

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

[DIVISIONAL BENCH]

Cr. Bail Appln. No. D-86 of 2025

*Before:*

*Mr. Justice Amjad Ali Bohio, J.*

*Mr. Justice Khalid Hussain Shahani, J.*

Applicant : Nisar s/o Misri, by caste Muhammadani  
Through M/s Ali Gul Abbasi & Muhammad  
Zohaib Azam, Advocates

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of Hearing : 29.10.2025

Date of Short order : 29.10.2025

Reasons recorded on : 30.10.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.—** Applicant Nisar Muhammadani seeks post arrest bail in a case bearing crime No.95/2022, for offences under Sections 324, 353, 365-A, 364-A, 368, 440, 148, 149 PPC & 6/7 ATA, registered at P.S Bakhshapur, of District Kashmore @ Kandhkot. Previously the bail of accused was declined by learned Incharge Judge of Anti Terrorism Court-II @ Central Prison Sukkur, vide order dated 25.09.2025.

2. According to the FIR lodged by SIP/SHO Haji Badal Khan of PS Tangwani on 14<sup>th</sup> December 2022 at Police Station Bakhshapur, the prosecution case unfolds that on 29<sup>th</sup> November, 2022 at about 2:00 PM, a person named Farooq Ahmed appeared at Police Station Tangwani and reported that his three years son, Masroor Ahmed, had been kidnapped by six persons on motorcycles from near a madrasa situated in Muhalla Shahi Tangwani near his residence. The kidnappers demanded Rs.300,000 as ransom through phone calls, but Farooq Ahmed refused to lodge an FIR initially, fearing that the kidnappers would harm his son if he did so. Upon receiving this information, SHO Haji Badal Khan Jakhrani and his police staff undertook secret efforts to recover the abductee. Fifteen days later, on 14<sup>th</sup> December 2022, while the SHO was posted at Police Station Tangwani, he received spy information that the kidnappers were attempting to shift the abducted child, Masroor Ahmed, from the Katcha

(riverine) area to Baluchistan via motorcycles. Acting upon this intelligence, SHO Badal Khan along with his subordinate staff, including PC Muhammad Hanif, PC Abdul Nabi, PC Arsalah, PC Ghulam Abbas, PC Hakim Ali, and PC Ghulam Akbar, departed from the police station in Government Vehicle No.SPE-826 at 1630 hours on 14<sup>th</sup> December, 2022. The police proceeded via Zor Garh Khan Belo road and reached Link Road Lal Wah Laro, where they established a police blockade. In the meantime, police parties from Police Station Bakhshapur under ASI Abdul Kareem Chachar and from Police Station Miani under ASI Lal Muhammad Chachar also arrived for assistance. At about 1700 hours, the police observed three motorcycles approaching from the south side of the link road. Two motorcycles carried 2-3 persons each, while the third motorcycle carried two accused persons with a child seated between them. The police identified seven accused persons by their names and described them as Mushki @ Saindad @ Ali Jaan, armed with a Kalashnikov, Ahsan, Nisar (the applicant), armed with pistol, Ghulam Murtaza @ Imtiaz, Zulfiqar, Shabbir Ahmed, and Sher Baz, all of whom were armed with Kalashnikovs. The abductee child, Masroor Ahmed, was in the custody of the accused Ahsan and Nisar. Upon seeing the police party, the accused alighted from their motorcycles, and the police disclosed their identity as law enforcement officials and ordered the accused to surrender and release the child. However, instead of complying, the accused kidnappers opened indiscriminate fire with the intention to kill the police officials. The police retaliated in self-defence, resulting in an exchange of gunfire that lasted for fifteen to twenty minutes. As a result of this encounter, accused Ahsan and Nisar were apprehended. The abducted child, Masroor Ahmed, was recovered safely. Five other accused persons managed to flee towards the south side of the link road. Upon interrogation, the apprehended accused disclosed their identity and admitted that they had kidnapped Masroor Ahmed from Muhalla Tangwani for ransom and attempted to transport him to Baluchistan. During this encounter, two unlicensed T.T Pistols of 30 bore each

