

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Mohammad Karim Khan Agha

C.P. No.D-1260 of 2018.

Syed Shoaib Hassan

Versus

Federation of Pakistan and others

C.P. No.D-2244 of 2018.

Irshad Yousuf

Versus

National Accountability Bureau (NAB)

C.P. No.D-2656 of 2018.

Salman Ali

Versus

Federation of Pakistan and another

C.P. No.D-2657 of 2018.

Muhammad Yousif and another

Versus

Federation of Pakistan and others

Petitioner : Syed Shoaib Hassan in C.P. No.D-1260/2018	Through Barrister Khawaja Naveed Ahmed, Advocate
Petitioners : Irshad Yousuf in C.P. No.D-2244/2018 and petitioners Muhammad Yousif and Arif Yousif in C.P. No.D-2657/2018	Through Mr. Ishrat Ali Lohar Advocate
Petitioner : Salman Ali in C.P. No.D-2656/2018	Through Mr. Arshad H. Lodhi, Advocate

Respondent : Federation of Pakistan	Through Mr. Fazal Hussain Jamali, Assistant Attorney General of Pakistan
Respondents : National Accountability Bureau and others	Through Mr. Jangu Khan, Special Prosecutor NAB.
Date of hearing	25.09.2018
Date of order	27.09.2018

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- By this single order, we intend to dispose of all the above captioned petitions, whereby the petitioners named above have sought post-arrest bail in Reference No.11/2017, pending in the Accountability Court No.VI, Sindh at Hyderabad.

2. The brief facts of the case are that on a source report against petitioner Muhammad Yousuf, EX-Head, Constable in Police Department, that he had accumulated huge assets through illegal means; an inquiry was authorized by the D.G. NAB Karachi, which was subsequently converted into the investigation. In execution of warrants of arrest issued by D.G. NAB petitioner Muhammad Yousuf and his son namely Arif Yousuf were arrested from outside of their office in Hyderabad on 25.02.2017. On the disclosure of the said petitioners, property documents, cash, etc were recovered from their office in presence of witnesses and such memos were prepared. Further on the pointation of Muhammad Yousuf following cash, documents and articles were recovered from his houses No.224 and 225, in Tando Mir Ghulam Hussain, Unit No.9 Latifabad, Hyderabad (1) Cash PKR 3.89 million, UAE Dirhams 3405, Saud Riyals 745, Iranian Riyal 20 million, (2) Pay orders: 3 x pay orders of Rs.12.6 million in favour of Chairman NAB alongwith VR affidavit (3) Gold: 39.4 tola + Imitation jewelry, (4) Rado Wrist Watch, (5) Five Cars including Prado, Vitz, Wagon R and Toyota Avanza, (6) 8 motorcycles, (7) 41 cheque books of various bank accounts, 13 credit/ATM cards of various banks, (8) 53 fake pension payment bills, 15 fake GP Fund Payment bills, 10 insurance policies in the name of his family, fake rubber stamps in the names of Chairman NAB, SSP Sindh Police, Accountant etc, diaries showing distribution of amounts amongst different persons, cheques of different account (signed/unsigned).

3. The 05 vehicles and the 08 motorcycles available there were seized, besides the documents of 08 more vehicles in the name of petitioner Muhammad Yousuf and his other family members were secured. Additionally the documents of 45 different immovable properties and 08 saving certificates in the name of family members of petitioner Muhammad Yousuf worth Rs.8,00,000/- were also secured. The search of the said premises further led to discovery of documents about 102 benami accounts in Soneri Bank, Latifabad Branch and 66 benami accounts in the Branches of UBL Hyderabad. The said benami accounts were being used and operated by the petitioners in connivance with the District Account Office Hyderabad and the bank managers i.e. petitioners Syed Shoaib Hassan, Branch Manager UBL and Salman Ali Askari, Manager, Soneri Bank Latifabad Branch. Allegedly they all by using bogus commutation and gratuity cheques accumulated wrongful gain to the tune of Rs.323,004,453/- and Rs.64,410,235/- from the benami accounts in the aforesaid two banks. The details of benami accounts have been given in the subject reference. That in the investigation, the cheques books of all such benami accounts were recovered from the house of petitioner Muhammad Yousuf. During investigation, it was also found that the said bank managers were living beyond their known sources of income and leading a luxurious life. Their houses were found fully furnished and decorated with expensive articles. The petitioner namely Muhammad Yousuf and his sons namely petitioners Arif Yousuf and Irshad Yousuf are alleged to have accumulated wealth to the tune of Rs.196,080,484/- and the total loss caused to the National Exchequer by the petitioners has been calculated to the tune of Rs.545,162,776/- and as such the petitioners have committed acts of corruption under S.9 of the National Accountability Ordinance 1999 (NAO) which lead to the filing of the above mentioned reference against them by the National Accountability Bureau (NAB) before the accountability court in Hyderabad.

