution has failed to proceed with the evidence. He therefore contended that the continued detention of the applicant amounts to punishment before conviction and is violative of the principle of expeditious trial. Lastly, he prayed that the applicant may graciously be enlarged on bail in the interest of justice. In support of his contentions, he has relied upon the cases reported as 2025 MLD 1918 (Muhammad Rafiq vs. The State), 2024 SCMR 28 (Muhammad Usman vs. The State and another), 2022 SCMR 1 (Shakeel Shah vs. The State and others), 2020 SCMR 1225 (Ali Akbar vs. The State and others), PLD 2012 Sindh 147 (Zia-ud-Din vs. The State), PLD 2022 Supreme Court 112 (Nadeem Samson vs. The State and others), PLD 2024 Supreme Court 492 (Rohan Ahmad vs. The State and others), 2012 PCRLJ 1022 (Jamsheed Ali vs. The State), 2013 PCRLJ 1162 (Naimat Khan vs. The State), 2010 MLD 552 (Hassan Nasir Dar vs. The State), Order passed in Criminal Petition No.27-K of 2025 by the Hon'ble Supreme Court of Pakistan and Order passed in CrI. Bail Application No.1303 of 2025 by the High Court of Sindh.

4. On the other hand, learned counsel for the complainant vehemently opposed for grant of bail to the applicant. He submits that the applicant is directly involved in the brutal murder of the complainant's father and that the allegations against him are of serious and heinous nature, therefore he does not deserve the concession of bail. He maintained that sufficient material is available on record connecting the applicant with the commission of the alleged offence. However, when confronted with the question as to why the

complainant party has been causing delay in the trial and repeatedly failing to produce witnesses before the learned trial Court, the learned counsel for the complainant could not give any satisfactory explanation. Learned Addl. Prosecutor General also opposed the grant of bail to the applicant and supported the stance taken by the complainant's counsel.

5. I have heard the learned counsel for the parties and have carefully perused the material available on record.

6. Learned counsel for the applicant has primarily pressed the instant bail application on the ground of statutory delay, contending that the applicant has remained behind bars for more than three years and, despite such prolonged incarceration, the trial has not made any meaningful progress. He further contended that the delay in the proceedings is entirely attributable to the complainant side, as the complainant has repeatedly failed to produce his witnesses before the learned trial Court and has been seeking frequent adjournments, thereby unnecessarily protracting the trial.

7. It appears from the record that the alleged incident took place on 05.02.2023 and the instant FIR was lodged on 06.02.2023. On the very same day, the present applicant/accused was arrested by the police in connection with the alleged offence and, since then, he has remained in judicial custody. It further transpires that out of a total of 18 witnesses cited by the prosecution, only three witnesses have so far been examined by the learned trial Court. On the last date of hearing, during the course of arguments, a controversy arose wherein the learned counsel for the applicant contended that the delay in the trial was attributable to the complainant side, whereas the complainant asserted that such delay had been caused by the applicant's side. In order to resolve the said controversy, this Court deemed it appropriate to call for a fresh progress report from the learned trial Court. The report has since been

received and taken on record. The same reflects that the complainant side sought as many as 12 adjournments, whereas the applicant sought only one adjournment, while several other adjournments occurred due to various reasons, including strike/work suspension by the Karachi Bar Association (KBA) and other unavoidable circumstances. The report further reveals that on 06.06.2024, an amended charge against the accused persons was framed at Ex.2; however, despite the lapse of more than one and a half years thereafter, only three out of the total 18 witnesses have been examined, which clearly demonstrates the extremely slow and unsatisfactory progress of the trial.

8. The object behind the recognition of the right to be released on bail on the ground of statutory delay, subject to fulfilment of the conditions prescribed under the third and fourth provisos to Section 497(1) of the Cr.P.C., is to ensure that criminal trials are not unnecessarily delayed and that the prosecution is not permitted to prolong the incarceration or hardship of an accused awaiting trial. The right of an accused to seek bail on the ground of statutory delay cannot be defeated except on the grounds explicitly provided under the third and fourth provisos to Section 497(1) of the Cr.P.C. An accused becomes entitled to bail as of right upon the expiry of the statutory period expressly stipulated in clauses (a) and (b), as the case may be, where the trial has not concluded within such period. The accrual of such right is manifest from the language employed in the third proviso. This right can only be defeated if the prosecution is able to demonstrate that the delay in the trial was attributable to an act or omission of the accused or of a person acting on his behalf. If the prosecution succeeds in establishing, to the satisfaction of the Court, that the accused was responsible for the delay, then such right stands forfeited.