with empty magazines were recovered from the accused Ahsan and Nisar. The motorcycle used by the accused, was seized and found to bear firearm damage on the fuel tank. The Government Vehicle No. SPE-826 also sustained firearm damage on the driver's side. It was further noted that accused Nisar sustained minor injuries on two fingers of his right foot, which he attributed to an injury sustained while alighting from the motorcycle. PC Muhammad Hanif and PC Abdul Nabi were designated as Mashirs for the preparation of the memorandum of arrest and recovery. Consequent upon; case was registered inter alia on above facts and separate cases for offence under Sections 23(1)(a) and 25 of the Sindh Arms Act 2013, against each apprehended accused.

3. Learned counsel for the applicant advanced comprehensive arguments invoking constitutional and statutory grounds in support of the bail application. It was emphasized that the applicant, despite being in custody since his arrest on 14<sup>th</sup> December 2022, has languished behind bars for an unconscionable period while the trial remains in its nascent stage. The learned counsel stressed that only two prosecution witnesses have been examined out of a total of twenty-three listed witnesses, demonstrating inordinate delay attributable entirely to the prosecution's lack of diligence and not to any conduct of the accused. The learned counsel further articulated that such prolonged incarceration violates the fundamental constitutional right to a fair and expeditious trial as guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. It was forcefully submitted that the applicant has been falsely implicated with mala fide intention, and that the fundamental grounds for refusing bail simply do not exist in this case. The learned counsel emphasized that the applicant possesses no criminal antecedents, no record of previous convictions in criminal cases, and stands as an ordinary citizen with no criminal propensity or hardened criminal characteristics. It was submitted that the very silence of the prosecution in producing any material regarding the applicant's criminal history demonstrates

the absence of any ground to characterize him as a desperate, hardened, or dangerous criminal within the fourth proviso to Section 497(1) of the Criminal Procedure Code. The counsel argued that there exists an unexplained delay of fourteen days between the alleged abduction on 29<sup>th</sup> November 2022 and the lodging of the FIR on 14<sup>th</sup> December 2022, which creates a serious lacuna and raises grave doubts about the veracity and reliability of the prosecution story. It was contended that the FIR fails to mention the mobile telephone number from which the alleged ransom demand was made, a material omission which further weakens the prosecution case and warrants further enquiry under Section 497(2) of the Criminal Procedure Code. The learned counsel stressed that according to the FIR itself, the alleged encounter and exchange of firing continued for fifteen to twenty minutes, yet no injury whatsoever was sustained by any member of the police party or by the accused persons, which renders the entire allegation of armed exchange of firing highly doubtful and suspicious, thereby attracting the jurisdiction of Section 497(2) requiring further enquiry. It was submitted that Farooq Ahmed, the father of the abducted child and the key prosecution witness (PW-1), when examined before the trial court at Ex.12, did not identify the applicant as the perpetrator of the kidnapping nor did he specifically implicate the applicant in any criminal act, thereby creating serious doubts regarding the applicant's involvement in the alleged offence. Furthermore, it was contended that all witnesses in the case are subordinate police officials and there exist no independent private witnesses to corroborate the prosecution narrative, which casts doubt on the credibility and trustworthiness of the evidence. It was argued that the co-accused Sherbaz Khan and Zulfiqar Ali, standing on identical factual premises and charged with the same offences, have already been granted bail by the trial court vide orders dated 6th August 2025 and 11th September 2025 respectively, and therefore the principle of consistency demands that the applicant be accorded the same relief. The learned counsel urged that the basic rule in criminal jurisprudence is "bail and not jail,"

and that mere arrest at the scene of occurrence cannot per se be sufficient to connect the accused to the commission of the alleged offence. It was submitted that the applicant is a permanent resident of Sukkur and poses no risk of absconding from the jurisdiction of the court, nor does he present any danger of tampering with evidence or intimidating witnesses and prayed for bail.

