

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1441 of 2025

Applicant : Javed Ahmed Khan son of Bashir Ahmed Khan through Mr. Mola Bux Bhutto, Advocate

The State : Through Ms. Seema Zaidi, Additional Prosecutor General, Sindh

Date of hearing : 22.10.2025

Date of decision : 22.10.2025

ORDER

Jan Ali Junejo, J.- This Criminal Bail Application has been filed under Section 497 of the Code of Criminal Procedure, 1898, by the Applicant, Javed Ahmed Khan S/o. Bashir Ahmed Khan, seeking post-arrest bail in case FIR No.837 of 2022, registered under Section 302 of the Pakistan Penal Code, 1860, at Police Station Ferozabad, Karachi East. The Applicant's previous bail application was dismissed by the learned XIIIth Additional Sessions Judge, Karachi East, vide a well-reasoned order dated 28.12.2024.

2. The prosecution case, as emanates from the FIR lodged by complainant Sultan Nawaz Khan, is that on 04.11.2022, his cousin, the deceased Muhammad Fakhr-ul-Islam, was performing his duty as a security guard at Tariq Road, Karachi. An altercation ensued between the deceased and the Applicant, who was his colleague, over a trivial matter. During this altercation, the Applicant, allegedly using his own weapon, shot and fatally injured the deceased. The victim was shifted to Jinnah Postgraduate Medical Centre (JPMC) where he succumbed to his injuries. The FIR nominates the Applicant by name and specifically attributes the act of murder to him.

3. Mr. Mola Bux Bhutto, learned counsel for the Applicant, has fervently argued that the Applicant is innocent and has been falsely implicated in the case. He contends that the complainant is not an eye-witness to the incident and that the prosecution witnesses are "managed". He submits that the Applicant, being approximately 70 years of age, is

infirm and suffering from physical ailments, enduring severe hardship in prison. He further argues that the case lacks motive, which creates a serious doubt in the prosecution's version. He maintains that the investigation is defective, as the available CCTV footage was not sent for forensic analysis. He asserts that the Applicant has been in continuous custody since 14.11.2022 and that the trial has not concluded, thereby entitling him to the statutory concession of bail under Section 497, Cr.P.C., due to protracted delay in trial. He further contends that the Applicant is not a habitual offender, has no previous criminal record, and is willing to furnish solvent sureties to the satisfaction of the Court. Lastly, the learned counsel prays that, in view of the above circumstances, the Applicant may be granted bail.

4. Ms. Seema Zaidi, learned Additional Prosecutor General, has vehemently opposed the grant of bail. She argues that the Applicant is specifically nominated in the FIR as the principal accused. She contends that there is direct ocular evidence available against the Applicant connecting him with the commission of the offence. She submits that the weapon of offence, a pistol, was recovered at the instance of the Applicant from his house. She further argues that statutory delay in the conclusion of trial does not by itself furnish a valid ground for grant of bail in a heinous offence such as murder, particularly when the delay has been caused due to the conduct of the Applicant himself. Lastly, the learned A.P.G. prays for dismissal of the bail application.

5. I have considered the arguments advanced by the learned counsel for the Applicant and the learned A.P.G. for the State, and have perused the material available on record with their able assistance. The record reflects that the Applicant is prima facie connected with the alleged offence through direct ocular evidence as well as recovery of the weapon of offence at his instance. The medical evidence further corroborates the prosecution's version, lending support to the eyewitness account. The trial court record, particularly the order dated 28.12.2024, reveals that after framing of charge on 17.05.2023, the prosecution witnesses, including the complainant, appeared on several dates, but their evidence could not be recorded owing to the repeated absence of the Applicant's counsel. The learned trial judge, therefore, rightly observed that the delay was "designed" by the accused side. It is a well-settled principle of law that an accused cannot be allowed to take advantage of a delay caused by his own conduct; hence, the plea of statutory delay stands negated. It is also a settled proposition that the benefit of statutory delay under the proviso to

Section 497, Cr.P.C. cannot be invoked where such delay is deliberate or occasioned by the accused. Moreover, bail in offences punishable with capital punishment is to be granted only where the prosecution evidence appears doubtful, tainted, or fabricated, which is not the case here. In view of the foregoing, the case squarely falls within the prohibitory clause of Section 497(1), Cr.P.C., and no exceptional circumstances have been shown to justify the grant of bail under subsection (2) thereof. In similar circumstances, the Honourable Supreme Court of Pakistan, in the case of **Major (R) Muhammad Iftikhar Khan v. The State and another (2022 SCMR 885)**, was pleased to hold that: *“This is settled that the bail cannot be claimed as a matter of right even if delay is not attributable to the accused. However, the same is not the case here. The report of the learned Trial Court clearly shows that the trial is being concluded by not only taking the matter almost on day to day basis but deciding the applications filed by the parties on almost daily basis. During the course of proceedings before this Court, it transpired that the prosecution evidence is almost complete barring two Investigating Officers and the Doctor, who are yet to be examined. As bulk of the prosecution evidence including the ocular account has been recorded, any observation by this Court at this stage would certainly prejudice the case of either of the parties, which is against the numerous precedents of this court. When it is established from the record that the delay has been occasioned due to number of applications filed by the applicant before lower courts coupled with the fact that only three witnesses are left to be examined, we do not feel it appropriate to give any finding at this stage. Consequently, this application having no merit is dismissed. However, in the interest of safe administration of justice, the Trial Court is directed to conclude the trial expeditiously”*.

6. The Applicant's claim of being 70 years old and infirm is not substantiated by any credible medical evidence or certificate from the prison authorities. Mere advancement of age, without proof of a life-threatening ailment or a condition that makes detention intolerable, is not a sufficient ground for bail in a capital offence. The learned trial judge also observed that the Applicant appeared to be “quite fit” during court proceedings. This ground, being unsubstantiated, is also rejected. No material has been placed on record to suggest that the Applicant has been implicated due to any ulterior motive, mala fides, or previous enmity. The absence of an apparent motive, in the face of direct allegations and recovery, does not by itself render the prosecution case doubtful at this stage.

7. In view of the foregoing discussion, the following conclusions are inescapable:

- a) *A prima facie case is made out against the Applicant for a heinous offence falling under the prohibitory clause of Section 497(1), Cr.P.C.*
- b) *The delay in the trial is directly attributable to the conduct of the Applicant, and he cannot claim its benefit.*
- c) *The plea of infirmity is not supported by any medical evidence.*
- d) *No grounds for "further inquiry" under Section 497(2), Cr.P.C., are made out.*

7. For the reasons delineated hereinabove, this Criminal Bail Application filed on behalf of the Applicant is devoid of merit and is accordingly dismissed. However, while dismissing this application, this Court deems it appropriate to direct the learned trial Court to proceed with the trial expeditiously and to make every possible effort to conclude the same within a period of four (04) months from the date of receipt of this order, ensuring that no unnecessary adjournments are granted to either side. The office is directed to transmit a copy of this order to the learned trial Court for strict compliance. These are the detailed reasons for the short order dated 22.10.2025.

JUDGE

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