

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2388/2024

Applicant : Shahzad son of Shahabuddin
through Mr. Shamim Alam & Rana Muhammad Arshad, Advocates

Respondent : The State
through Mr. Tahir Hussain, Addl. P.G Sindh

Date of hearing : 07.05.2025

Date of order : 12.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J- Applicant Muhammad Shahzad seeks post-arrest bail in case bearing crime No. 346/2023 registered at P.S. Tipu Sultan, Karachi, offence under Sections 397, 353, 324, and 34 PPC. His earlier application was declined by the learned VIII Additional Sessions Judge, Karachi-West, vide order dated 19.09.2024. This is his second application before this Court.

2. The applicant earlier approached this Court seeking bail on merits, which was declined vide order dated 28.03.2025. Thereafter, he sought bail afresh on the distinct ground of statutory delay in conclusion of the trial. This subsequent ground had not matured at the time of filing the first bail application. Though the present application is styled as a second bail application, it is in fact premised solely on the fresh ground of delay in conclusion of trial, as contemplated under the third proviso to Section 497(1) Cr.P.C. It is pertinent to mention that the earlier application invoking the ground of statutory delay had been dismissed on 28.03.2025 upon withdrawal, with directions issued to the learned trial court to conclude the proceedings within a period of two months.

3. I have heard the learned counsel for the applicant as well as the learned Additional Prosecutor General for the State. The learned APG opposed the maintainability of the instant application, contending that a second bail petition on identical or previously available grounds is barred by settled principles laid down by the Supreme Court, inter alia, in *Nazir Ahmed & another v. The State* (PLD 2014 SC 241). It was argued that since the earlier bail application on the ground of statutory delay was dismissed,

even if withdrawn, the petitioner cannot be permitted to reagitate the same ground, which stands concluded.

4. The legal position, however, is that while successive bail petitions based on identical or pre-existing grounds are generally not maintainable, an exception exists where the application is based on the ground of statutory delay in conclusion of trial under the third proviso to Section 497(1) Cr.P.C. The Honourable Supreme Court has consistently held that the right to seek bail on statutory grounds accrues only if the delay is not attributable to the accused or any person acting on his behalf. In such a case, if the statutory period specified therein expires during the pendency or following the disposal of a prior application, and the accused has not contributed to the delay, the accused becomes entitled to file a subsequent application on that distinct ground.¹

5. Where a bail application premised on statutory delay is withdrawn before the relevant period matures, and no determination is made on merits, the accused is not precluded from invoking the said ground afresh once the statutory period has lapsed, provided the delay is not occasioned by his conduct. In this case, the third proviso had not matured when the earlier application was withdrawn. It has since come into operation during the pendency of the present application, thereby conferring a fresh and independent ground in law.²

6. The pivotal question is whether the applicant has become entitled to the relief of bail on the ground of statutory delay. It is not disputed that the applicant has remained incarcerated for more than one year and that the trial has not been concluded to date. The record further reflects that the delay in the proceedings is not attributable to the applicant or his counsel. Mere adjournments or absence of witnesses, not caused by the defence, do not constitute such acts or omissions as would defeat the statutory right. The legislature has confined the exception to cases where delay is occasioned by the accused or by a person acting on his behalf.

7. The object of the third and fourth provisos to Section 497(1) Cr.P.C. is to prevent prolonged incarceration of undertrial prisoners and to ensure that the right to liberty is not defeated by prosecutorial inaction or systemic

¹ Syed Ayesha Subhani v. The State and others (PLD 2023 Supreme Court 648)

² Nazir Hussain v. Zia-ul-Haq and others (1983 SCMR 72), Sher Ali alias Sheri v. The State (1998 SCMR 190), Akhtar Abbas v. State (PLD 1982 SC 424), Moundar and others v. The State (PLD 1990 SC 934), Abdul Rashid v. The State (1998 SCMR 897), Zahid Hussain Shah v. The State (PLD 1995 SC 49) and Muhammad Siddique v. Muhammad Behram and another (1998 PCr.LJ 358)

delay. The right to bail under the third proviso is not discretionary once the statutory conditions are satisfied. It has been judicially settled that the Court cannot invoke its general discretion to deny bail where the statutory period has lapsed and the delay is not attributable to the accused. Further, in assessing whether the accused is responsible for delay, the Court is to consider the overall progress of the trial rather than indulging in arithmetic exclusion of adjourned dates. Crucially, even if the testimony of a last witness remains to be recorded, the trial cannot be deemed to have concluded, and the right to bail under the third proviso remains unaffected.

8. Applying the above principles to the case at hand, the applicant has successfully demonstrated that the delay in conclusion of trial is not due to any fault or omission on his part. Accordingly, he has acquired a right to be released on bail under the third proviso to Section 497(1) Cr.P.C. The contention of the learned APG that the application is barred or that the delay is immaterial has no legal basis and is thus repelled.

9. In view of the foregoing, the applicant is admitted to bail subject to furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court. It is clarified that the observations made herein are tentative in nature and shall not influence the trial proceedings, which shall be decided strictly on the basis of evidence.

J U D G E

¹ Syed Ayesha Subhani v. The State and others (PLD 2023 Supreme Court 648)

² Nazir Hussain v. Zia-ul-Haq and others (1983 SCMR 72), Sher Ali alias Sheri v. The State (1998 SCMR 190), Akhtar Abbas v. State (PLD 1982 SC 424), Moundar and others v. The State (PLD 1990 SC 934), Abdul Rashid v. The State (1998 SCMR 897), Zahid Hussain Shah v. The State (PLD 1995 SC 49) and Muhammad Siddique v. Muhammad Behram and another (1998 PCr.LJ 358)