Form No.HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Crl. Misc. No.33164-B of 2026

Iftikhar Ahmed Vs. The State, etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.

23.07.2026. Mr. Muhammad Safdar Shaheen Pirzada, Advocate for the petitioner.
Ms. Noshe Malik, Deputy Prosecutor General with Talib, SI.
Mr. Mohsin Javed, Advocate for the complainant.

Through this petition under section 497 Cr.P.C., petitioner has sought post arrest bail in case FIR No.2004 dated 24.05.2024 registered under sections 334, 337D, 337H, 337Q, 419 PPC at Police Station Sabzazar, District Lahore.

2. The petitioner, a doctor, performed the circumcision of the complainant's son. What should have been a routine procedure allegedly turned negligent, leading to infection, severe complications, and ultimately a medical emergency that endangered the child's life. The family, once trusting, now accuses the doctor of causing this tragic ordeal.

3. Learned counsel for the petitioner submits that the plea before this Court is not anchored in the merits of the case, but rests solely upon the petitioner's failing health. In obedience to this Court's directions, a medical report prepared by the Superintendent of District Jail, Lahore has been placed on record. The report paints a grave picture: the petitioner is afflicted with a progressive degenerative disorder of the brain, Parkinsonism, a condition that steadily erodes his independence, leaving him unable to carry out even the simplest of daily tasks without constant assistance.

4. Conversely, the learned Deputy Prosecutor General, joined by counsel for the complainant, stood firmly against the petition. They contended that the petitioner's negligence had inflicted grave and irreversible harm upon the complainant's minor son, a tragedy that shadows the child's future and leaves him incapacitated. In their view, such a lapse strips the petitioner of any entitlement to the concession of bail, even on medical grounds. They emphasized that the jail's medical report itself records the petitioner as vitally stable, receiving adequate treatment within the prison walls, thereby nullifying any plea for leniency.

5. Heard. Record perused.

6. In order to properly appreciate the controversy involved, it is necessary to reproduce the relevant portion of the medical report prepared by the Medical Officer, District Jail, Lahore, which reads as follows:

> He had difficulty in walking, slow movements and rigidity in arms and legs. He was evaluated by visiting neurologist inside jail on their routine Jail visits. He was sent to Services Hospital Lahore on 20-11-2025, 26-11-2025, 02-12-2025, 09-12-2025, where his MRI Brain was done and evaluated by the consultant Neurologist who optimized his medication which he is taking regularly. He was again sent to Services Hospital Lahore in Neurology Department on 07-07-2026 for follow up where he was examined by Dr. Shamas PGR Neurology who advised to continue the same treatment as he was already taking.
>
> Presently, he has slow speech, needs assistance for movement and daily routine activities like changing clothes and self-care.
>
> It is pertinent to mention that Parkinsonism disease is progressive degenerative disease of brain and full recovery is not expected, however he is being provided treatment from inside and outside the Jail Hospital and he is vitally stable with it.

The above report unequivocally demonstrates that the petitioner is suffering from Parkinsonism, a progressive degenerative disease of the brain, from which complete recovery is not expected. The report further reveals that he has difficulty in walking, slow

speech, rigidity of limbs, and requires assistance in performing even ordinary daily activities. Although he is stated to be vitally stable and is receiving medical treatment while in custody, such circumstance, by itself, cannot be treated as a sufficient ground to decline the concession of bail.

7. Section 497 of Cr.P.C. recognizes **"infirmity"** as a separate and independent ground for bail, even in cases involving heinous offences. The jurisprudential foundation of this provision lies in the principle that criminal justice must remain humane, ensuring that the accused is not subjected to undue hardship beyond the scope of lawful punishment. The term *"infirm"* does not merely connote illness or disability in the narrow medical sense. Rather, it encompasses a broader condition of physical weakness, frailty, or degeneration, whether due to advancing age, congenital limitations, or non-fatal diseases that impair mobility and restrict the ability to pursue ordinary pursuits of life. Thus, infirmity is distinguished from bail on medical grounds, which typically requires demonstrable illness necessitating treatment. Infirmity, by contrast, is a functional incapacity that undermines the accused's ability to endure incarceration without disproportionate suffering. Medical science recognizes that living standards and biological responses vary significantly among individuals. Each person's blood chemistry, immune system, and physical resilience react differently under stress, deprivation, or exposure to unhygienic environments. When individuals accustomed to healthier living conditions are suddenly placed in overcrowded, unsanitary prisons, their bodies often exhibit signs of functional decline, a state that can be classified as *infirmity* under Section 497 Cr.P.C.

