

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Applications No.465 and 1052 of 2025

Present:

Justice Zafar Ahmed Rajput

Justice Ms. Tasneem Sultana

Applicant in : Adil Ansari @ Majid / Jimmy s/o Anwar
Cr. Bail No.465 of 2025 Khalid Ansari through Mr. Muhammad Irfan
Advocate.

Applicant in : Abdul Jabbar s/o Abdul Sattar through
Cr. Bail No.1052 of 2025 Mr. S.M. Nehal Hashmi, Advocate.

Respondent : The State, through Mr. Khaleeq Ahmed,
Deputy Attorney General for Pakistan (**DAG**),
along with Bharat Kumar, Assistant Director,
FIA and Shabbir Ahmed Chandio, Inspector,
FIA, Counter Terrorism Wing, Karachi.

Date of hearing : 30.04.2025 and 05.05.2025.
Date of order : 05.05.2025

ORDER

ZAFAR AHMED RAJPUT, J.- By this common order, we intend to dispose of the above-listed both Crl. Bail Applications, as the same being arisen out of same Crime/F.I.R. bearing No. 02 of 2020, registered under sections 11H, 11I, 11J, 11K, 11N, 21C (7) and 21I of the Anti-Terrorism Act, 1997 ("**Act**") at P.S. FIA, Counter Terrorism Wing, Karachi, have been heard by us together.

2. Having been rejected his earlier application for grant of bail on statutory ground of delay in Special Case No.135 of 2020 by the Anti-Terrorism Court No. XII, Karachi ("**Trial Court**"), vide order dated 04.02.2025, applicant **Adil Ansari @ Majid / Jimmy**, through Crl. Bail Application No.465 of 2025, seeks the same relief. Earlier to this, his first Crl. Bail Application was dismissed on merit by the Trial Court, vide order dated 02.06.2022; his second Crl. Bail Application bearing No.1247 of 2022 was dismissed by this Court, vide order dated 23.01.2023; and his third Bail Application was dismissed by the Trial Court, vide

order dated 09.05.2023. Similarly, applicant **Abdul Jabbar** having been denied post-arrest bail by the Trial Court, vide order dated 04.03.2025, in CrI. Bail Application No. 06 of 2025, filed in the aforesaid Special Case, now seeks the same concession through CrI. Bail Application No. 1052 of 2025. Prior to this, his first CrI. Bail Application was dismissed on merits by the Trial Court, vide order dated 07.06.2022, and his second CrI. Bail Application No. 1342 of 2022 was rejected by this Court, vide order dated 23.01.2023.

3. Learned counsel for the applicants have contended that the instant F.I.R. was lodged on 29.04.2020 and the applicants were arrested on 07.05.2020; however, despite the fact that the applicants are confined in judicial custody for the last five years, the prosecution failed to conclude the trial notwithstanding the directions of this Court, vide order dated 23.01.2023, whereby the earlier CrI. Bail Applications of the applicants bearing No.1247 and 1342 of 2022 were dismissed by this Court, directing the Trial Court to conclude the trial within six months positively, however, the Trial Court has failed to conclude the trial even after the passing of more than two years; that the delay in trial is not on account of any act of the applicants or their counsel; that so far the Trial Court has been able to examine 04 witnesses out of total 42 witnesses; that the minimum punishment for the offence under section 11N of the Act is five years and maximum ten years, hence, the applicants are entitled to grant of bail on statutory ground of delay.

4. On the other hand, learned DAG has opposed these applications on the ground that case of the applicants falls within 4th proviso of section 497, Cr. P.C., hence they cannot seek bail on statutory ground of delay.

5. Heard. Record perused.

6. In order to appreciate the contentions of learned counsel for the applicants 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 may be observed that a 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 prepare the accused to face the 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.

9. In the case of *Syeda Ayesha Subhani vs. The State and others (PLD 2023 Supreme Court 648)*, the Apex Court of Pakistan has observed as under:

9. The purpose and objective of the 3rd proviso, as observed by this Court in Shakeel Shah, is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a fresh right, that is to say, a fresh ground, would accrue in his favour. The 3rd proviso to Section 497, CrPC, thus, becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused.

10. In the instant case, it is an admitted position that the applicants/accused have been detained for the alleged offence, punishable in maximum under section 11N of the Act with imprisonment for a term not less than five years and not exceeding ten years, for a continuous period of more than five years (*exceeding one year*) and their trial has yet not concluded. The FIA submitted the interim charge-sheet on 18.06.2020 and final charge-sheet on 24.03.2021. Charge was to be framed within a reasonable period by the Trial Court, but it took 21 months, as the Trial Court framed the charge against the applicants on 10.01.2023. Thereafter, 26 months have passed but 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 applicants or their counsel; hence, no convincing justification is available with prosecution to decline the relief of bail to applicants on the statutory ground.

11. We are not convinced with the contention of the learned DAG that since the applicants are accused of an act of terrorism, they are not entitled to bail on statutory ground of delay. In this regard, it may be observed that the 3rd proviso to section 497, Cr. P.C., does 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. The alleged offence is punishable with imprisonment for a term not less than five years and not exceeding ten years, hence, the same falls within clause (a) of the 3rd proviso of section 497, Cr. P.C. There is no previous record of conviction of the applicants, thus, no opinion can be drawn holding them hardened, desperate or dangerous criminals. Moreover, the applicants have already undergone the lesser punishment for the offence, i.e., five years, as under trial prisoner.

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

13. 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 applicants on merits. In case the applicant(s) misuses the concession of bail in any manner, the Trial Court shall be at liberty to cancel the same after giving them notice, in accordance with law.

Above are the reasons of our short order dated 05.05.2025.

JUDGE

JUDGE