

HIGH COURT OF SINDH, CIRCUIT HYDERABAD

Present:

Mr.Justice Abdul Mobeen Lakho

Mr.Justice Zulfiqar Ali Sangi

Crl. Bail Application No. D-205 of 2026

Applicant : Saleem Ahmed Shaikh s/o Ahmed Jamaluddin
Through Mr.Farooq H. Naek, Advocate along
with Mr.Taimoor Ali Mangrio, Advocate

The State : Through Ms.Shahida Ghani, Special Prosecutor

Dates of hearing : **04.08.2026 & 06.08.2026**

Date of short order: **06.08.2026**

Date of reasons : **.08.2026**

ORDER

ABDUL MOBEEN LAKHO, J:- Through the instant Criminal Bail Application, the applicant/accused Saleem Ahmed Shaikh seeks the concession of post-arrest bail on the ground of statutory delay and hardship in Reference No.03-A of 2021 (The State v. Munawar Ali Bozdar and others) under Sections 18(g) r/w Sections 16(e) and 24(b) of the National Accountability Ordinance, 1999. His earlier bail plea for the same relief has been declined vide Order 07.05.2026, by the learned Accountability Court-I, Hyderabad.

2. Briefly stated, FIR No.GO-04/2020 was lodged by the Anti-Corruption Establishment, Sindh, concerning alleged misappropriation and embezzlement of public funds in the execution of flood-fighting and emergent works relating to RBOD-II Project. Subsequently, upon transfer of jurisdiction to NAB, investigation culminated in Reference No.3-A of 2021 before the Accountability Court. The prosecution case broadly alleges that officers/officials of RBOD-II and certain contractors, acting in collusion, processed and obtained payments on account of alleged flood-fighting works despite there being no actual execution of such works, thereby causing substantial loss to the

national exchequer. The applicant was arrayed as accused No.17 in the Reference. The allegation attributed to him is that while serving as Assistant Executive Engineer (AXEN), RBOD Sub-Division-III, he allegedly signed and recommended two bills amounting to Rs.13,932,800/- in favour of co-accused Abdul Ghaffar Soomro in respect of purported flood-fighting/emergent works despite knowledge that no such works had been carried out. Charge was framed against the applicant and other accused persons on 30.03.2024, to which the applicant pleaded not guilty and claimed trial.

3. The applicant's pre-arrest bail remained operative for a considerable period but was ultimately dismissed on 08.02.2025, whereafter he was taken into custody. Subsequent attempts to secure post-arrest bail before the trial Court and superior Courts did not succeed. Eventually, after withdrawal of his bail application before the Supreme Court with permission to seek bail on the statutory ground of delay, the applicant approached the learned Accountability Court, which dismissed his application vide order dated 07.05.2026, giving rise to the present bail application.

4. Learned counsel for the applicant, while candidly confining his case to the solitary ground of statutory delay envisaged under the third proviso to Section 497(1), Cr.P.C., submitted that the applicant has remained continuously incarcerated since 08.02.2025 and has thus undergone detention far exceeding the statutory period of one year, whereas the trial is still far from culmination. He contended that the alleged offences do not entail capital punishment, therefore, once the prescribed period of detention has expired without conclusion of trial, the applicant becomes entitled to the concession of bail unless the delay is demonstrably attributable to his own conduct. It was forcefully argued that the learned trial Court fell into patent error while attributing the delay to the defence in general without drawing a

distinction between the present applicant and other co-accused persons. Learned counsel submitted that not a single adjournment was ever sought by the present applicant or on his behalf after his arrest, nor was any prosecution witness prevented from being examined due to any act or omission attributable to him. According to the learned counsel, if any adjournments were sought by other co-accused persons or their respective counsel, the same could not legally be fastened upon the present applicant so as to deprive him of the statutory protection afforded by law. Learned counsel further contended that the case diaries would reveal that numerous adjournments were sought on behalf of the prosecution on account of non-availability or absence of prosecution witnesses. He submitted that approximately thirteen adjournments were occasioned due to the prosecution's inability to produce its witnesses and therefore, a substantial part of the delay is attributable to the prosecution itself and despite the lapse of a considerable period and the citation of a large number of prosecution witnesses, only a few witnesses have so far been examined, demonstrating that the conclusion of trial is not likely within the foreseeable future. Learned counsel maintained that the right flowing from the third proviso to Section 497(1) Cr.P.C. is an individual right available to each accused separately and his entitlement is to be examined on the basis of his own conduct. Lastly, he contended that since the applicant has remained in custody beyond the statutory period and no part of the delay can be attributed to him personally, he is fully entitled to the concession of post-arrest bail. In support of his submissions, he has placed reliance upon the case law reported as **2015 SCMR 1092, unreported Order dated 02.02.2022 passed in C.P. No.D-7103/2021, 2022 SCMR 1, 2022 P.Cr.L.J. 883, 1998 SCMR 190, 2025 YLR 622, 2019 YLR 2357, PLD 1997 Karachi 172, 2024 SCMR 1543, 2016**

SCMR 18, PLD 2020 Lahore 205, 2022 YLR 2046, 2001 SCMR 1040, PLD 2017 SC 147, 2019 P.Cr.L.J. 370 and 2002 SCMR 1478.

