ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT

Crl. Misc. No.2231-B of 2025

(Mst. Fasahat Huma Vs. The State etc.)

Date of hearing:	**25.02.2026**
Petitioner by:	**Mr. Javed Saleem Shorish, Advocate.**
State	**Mr. Sarfraz Rauf, AAG with Ms. Fatima Tul Zahra, AD-CBC/FIA.**
Respondent No.2	**Mr. Sana Ullah Kalwar, Advocate.**

SARDAR MUHAMMAD SARFRAZ DOGAR, ,CJ.:- Through this petition in terms of Section 497 Cr.P.C., the petitioner has sought post arrest bail in case FIR No.17 dated 23.07.2024, registered for the offences under sections 409, 419, 420, 468, 471, 109 of PPC, with Police Station FIA Commercial Banks Circles, Islamabad.

2. Learned counsel for the petitioner contends that expeditious and early trial is statutory right of every accused but in the instant case, the trial has not been concluded within statutory period in spite of the fact that the petitioner/accused was not responsible for causing delay, as such she cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. It is further contended that the petitioner was taken into custody on 11.02.2025 i.e. more than one year; that the period for conclusion of trial as stipulated under section 497 Code of Criminal Procedure, 1898 has already been lapsed; that the PWs have failed to appear before the trial court on numerous occasions to get their evidence recorded despite issuance of non-bailable warrants of arrest as such the petitioner solely cannot be held responsible for delay in the conclusion of the trial; that there is no previous record of conviction of the petitioner and in the circumstances of the case, she cannot be held to be hardened, desperate or dangerous criminal. Hence, the petitioner is entitled to the grant of bail.

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3. Conversely, the learned Assistant Attorney General duly assisted by learned counsel for the Respondent No.2 has vehemently opposed the bail petition by contending that petitioner was a Banking Services Officer when the alleged fraud/embezzlement took place; that the petitioner deliberately performed Call Back Confirmation of the fake and forged mobile number and as a result she in connivance with the co-accused withdrew the amounts through forged cheques, which eventually caused loss to the Respondent No.2; that the trial has been delayed due to adopting delaying tactics by the petitioner as she remained reluctant to engage her private counsel; that petitioner is involved in heinous offence, hence she is a dangerous, desperate and hardened criminal within the meaning of 4th Proviso to section 497, Cr.P.C, thus, this petition is liable to be dismissed.

4. Arguments heard and record perused with the able assistance of learned counsel for the parties.

5. The point for consideration before this Court is as to whether after the expiry of certain period, benefit of proviso 3 of section 497(1), Cr.P.C. could be available to the petitioner in all eventualities and as to whether the case of the petitioner falls within the definition of hardship due to her prolonged and continuous incarceration? To construe the legal imports of law, it is advantageous to reproduce third and fourth provisos of Section 497 (1), Cr.P.C.-

> ***"497. When bail may be taken in cases of non-bailable offence.*** *(1) When any person accused of non-bailable offence is arrested or detained without warrant by an officer-incharge 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 ……..*
> *Provided further that……..*
> *Provided further that the Court shall, except where it is of the 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, 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*

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> *(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 foregoing proviso 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*

As per 3rd Proviso to Section 497(1), Cr.P.C., a person accused of an offence not punishable with death, if detained for such an offence for a continuous period exceeding one year and in case of woman exceeding six months shall be released on bail, of course, with the exception contained in the 4th Proviso to section 497 (1), Cr.P.C. that the provisions of said Proviso 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. The scope of the 3rd Proviso to Section 497 (1), Cr.P.C. has been expounded by the Hon'ble Supreme Court of Pakistan in the case cited as ***'Shakeel Shah Versus The State' (2022 SCMR 1)*** and the principles enunciated therein, have been recapitulated by the Apex Court in case reported as ***"Nadeem Samson Versus The State" (PLD 2022 Supreme Court 112)*** which for the sake of ready reference are reproduced as under:-

