

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1st Criminal Bail Application No.S-92 of 2025

Applicant : Qalander Bux Bugti,
Through Mr. Athar Abbas Solangi, Advocate

Complainant : Through Mr. Habibullah Ghouri, Advocate

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar, DPG
Sindh

Date of hearing : 30.06.2025

Date of order : 09.07.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Through this application, applicant Qalandar Bux seeks post arrest bail in a case bearing Crime No.35 of 2018 of P.S Taluka, for offence under Sections 302, 324, 337-H(ii), 148, 149 PPC after dismissal of his bail plea on statutory delay vide order dated 22.01.2025.

2. Learned counsel for the applicant mainly contended that the applicant has been in custody since his arrest on 05.04.2018, and despite the lapse of considerable time, the trial has not yet been concluded. By referring to the case diaries produced, learned counsel submits that the delay in proceedings is not attributable to the applicant.

3. Learned DPG vehemently opposed the bail application, echoing the arguments of the complainant's counsel regarding the defense's role in causing delay. He submitted that all the material witnesses have already been examined, except two witnesses including investigating officer and a mashir. He relied upon the case laws cited at 2011 SCMR 1332, 2010 SCMR 144, and 2002 SCMR 138.

4. Upon careful perusal of the case diaries and considering the arguments advanced by learned counsels for both sides, this Court finds the following relevant entries pertinent to the issue of statutory delay, specifically concerning the first proviso to Section 497 Cr.P.C.

5. The Supreme Court, in the case of Shakeel Shah versus State and others (2022 SCMR 1), elaborately explained the concept of bail on statutory grounds and ruled that it is subject to two exceptions: (a) delay in conclusion of the trial if occasioned by an act or omission of the accused or by any other person acting on his behalf; and (b) the accused, a hardened, desperate or dangerous criminal, in the opinion of the Court.

6. Now proceed to examine the instant case on the touchstone of Shakeel Shah case (supra) to determine whether it falls in any of the exceptions laid down therein, particularly regarding delay in the conclusion of the trial occasioned by an act or omission of the accused or by any other person acting on his behalf.

7. The Shakeel Shah case (supra) expounded this exception, explaining it in the following terms:

"The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial."

Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.¹ The statutory right to be released on bail flows from the constitutional right to liberty and fair trial under Articles 9 and 10A of the Constitution. Hence, the provisions of the third and fourth provisos to section 497(1), Cr.P.C must be examined through the constitutional lens and fashioned in a manner that is progressive and expansive of the rights of an accused, who is still under trial and has the presumption of innocence in his favour. To convince the court for denying bail to the accused, the prosecution must show, on the basis of the record, that there is a concerted effort on the part of the accused or his counsel to delay the conclusion of the trial by seeking adjournments without sufficient cause on crucial hearings and/or by making frivolous miscellaneous applications."

8. The applicant's argument for statutory bail hinges on the contention that the trial has not concluded within the stipulated time and that there is no act or omission on his part causing delay. However, a close examination of the case diaries, when viewed through the lens of the Shakeel Shah judgment, reveals a pattern of conduct by the defense counsel that appears to fall within the exception.

- August 27, 2018: The case was fixed for framing of the charge; however, accused submitted adjournment application, which was allowed.
- October 12 2018: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- November 09, 2018: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- November 24, 2018: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- December 10, 2018: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- January 10, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- January 25, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- February 08, 2019: The case was fixed for framing of charge. Accused submitted adjournment application.

- February 25, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- March 18, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- April 18, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- April 24, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- May 07, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- May 22, 2019: The case was fixed for framing of charge. Defense counsel called absent. Accused submitted adjournment application.
- June 03, 2019: The case was fixed for framing of charge. Defense counsel of co-accused Anwar called absent. Accused submitted adjournment application.
- July 16, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- August 07, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- August 23, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- September 06, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- September 20, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- October 22, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- November 12, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel submitted adjournment application.
- September 29, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- December 11, 2019: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- January 23, 2020: The case was fixed for evidence. Prosecution witnesses were present. Case was adjourned at the request of defense counsel.
- February 10, 2020: The case was fixed for evidence. Prosecution witnesses were present. Case was adjourned at the request of defense counsel.
- February 27, 2020: The case was fixed for evidence. Prosecution witnesses were present. Case was adjourned at the request of defense counsel.
- March 16, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.