5. Conversely, learned Special Prosecutor, NAB, opposed the application and submitted that the allegations against the applicant arise out of a massive corruption scam involving huge loss to the national exchequer, therefore, the matter is of a serious nature. She argued that the prosecution has been diligently pursuing the trial and evidence is being recorded before the learned Accountability Court. However, learned Special Prosecutor fairly conceded that the present applicant/accused has not personally sought any adjournment. She nevertheless submitted that the proceedings in the Reference involve a large number of accused persons represented through different counsel and on several occasions, adjournments were sought by co-accused persons or cross-examination of prosecution witnesses was reserved at the request of defence counsel appearing for other accused. According to her, such adjournments inevitably affected the overall progress of the trial. She further conceded that on certain dates the prosecution witnesses remained absent and adjournments were necessitated on that score; however, she maintained that the mere passage of time or completion of the statutory period does not automatically entitle an accused to bail where the Court, in the overall facts and circumstances of the case, finds justifiable reasons for the delayed progress of the trial. She, therefore, contended that notwithstanding the fact that no adjournment had been sought by the present applicant himself, the nature of the allegations, the complexity of the Reference and the overall circumstances of the case disentitle him from the extraordinary concession of post-arrest bail and as such, the application merits dismissal.

6. We have heard the learned counsel for the applicant/accused and learned Special Prosecutor for NAB as well as perused material

available on record including case law relied upon by the learned counsel for the applicant.

7. Learned counsel for the applicant has consciously restricted his claim to the statutory ground embodied in the third proviso to Section 497(1) Cr.P.C. and has not pressed the matter on merits. Therefore, the controversy requiring determination is confined to whether the applicant has undergone the statutory period of detention and whether the delay in conclusion of trial is attributable to his own conduct.

8. The admitted position emerging from the record is that the applicant's pre-arrest bail was dismissed on 08.02.2025 and since then he has remained continuously behind bars. As such, he has undergone incarceration well beyond the statutory period of one year contemplated under the third proviso to Section 497(1), Cr.P.C. It is equally undisputed that the offence attributed to him is not punishable with death. Consequently, the pivotal question is whether the delay in conclusion of trial can be attributed to the present applicant.

9. Before examining the legal position, it would be advantageous to scrutinize the actual progress of trial from the diary sheets placed on record. A careful perusal thereof reveals that after the arrest of the applicant on 08.02.2025, the proceedings suffered repeated interruptions for reasons not exclusively attributable to him. The diary dated 25.02.2025 reflects that the Investigating Officer remained absent and his absence was condoned through an application moved by the prosecution. On the same date, the matter could not substantially proceed. Likewise, on 22.03.2025, no prosecution witness was present despite summons having been issued, compelling the Court to repeat summons for the prosecution witnesses. Again on 08.04.2025, the Investigating Officer remained absent and an application for condonation of absence was moved through the learned Prosecutor, while summons to prosecution witnesses had to be repeated. On

26.04.2025, the Presiding Officer was on casual leave. Learned Prosecutor was not in attendance, the Investigating Officer remained absent and although PW Jalil Ahmed Soomro was present, the proceedings could not effectively move forward. On 14.05.2025, PW Jalil Ahmed Soomro was absent and summons were once again directed to be issued. On 29.05.2025, although PW Jalil Ahmed Soomro was present, the learned Prosecutor himself filed an adjournment application and the matter was deferred. More significantly, on 16.06.2025, despite the presence of PW Jalil Ahmed Soomro, the learned Prosecutor sought adjournment on the specific ground of non-availability of the original record and consequently the evidence could not proceed further. On 25.08.2025, PW-02 Jalil Ahmed Soomro was partly examined and his further cross-examination was reserved upon an application filed by learned defence counsel. However, nothing on the record suggests that such request emanated from the present applicant individually. On 16.09.2025, further cross-examination of PW-02 could not take place because certain learned counsel appearing for co-accused sought adjournment on the ground that their senior counsel were out of station. The most striking feature of the case, however, is the institutional delay reflected from the record. The diary sheets dated 16.10.2025, 22.11.2025, 18.12.2025, 14.01.2026, 11.02.2026, 25.03.2026, 09.04.2026, 22.04.2026, 06.05.2026, 21.05.2026 and 04.06.2026 consistently record that the Accountability Court was lying vacant and proceedings were being taken up by an Incharge Judge or Link Judge. Several dates were consumed without meaningful progress in evidence on account of this institutional circumstance.