> *(i) The purpose and object of the 3rd proviso to Section 497(1) Cr.P.C is to ensure that the trial of an accused is conducted and concluded expeditiously, and that the pre-conviction detention of an accused does not extend beyond the period of two years in cases involving an offence punishable with death, or **one year in other cases**;*
>
> *(ii) The **period** of one year or two years, as the case may be, for the conclusion of the trial **begins from the date of the detention of the accused** in the case, **not** from the **date** when the **charge is framed** and trial commenced;*
>
> *(iii) A statutory right to be released on bail accrues in favour of the accused if his trial is not concluded within the specified period, i.e., exceeding one year or two years as the case may be, from the date of his detention;*
>
> (iv) *This statutory right of the accused to be released on bail is, however, subject to two exceptions: one is embodied in the 3rd proviso itself and the second is provided in the 4th proviso, which are (a) the delay in conclusion of the trial is occasioned by an act or omission of the accused or by any other person acting on his behalf, and (b) the accused is a convicted offender for an offence punishable with death or imprisonment*

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for life, or is in the opinion of the court a hardened, desperate or dangerous criminal, or is accused of an act of terrorism punishable with death or imprisonment for life.

(v) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel for the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive reflecting a design or pattern to consciously delay the conclusion of the trial; and

(vi) The phrase "A hardened, desperate or dangerous criminal" denotes an accused who is likely to seriously injure and hurt others without caring for the consequences of his violent act and will pose a serious threat to the society if set free on bail. Such tentative finding as to character of the accused must be based upon careful examination of the facts and circumstances of the case, supported by sufficient incriminating material.

(Emphasis supplied)

6. Lest this Court pass any finding on the role of the petitioner, which may prejudice the case of the parties during the on-going trial before the learned trial Court, and without commenting upon the merits of the case, it is observed that the punishment of offences with which the petitioner has been charged is neither death nor life imprisonment. The petitioner was arrested in this case on 11.02.2025 i.e. about **one year** and **fourteen days** back. The petitioner is a female, therefore, the right to be released on bail on the basis of the lapse of statutory period has already been accrued to the petitioner. This right could be denied to the petitioner only when her case falls into any of the two exceptions: (a) if the delay in conclusion of the trial had been occasioned by an act or omission of the petitioner or by any other person acting on her behalf, and (b) if the petitioner is found to be a convicted offender for an offence punishable with death or imprisonment for life, or is in the opinion of the court a hardened, desperate or dangerous criminal, or accused of an act of terrorism punishable with death or imprisonment for life.

7. Now, therefore, this Court has to evaluate as to whether case of the petitioner attracts any of the above noted exceptions or not? In this regard, the perusal of report of learned trial court, reveals that delay in conclusion

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mainly lies due to the conduct of the investigation officer and the prosecution. The relevant portion of the report is reproduced hereunder:-

> "**The delay in conclusion mainly lies due to the conduct of the Investigation Officer and the prosecution**. The record reflects that the Court received an incomplete challan on 30.05.2025, after a belated period of approximately fourteen (14) months, which caused substantial delay at the initial stage of proceedings. Furthermore, a perusal of the order sheets shows that on the majority of hearing dates, the Investigation Officer and the prosecution remained absent or failed to proceed, resulting in repeated adjournments. Although on certain dates adjournments were also sought by the learned counsel for the accused, **the primary responsibility for delay rests upon the prosecution side**."
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> (Emphasis added)

8. There is nothing on the record to show that the act or omission on the part of the petitioner to delay the conclusion of the trial was the result of a visible concerted effort orchestrated by her or any person acting on her behalf. On the other hand, the delay is visibly attributed to the prosecution who was under legitimate duty to ensure conclusion of trial of petitioner/accused, as such it can be unequivocally stated that petitioner cannot be blamed for the delay so caused. This court is also cognizant of the fact that allegations of severe nature have been leveled against the petitioner, however, at the same time it is observed that accusations so leveled against the petitioner are yet to be proved by the prosecution by producing evidence and the prosecution was required to play its role well to get the trial concluded within the statutory period but unfortunately, the prosecution has badly been failed to do so and as such has committed violation of express statutory provision giving rise statutory right to the petitioner for releasing on bail, which could only be curtailed when any of above noted two exceptions are in field. On the other hand, learned law officer has confirmed that there is no record of previous conviction or any criminal antecedents, as such she cannot be declared as a hardened, desperate or dangerous criminal.

