

Supreme Court: Medical Bail Cannot Be Rejected Without Assessing Treatment Available in Jail

The Supreme Court granted post-arrest bail where the alleged firing role was joint and unspecified, the forensic circumstances required further inquiry, and lower courts had not determined whether a seriously ill 78-year-old accused was receiving adequate treatment in custody.

Supreme Court criminal and medical-bail analysis
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Case: Criminal Petition No. 187-P of 2026

Court and date: Supreme Court of Pakistan | 21 September 2026

Bench: Justice Jamal Khan Mandokhail, Justice Naeem Akhter Afghan and Justice Aqeel Ahmed Abbasi

Result: Post-arrest bail granted; Peshawar High Court order set aside

The ruling in one sentence

The Supreme Court of Pakistan held that a serious medical ground cannot be summarily rejected without determining whether the required treatment is actually available or being provided in jail, and granted post-arrest bail where the prosecution also assigned the accused an unspecified joint firing role that required further inquiry.

The reported order is Nadar Khan v The State through Advocate General, Khyber Pakhtunkhwa and another, Criminal Petition No. 187-P of 2026. Justice Aqeel Ahmed Abbasi authored the reasons for a bench comprising Justice Jamal Khan Mandokhail, Justice Naeem Akhter Afghan and Justice Aqeel Ahmed Abbasi. The matter was heard on 21 September 2026.

The murder case and the rejected bail request

Nadar Khan was implicated with his two sons in FIR No. 360 of 2022, registered on 11 April 2022 under Sections 302, 324 and 34 PPC at Police Station Lund Khwar, District Mardan.

The prosecution alleged that the three accused fired pistols at the complainant, Zafar Khan, his father Saadullah and his brother Zardali Khan. Saadullah and Zardali Khan died, while the complainant was injured.

The petitioner sought post-arrest bail. The Peshawar High Court dismissed Criminal Miscellaneous Bail No. 1862-P of 2026 on 10 July 2026. He then approached the Supreme Court.

The defence case on the alleged firing

The defence maintained that Nadar Khan had been falsely implicated with his sons. It emphasized that the FIR assigned a joint role to Nadar Khan and co-accused Siraj for causing a firearm injury to deceased Saadullah but did not identify which injury was attributable to which accused.

No weapon was recovered from Nadar Khan. The defence further relied on the prosecution's own forensic position that the empties recovered from the scene had been fired from one pistol.

These circumstances were said to weaken the generalized allegation that all three accused had independently fired pistols and to require further inquiry before individual criminal responsibility could be fixed.

The medical ground raised by the 78-year-old accused

Nadar Khan was 78 years old and suffered from hypertension, diabetes mellitus and ischaemic heart disease. A court-directed Standing Medical Board had examined him and confirmed the diseases.

The defence argued that his age, infirm health and cardiac condition independently supported bail. It criticized the courts below for rejecting the medical ground merely because the Board had not labelled the diseases terminal or expressly stated that treatment could not be provided in custody.

The prosecution and complainant's objections

The State and complainant opposed bail. They relied on the petitioner's nomination in the FIR, the specific allegation of firing and his alleged period of abscondence.

On the medical issue, they argued that the Medical Board had not declared his illnesses life-threatening and had not reported that the required treatment was unavailable in judicial custody.

The Supreme Court therefore had to consider both the evidentiary merits and the manner in which the medical ground had been addressed.

Why the joint role required further inquiry

The Court noted that all three members of the same family had been assigned a joint role of firing pistols at three members of the complainant party. Two victims died and one was injured, but the allegations did not provide sufficient detail linking a particular injury to Nadar Khan.

At the bail stage, this omission made it difficult to ascertain his individual role in the fatal injuries. The Supreme Court observed that the possibility of involving him through a wider net could not be ruled out.

That concern was reinforced by two additional circumstances: no weapon had been recovered from him, and the empties found at the scene were reportedly fired from the same pistol.

The Court held that the courts below had not properly appreciated these features. They required further inquiry into the allegation against Nadar Khan and prevented the generalized joint role from being treated as conclusive at the bail stage.

What the Medical Board actually found

The Standing Medical Board confirmed hypertension, diabetes mellitus and ischaemic heart disease. Fresh investigations showed ischaemic changes on the electrocardiogram and abnormalities on echocardiography, including impaired left-ventricular function and inferolateral hypokinesia, along with aortic sclerosis and other cardiac findings.

The Supreme Court characterized these as serious illnesses that could become life-threatening if not properly treated by specialist doctors.

