

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 743 of 2025

Present:

Justice Zafar Ahmed Rajput
Justice Tasneem Sultana

Applicant	:	Fahad Muhammad Mohsin s/o Muhammad Mohsin, through Mr. Mian Haad A. M. Paggawala Advocate
Respondent	:	The State, through Mr. Khalique Ahmed, D.A.G.
Date of hearing	:	08.05.2025
Date of order	:	<u>08.05.2025</u>

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Fahad Muhammad Mohsin s/o Muhammad Mohsin seeks post-arrest bail in Crime No. 09/2013, registered under sections 409, 468, 471, 477-A, PPC. at P.S. F.I.A. Commercial Bank Circle (**CBC**), Karachi. His first post-arrest bail application, seeking bail on merit filed in Case No. 22 of 2013, was dismissed by the Special Court (Offences in Banks) Sindh at Karachi (**Trial Court**) vide order dated 25.01.2024; second bail application bearing No. 442 of 2024 was dismissed as not pressed by this Court, vide order dated 16.05.2024; third bail application was dismissed by the Trial Court, vide order dated 31.08.2024; fourth bail application bearing No. 2072 of 2024 was dismissed, as not pressed, by this Court vide order dated 30.09.2024. He then filed before the Trial Court fifth application seeking bail on the statutory ground of delay, which was also dismissed vide order dated 08.03.2025. Hence, he has maintained this Application for the grant of bail on the ground of statutory delay in conclusion of the Trial.

2. Brief facts, as stated in the FIR lodged on 30.05.2013 by complainant S.I.P. Abdul Rehman of F.I.A., C.B.C., Karachi, are that instant case is outcome of Enquiry No.60/2012, registered on the basis of a complaint made by Syed Muhammad Hasan, CSM (Customer Service Manager) ABL Ancholi Branch, Karachi against the applicant, who is Ex-CSM of said Branch, with the allegation

that, on 13-02-2012, he illegally transferred funds of Rs.1.6 million online from ABL Parking/Routing Account (*A/c for internal use*) to ABL Rising A/c No.01-255-255-0021-3 Title: Sameer Yousuf (*his nephew/minor*) maintained by Yousuf Muhammad Mohsin (*father of Sameer and elder brother of accused Fahad*) at ABL Aisha Manzil Branch, Karachi and withdrew said amount on same day through five cheques. The act of crediting the A/c of Sameer Yousuf by the applicant with huge amount of Rs.1.6 million is sheer breach of trust being vested in him by virtue of having domain over bank's property in the way of his business as banker; hence, he was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case with mala fide intention and ulterior motives; that the applicant is confined in judicial custody for last 16 months; that police submitted the charge-sheet after an inordinate delay of four months and eighteen days and till date prosecution has examined only one witness; that the delay in concluding the trial has not occasioned on the part of applicant or his counsel; hence he is entitled to bail on statutory ground of delay.

4. Conversely, learned DAG has opposed the instant applicant on the ground that under subsection (6) of section 5 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 (**Ordinance**), an accused person can only be released on bail if there appears that no grounds exist to believe that he has committed a Scheduled Offence and since the section 5 of the Ordinance does not provide any provision for grant of bail on ground of delay in trial, the applicant is not entitled for the bail on such ground.

5. Heard, record perused.

6. In order to appreciate the contentions of learned counsel for the applicant and DAG, we deem it appropriate to reproduce the relevant provision of section 497, Cr. P. C., as under:

497. When bail may be taken in case of non-bailable offence.

(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show-cause why he should not be so released.

Provided further that the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, direct that any person shall be released on bail—

- (a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or*
- (b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded.*

Provided further that the provisions of the third proviso to this subsection shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

- (2) -----*
- (3) -----*
- (4) -----*
- (5) -----*

(Emphasis supplied)

7. It appears from the perusal of the above provision of law that clause (a) of the third proviso to sub-section (1) of section 497, Cr. P.C. gives an independent right of bail to an accused of any offence not punishable with death, who has been

detained for such offence for a continuous period exceeding one year or, in case of a woman, exceeding six months on the ground of statutory delay in conclusion of trial, subject to certain conditions i.e. (i) that the delay in conclusion of trial has not 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 not 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 not a hardened, desperate or dangerous criminal and is not 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.