9. The statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial and dignity guaranteed under Articles 9, 10A and 14 of the Constitution of Islamic Republic of Pakistan, 1973. The provisions of the 3rd proviso to Section 497(1), Cr.P.C must be fashioned in a manner that is

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progressive and expansive of these rights of the accused, who is still an under trial prisoner, and her guilt being not yet proven, has in her favour the presumption of innocence. Guidance has been sought from the case law titled "**SYEDA AYESHA SUBHANI v. THE STATE and others**" **(PLD 2023 Supreme Court 648)**.

10. It is also observed that this Court has to perform the neutral sacred constitutional role to ensure the administration of justice for both the parties and has to protect their respective rights. It was the duty of the prosecution to act vigilantly to get the trial concluded within the statutory period but it remained in deep slumber and as per report of learned trial court, prosecution itself mainly caused the delay. This conduct of the prosecution speaks volume in respect of its slackness and reluctance to get the trial concluded. Therefore, keeping in view this sluggish, negligent and careless attitude of prosecution and in absence of any concrete material on record, mere leveling of allegations cannot be stretched so far in favour of the prosecution to deprive and bulldoze petitioner's statutory right to be released on bail after expiry of specified period. Due to this conduct of the prosecution, conclusion of trial is not in sight in near future, as such the petitioner cannot be left at the mercy of the prosecution to rot and languish in jail merely on the ground that the petitioner is an accused of heinous offence and it does not amount giving license to the prosecution to protract the trial for unlimited time according to its whims and wishes. On the other hand, there is no cavil to the proposition that release of an accused on bail does not tantamount her acquittal rather it is just shifting the custody of the accused to sureties.

11. The Hon'ble Supreme Court of Pakistan in a case reported as "**Ali Akbar versus State and others**" **(PLJ 2021 SC (Cr.C) 106)**, has allowed bail to the petitioner while observing as under:-

> *"9. In these circumstances, when the trial Court has in its report, stated that the delay in the conclusion of trial is also on the part of complainant and his private witnesses, the petitioner cannot be solely held responsible for such delay particularly when the period of two years' continuous detention expired even before framing of charge. Now even four years have passed since the arrest of the petitioner."*

12. In the similar facts and circumstances of the case, the learned Division Bench of hon'ble Lahore High Court in the case reported as

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"Muhammad Hussain Versus State, etc" ***(PLJ 2018 Cr.C. 730 (DB),*** while referring to the case reported as ***"Asif Ali Zardari vs. The State" (1993 P.Cr.LJ 781)***, has also granted bail to the accused on the basis of statutory delay in the trial. The extract from the said order, i.e. paragraphs No. 9 & 10, is reproduced as under:-

> *"9. The petitioner is in jail since 7.7.2015, while conclusion of the trial is not in sight because the prosecution witnesses are not turning up, in spite of coercive process has been issued against them, therefore, to expect the conclusion of the trial in the near future, would be nothing but a farfetched dream. In the case titled "Mr. Asif Ali Zardari vs. The State" (1993 PCr.LJ 781), A Full Bench of the Sindh High Court, granted him bail on the basis of statutory delay in the trial, the Full Bench of the Sindh High Court at Karachi held that in the case of shocking delay in the conclusion of trial, the accused was entitled to the concession of bail on the strength of third proviso to Section 497, Cr.P.C., which view has not been set aside by the August Supreme Court of Pakistan till date.*
>
> *10. In view of the above, in our view, the petitioner has become entitled to grant of bail as of right on the basis of shocking delay in the conclusion of trial, more so, if further time is allowed to the prosecution, it would be absolutely impossible to conclude trial before the Trial Court. The petitioner is still awaiting his trial, therefore, his further detention in jail would serve no useful purpose for the prosecution.*

13. In view of all these circumstances, *instant petition is* ***accepted*** as a consequence whereof, the petitioner is admitted to bail after arrest subject to her furnishing bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of learned trial court.

14. The learned trial court seized of the matter is also directed to expedite the proceedings of trial and ensure its conclusion in the shortest possible time.

(**Muhammad Azam Khan**) **(CHIEF JUSTICE)**
Judge

S*hamroz* ***A****li**

APPROVED FOR REPORTING

Judge **(CHIEF JUSTICE)**

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