

Supreme Court: Failure to Produce an Undertrial Cannot Defeat Statutory Bail Under Section 497 Cr.P.C.

The Supreme Court held that an undertrial cannot be blamed for delay caused by jail or prosecution authorities, and that mere involvement in other cases does not by itself exclude statutory bail.

Supreme Court criminal-law and statutory-bail analysis
Published 29 September 2026 | Shahbaz Shah, Advocate High Court

Case: Criminal Petition for Leave to Appeal No. 1449 of 2026

Court and date: Supreme Court of Pakistan | 24 September 2026

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

Result: Appeal allowed; statutory-delay bail granted; lower-court orders set aside

The ruling in one sentence

The Supreme Court of Pakistan held that once an accused in a non-death-punishable case has remained continuously detained for more than one year without conclusion of trial, statutory bail must follow unless the delay was caused by the accused or someone acting on his behalf, and the failure of jail or prosecution authorities to produce the undertrial cannot be attributed to him.

The reported order is Chaudhary Shahzaib Shamim v The State and another, Criminal Petition for Leave to Appeal No. 1449 of 2026. Justice Aqeel Ahmed Abbasi authored the reasons for a three-member bench comprising Justice Jamal Khan Mandokhail, Justice Naeem Akhter Afghan and Justice Aqeel Ahmed Abbasi. The matter was decided on 24 September 2026 and approved for reporting.

The cheque case and the second bail application

The petitioner faced FIR No. 83 of 2025, registered at Police Station Sihala, Islamabad, under section 489-F of the Pakistan Penal Code. The complainant alleged that a partnership arrangement was cancelled and replaced by a fresh agreement under which the petitioner issued a cheque for Rs. 10 million. The cheque was dishonoured after payment was stopped.

His earlier bail applications on merits were rejected. A previous petition before the Supreme Court was withdrawn with liberty to seek bail afresh after the complainant's statement was recorded, and with a direction that the trial court should decide the fresh request independently.

Charge was framed on 26 June 2025. The case was then repeatedly fixed for prosecution evidence, but no witness was examined. The petitioner sought bail on the statutory ground of delay under the third proviso to section 497(1) of the Code of Criminal Procedure.

The trial court rejected the request without recording a finding on statutory delay. The Islamabad High Court also refused bail, reasoning that the delay was not attributable exclusively to the prosecution because the petitioner had not been produced from jail. It additionally relied on his alleged involvement in other cases and treated him as a habitual offender within the fourth proviso.

The statutory test focuses on conduct of the accused

Clause (a) of the third proviso to section 497(1) applies where a person accused of an offence not punishable with death has been continuously detained for more than one year and the trial has not concluded. The court must release the person unless the delay was occasioned by an act or omission of the accused or someone acting on his behalf.

The Supreme Court emphasized that the inquiry is not whether the prosecution was exclusively responsible for every day of delay. The legally relevant question is whether the accused or a person acting for him caused the delay.

Once the accused shows that neither he nor his counsel caused the delay, another institutional explanation does not defeat the statutory protection. This distinction matters because the proviso protects liberty against prolonged undertrial detention; it is not merely a sanction for prosecutorial misconduct.

Non-production from jail was the State's responsibility

The trial diary showed that neither the petitioner nor his counsel sought an adjournment. The proceedings remained stalled mainly because jail authorities did not produce him.

The trial court eventually issued production warrants directing the Superintendent of Central Jail Adiala, Rawalpindi, to ensure his attendance, but those directions were not obeyed. The prosecution did not secure his production or present its witnesses, and the trial court did not effectively enforce its own order.

The Supreme Court held that producing an undertrial prisoner on each hearing date is the prosecution's responsibility. If that does not happen, the trial court must issue and enforce production warrants. Administrative failure by the jail, prosecution or court cannot be converted into an act or omission of an accused who remains in custody and has no practical control over his production.

Treating non-production as a reason to deny bail reversed the statutory logic: the very failure prolonging detention was used against the detainee.

Other criminal cases did not automatically trigger the exception

The fourth proviso excludes certain categories from statutory-delay bail, including a previously convicted offender for an offence punishable with death or life imprisonment; a person whom the court considers a hardened, desperate or dangerous criminal; and a person accused of terrorism punishable with death or life imprisonment.

The Islamabad High Court relied on the petitioner's alleged involvement in several similar and other cases. The Supreme Court held that mere involvement in other cases does not by itself establish an exception under the fourth proviso, particularly where the present offence falls outside the prohibitory clause of section 497(1).

An accusation in another FIR is not the same as a previous conviction, and a list of pending cases is not a substitute for a judicial finding, supported by relevant material, that the accused is hardened, desperate or dangerous. The Court relied on *Ali Anwar Paracha v The State* (2024 SCMR 1596) and *Muhammad Rafique v The State* (1997 SCMR 412).

Section 489-F and prolonged undertrial detention

Section 489-F PPC carries imprisonment that may extend to three years, a fine, or both. It does not fall within the prohibitory clause of section 497(1), and the one-year statutory-delay threshold therefore applied.

The Court linked the prolonged failure to commence evidence with both liberty and fair-trial concerns. Detention cannot become an unrecorded substitute for punishment while the State fails to move the prosecution forward.

Statutory bail leaves little residual discretion

The Court described release on statutory delay as a protection created by law. Once its conditions are met, the provision leaves little discretion to withhold bail unless a specified exception is established.

Courts should therefore actively enforce the statutory benefit rather than approach it as an indulgence. The judgment relied on *Syed Ayesha Subhani v The State* (PLD 2023 SC 648) and *Mehran v Ubaidullah* (PLD 2024 SC 843) for the governing approach to delayed trials and statutory bail.

The words "shall direct" are important. They distinguish statutory-delay bail from an ordinary merits assessment in which the court weighs tentative evidence and broader discretionary considerations.

The final order

The Supreme Court concluded that the petitioner had not caused the delay in any manner and was entitled to bail on the statutory ground. It converted the petition into an appeal, allowed it and set aside the orders of the trial court and the Islamabad High Court.

The reasons followed the short order made on 24 September 2026. The supplied judgment is approved for reporting.

What the judgment does not hold

The judgment does not decide whether the petitioner committed the offence under section 489-F. Bail findings are tentative and the prosecution must still prove its case at trial.

It does not mean that every accused detained for one year automatically receives bail. The offence, length and continuity of detention, state of the trial, responsibility for delay and the express exceptions in the fourth proviso must still be examined.

It does not prevent a court from refusing statutory bail where the accused or someone acting for him caused material delay. Nor does it erase the exception for a qualifying previous conviction, a properly supported finding that the person is hardened, desperate or dangerous, or the specified terrorism category.

It also does not hold that other FIRs are irrelevant for every bail purpose. The narrower holding is that mere involvement, without more, does not itself establish the statutory exception used to defeat delay-based bail.

Practical guidance for bail proceedings

Counsel seeking statutory bail should place the complete order-sheet chronology before the court and identify every hearing after arrest or charge. The record should show the continuous custody period, whether defence counsel sought any adjournment, whether witnesses attended, and whether production warrants were issued and obeyed.

Where non-production caused delay, counsel should obtain the jail record and the trial court's warrants. The argument should remain focused on the statutory question: did any act or omission of the accused or a person acting on his behalf cause the delay?

If the prosecution invokes the fourth proviso, it should identify the precise statutory category and supporting material. A bare list of other FIRs should not be accepted as a substitute for the findings required by law.

Independent legal analysis; not legal advice.