8. It is worth mentioning that the right of an accused to a fair and speedy trial is a fundamental right guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973. The primary aim of criminal law is to ensure that an accused is brought to trial to determine if he committed the crime —not to subject him to punishment during the trial stage. The spirit of the law demands that criminal cases be concluded without undue delay. Undoubtedly, prolonged delays in concluding a criminal case can undermine public trust in the judicial system. On one hand, it erodes confidence in the courts, and on the other, it leads to feelings of frustration, helplessness, and mental anguish for those awaiting justice, adding to their suffering. No individual should be deprived of liberty without due process of law. If delay in the trial arises due to the action or inaction of the court or prosecution, the accused cannot be made to suffer for their fault. In such cases, the continued detention of the accused is not justified.

9. In the instant case, it is an admitted position that the applicant/accused was arrested on 26.12.2023; as such, he is confined in judicial custody for last sixteen

months (*exceeding one year*). The Trial Court framed the charge against him on 13.05.2024; thereafter, twelve months have passed yet the trial could not be concluded. The delay in conclusion of trial has not occasioned on account of sole act or omission on the part of the applicant or his counsel. The alleged offence is punishable in maximum under section 409, PPC with imprisonment for life; hence, no convincing justification is available with prosecution to decline the relief of bail to applicant on the statutory ground.

10. As regards the contention of the learned DAG, we are of the view that section 5(6) of the Ordinance does not constitute a complete code for the grant of bail to persons accused of offences mentioned in the Schedule to the exclusion of all provisions in the Cr. P.C. relating to the same subject. Section 5(6) of the Ordinance does not completely oust the applicability of section 497 of the Cr. P.C. in respect of bails and though the rule of subsection (1) of section 497 with a slight change and the exception to the said rule as contained in the second proviso of the same subsection have been introduced in subsection (6) of section 5 of the Ordinance, which is couched in negative language, no express or implied ouster of the remaining provisions of section 497 of Cr. P.C. can be spelt out from subsection (6) of section 5 of the Ordinance. First proviso to section 497(1), Cr. P.C. is not available to the Special Court or the High Court when dealing with the bail of a person accused of a Scheduled Offence under the Ordinance. Third proviso to section 497(1), Cr. P.C. though provides an exception to the rule contained in section 497(1), Cr. P.C. it is founded on public policy, namely, that an accused shall not be made to suffer for long delay arising out of the commencement of his trial, 'unless the same has been occasioned by his own conduct, and assuming that the same is also not available, the possibility of its application through section 561-A, Cr. P.C. to prevent an abuse of the process of the Court or otherwise to secure ends of justice cannot be totally excluded in a fair case. Third proviso to section 497(1), Cr. P.C. being itself an exception to the

principle laid down in section 5(6) of the Ordinance would therefore be available to the High Court if third proviso to section 497(1), Cr. P.C. is treated as applicable. Whilst the provisions of first and third provisos to section 497(1), Cr. P.C. may be treated as not available to the Special Court or the High Court, such a situation would not apply to subsections (2), (3), (4) & (5) of section 497, Cr. P.C. as they do not affect the rule stated in section 5(6) of the Ordinance and these provisions would not stand excluded, whether expressly or by necessary intendment or implication. Reliance in this regard is placed on the case of *Allied Bank of Pakistan Ltd. Vs. Khalid Farooq* (1991 SCMR 599).

11. For the foregoing facts, discussion and reasons, the instant Crl. Bail Application is allowed by admitting the applicant to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.5,00,000/- (Rupees five lac) and P.R. Bond in the like amount to the satisfaction of the Trial Court.

12. Needless to mention here that the observations made hereinabove are tentative in nature and shall not influence the Trial Court while deciding the case of the applicant on merits. In case the applicant misuses the concession of bail in any manner, the Trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

13. Above are the reasons of my short order dated 08.05.2025.

JUDGE

JUDGE

Athar Zai