

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Omer Sial

Const. Petition No.D-7137 of 2019.

Petitioner: Inam Akbar S/o. Ghulam Akbar through M/s. Yaseen Azad Khan and Raja Muqsit Nawaz Khan, Advocates.

Respondents: Chairman NAB & another through Mr. Zahid Hussain Baladi along with I.O. Asif Raza.

Const. Petition No.D-7131 of 2019.

Petitioner: Salman Mansoor S/o. Mian Ghalib Mansoor through Mr. Habib Ahmed, Advocate.

Respondents: Chairman NAB through Mr. Zahid Hussain Baladi along with I.O. Asif Raza.

Const. Petition No.D-7251 of 2019.

Petitioner: Syed Naveed S/o. Syed Majeed through Mr. Shoukat Hayat, Advocate.

Respondents: Chairman NAB and others through Mr. Zahid Hussain Baladi along with I.O. Asif Raza.

Const. Petition No.D-7199 of 2019.

Petitioner: Umer Shahzad S/o. Nadir Khan through M/s. Rommel Barkat and Faran Sardar, Advocates.

Respondents: Chairman NAB and others through Mr. Zahid Hussain Baladi along with I.O. Asif Raza.

Date of hearing: 20.01.2020.

Date of announcement: 24.01.2020.

ORDER

Mohammad Karim Khan Agha, J.- All the petitioners have applied for post arrest bail. Previously all their pre arrest bail applications were dismissed by this court and the petitioners were all taken into custody. Some of the petitioners have also moved post arrest bail applications

before this court which were dismissed and had approached the Supreme Court against such orders but rather than press their appeals on merits before the Supreme Court withdrew the same on the basis that they may again approach this court if any fresh ground had arisen.

2. The case in essence involves a misuse of authority by the official accused of the Ministry of Information Government of Sindh which favored beneficiary accused (the petitioners and other co-accused) mainly advertising agencies which enabled them to make hefty unjustified profits by receiving exorbitant advertising rates for placing adverts with T.V channels which caused a massive loss to the Government of Sindh

3. Learned counsel for the petitioners in essence raised two new grounds for the grant of post arrest bail. **Firstly**, that this court had granted post arrest bail to Sharjeel Inam Memon vide order dated 25.06.2019 and the other co-accused who were government officials vide order dated 28.10.2019 and based on the rule of consistency the petitioners should also be granted bail as their case was on a similar if not better footing and therefore had to be treated equally and **secondly** on the grounds of hardship as the petitioners had all now been in jail for over two years and the trial was no where in sight of conclusion.

4. On the other hand learned Special Prosecutor NAB along with the IO opposed the bail of all the petitioners on the grounds that the rule of consistency was inapplicable to them and that the petitioners had failed to make out any case for bail on hardship grounds. In support of their contentions they placed reliance on **Tallat Ishaq V NAB** (PLD 2019 SC 112)

5. We have heard learned counsel for the parties, considered the record and the case law referred to with their able assistance.

6. The first point to note is that we find that all the petitioners have raised two new grounds which were not available to them before i.e (a) the rule of consistency and (b) hardship. We will consider each ground in turn.

7. Turning to the rule of consistency. In essence co-accused Sharjeel Inam Memon was granted post arrest bail on the grounds that new

material had come to light which indicated that that the rates so charged by the advertising agencies might not have been so exorbitant as alleged which made his case as one of further inquiry. Since this new information regarding the rates being charged by the advertising agencies potentially not being so exorbitant would also apply to the petitioners in our view their case is on the same footing as that of Sharjeel Inam Memon and the other co-accused Government officials who were granted bail based on the case now being one of further inquiry and thus based on the rule of consistency the petitioners are equally entitled to be granted post arrest bail and thus are all the petitioners are granted post arrest bail on these grounds. Namely, it being a case of further inquiry and the rule of consistency.

8. With regard to the grant of bail on hardship grounds we are of the view that we do not now have to answer this question since we have already granted bail on the grounds of this being a case of further inquiry and the rule of consistency is applicable.

9. We would however like to place on record that in our view the case of **Tallat Ishaq** (Supra) does not completely debar bail being granted on hardship grounds in NAB cases and there may be exceptional facts and circumstances based on the particular facts and circumstances of each case which may justify bail being granted to NAB petitioners on hardship grounds and this **might** be such a case.