- August 10, 2020: The case was fixed for evidence. Prosecution witnesses were present. Case was adjourned at the request of complainant that his transfer application is pending before High Court.
- August 24, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent. Case adjourned as the transfer application was pending before High Court.
- September 14, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent. Case adjourned as the transfer application was pending before High Court.
- September 26, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent. Case adjourned on application by complainant with affidavit that the transfer application was pending before High Court.
- October 09, 2020: The case was fixed for evidence. Defense counsel called absent. Case adjourned at the request of complainant that his transfer application was pending before High Court.
- October 27, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent. Case adjourned at the request of complainant that his transfer application was pending before High Court.
- November 12, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent. Case adjourned at the request of complainant that his transfer application was pending before High Court.
- December 10, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application for re-scheduling the case due to Corona-19 infection suffered by learned counsel for the accused persons.
- December 23, 2020: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- January 08, 2021: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- January 22, 2021: The case was fixed for evidence. Complainant Muzaffar Ali, PW Shaukat Ali and PW/PC Noor Mustafa examined but their cross examination was reserved as defense counsel for accused Anwar @ Saeed called absent and his junior submitted adjournment application.
- February 09, 2021: The case was fixed for evidence. Prosecution witnesses were present. Case was adjourned at the request of defense counsel.
- February 25, 2021: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.

- April 01, 2021: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- April 14, 2021: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- April 19, 2021: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- May 05, 2021: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- May 27, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel for accused Qalandar Bux and Walidad called absent. Counsel for accused Saeed @ Anwar submitted adjournment application.
- July 27, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- August 30, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- September 03, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- September 30, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- October 18, 2021: The case was fixed for evidence/hearing on application of complainant. Defense counsel called absent.
- November 03, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- November 18, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his clerk submitted adjournment application.
- December 21, 2021: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- January 11, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- January 31, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present.

Defense counsel called absent and sent adjournment application through his clerk.

- February 21, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and sent adjournment application through his clerk.
- March 07, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- March 21, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- April 05, 2022: The case was fixed for evidence/hearing on application of complainant. Work was suspended due to strike of advocates.
- April 20, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- May 23, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- July 26, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- August 31, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- September 14, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- September 29, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and sent adjournment application through his clerk.
- October 17, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- October 31, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- November 14, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- November 29, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.

- December 14, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and sent adjournment application.
- December 29, 2022: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- January 10, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and adjournment application through his clerk.
- January 24, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- February 13, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- March 09, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- March 27, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent.
- June 06, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- July 04, 2023: The case was fixed for evidence/hearing on application of complainant. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- September 16, 2023: The case was fixed for evidence. Defense counsel called absent.
- October 02, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- October 07, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- October 12, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and sent adjournment application through his junior.
- October 25, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel for accused Qalander Bux and Walidad called absent.
- November 13, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel submitted adjournment application.
- November 27, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.

- December 19, 2023: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- February 06, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- March 07, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his associate submitted adjournment application.
- March 27, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his associate requested to adjourn the matter.
- April 18, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- April 30, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his associate submitted adjournment application.
- May 08, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- June 06, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- June 21, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- July 18, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- August 19, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- September 04, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- September 24, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his junior submitted adjournment application.
- October 08, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent.
- October 23, 2024: The case was fixed for evidence. Prosecution witnesses were present. Defense counsel called absent and his partner submitted adjournment application.

9. The case diaries referred above, read in light of the Shakeel Shah precedent, demonstrate that the delay cannot be solely attributed to the prosecution or the court. The actions of the defense counsel, represent a "concerted effort orchestrated by the accused" (through his counsel) to delay the timely conclusion of the trial on crucial hearings. These are not

merely "frivolous miscellaneous applications", but judicial challenges that, by their nature, paused the trial proceedings.

10. Without delving into the merits of the case, which might prejudice the rights of either party and solely on the ground of statutory delay, this Court finds that the exception to the first proviso of Section 497(1) Cr.P.C, as elaborated in the Shakeel Shah case (supra), is applicable. The delay in the conclusion of the trial cannot be attributed solely to the prosecution or the court, as there are clear instances of acts and omissions on the part of the learned advocate for the applicant/accused, including remaining absent and seeking adjournments on crucial hearings, which has resulted in the delay.

11. In the circumstances, applicant has failed to make out case for bail on statutory delay. Instant bail application is dismissed. However, the learned trial Court is directed to conclude the trial within two (02) months from the date of receipt of this order. The SSP Larkana is also directed to ensure the appearance of the I.O and Mashir before the trial Court on the dates fixed so as to avoid any further delay in proceedings. Besides, in case of failure by trial court in conclusion of trial within stipulated period, learned counsel would be at liberty to repeat bail application before trial Court on statutory delay, which will be decided in accordance with the law.

JUDGE