

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Jamal Khan Mandokhail
Justice Naeem Akhter Afghan
Justice Aqeel Ahmed Abbasi

**CRIMINAL PETITION FOR LEAVE TO APPEAL NO.1449 OF
2026**

*(Against the order dated 20.07.2026 passed by the Islamabad High Court,
Islamabad, in CrI. Misc No.925-B of 2026)*

Chaudhary Shahzaib Shamim
...Petitioner(s)

Versus

The State and another
...Respondent(s)

For the Petitioner(s) : Mr. Adil Aziz Qazi, ASC
Mr. Sheikh Mehmood Ahmed, AOR

For the State : Chaudhary Mohammed Tahir
Mehmood, APG Islamabad

For the Complainant(s) : Mirza Nabeel Tahir, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 24.09.2026

ORDER

Aqeel Ahmed Abbasi, J.- Through instant Criminal Petition for Leave to Appeal, the Petitioner has impugned the order dated 20.07.2026, passed by the Islamabad High Court, Islamabad, in Cr. Misc. No.925-B of 2026, whereby the post-arrest bail filed by the Petitioner on statutory ground in FIR No.83/2025 dated 05.04.2025 under section 489-F PPC registered at Police Station Sihala, Islamabad, has been dismissed.

2. Briefly, the facts of the case are that complainant (Chaudhary Waseem Afzal) lodged an FIR on 05.04.2025 against the Petitioner alleging therein that he entered into an agreement of partnership with the Petitioner on 22.08.2024, which was cancelled on 27.11.2024 and a new agreement dated 27.11.2024 was executed, wherein it was agreed that the Petitioner will pay an

amount to the complainant for which a cheque dated 17.03.2025 was issued in the sum of Rs.10,000,000/- drawn at JS Bank, DHA, Phase-II Branch in favour of complainant, however, when such cheque was deposited on 17.03.2025 in the bank, the same was dishonoured with a note of the bank that the Petitioner has stopped payment. It has been alleged that the Petitioner is involved in similar cases and FIRs have been registered in different police stations against him, whereas in spite of repeated requests, the Petitioner did not make payment of the amount, therefore, the subject FIR was registered against the Petitioner.

3. Learned counsel for the Petitioner submits that pursuant to the aforesaid FIR, the Petitioner was arrested whereafter, bail applications, filed by the Petitioner were rejected up to High Court on merits. The Petitioner assailed the same before the Supreme Court of Pakistan, by filing Criminal Petition for Leave to Appeal No.1389 of 2025. However, the said petition was dismissed as withdrawn vide order dated 23.09.2025 with the direction that the Petitioner is at liberty to file bail application afresh before the Trial Court after recording statement of the complainant with further directions that the Trial Court shall decide the same on its own merits without being influenced by its earlier bail rejection order as well as the impugned order passed by the Islamabad High Court. According to learned counsel, the prosecution did not proceed with the matter after framing of charge by the Court on 26.06.2025 as the case was fixed for prosecution witness evidence, however, no evidence has been recorded so far despite lapse of more than one and a half year, therefore, Petitioner filed the bail application before the Trial Court seeking release on bail on statutory ground in terms of the third proviso to section

497(1) Cr.P.C. which was dismissed vide order dated 03.06.2026 without recording any finding on the ground of statutory delay. The said order was assailed by the Petitioner by filing Crl. Misc. No.925-B of 2026 before Islamabad High Court. However, the Islamabad High Court has dismissed the same vide impugned order dated 20.07.2026 by holding that the delay in conclusion of the trial cannot be attributed to the prosecution as the Petitioner was not produced before the Court from jail, therefore, the Petitioner cannot be held entitled to the concession of post-arrest bail on statutory ground of delay in conclusion of the trial. According to learned counsel, the Islamabad High Court has further erred while holding that the Petitioner's case is hit by the fourth proviso to section 497(1) Cr.P.C. as he is involved in six other cases of like nature and nine cases under sections 336, 342, 447, 440, 365, 392 and 407 PPC which shows that the Petitioner is habitual in issuance of forged cheques, therefore, such ground of statutory delay is not available to the Petitioner. Learned counsel for the Petitioner has vehemently argued that the learned Trial Court and the learned Islamabad High Court have seriously erred in law and fact while declining bail to the Petitioner on statutory ground of delay despite of the fact that after framing of the charge, the Petitioner and his counsel never sought any adjournment and the matter was being adjourned for the reason that prosecution did not produce the Petitioner in court on all the dates of hearing during aforesaid period. In support of his contention, learned counsel for the Petitioner has referred to Crl. MA. No.2096 of 2026 filed alongwith instant Petition that contains the copy of application for judicial remand dated 17.04.2025 and the order sheet of the Judicial Magistrate Section 30, Islamabad (East) from