4. Earlier, petitioners Syed Shoaib Hassan Zaidi and Irsahd Yousuf through C.P. Nos.D-630/2017 2244/2017, respectively, applied for pre-arrest bail and they were granted ad interim pre-arrest bail by this Court, however, same was not confirmed and their plea for grant of pre-arrest bail was declined by this Court vide order dated 05.12.2017; resultantly, both the petitioners were taken into custody. Thereafter, petitioner Syed Shoaib Hassan through C.P. No.D-3806/2017 applied for post-arrest bail, which was also dismissed by this Court vide order dated 31.01.2018 with direction to the

trial Court to conclude the trial of the subject Reference within a period of 03 months from the date of said order; whereas the other petitioners namely Salman Ali, Muhammad Yousif and Arif Yousif are in custody and their petitions for grant of post-arrest bail were also dismissed by this Court vide order dated 05.12.2017.

5. It appears from the record that petitioners Muhammad Yousif and Arif Yousif have assailed the order of dismissal of their petitions passed by this Court before the Honourable Supreme Court of Pakistan by way of Civil Petition No.259 of 2018, however, the same was also dismissed by order of the Hon'ble Supreme court dated 17.04.2018, with direction to conclude the trial within a period of three months positively, failing which petitioners may if so advised ask for grant of bail even on ground of delay in trial. Through instant petitions, all the petitioners have applied for post-arrest bail on the ground of non-conclusion of trial within a period of 03 months or in other words on the grounds of hardship.

6. Learned counsel for the petitioners mainly emphasized in their arguments the non-conclusion of the trial of the Reference despite the direction given by this Court as well as the Honourable Supreme Court for deciding the subject Reference within a period of 03 months which had not been complied with; that petitioners Syed Shoaib Hassan and Irshad Yousuf are in custody since 05.12.2017 whereas Muhammad Yousif and Arif Yousif are in custody since 22.02.2017 and petitioner Salman Ali is in custody since 24.05.2017 and no delay has been caused by any of them in the conclusion of the trial and in this respect they have placed reliance on the diary sheets of this court; that till date out of 80 prosecution witnesses only 29 witnesses have been examined and the trial was not within sight of completion and as such they were entitled to bail on hardship grounds. In support of their contentions, learned counsel relied upon **Anwar Saifullah Khan V The State** (2001 SCMR 1040), **Muhammad Saeed Mehdi V State** (2002 SCMR 282), **Muhammad Nadeem Anwar V National Accountability Bureau** (PLD 2008 Supreme Court 645), **Himesh Khan V National Accountability Bureau (NAB)** (2015 SCMR 1092), **Muhammad Afzal Butt V State** (2015 SCMR 1696), **Muhammad Amin Qureshi V State** (2007 PCr.LJ 105), **Mansoor Ali V Chairman NAB** (PLD 2016 Sindh 41), and **Mushtaq Ahmed V Chairman, NAB** (2018 YLR 134).

7. Learned Special Prosecutor NAB while opposing the bail petitions of the petitioners, contended that they are responsible for committing the alleged offence and have caused huge loss to the national exchequer. According to him, the petitioners are the beneficiary of all the illegal practices; that the delay in conclusion of the trial is not on part of the prosecution but on the part of the accused/petitioners on which he also relied on the diary sheets of the trial court and as such the petitioners petition for bail on hardship grounds should be dismissed

8. We have heard the learned counsel for the petitioners, learned Special Prosecutor NAB, perused the record and considered the relevant law.

9. We would reiterate that the grant of bail on hardship ground is for the court to determine by exercising its discretion rather than of right as in the case of statutory bail u/s 497 Cr.P.C.

10. Although the petitioners have applied for bail on hardship grounds in our view we also need to give some weight to the context of the case. Namely, that all the petitions of the petitioners have been dismissed by this court and the Hon'ble Supreme Court on merits and that a huge loss has been caused to the national exchequer.

11. At the outset we find that non-compliance of a direction given by the High Court to a trial court to conclude a trial within a given period of time does not lead to the automatic grant of bail and may not on its own even be a fresh ground for grant of bail. In this respect reliance is placed on the case of **Nisar Ahmed v. The State & others** (PLD 2016 S.C. 11) which held as under at para-4 (P.13).

"4. We have scanned the material placed on record and are unable to subscribe to such submissions of the learned ASC. Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C., nor filing of direct complaint will have any bearing as regards earlier bail refusing orders, which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case".(bold added)

12. On this ground alone the petition could have been dismissed but we have also in the interests of justice and in our discretionary jurisdiction

considered whether a case of hardship has been made out by any of the petitioners in this case.

