

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT, BANNU BENCH  
JUDICIAL DEPARTMENT**

**Cr. Misc. (BA) No. 442-B/2025**

**Anwar Khan. Vs. The State & others.**

**JUDGMENT**

Date of hearing.....**16.10.2025**.....

Petitioner by: **Mr. Muhammad Arif Khan, Advocate.**

State by: **Mr. Muhammad Asghar Khan Ahmadzai,  
AAG.**

Respondent by: **Hujjat Ullah Khan Marwat, Advocate.**

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**ABDUL FAYAZ, J.-** This petition has been moved on behalf of the petitioner namely Anwar Khan son of Gula Khan for admitting him to bail till final conclusion of trial on statutory delay, who is detained in case FIR No.359 dated 21.6.2023 registered under sections 302/324/452/148/149 PPC at police station, Naurang District Lakki Marwat.

2. Allegations against the accused/petitioner as per FIR are that on 21.6.2023 at about 18:30 hours at the house of complainant situated at Patawi Kala Tehsil Naurang, District Lakki Marwat, the accused/petitioner along with co-accused committed murder of complainant

Ikramullah and deceased Hajra Bibi by making firing at them and also caused injury to a passerby namely Adnan through dragger by co-accused Saeed ur Rehman. The complainant initially charged by name co-accused Iqbal, Akbar Khan and Said Rehman along with two unknown accused. Later on the wife of complainant now deceased has charged the accused/petitioner in her statement under section 161 Cr.P.C. Hence, the ibid FIR.

3. I have heard arguments of learned counsel for the parties as well as learned AAG for the State at length and scanned the record with their valuable assistance.

4. Perusal of the record depicts that petitioner was arrested on 24.6.2023 and last charge was framed against him and his co-accused on 06.11.2024. It is evident from the record that in this case twenty witnesses are to be examined by the prosecution but till date only a single witness has been examined by the prosecution. It is by now settled law that speedy and fair trial is the inherent right of every accused. The guiding principle for the grant of bail on the ground of inordinate

delay was laid down by the Hon'ble Supreme Court in the case of **Riasat Ali Vs Ghulam Muhammad and the State (PLD 1968 SC 353)**, wherein it was held that

“Inordinate delay in the prosecution of a case, if not explained by the prosecution amounting to an abuse of the process of law, can be considered as a ground for bailing out an accused person even in a murder case depending on the nature of the delay and the circumstances that have caused it.”

It is clear from the record that the delay, if any, in concluding the trial is neither attributable to the petitioner nor anyone acting on his behalf and there is nothing on record to suggest that petitioner is either a hardened or desperate or dangerous criminal or previously convicted offender or involved in the act of terrorism.

5. As regards the category of accused mentioned in sixth proviso, it will be appropriate to refer the case reported as '**Moundar Vs The State' (PLD 1990 SC 934)** wherein, the Full Bench of august Supreme Court of Pakistan held as under:

“It is quite plain that the normal rule stipulated in the Third proviso to

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section 497 was that an under trial prisoner shall be released, after expiry of the respective period, without the trial concluding. The Fourth proviso is in substance an exception to the aforesaid general rule contained in the Third proviso. Before the Court applies the exceptional provisions of the Fourth proviso, it has to form an opinion that the accused was a previous convict or a criminal of one of the categories described therein. The words are "in the opinion of the Court". Such opinion cannot be obviously subjective but must be based upon materials placed before the Court, reasonably supporting the conclusion that the person concerned is a criminal of the classes described. The word "criminal" has not been defined. It will not be proper and indeed would be difficult to define it or give it a specific meaning. However, it is a common word of the English language. According to the Shorter Oxford English Dictionary the word carries several meanings, including

the meaning-- a person accused of a crime. In the context of the provisions under construction, we feel that the word cannot be construed in the technical sense, namely, that a formal accusation must be made against the person or that he should have been adjudged guilty of a charge in a Court of law. It appears to have been used in the sense of a person who violates the law of the land. The three adjectives qualifying the word "criminal" may also be examined.

According to the same dictionary the word "harden" has been defined to mean, inter alia, (1) to render or make hard; to indurate, (2) to embolden, confirm, (3) to make callous or unfeeling and (4) to make persistent or obdurate in a course of action or state of mind. The word "hardened" has also been defined to mean "made hard, indurate; rendered callous; hard-hearted; obdurately determined in a course".