10. In this case all the petitioners have been in jail for almost 2 years and 3 months. A direction given by the Supreme Court to complete this case in a given time expired long ago. Likewise a similar direction given by this court. Thus, the giving of further directions to complete the case in a given period of time would serve no useful purpose. In this respect we would like to reproduce para's 13 to 15 of this court's order dated 28.10.2019 (over three months ago) whilst granting bail to the other Government official co-accused in this case:

"13. This direction expired 3 months ago and yet conclusion of the trial is still no where in sight despite the lapse of two years. For example, 36 PW's are yet to be examined by the prosecution, each PW will be subject to cross examination by 17 different defense counsel, each of the 17 accused will have to record their S.342 Cr.PC statements, may call DW's and each of the 17 accused along with

the prosecution will have to submit their final arguments. Thus, realistically we do not consider that the trial can be completed in 6 months and probably not even within a year. Thus, we do **not** consider it appropriate to pass **yet another direction** (being the third in the case) to complete the trial within another 6 months (which directions in any event are not binding on the trial court being only administrative directions) as realistically the trial is not going to be completed within this period even if heard on a day to day basis as it currently is and thus giving such direction would not serve any useful purpose apart from keeping the petitioners in jail for a further period of 6 months. In particular we have observed that on the last date of hearing of the case before the accountability court on 16.10.2019 no PW was in attendance which fault and delay lies on the shoulders of the prosecution who has the obligation to produce PW's in order to give their evidence in proof of its case

14. If the **maximum** sentence which can be awarded by an accountability court on conviction in terms of imprisonment under the NAO is 14 years would it be appropriate or fair or justified to keep an accused behind bars for more than 3 years when his trial is no where near conclusion keeping in view that the accused is presumed to be innocent until proven guilty and neither he nor his counsel has been responsible for any delay, bail cannot be denied as a punishment and as was observed by the Supreme court in the case of **Zaigham Ashraf V The State** (2016 SCMR 18) if an accused is ultimately acquitted he cannot recover this lost time spent in jail possibly away from his family including potentially small children or even receive any compensation or reparation? We are not convinced that it would be either just or fair. It needs to be carefully considered in our view whether such lengthy periods of incarceration during prolonged trials violates Article 10 (A) of the Constitution which guarantee due process rights one of which in our view is the right to an expeditious trial which is underlined by the preamble and S.16 (a) of the NAO. This is more so if the case is mainly based on documentary evidence and sufficient safe guards can be put in place to avoid the petitioners absconding and/or any potential interference with witnesses. We cannot in all good conscience close our eyes to such issues where a person's liberty is at stake for potentially long periods of time without him being convicted of any offense.

15. Thus, apart from this being a case of where we have already decided that bail should be granted to all the petitioners based on the rule of consistency on the particular facts and circumstances of the case this delay in conclusion of the trial which completion is not in sight in the foreseeable future which may not at this stage have quite reached the position where such delay or period spent in custody of the petitioners can be regarded as *shocking, unconscionable or inordinate* in our view such delay does also in addition **tilt the balance in favour** of the grant of post arrest bail to the petitioners".

11. What we have found **particularly shocking** whilst hearing these petitions is that the accountability court which is hearing this case has been lying vacant since August 2019 i.e. for approx 5 month **and as such not a single witness has recorded any evidence in this case over a 5 month period. The case has in effect simply ground to a halt through no fault of the petitioners.**

12. At present there are only 2 out of 4 accountability courts functioning in Karachi (both of which are massively over burdened) as two other courts have been vacant for at least 4 months each despite names being recommended by the Chief Justice of this court for appointment by the Federal Government. If the Federal Government fails to appoint Judges for the accountability courts for reasons best known to its self which lead to trials before the accountability courts in Karachi becoming endless with the accused in many cases rotting behind bars for years on end because there cases are not proceeding expeditiously, if at all, the question arises whether this court as mentioned above will need to step in in its constitutional jurisdiction to safe guard the rights of those behind bars since in our view Article 10 (A) also guarantees a right to an expeditious trial not with standing the provisions in the NAO to this effect. It is the duty of the State to prosecute accused expeditiously and if it by implication fails in this duty by not appointing accountability court judges in a timely fashion then it may be left to the courts to step in in order to safe guard the fundamental rights of its citizens. We in an Islamic welfare State based on the rule of law cannot turn a blind eye on such failings of the State in so far as the liberty of a person is concerned.

13. It goes without saying that the findings in this order are only after a tentative assessment of the material on record and will have no bearing on the out come of the trial which shall be decided on merits by the trial court based on the evidence on record.

14. Thus, all of the petitioners (Inam Akbar, Salman Mansoor, Syed Naveed and Umer Shahzad) are each granted post arrest bail subject to **each** of them furnishing solvent surety in the amount of RS one crore and PR bond in the like amount to the satisfaction of the Nazir of this court. **The names of all the petitioners namely, Inam Akbar, Salman Mansoor, Syed Naveed and Umer Shahzad shall also be placed immediately on**

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the ECL by the Secretary Ministry of Interior Government of Pakistan.
A copy of this order shall be sent to the Secretary Ministry of Interior by
fax for immediate compliance.

15. The above petitions are disposed of in the above terms.