17.04.2025 to 13.04.2026 to show that on 17.04.2025, the Petitioner was produced in custody by the IO who requested for judicial remand of accused by stating that investigation is yet to be completed and the Petitioner was sent to judicial lockup. Thereafter, he was produced in court on 01.05.2025, 29.05.2025, 12.06.2025 and 26.06.2025 when the charge was framed against the Petitioner who denied the allegations contained in the challan pursuant to which the prosecution was directed to produce the prosecution witnesses on 10.07.2025, however, thereafter, the Petitioner was never produced before the court till 13.04.2026 when the Trial Court was pleased to pass an order for production warrants of the accused directing the Superintendent Central Jail Adeyala, Rawalpindi to ensure the production of the accused on the next date of hearing i.e. 27.04.2026. However, such directions have not been complied with till today and the trial of the Petitioner has not even commenced after framing of charge. According to learned counsel, the Petitioner cannot be held liable for delay and conclusion of the trial, as not a single date has been obtained by the Petitioner or his counsel whereas, the prosecution has miserably failed to produce the Petitioner in court and to record prosecution witness evidence whereas, the Petitioner is, behind the bar in the instant case for more than one and a half year, and has completed the maximum punishment of three years provided under section 489-F PPC without his conviction by the court. It has been prayed that the Petitioner is entitled to be released on bail on the ground of statutory delay, therefore, requests that the Petitioner may be granted bail subject to his furnishing surety in the instant matter.

4. Conversely, learned counsel for the complainant and the APG had opposed the grant of bail to the Petitioner on the ground that the Petitioner is a habitual offender who is involved in similar cases, whereas, the delay cannot be attributed to the prosecution as the Petitioner has been arrested in some other case in an FIR registered at Mirpur, AJ&K. It is further contended that in view of the bulk of cases registered against the Petitioner, the Petitioner is not entitled to the grant of bail on the ground of statutory delay in view of the fourth proviso to section 497(1) Cr.P.C.

5. Heard the learned counsel for the parties, perused the record and the impugned order passed by the Islamabad High Court as well as the diary sheets of the Trial Court to ascertain the cause of delay in conclusion of the trial.

6. On perusal of the diary sheets of the Trial Court, it has transpired that the Petitioner or his counsel did not seek any adjournment, whereas, the matter kept pending before the Trial Court mostly on the ground that the accused was not produced by the jail authorities. It has been further observed that despite the issuance of production warrants for the Petitioner by the Trial Court, the Superintendent Central Jail Adeyala, Rawalpindi did not produce the Petitioner as reflected from the order dated 13.04.2026. It is astonishing to note that despite of hereinabove factual position, the learned Trial Court as well as the Islamabad High Court without appreciating the clear mandate of the law as reflected from the third proviso to section 497(1) Cr.P.C. (reproduced below) declined bail to the Petitioner on the ground of statutory delay while holding that the delay in conclusion of trial cannot exclusively be attributed to the prosecution as on most of

the dates of hearing, the Petitioner was not produced before the court from jail. The other ground of rejecting the bail to the Petitioner on the ground of statutory delay has been mentioned in para-7 of the impugned order passed by the learned Single Judge of the Islamabad High Court, according to which, *“the case of the Petitioner is hit by the fourth proviso to section 497(1) Cr.P.C., as he is also involved in several other cases of like nature, which shows that Petitioner is habitual in issuance of forged cheques, therefore, this ground is also not available to the Petitioner.”* It is settled position of law that mere involvement of an accused in similar cases alone does not disentitle him to be released on bail, particularly, while considering the bail of an accused in respect of an offence which does not fall within the prohibitory clause of section 497(1) Cr.P.C, nor the offence falls within the exceptions provided under third and fourth proviso to section 497(1) Cr.P.C. Such ground for denying bail is misconceived and contrary to law and the judgments of this Court. Reliance in this regard can be placed to the cases of *Ali Anwar Paracha v. The State and another* **(2024 SCMR 1596)** and *Muhammad Rafique vs. The State* **(1997 SCMR 412)**.

