

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M (B.A) No.639-M/2025

Petitioner(s): **(Dawood)**
 By Mr. Rashid Ali Khan, Advocate.

Respondent(s): **(The State)**
 By Mr. Imran Khan, A.A.G.

(Fazal Rahman and others)
 By Mr. Rahim Ullah, Advocate.

Date of hearing: **10.11.2025**

ORDER

SABIT ULLAH KHAN, J:- By way of this petition, petitioner namely Dawood s/o Bakht Karam seeks his post arrest bail in case F.I.R No.473 dated 10.07.2021 registered under sections 302, 324, 337-D, 337-F(i), 337-F(iii), 34 PPC and section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 at Police Station *Kabal*, District Swat, on the ground of statutory delay in conclusion of his trial.

2. According to the contents of the F.I.R, allegation against the accused/petitioner is that he, along with co-accused in furtherance of their common intention, have committed the murder of Fazal Rahman besides causing injuries to PW Wajid by stabbing.

3. Arguments heard. Record perused.

4. On merits, since the bail plea of the accused/petitioner has already been declined up to this Court and now he seeks his enlargement pm bail mainly on the ground of delay in the conclusion of his trial despite the lapse of the statutory period, therefore, the merits of the case shall not be discussed. Record shows that on the ground of statutory delay too, the bail plea of the petitioner was earlier declined by this Court vide order dated 18.07.2025 in Cr.M (B.A) No.406-M/2025, with directions to the learned trial Court to conclude the trial expeditiously preferably within a period of three months and such directions were issued keeping in view the date of arrest of the accused/petitioner, i.e., 10.07.2021 and the lapse of the statutory period as provided under the third proviso to section 497 Cr.P.C. However, despite the dismissal of his earlier bail plea on 18.07.2025, and after the lapse of almost further four months, the remaining three prosecution witnesses out of the total twenty-four could not be examined till date. The record reflects that on 14.07.2025, the prosecution witnesses namely Iqbal Hussain, Dost Muhammad (MM) and Constable Akhtar Munir, whose examinations-in-chief have already been recorded as PW-4, PW-7 & PW-8 respectively, were not in attendance. Thereafter, on 13.08.2025, although the

said witnesses appeared before the Court but they could not be cross-examined due to the absence of learned counsel for the complainant-party. Similar was situation on 28.08.2025. More particularly, on 15.09.2025 and 29.09.2025, not only there was a strike of the bar but the prosecution witnesses were also not present. Even on the last date of hearing, i.e., 13.10.2025, the PWs were not in attendance. As already observed by this Court in the earlier order dated 18.07.2025, the statutory period of two years from the date of arrest of the accused/petitioner has already lapsed and in view of the foregoing facts, there is nothing on record to suggest that after dismissal of his earlier bail plea, the delay in the conclusion of the trial or the non-attendance of the remaining prosecution witnesses can be attributed to the accused/petitioner rather, despite the lapse of the statutory period and clear directions of this Court, the lack of progress in the case is squarely attributable to the prosecution. It may be highlighted here that the prosecution has neither bothered to adhere to the relevant provisions of law on the subject nor complied with the directions of this Court, without offering any cogent or reasonable justification/ explanation. It is a settled principle of law that where there is no fault or negligence

/omission on the part of the accused in the conclusion of the trial within the statutory period then the application of the third proviso to section 497(1) Cr.P.C. becomes mandatory upon expiry of the period specified therein. Reliance is placed on the case titled “**Muhammad Usman Vs. The State and another**” (2024 SCMR 28), wherein, it was held by the apex Court that:

“If any act or omission of the accused has hindered the conclusion of trial within the period specified in the third proviso of section 497(1) of the Code of Criminal Procedure, 1898 (Cr.P.C.) then a right, as contemplated thereunder, will not accrue in the latter's favour and, therefore, he or she, as the case may be, would not become entitled to be released on bail on the statutory ground of delay in conclusion of the trial. Nonetheless, if after the rejection of the plea of bail on statutory grounds, the accused has subsequently corrected himself/herself and has abstained from doing any act or omission in the following period specified under the third proviso, then a fresh ground would accrue to the accused to invoke the jurisdiction of the court for grant of bail. Third proviso to section 497(1) of Cr.P.C. would thus become operative as and when the period specified therein has expired but the trial has not concluded without any fault on part of the accused. In the case in hand, the ground of statutory delay was not available to the petitioner (accused) when he had sought the concession of bail through the two attempts made by him. It was during subsistence of the second bail petition that the period specified under the third proviso had ripened and, therefore, a fresh ground became available to seek bail. Petition before the High Court was dismissed for non-prosecution and such dismissal did not prejudice his right to file a fresh petition before the High Court, which he did. Petition was competent because a fresh ground of delay in conclusion of trial had become

available to him. Petition was converted into appeal and allowed, and accused was admitted to bail.”

5. Similarly, there is nothing on record to suggest that the accused/petitioner is a previous convict or that he can be categorized as a hardened, desperate or dangerous criminal, therefore, he has successfully crossed both the above statutory barriers.

6. The Court unequivocally held that once the statutory period prescribed for the conclusion of a trial expires and the delay in proceedings is not attributable to the accused, the accused attains a vested right to be released on bail as a matter of law. Such right, being rooted in the principles of due process and fair trial guaranteed under Article 10-A of the Constitution, cannot be defeated by the negligence or inaction of the prosecution. The Court emphasized that prolong incarceration of an accused, despite the lapse of the statutory period and absence of prosecutorial diligence, undermines the very essence of justice and infringes upon fundamental rights. It was further observed that where the prosecution fails to produce witnesses or ensure progress in the case within the prescribed time, the resulting delay cannot be visited upon the accused. Hence, the denial of bail in such circumstances would

amount to an abuse of process and a violation of the constitutional safeguards ensuring liberty, fairness and expeditious justice.

7. In this view of the matter, this bail petition stands allowed, resultantly the petitioner is directed to be released on bail subject to furnishing bail bonds in the sum of Rs.500,000/- (rupees five hundred thousand) each, with two sureties each, in the like amount to satisfaction of the area Judicial Magistrate/MoD who shall ensure that the sureties are local, reliable and men of means.

Announced.
10.11.2025

Sd/-
JUDGE