4. On behalf of the prosecution and the State, the learned Deputy Prosecutor General vigorously opposed the grant of bail. The learned DPG argued that the allegations against the applicant are serious in nature, involving the heinous crime of kidnapping a minor child for ransom purposes, and that the gravity of the offence precludes the grant of bail. It was submitted that the applicant was apprehended red-handed at the spot of the encounter with an unlicensed pistol which was used in the commission of the offence, and that his arrest meshes the recovery of the abducted child. The learned DPG contended that the applicant's specific role in the commission of the crime is evident from the fact that he was found in possession of a firearm at the time of the encounter and that he engaged in exchange of fire with police officials with the stated intention to kill. It was stressed that the applicant actively participated in the incident of kidnapping and was instrumental in transporting the abducted minor child on the motorcycle at the time of the recovery operation. The learned DPG argued that the offences are grave and heinous in nature, involving not merely criminal conspiracy but also the commission of substantive crimes against the person including attempted murder of police officials. However, upon careful perusal of the record and the arguments presented by both learned counsel, it became evident that the State's submissions could not adequately explain several critical lacunae and inconsistencies in the prosecution's narrative. Moreover, the learned counsel contended that in the absence of any material to suggest that the accused poses a risk of absconding, of tampering with evidence, of intimidating witnesses, or of endangering the community if released on bail, the discretionary refusal of bail would constitute an abuse of judicial power. It

was urged that the provision of a solvent surety and personal recognizance bond would adequately safeguard the interests of justice and ensure the attendance of the accused at all trial proceedings. On behalf of the State/prosecution, the learned Deputy Prosecutor General opposed the grant of bail, contending that the seriousness of the charges and the nature of the offence preclude the grant of relief sought. The prosecution argued that the mere fact of being in custody for some duration cannot automatically entitle an accused to bail, and that the discretion of the court in refusing bail must be respected in cases involving grave offences. However, the learned counsel for the prosecution could not produce any credible material suggesting previous criminal involvement or propensity toward criminal conduct on the part of the accused.

5. We have extended a thoughtful and serious consideration to the submissions of learned counsel for both parties and has thoroughly examined the entire case file placed before.

6. The foremost issue that falls for determination is the proper interpretation and application of the constitutional and statutory provisions governing the grant or refusal of bail in criminal cases. It is well-established that Article 10-A of the Constitution guarantees every citizen the fundamental right to a fair trial and due process of law. This constitutional guarantee is not merely aspirational; it is binding upon all courts and organs of the State. The Supreme Court of Pakistan has repeatedly held that this constitutional right flows into and finds expression in the statutory framework provided by the Criminal Procedure Code, 1898, particularly in Sections 496, 497, and 498 thereof. The critical provision applicable to the present case is Section 497 of the Criminal Procedure Code, which provides the framework for granting bail in non-bailable offences. The statutory scheme establishes a hierarchy of considerations that must guide judicial discretion. The first port of call in any bail application is whether reasonable grounds exist for believing that the accused has committed the offence alleged. This inquiry is not a probe into the

merits of the case or the ultimate guilt or innocence of the accused; rather, it is a preliminary and tentative assessment of whether the material placed on record by the prosecution discloses a prima facie case or reasonable grounds suggestive of culpability.

7. In the instant matter, while we do not venture into the merits of the charges, it suffices to note that the prosecution has not demonstrated the absence of reasonable grounds connecting the accused to the alleged offence. Therefore, the accused cannot claim bail on this ground alone. However, the present application is grounded on several other considerations which this Bench believes carry considerable weight. The applicant has placed strong reliance upon the delay in the progress of the trial. This is not a trivial consideration. The right to expeditious trial is integral to the constitutional guarantee of fair trial enshrined in Article 10-A of the Constitution. The jurisprudence established by the superior courts of this country, particularly the Supreme Court, is crystalline and unambiguous on this point: an accused cannot be subjected to indefinite or inordinate pre-trial detention. The object of criminal prosecution is not to punish undertrial prisoners in a protracted pre-conviction detention but to afford them a fair opportunity to contest the charges within a reasonable timeframe.