8. In the legal discourse on bail, infirmity is not a mere medical condition but a constitutional concern. The factors that generate infirmity within prison walls are deeply rooted in systemic neglect: unhygienic food and contaminated water, overcrowded barracks, and relentless psychological stress. Physical weakness, often the product of poor nutrition and tainted

supplies, manifests in chronic gastrointestinal disorders, persistent stomach ailments, and malnutrition. Close confinement magnifies the risk, exposing detainees to contagious diseases such as respiratory infections, skin allergies, and parasitic infestations. Medical literature underscores that stress hormones like cortisol erode immunity, rendering prisoners acutely vulnerable to illness. The continuous assault of poor sanitation and inadequate diet does not merely inconvenience, it corrodes the human body. Muscle wasting, bone fragility, and diminished stamina become inevitable, even for those who entered incarceration in apparent health. Thus, the prison environment itself becomes a crucible of infirmity, transforming detention into a punishment far harsher than the law intends. In this light, bail is not indulgence but a constitutional safeguard, ensuring that liberty and dignity are preserved against conditions that otherwise degrade the human person.

9. Unlike a diagnosable disease requiring treatment, infirmity is a functional incapacity, the inability of the body to sustain ordinary pursuits due to environmental stressors. Courts must remain aware that the baseline living conditions of each accused differ. A person accustomed to hygienic surroundings, balanced nutrition, and medical care may deteriorate rapidly in prison, developing infirmity through weakness, allergies, or digestive disorders. Judicial assessment of infirmity should therefore consider not only age or congenital weakness but also the impact of prison conditions on the individual's ability to remain fit and healthy. Courts, in applying Section 497 Cr.P.C, must interpret infirmity in light of these realities, ensuring that bail decisions reflect both the statutory mandate and the medical evidence of how prison conditions impair human health.

10. Infirmity is defined in dictionaries as "ill/sick and weak, especially over a long period or as a result of being old', "people who are weak and ill/sick for a long period" "sickly, weak; frail;

unstable, "of poor or deteriorated vitality; esp: feeble from age; weak of mind, will or character." [1]

Words and Phrases by Thomson-West:

"**Infirm"** means "*lacking in bodily or mental strength, feeble or relaxed, as from age or disease*." [2]

Urdu Meanings:

"infirm" (in-furm) adj. physically weak; irresolute; feeble.
جسمانی لحاظ سے کمزور، ضعیف، ناتواں، علیل، غیر مضبوط [3]

Words '**ضعف**' and '**ضعیف**' are used to describe infirmity and state of being infirm. Meaning of both these words are provided below for kind perusal:

ضعیف (ع) صفت :سست، ناتواں، ناطاقت، نر بل، در بل، کمزور، نحیف ، نقیہ ، بوڑھا۔ ، منحنی
ضعف (ع) اسم مذکر :ناتوانی، کمزوری، نقاہت، نا طاقتی، سستی[4]

The Urdu definition underscores this distinction, clarifying that infirmity reflects a state of physical debility rather than a passing illness.

11. Even our religion recognizes the special circumstances of persons suffering from infirmity and grants them appropriate concessions. In this regard, Almighty Allah has expressly exempted those who are infirm from fasting and from the obligation of participating in Jihad. Translation of Ayat No.91 of Surah At-Tawbah is reproduced hereunder:

لَّيْسَ عَلَى ٱلضُّعَفَآءِ وَلَا عَلَى ٱلْمَرْضَىٰ وَلَا عَلَى ٱلَّذِينَ لَا يَجِدُونَ مَا يُنفِقُونَ حَرَجٌ إِذَا
نَصَحُوا لِلَّهِ وَرَسُولِهِۦ ۚ مَا عَلَى ٱلْمُحْسِنِينَ مِن سَبِيلٍ ۚ وَٱللَّهُ غَفُورٌ رَّحِيمٌ ۝٩١