9. It has been consistently held by the Honourable Supreme Court that the right recognized under the third proviso to Section 497(1) of the Cr.P.C. cannot be denied to

an accused on the basis of the discretionary powers of the Court in granting bail. The said right has not been left to the discretion of the Court; rather, its accrual is subject only to the fulfillment of the conditions enumerated in the third proviso to Section 497(1) of the Cr.P.C. Furthermore, while determining the extent of delay attributable to the accused, the Court is required to consider whether the progress or conclusion of the trial was, in any manner, delayed due to any act or omission on the part of the accused. While assessing such delay, the cumulative effect on the disposal of the case must be taken into account, and the determination cannot be made merely on the basis of mathematical calculations by excluding those dates on which adjournments were sought by the accused or his counsel. The principal factor for consideration remains the attendance and production of prosecution witnesses and whether, despite the case having become ripe for the recording of evidence, the delay was occasioned by the defence. Even the recording of the statement of the last witness would not defeat the right recognized under the third proviso, and it would be unreasonable to conclude, in such circumstances, that the trial has been completed.

10. Now the question that arises for determination before this Court is whether a right has accrued in favour of the applicant/accused to be released on bail on account of delay in the conclusion of the trial, as contemplated under the third proviso to Section 497(1) of the Cr.P.C. It is not disputed that the period of two years specified in the third proviso to Section 497(1) of the Cr.P.C. has already elapsed, and thus this essential condition stands satisfied. It is further not disputed that, despite the applicant/accused having remained in continuous incarceration for more than two years, the trial has not yet concluded. The delay in the conclusion of the trial is not attributable to the applicant/accused or his counsel; rather, the same has occurred due to the complainant and his witnesses.

11. From the perusal of the progress report, it transpires that the case was fixed for the first time on 30.01.2024 for the purpose of framing of charge; however, the matter was adjourned repeatedly for the said purpose. Subsequently, the learned ADPP for the State moved an application seeking amalgamation of the trials of the accused persons, which was allowed by the learned trial Court. Thereafter, the evidence of the complainant was recorded on 16.04.2025, whereas his further examination-in-chief was deferred at the request of the learned DDPP in order to produce the case property and to supply a USB containing CCTV footages to the learned counsel for the accused. On this sole ground, the matter was adjourned from time to time. The record thus reflects that the applicant/accused was not at fault; nevertheless, he has been compelled to suffer the hardship of incarceration for more than three years.

12. The legislature has expressly confined the delay contemplated under the third proviso to Section 497(1) of the Cr.P.C. to an act or omission on the part of the “accused” or “any person acting on his behalf.” Any delay caused by the complainant or by a co-accused cannot be attributed to the present applicant/accused, as no act or omission on his part, nor on the part of any person acting on his behalf, has been shown on record. In an identical situation, the Honourable Supreme Court of Pakistan has been pleased to grant bail to the accused. Reliance is placed in the case of *Shakeel Shah v. The State* (2022 SCMR 1), *Ali Akbar v. The State* (2020 SCMR 1225), *Nadeem Samson v. The State* (PLD 2022 Supreme Court 112), *Rohan Ahmed v. The State* (PLD 2024 Supreme Court 492), and in unreported case *CrI. Petition No.166-K/2018 [Re. Fazal Moula Vs. Regional Director Anti-Narcotic Force, Karachi]*: the bail was granted to the accused on the ground that the Petitioner was arrested on 10.06.2014 and he is behind the bars since then

and inspite of efforts made by the trial Court, the prosecution has failed to produce his witnesses.

13. Further, I am of the considered view that during the span of three years, only three prosecution witnesses have been examined, which clearly reflects the extremely slow progress of the trial. Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees the right to a fair trial and due process, which necessarily encompasses the right to an expeditious trial. This right must be meaningfully enforced and fully applied so as to protect an under-trial prisoner from suffering prolonged incarceration during the pendency of his trial through no fault attributable to him. In the case of *Imtiaz Ahmed vs. The State through Special Prosecutor ANF*, the Honourable Supreme Court of Pakistan was pleased to grant bail to the accused on the ground that the right to a speedy trial is a fundamental right of an accused, universally acknowledged in criminal jurisprudence. It would, therefore, be advantageous to reproduce the relevant paragraph hereunder:

“17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial”

14. In light of the principles discussed hereinabove, it is evident that a right has accrued in favour of the accused under the third proviso to Section 497(1) of the Cr.P.C. to be

released on bail, as the requisite conditions stand fulfilled. The prosecution has failed to satisfy this Court that the delay in the conclusion of the trial is attributable to the applicant/accused, nor has it been demonstrated that the mischief contemplated under the fourth proviso to Section 497(1) of the Cr.P.C. is attracted in the present case.

15. In view of the above discussion and taking guidance from the above cited cases, learned counsel for the applicant has made out a case for grant of post-arrest bail under the third proviso of Section 497 (1) of the Cr.P.C. Accordingly, the instant bail application is **allowed**. Applicant/accused named above is granted post-arrest bail subject to his furnishing two solvent sureties equivalent to Rs.500,000/- (Rupees five lac only) **each** and PR bond in the like amount to the satisfaction of the learned trial Court.

16. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Kamran/PS