8. The Supreme Court in various judgments, most notably in cases cited before us, has held that where a trial has not progressed with reasonable expedition and the accused has not been responsible for such delay, the statutory ground for bail envisaged in the third proviso to Section 497(1) becomes operative. The position is further reinforced by the principle that mere mathematical counting of all dates of adjournment sought by the accused is not sufficient to deprive him of the statutory right to bail. Rather, the prosecution must demonstrate, on the basis of record, that there exists a concerted and visible effort on the part of the accused or his counsel to deliberately delay the trial through frivolous adjournments or dilatory tactics on crucial hearings.

9. In the present case, the record reveals that out of twenty-three witnesses listed by the prosecution, only three have been examined. The examination of evidence remains in a primitive stage, suggesting that the trial has not progressed with the necessary speed and efficiency. The applicant has submitted that the delay is not attributable to him or to any act or omission on his part. The prosecution has not placed any credible material before us to demonstrate that the accused has sought adjournments frivolously or that he has in any manner obstructed the course of justice. Under these circumstances, we are satisfied that the fundamental right of the accused to a fair and expeditious trial is being eroded by the inordinate delay in the progress of the trial. The fourth proviso to Section 497(1) of the Criminal Procedure Code provides an exception to the grant of bail, namely, that bail may be refused if the court believes the accused to be a person who, in the opinion of the court, is a hardened, desperate, or dangerous criminal. However, this exception is not an unlimited or unfettered discretion. The superior courts have established that such characterization cannot be made on conjecture or speculation. Rather, there must exist material evidence on the record demonstrating that the accused is a person likely to inflict serious harm on society, to tamper with evidence, to intimidate witnesses, or to abscond from justice.

10. The Supreme Court in the celebrated case cited in our deliberation has held that all three words hardened, desperate, and dangerous paint a picture of a person who is likely to seriously injure and hurt others without caring for the consequences. Therefore, for this exception to apply, there must be material showing that the accused is such a person who poses a serious threat to society if released on bail. In the instant case, the prosecution has failed to produce any material whatsoever to suggest that the applicant/accused is a person with previous criminal convictions or a history of involvement in criminal activities of a grave or heinous nature. The very absence of a criminal record and the silence of the prosecution on this critical point weigh heavily in favor of the



applicant. The burden lies upon the prosecution to establish, through credible material, the criminal antecedents and dangerous propensities of the accused. In the absence of such material, the applicant cannot be branded as a hardened, desperate, or dangerous criminal.

11. We have noted from the submissions that the applicant has maintained cooperation in the trial proceedings and has not indulged in any conduct suggestive of desperation or danger to society. The applicant's willingness to remain engaged in the judicial process, coupled with the absence of any apprehension regarding his absconding or tampering with evidence or witnesses, indicates that he is a person of ordinary criminal responsibility and not a threat to the administration of justice or to the public.

12. Upon a holistic assessment of the facts, circumstances, and applicable law, we are satisfied that the applicant has made out a case for the grant of bail. The fundamental constitutional right to fair and expeditious trial has been compromised by the inordinate delay in the progress of the trial, which is not attributable to any act or omission on the part of the accused. The absence of any criminal record or material suggestive of hardened, desperate, or dangerous criminal propensities precludes the application of the exception provided in the fourth proviso to Section 497(1) of the Criminal Procedure Code. Therefore, justice and equity demand that the applicant be released on bail pending the conclusion of the trial.

13. For the foregoing reasons, we are/were satisfied that the application merits acceptance. Accordingly, by short order dated: 29.10.2025 this Court accepted bail of applicant, subject to furnish solvent surety of Rs.200,000/- (Two Hundred Rupees) and P.R bond in like amount to the satisfaction of learned trial court. These are the reasons of such short order. The trial court is directed to conclude the said case within a reasonable timeframe, consistent with the requirements of justice and fair trial.

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