["There is no blame on the weak, the sick, or those lacking the means ˹if they stay behind˺, as long as they are true to

[1] (Page 797, Oxford Advanced Learner's Dictionary of Current English, by A S Hornby, Eighth Edition, published by Oxford University Press.) (Page no.781, The Chambers Dictionary, 12th Edition, published by Chambers Harrap Publisher, U.K.); (Page no. 640, Merriam-Webster's Collegiate Dictionary, Eleventh Edition, published by Merriam-Webster, Incorporated, Springfield, Massachusetts, U.S. A.)

[2] (Words and Phrases, Volume 21A, Permanent Edition, published by Thomson-West at page 124.)

[3] (GEM Advanced Practical Dictionary, English to English and Urdu, Published by Azhar Publishers, Urdu Bazaar, Lahore)

[4] (Farhang-e-Asfiya. Jild-Soom, by Khan Sahib Molvi Syed Ahmad Dahelvi, composed by Syed Yasir Jawad, published by Al-Faisal, Nashiran-wa-Tajiran Kutab, Ghazni street Urdu Bazaar, Lahore.)

> Allah and His Messenger. There is no blame on the good-doers. And Allah is All-Forgiving, Most Merciful." **(Surah Tawbah 9:91)]**

Translation of Ayat No.184 of Surah Baqarah is reproduced hereunder:

اَيَّامًا مَّعْدُوْدٰتٍ ؕ فَمَنْ كَانَ مِنْكُمْ مَّرِيْضًا اَوْ عَلٰى سَفَرٍ فَعِدَّةٌ مِّنْ اَيَّامٍ اُخَرَ ؕ وَعَلَى الَّذِيْنَ يُطِيْقُوْنَهٗ فِدْيَةٌ طَعَامُ مِسْكِيْنٍ ؕ فَمَنْ تَطَوَّعَ خَيْرًا فَهُوَ خَيْرٌ لَّهٗ ؕ وَاَنْ تَصُوْمُوْا خَيْرٌ لَّكُمْ اِنْ كُنْتُمْ تَعْلَمُوْنَ o

> "Fast a˹ prescribed number of days. But whoever of you is ill or on a journey, then ˹let them fast˺ an equal number of days ˹after Ramaḍân˺. For those who can only fast with extreme difficulty,[2] compensation can be made by feeding a needy person ˹for every day not fasted˺. But whoever volunteers to give more, it is better for them. *And to fast is better for you, if only you knew."* **(Surah Baqarah 2:184)**

12. In several judicial precedents, advanced age alone has not been deemed synonymous with infirmity. Courts have consistently emphasized that mere old age, without accompanying debility, does not automatically qualify as an infirm condition. However, it is equally recognized that infirmity may indeed arise as a natural consequence of advanced age, manifesting in diminished physical or mental capacity. Importantly, the test for infirmity must remain objective and comprehensive, acknowledging that it can stem not only from age but also from a wide spectrum of conditions such as serious illness, blindness, deafness, or muteness. While such conditions may, in theory, be managed within the confines of jail premises, the reality is that they impose extreme difficulty and hardship upon the affected individual. Judicial wisdom has therefore established that mere old age, when coupled with other debilitating factors, constitutes infirmity in fact and in law, thereby providing legitimate grounds for bail. The precedents underscore that the justice system must not reduce infirmity to a narrow definition but instead interpret it in light of human dignity, practical realities, and the constitutional mandate of fair treatment. Reliance in this respect is placed on the following reported cases;