The important point was not simply the existence of chronic disease. It was the combination of advanced age, objective cardiac findings and the risk created if suitable specialist treatment was not available or delivered in custody.

The error in summarily rejecting medical bail

The courts below treated the absence of the words “terminal” or “life-threatening” in the Medical Board's conclusion as sufficient to reject the medical ground. They also relied on the fact that the report did not expressly say that treatment could not be provided in jail.

The Supreme Court found that approach inadequate. Once an official Medical Board had confirmed serious cardiac and metabolic diseases, the court had to ascertain whether the necessary medical facility and treatment were actually available or being provided to the accused in judicial custody.

A medical ground cannot be dismissed through assumption. If the State contends that adequate treatment exists in jail, the court should have material enabling it to record that finding. The omission may expose the accused to a fatal risk if a serious condition is not addressed promptly.

This is the judgment's broadest procedural lesson: assessment of custodial medical care is part of the judicial inquiry, not a burden that can be avoided merely because a Medical Board did not use a particular formula.

Why this was not solely a medical-bail decision

The Supreme Court did not grant bail only because Nadar Khan was elderly or ill. It first found substantial features on the merits that brought the case within further inquiry: the joint and unspecified role, lack of weapon recovery and the report that the empties came from one pistol.

The medical evidence strengthened that conclusion and exposed a separate failure in the orders below. The result therefore rested on the combined circumstances of the prosecution case, the petitioner's individual role, his advanced age, objective medical findings and the absence of a judicial determination about treatment in custody.

This distinction prevents the order from being read as an automatic rule that any accused with hypertension, diabetes or heart disease must receive bail.

The final order

The Supreme Court held that the case required further inquiry and entitled the petitioner to post-arrest bail. It converted the petition into an appeal, allowed it and set aside the Peshawar High Court judgment dated 10 July 2026.

Nadar Khan was granted bail subject to furnishing bail bonds of Rs200,000 with one surety in the same amount to the satisfaction of the trial court.

The reasons followed a short order made on the same date. The order was approved for reporting.

What the judgment means for bail practice

For defence counsel, a medical-bail ground should place the official diagnosis, objective tests, specialist needs and the accused's age before the court. Counsel should also seek a clear report on the treatment and facilities presently available in jail.

For the prosecution and jail authorities, a general assertion that treatment can be provided should be supported with concrete information: the relevant doctors, medicines, investigations, referral arrangements and actual treatment already delivered.

For courts, the relevant question is not limited to whether the illness has been labelled terminal. The court must examine its seriousness, the risk from inadequate treatment and the real custodial capacity to manage it.

On the merits, a joint role should not obscure the need to examine individual attribution. Medical evidence, recoveries and forensic material may determine whether the allegation against a particular accused requires further inquiry.

Relationship with the Supreme Court's recent medical-bail approach

The order is consistent with the Supreme Court's recent insistence that medical bail depends on evidence rather than labels. In one type of case, an official report may expressly state that specialized treatment is unavailable in jail. In another, as here, the defect may be that the lower courts never ascertained availability despite serious findings.

The distinction matters. Nadar Khan does not remove the need to investigate custodial capacity; it makes that investigation a necessary step before a serious medical ground is rejected.

What the judgment does not hold

The judgment does not decide that Nadar Khan is innocent. Bail regulates custody and the trial court remains responsible for deciding guilt on the evidence.

It does not establish that an unspecified joint role always results in bail. The lack of attribution was considered with the absence of recovery and the single-pistol forensic circumstance.

It does not declare that every elderly or chronically ill accused has an automatic right to release. The nature of the illness, medical proof, custodial treatment and merits of the prosecution case remain material.

It also does not finally find that adequate treatment was unavailable in the relevant jail. The criticism was that the courts below rejected the medical ground without first ascertaining and recording whether such care was available or being provided.

Practical legal position

Nadar Khan strengthens two important bail principles. First, individual responsibility cannot be assumed from a broad joint allegation where the injury attribution, recoveries and forensic circumstances require further probe. Second, an official finding of serious illness demands a real inquiry into custodial treatment before medical bail is rejected.

The decision therefore combines evidentiary fairness with protection of life and health. A court may refuse bail after examining the record, but it should not do so through an untested assumption that adequate jail treatment exists.

This commentary is independent legal analysis for research and general information. The complete order, FIR, medical report, forensic material, custody record, current medical condition and later judicial treatment should be checked before reliance in proceedings.