The same dictionary gives the meaning of the word "desperate" inter alia, in relation to person: driven to desperation hence reckless, violent, ready to risk or do anything.

The, same dictionary gives the meaning of the word "dangerous", inter alia, as fraught with danger or risk; perilous, hazardous, unsafe."

Further reliance is placed on case title Shakeel Shah Vs. the State and others (2022 SCMR 1), wherein it has been held as under:

“9. We have, therefore, come to the conclusion that the delay in concluding the trial of the petitioner beyond the period of one year from the date of his arrest/detention has not been occasioned by an act or omission of the petitioner or any other person acting on his behalf, and that in the facts and circumstances of the case the accused does not appear to be a hardened, desperate or dangerous criminal. The petitioner has, thus, made out a case for grant of bail as a matter of

right under the third proviso to section 497(1), Cr.P.C. The High Court has failed to correctly appreciate the scope of the third and fourth proviso to section 497(1), Cr.P.C in the light of the fundamental rights guaranteed by the Constitution. This petition is, therefore, converted into appeal and allowed: the impugned order is set aside, the application of the petitioner for grant of post arrest bail is accepted and he is admitted to post-arrest bail subject to his furnishing bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the trial court.”

6. I am in respectful agreement with the above enunciation of law. In the instant case, the prosecution has not placed on record anything before the Court to indicate that the delay in conclusion of trial was caused due to act of accused/petitioner or any person acting on his behalf or that the petitioner is a hardened, desperate or dangerous criminal or a previously convicted person

for an offence punishable with death or imprisonment for life or a person involved in the act of terrorism.

Since the delay was caused in conclusion of trial particularly of the acts of co-accused for the reason that they were arrested one after the other, however, no one shall be condemned for the act of others. Reliance in this regard is placed on case title **Muhammad Usman Vs. The State 2024 SCMR 28**, wherein it has been held by the apex Court that:

“6. The next question that requires to be examined is whether a right had accrued in favour of the petitioner to be released on bail because of delay in the conclusion of the trial as contemplated under the third proviso of section 497(1). It is not disputed that the two year period specified in the third proviso of section 497(1) of the Cr.P.C. has passed and, therefore, this crucial condition has been met. It is also not disputed that, despite more than two years of continuous incarceration of the petitioner, the trial has not concluded. The delay in conclusion of trial is not attributable to the

petitioner nor his counsel, rather, it has been on account of the abscondance of the co-accused and their surrender or arrest at different times. Each time the charge had to be reframed. In response to our repeated queries, the learned State Counsel could not persuade us that the delay in conclusion of the trial could be attributed to the petitioner. The petitioner was not at fault and yet he had to suffer the hardship of incarceration of more than two years. The co-accused are stated to be close relatives of the petitioners and, therefore, the State Counsel has argued that his complicity could not be ruled out. The legislature has expressly confined the delay under the third proviso to an act or omission of the 'accused' or 'any person acting on his behalf. The accused cannot be made liable for the acts or omissions of a co accused regardless of the relationship, except when the prosecution can clearly show, based on undisputed facts that the accused seeking bail was complicit. The latter's acts and

omissions, or those of a person acting on his behalf, are crucial and could be considered for the court to determine the right to be released on bail on the ground described under the third proviso. The delay caused by the co accused is not attributable to the petitioner because no act or omission on the latter's part nor a person acting on his behalf could be shown."

Under these circumstances, it can safely be concluded that the petitioner has successfully made out a case for the grant of bail on the basis of statutory delay, after remaining in custody for more than two years and no prospects existed of the trial being concluded within reasonable time and detention of the accused/petitioner for an indefinite period would amount to an abuse of the process of the Court.

7. For what has been discussed hereinabove, this petition is allowed and petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/-(two lac) with two sureties, each in the like amount to the satisfaction of learned trial Court, who

shall ensure that the sureties are local, reliable and men  
of means.

**Announced:**  
16.10.2025.

-Sd-  
Judge

Ihsan PS/\*  
(S.B)  
Hon'ble Mr. Justice Abdul Fayaz.

17/10  
SCANNED  
17 Oct 2025  
Khalid Khan