> *"MUHAMMAD BASHIR versus THE STATE"* (**1987 P Cr. L J 230**) *"ABDUL JABBAR AND ANOTHER versus THE STATE"* (**1977 SCMR 50**) (70 years of age); *"MAQSOOD versus ALI MUHAMMAD AND ANOTHER"* (**1971 SCMR 657**) (infirm, sentence suspended); *"M. RASHID versus SHAH MUHAMMAD"* (**2011 YLR 242**) (69 years of age); *"MUHAMMAD ISHAQ Versus THE STATE"* (**2011 YLR 781**) (65 years of age); *"FAIZ BAKHSH and others Versus THE STATE"* (**2010 YLR 2997**) (old age too); *"MUHAMMAD AMEER GONGA Versus THE STATE"* (**2010 MLD 1894**) (deaf and dumb too); *"SHER MUHAMMAD Versus THE STATE"* (**2009 P Cr. L J 788**) (80 year of age, though no life threatening disease); *"MANSABDAR Versus THE STATE through A. G. Punjab"* (**2009 MLD 641**) (extreme old age and bad state of health); *"GHOUS ALI Versus THE STATE"* (**2008 P Cr. L J 647**) (old age an infirmity); *"YOUSAF SHAH versus SYED SHAH and another"* (**2002 MLD 905**) (old age having weak eye sight): *"ANWAR KHAN versus THE STATE"* (2002 P Cr. L J 400) (70 years of age & other circumstances); *"SAKHI MUHAMMAD versus THE STATE"* (**1973 P Cr. L J 397**) (only old age as of 68/70 years with no ailment)

13. Though magnitude of infirmity cannot be quantified by the Courts once a jail report is on the record however, Courts in Pakistan recognized that infirmity is distinct from medical illness, and may arise from age-related degeneration or congenital weakness. The precedents affirm that infirmity is not contingent upon medical certification but upon the Court's assessment of the accused's physical condition and its impact on their ability to endure incarceration. Reliance in this respect is placed on cases reported as "*INSHAULLAH Versus The STATE and 2 others*" (**2024 YLR 1213);** "*Major (Retd.) MUSHTAQ AHMAD Versus THE STATE*" (**2002 YLR 706**) & "*MUHAMMAD NAWAZ Versus THE STATE*" (**1998 P Cr. L J 166**); relevant portion of this last judgment is reproduced as under;

> "Since the accused were present before the learned lower Court, he was quite capable of taking notice of the physical condition of the accused. Old-age or infirmity are physical phenomena and can be perceived by seeing and no documentary evidence was required to hold a lame person to be a lame person or an old person to be an old person. The observations of the learned Additional Sessions Judge in this regard do not suffer from any infirmity."

14. International best practices reveal a consistent recognition that infirmity and frailty demand special consideration in bail

decisions. In the United States, courts have repeatedly granted bail or compassionate release to elderly and infirm prisoners, grounding their reasoning in the Eighth Amendment's prohibition against cruel and unusual punishment. The Federal Bail Reform Act further strengthens this position by expressly allowing release on "exceptional reasons," which include physical incapacity. Across the Atlantic, the United Kingdom's Bail Act of 1976 empowers courts to weigh health and vulnerability, and judicial practice has long acknowledged that advanced age or frailty may justify bail even in cases involving serious offences. India too has embraced this principle. In "*Sanjay Jain vs Enforcement Directorate*" **(2023 DHC 4092)** (Bail Application. 3807/2022 decided on 5 June, 2023), it was the opinion that *"Mere old age does not make a person 'infirm' to fall within section 45(1) proviso. Infirmity is defined as not something that is only relatable to age but must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis."* In "*Naresh Goyal vs Directorate Of Enforcement and Anr,*" **(2024 BHC-AS 20953)** (Bail Application No.1901 of 2024 decided on 06 May 2024)**,** it was held that "*A prisoner has right to have treatment to preserve his health. It is the obligation of State to provide requisite treatment to a prisoner so as to preserve and protect his health. A prisoner is entitled to the dignity he deserves."* High Court of Justice Queen's Bench Division Administrative Court **in** "*PA Claimant V. Governor of Her Majesty's Prison Lewes*", **{[2011] EWHC 704}** has held as under;

> 37. "**Infirm"** is plainly not a medical term. It is a description applied by laymen to the consequences of a condition or conditions from which the person concerned suffers including old age. In deciding whether a person is infirm, the observer will need to form a value judgment. There is no point on a hypothetical scale of disability at which an individual can with confidence be said to be infirm, when a little further down the scale he was not. There are many who would resist the label of infirmity, despite enduring disability. There are many very serious disabilities which do not necessarily lead to the conclusion that the person concerned is infirm. For example, many who are unfortunate enough to be paraplegic or to have suffered multiple amputations could not sensibly be

> considered infirm. It would be difficult to imagine the Para-Olympics taking place if that were so.

