

## IN THE HIGH COURT OF SINDH AT KARACHI

Converted into Criminal Misc. Application No. 211 of 2025

Criminal Bail Application No. 2816 of 2024

Present:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

**Applicant** : Syed Sadiq Ali s/o Syed Sabir Ali, through Mr. Syed Khurram Nizam Advocate.

**Complainant** : Abdul Baseer Pasha, through M/s. Asim Iqbal & Syeda Khizra Fatima Advocates.

**Account Holder** : Pervaiz Akhter, through Mr. Sarosh Jamil, Advocate.

**Respondent** : The State, through Mr. Pir Riaz Muhammad Shah, D.A.G.

**Date of hearing** : **27.02.2025**

**Date of order** : **27.02.2025**

### ORDER

**TASNEEM SULTANA, J.-** Having been rejected his earlier application for grant of post-arrest bail on statutory ground by the Special Court (Offences in Banks) Sindh at Karachi, vide order dated 28.11.2024, passed in Case No. 40 of 2023, arisen out of FIR No. 371 of 2023 registered at Police Station Gizri, Karachi (*FIA, CBC, Karachi*) under sections 408, 409, 420, 468, 471, 477-A, 109/34, P.P.C., applicant, Syed Sadiq Ali s/o Syed Sabir Ali, through Crl. Bail Application No. 2816 of 2024 has sought the same relief from this Court.

2. Brief facts of the case, as narrated in the FIR lodged on the complaint of Abdul Baseer Pasha, Head Fraud Risk Management Unit, Habib Metro Bank (the “Bank”), are that one Pervaiz Akhter, who was maintaining two bank accounts in Khayaban-e-Sehar Branch of the Bank with the title of *M/s Super Touch Private Limited* and *Bilquis Welfare Foundation*, submitted an application to the Bank that from his said accounts Branch Manager Syed Sadiq Ali and an employee of his company, namely, Ahmed Yaqoob in

collusion with each other, misappropriated Rs.10, 80,00,000/- by way of fraud by making fake signatures on various cheques.

3. Learned counsel for the applicant has contended that the FIR was recorded and the applicant was arrested on 19.10.2023 and since then he has been confining in judicial custody; that the interim and final charge-sheets were submitted by the Investigating Officer in Trial Court on 30.11.2023 and 21.08.2024, respectively; that the Charge was framed against the applicant on 23.12.2024 and, thereafter, only examination-in-chief of the complainant has partly been recorded; that the bail application of the applicant on merit was dismissed by the Trial Court on 02.01.2024; that the statutory period of one year has already elapsed while the delay to conclude the trial is not on the part of applicant or on any person acting on his behalf; that the applicant has sought relief under Section 497(1)(a), Cr. P.C, which statutory right is mandatory in nature and the same is not left to the discretion of the Court; that under section 5(6) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 (the “Ordinance”), there is no specific bar on grant of bail on statutory ground provided in section 497, Cr. P.C.; that the preamble of the Ordinance provides for speedy trial of offences committed in respect of Banks, therefore, applicant is entitled to bail on statutory ground.

4. Conversely, learned D.A.G, and learned counsel appearing on behalf of the complainant Bank and Account Holder have supported the impugned order by maintaining that Part (a) of the third proviso to section 497, Cr. P.C. relating to the statutory right to be released on bail is not available to applicant under the frame work of section 5(6) of the Ordinance, and no such facility has been extended by the legislature to the accused involved in offences in respect of Banks, hence, the applicant is not entitled for bail.

5. Heard, record perused.

6. There is no cavil to the proposition that Part (a) of the third proviso to section 497, Cr. P.C. gives the accused an independent right for grant of bail on the ground of statutory delay in conclusion of trial subject to certain conditions i.e. (i) that the delay in conclusion of trial had occasioned on account of an act or omission on the part of the accused or any person acting on his behalf; (ii) that the accused is a previously convicted offender for an offence punishable with death or imprisonment for life; (iii) that in the opinion of the Court, the accused is a hardened, desperate or dangerous criminal; and (iv) that the accused is involved in an act of terrorism punishable with death or imprisonment for life. If these conditions are not applicable to the case of an accused, he is entitled to the bail as a matter of right and since such right is not left to the discretion of the Court, it cannot be denied under the discretionary power of the Court.

7. The right of an accused to an expeditious and fair trial has been enshrined in the Constitution of Islamic Republic of Pakistan, 1973. The object of criminal law is to make accused face trial and not to punish him as under trial prisoner. The intention of law is that a criminal case must be disposed of without unnecessary delay. It will not be difficult to comprehend that inordinate delay in imparting justice is likely to cause erosion of public confidence in the judicial system on one hand, and on the other hand, it is bound to create a sense of helplessness and despair and fillings of frustration and anguish apart from adding to their woes and miseries. The accused cannot be deprived of the liberty without due process of law; if any delay occurs in trial due to the act of the court or prosecution, then the liberty of accused cannot be curtailed for the fault on the part of the court and prosecution.

8. In present case, it is an admitted position that the applicant was arrested on 19.10.2024 and since then he is behind the bars. The case diaries reveal that applicant cannot be hold responsible for the delay so occurred in the trial. On the contrary, I.O and Prosecution had taken considerable time for submission of interim and final report under Section 173, Cr. P.C, which is spanning over eight months. Thereafter, trial Court took almost four months for framing of charge; hence, the delay in conclusion of trial cannot be attributed to the applicant.

9. The Trial Court has rejected the bail plea of the applicant relying on the case of *Syed Raza Hussain Bukhari v. The State* and other (PLD 2022 SC743) and observing that *“the Court being constrained by the statutory framework of section 5(6) of the Ordinance lacks the jurisdiction to grant bail to the applicant/accused on statutory grounds.”*

10. The case of *Syed Raza Hussain Bukhari (supra)* is very exhaustive on the same point. The relevant portion is reproduced, as under: -

*“Thus, in appropriate cases, a High Court can grant bail on the ground of delay in conclusion of the trial, similar to that which is available under the third proviso to section 497(1), Cr.P.C., under its inherent powers under section 561-A, Cr.P.C. to secure the ends of justice or to prevent the abuse of the process of court as held in Khalid Farooq but going further, a High Court also enjoys constitutional jurisdiction under Article 199(1)(c) of the Constitution for the enforcement of fundamental rights. This constitutional jurisdiction of High Courts cannot be abridged by any sub-constitutional legislation. So, while section 5(6) of the Ordinance is binding on the Special Court, it is not so on a High Court which fashions its jurisdiction on the basis of the enforcement of the fundamental rights under the Constitution. Undue delay in the trial of the accused infringes his fundamental rights to liberty, fair trial and dignity under Articles 9, 10A and 14 of the Constitution, if the delay cannot be attributed to him.”*

11. In view of aforementioned dictum laid down by the Apex Court, we convert this Criminal Bail Application under section 497, Cr. P.C. into a Criminal Misc. Application under section 561-A, (*ibid*) and for the foregoing

facts and reasons, allow the same. The applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs. 3,30,40,000/= (*Rupees three crore, thirty lac and forty thousand only*) and P.R. bond in the like amount to the satisfaction of the trial Court.

12. Needless to mention here that if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

13. These are the reasons of our short order dated 27.02.2025.

J U D G E

J U D G E

Faheem/PA