10. Furthermore, on 06.05.2026, PW Muhammad Kamran remained absent and the prosecution reported that he had been transferred from NAB Hyderabad to NAB Lahore, whereafter fresh summons were ordered. Again on 21.05.2026, the said witness remained absent and an

application for condonation of his absence was moved through the learned Special Prosecutor. Even on 04.06.2026, PW-Muhammad Kamran was absent and the matter had to be adjourned once more.

11. The cumulative effect of the above proceedings demonstrates that a substantial portion of the delay occurred either because prosecution witnesses were unavailable, the Investigating Officer remained absent, the prosecution sought time owing to non-availability of original record, or because the Court itself remained vacant for a considerable period. These factors were wholly beyond the control of the present applicant.

12. During the course of arguments, learned counsel for the applicant further pointed out that even presently the Accountability Court at Hyderabad is lying vacant and there is no immediate prospect of regular trial proceedings recommencing. Learned Special Prosecutor for NAB, fairly did not dispute the factual position. Needless to observe that delay caused by institutional constraints or vacancy of the Court cannot legally be attributed to an under-trial prisoner seeking the benefit of the third proviso to Section 497(1) Cr.P.C.

13. Another aspect of considerable importance is that learned Special Prosecutor candidly conceded during arguments that the present applicant has not sought any independent adjournment after his arrest on 08.02.2025. Therefore, even if on certain occasions adjournments were requested by counsel appearing for co-accused persons, the same cannot automatically be fastened upon the present applicant so as to deprive him of the statutory protection conferred by law. In this regard, valuable guidance is available from the unreported judgment passed by a Division Bench of this Court in **C.P. No.D-7103 of 2021 (Abdul Latif v. Chairman, NAB & others)**, decided on 02.02.2022, wherein it was categorically held that adjournments sought by co-accused cannot be attributed to an accused seeking bail

on the ground of hardship and delay and that the entitlement of each accused has to be examined on the basis of his individual conduct. The same principle has been reaffirmed by the Honourable Supreme Court of Pakistan in **2015 SCMR 1092 (That National Accountability Bureau (NAB), Lahore and others v. Himesh Khan)**, wherein it was held that delay occasioned by co-accused is not to be counted against an accused claiming benefit under the third proviso to Section 497(1), Cr.P.C.

14. The record further reveals that charge was framed on 30.03.2024, yet despite passage of considerable time only a handful of prosecution witnesses have been examined out of the total thirty-nine witnesses cited by the prosecution. Even amongst the witnesses examined, their evidence could not be concluded on one date and cross-examination remained pending for extended periods. Consequently, there appears no realistic likelihood of conclusion of trial within the foreseeable future.

15. Viewed cumulatively, the following circumstances emerge from the record: the applicant has completed the statutory period of detention; the offence attributed to him is not punishable with death; no adjournment has been shown to have been sought by the applicant after his incarceration; repeated delays occurred due to absence of prosecution witnesses and absence of the Investigating Officer; the Accountability Court remained vacant for a substantial period and proceedings were conducted through Incharge/Link Judges and only a few witnesses out of thirty-nine cited witnesses have so far been examined.

16. In these circumstances, I am unable to persuade myself to agree with the conclusion drawn by the learned trial Court that the delay in conclusion of trial is attributable to the present applicant. The record, when viewed as a whole, does not support such an inference.

17. Since all the essential ingredients contemplated by the third proviso to Section 497(1), Cr.P.C. stand satisfied, the applicant has

successfully made out a case for the concession of post-arrest bail on the ground of statutory delay and hardship.

18. For the foregoing reasons, the instant Criminal Bail Application is **allowed**. The applicant/accused Saleem Ahmed Shaikh is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court. The applicant shall regularly attend the trial proceedings and shall not, directly or indirectly, hamper the progress of the trial. In case of misuse of the concession of bail or deliberate obstruction in expeditious disposal of the Reference, the prosecution shall be at liberty to seek appropriate remedy in accordance with law.

19. The observations made herein are purely tentative in nature and confined to the determination of the present bail petition. They shall neither constitute an expression on the merits of the case nor influence the learned trial Court while deciding the Reference.

20. The above are the reasons of our short order dated 06.08.2026.

JUDGE

JUDGE

AHSANK.ABRO