15. Similarly, the European Court of Human Rights has reinforced this approach in landmark rulings such as "***Kudła v. Poland***", (App. No. 30210/96, 35 Eur. H.R. Rep. 198 (2000), holding that detention conditions must never subject prisoners to inhuman or degrading treatment. This jurisprudence directly supports the release of those unable to withstand incarceration due to infirmity. Taken together, these examples demonstrate a powerful global consensus: bail is not merely a procedural relief but a constitutional safeguard. Whether through the American emphasis on dignity, the British recognition of vulnerability, the Indian insistence on personal circumstances, or the European protection against degrading treatment, the message is clear, humanitarian justice demands that infirmity be respected in decisions of liberty.

16. When a court considers a bail petition, the relief extended to the accused must be anchored in three powerful principles: Humanitarian Considerations, Equality Before Law, and Proportionality. Bail jurisprudence worldwide recognizes that punishment cannot be cruel or degrading. Where an individual's infirmity diminishes their ability to withstand the harsh realities of prison, humanitarian principles, deeply embedded in constitutional guarantees of dignity and liberty, demand that such vulnerability be respected. Equally, the law must acknowledge that detention does not weigh the same on every individual. A young, healthy accused may endure imprisonment differently than an aged or physically frail person. True equality before law requires sensitivity to this unequal impact, ensuring that justice is not blind to human frailty. Finally, proportionality stands as a safeguard against excessive punishment. To detain an infirm person is to risk imposing a penalty far harsher than intended, one that violates the principle of proportionality at the heart of criminal justice. In such cases, continued incarceration ceases to be a legitimate measure of justice and instead becomes an unjust burden. Together, these

considerations form a compelling argument: bail is not a mere indulgence but a constitutional necessity, preserving liberty, dignity, and fairness in the criminal process.

17. Thus, the concept of infirmity under Section 497 Cr.P.C. provides a separate, humane, and legally sound ground for bail, distinct from medical grounds. It reflects the principle that justice must be tempered with mercy, ensuring that individuals who, due to weakness, age, or degenerative conditions, cannot pursue ordinary life pursuits, are not subjected to disproportionate suffering in custody. This approach aligns Pakistan's criminal jurisprudence with international standards of human rights and judicial fairness, reinforcing the dignity of the individual even in the face of serious allegations.

18. On a prayer for bail based on the prisoner's infirmity, when a jail report is placed on record confirming the infirmity or illness of the prisoner, the court may grant bail without delving into the extent or severity of the condition. However, in the absence of such a report, the court bears the responsibility to personally examine the prisoner to verify the claim of ill health. If, upon its own assessment, the court finds the prisoner to be infirm, it is empowered to grant bail without requiring any further medical investigation.

19. In the present case, the petitioner has been in continuous incarceration since 13.03.2025. He is afflicted with Parkinsonism, a progressive degenerative disease of brain, which places him within the category of an infirm person as contemplated under Section 497 Cr.P.C. This statutory provision itself recognizes infirmity as a valid ground for bail, and the petitioner's circumstances squarely fall within its ambit.

20. In view of what has been discussed above, the petition in hand is **allowed** on the ground of infirmity and the petitioner is admitted to bail upon furnishing bail bonds in the sum of Rs.1,000,000/- (Rupees One Million Only) with one surety in the

like amount to the satisfaction of the trial Court, subject to the following conditions;

a) The petitioner shall not tamper with the prosecution evidence or threaten the prosecution witnesses in any manner.

b) The petitioner shall not leave the territorial jurisdiction of this Court without prior written permission from the investigating officer/trial court.

c) The petitioner shall surrender his passport, if any, and shall make himself available for the investigation/trial as and when required.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

Approved for Reporting

Judge

Signed on 23.07.2026

M. Umar*