7. It will be advantageous to reproduce the relevant provisions in order to examine the scope and application of the third and fourth provisos to section 497(1) Cr.P.C, the same are reproduced hereunder:

"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

- (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 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 criminal or is accused of an act of terrorism punishable with death or imprisonment for life."

8. From perusal of clause (a) of third proviso to section 497(1) Cr.P.C, it is clear that any person accused of any offence not punishable with death, who has been detained for such offence for a continuous period exceeding one year and whose trial for such offence has not concluded, whereas, the delay in the trial of the accused has not been occasioned by an act or omission of the accused or any other person acting on his behalf, **the court shall direct that such accused shall be released on bail. It is pertinent to note for the purposes of seeking release of an accused on bail on the ground of statutory delay, the courts are required to examine as to whether the delay has been occasioned by an act or omission of the accused or any other person acting on his behalf** only. Once such onus is discharged by the accused, no other reason whatsoever for the delay in conclusion of the trial, particularly, the failure of the prosecution to produce the under trial prisoner in court for a period exceeding one year as provided in clause (a) of third proviso of section 497(1), Cr.P.C, can be considered as an act or omission on the part of accused, for the reason to produce the under trial prisoner before the court on each date of hearing is the responsibility of the prosecution, whereas, in case of failure on the part of prosecution, it is the duty of the court to ensure production of the under trial

prisoner by passing an order for production warrants of the accused. In the instant matter, record shows that prosecution did not make any effort, whatsoever to ensure production of the accused, nor produced prosecution witnesses before the Trial Court in spite of lapse of more than one and a half year nor the order passed by the Trial Court to this effect on 13.04.2026 directing the Superintendent Central Jail Adeyala, Rawalpindi was complied with. This conduct on the part of the prosecution, non-compliance of the court's order for production of the accused by the Superintendent Central Jail Adeyala, Rawalpindi and omission on the part of the Trial Court to ensure production of the accused in court for the purposes of trial in a case in respect of an accused for an offence under section 489-F PPC, which is punishable with imprisonment which may extend to three years, or with fine, or with both, withholding bail of such an accused who has already remained in judicial custody for more than one and a half year by denying his release on bail on statutory ground, when the accused has already served out his maximum punishment amounts to denying the right of bail (liberty) and also the right of fair trial to under trial prisoner. The right of an accused to be released on the ground of delay in conclusion of trial has been protected by the statute, which subject to fulfilment of the requirements, hardly leaves any discretion to the court(s), to extend such statutory benefit given to an under trial prisoner, the prosecution or the courts shall not be jealous about such statutory concession available to an accused provided by law, therefore, only under the exceptions provided for excluding such statutory benefit, the courts must be proactive to exercise such discretion in favour of the accused. Reliance in this regard can be placed to the cases of

Syed Ayesha Subhani vs. The State and others (PLD 2023 SC 648)
and Mehran vs. Ubaidullah (PLD 2024 SC 843).

9. Keeping in view hereinabove facts and circumstances of the case, we are of the opinion that the delay in conclusion of the trial cannot be attributed to the Petitioner in any manner, therefore, he was entitled to be released on bail on the ground of statutory delay in conclusion of trial, particularly, when he has served out the maximum period of punishment provided under section 489-F PPC. Accordingly, the orders passed by the Trial Court as well as by learned Single Judge of Islamabad High Court are hereby set aside. The instant petition was converted into appeal and allowed vide our short order dated 24.09.2026 in the terms mentioned therein. Above are the reasons for such short order.

Judge

Judge

Islamabad, the
24.09.2026
Approved for Reporting
Hamid/ *

Judge