13. In the case of **Shahid Umer V Chairman NAB** (SBLR 2018 Sindh 357) this court considered in detail the law on hardship grounds in NAB cases and found as under at para's 28 to 33

"28. Once again however following **NAB V Bakhat Zameen's case** (Supra) the Supreme Court seems to have now turned to a broader interpretation of granting bail in NAB cases on the grounds of hardship based on factors which are more in line with **Attah Abbass Zaidi's case (Supra)** as opposed to the traditional ground of **many years** in jail having been served and there being no prospect of the trial concluding in the near future.

29. For example, in the following orders;

ORDER 03.03.2017 by a 2 member bench of the Supreme Court.

"Petitioner who is facing Reference No.31 of 2016 in Accountability Court-III, Lahore when failed to get the concession of bail from the lower forum sought indulgence of this Court therefore on the ground that none of the assets is disproportionate to his known means but unfortunately none of the documents explaining them has been read in its correct perspective **and that he has been in jail for one year yet the Reference awaits conclusion.**

2. The learned Special Prosecutor appearing on behalf of NAB contended that as many as eight witnesses have been examined and that if a month or so is given to the NAB, the trial will stand concluded. He, however, seriously disputed the assertion of learned ASC for the petitioner that the assets of the petitioner are not in disproportionate to his known assets.

3. We have gone through the record carefully and considered the submissions of learned ASC for the petitioner as well as the learned Special Prosecutor, NAB.

4. **Without entering into the merits of the case lest it prejudices the stance of either of the parties, the very fact that the petitioner has been in jail for one year yet his trial has not been concluded despite there being no lapse on his part. Needless to say speedy trial is an indefeasible right of the accused particularly in the cases of NAB when Section 16 of the NAO provides that trial shall be concluded within 30 days. (bold added)**

For the reasons discussed above, we convert this petition into appeal, allow it and direct release of the petitioner on bail if he furnishes bail bonds in the sum of rupees five million with two sureties to the satisfaction of the trial Court.

30. As mentioned earlier and relied upon by the petitioner **unreported order of a 3 member bench of the Supreme Court in Civil Petition 17/17 Syed Rashid Hussain Rizvi V Chairman NAB dated 12-7-2017** where at Para 5 it held as under:

"A look at para-8 and para-9 of the reference would reveal that role assigned to the petitioner is not much different from the one assigned to his co-accused who has since been released on bail. We thus, see no strong reason to treat the petitioner differently. **The fact that the petitioner has been in jail for two years yet the conclusion of his trial is not in sight would tilt in favour of grant rather than refusal of bail**" (bold added)

31.

32. Perhaps this change in approach is guided by Article 10 (A)'s requirement of an expeditious trial, the fact that the NAO is special law whose object is speedy disposal of cases within fixed timeframes and the realization that the ground reality is that in NAB cases due to their complexity, there being so many accused (often upwards of 10) each with a separate right of cross examination of usually many witnesses often through separate advocates such trials can often take 5 or more years to complete with a maximum sentence of 14 years and the object of the criminal law primarily being to allow persons to face the trial against them and not to let them rot in jail for years on end in cases where they may be acquitted at the end. Thus, since there is no statutory grounds of bail in NAB cases in terms of hardship the supreme Court may be turning towards a more lenient and humane approach in determining hardship cases in NAB cases based on the ground realities that these cases even after several years often realistically have no hope in sight of being completed in the near future due to some of the factors mentioned above and as such the Court is taking a more human approach in NAB cases bearing in mind that it is for the prosecution to expeditiously prosecute its case and for the trial court to manage the smooth running and fast and efficient disposal of NAB cases in accordance with the NAO **provided that the accused or his representative has not been at fault in delaying the trial.** Corruption may be a heinous crime which is eating away at the fabric of society and hindering economic development but it should not permit the State to lock accused up in jail for years on end without determining their guilt, time which the accused cannot recover. A balance needs to be struck between the heinousness of the offense and the liberty of the accused who cannot be detained indefinitely as was held in the classic case of **Riasat Ali V Ghulam Muhammad** (PLD 1968 SC 353) which seems to have been one of the foundational cases on the grounds of hardship. Such intervention by the courts in such NAB hardship cases may even be perceived as the court's acting in their discretionary constitutional jurisdiction to safe guard/protect the fundamental rights of a citizen who has been in prolonged detention pending completion of his trial due to no fault of his own against the failure of the State to expeditiously prosecute him. If such NAB trials are taking so long to complete due to no fault of the accused it is not for the accused to be made to suffer prolonged incarceration due to the fault of the State in any civilized society but for that State to sort out the shorting comings in the criminal justice system so that the accused is not unnecessarily made to suffer due to the State's failure.

creating more accountability courts to deal with the heavy work load so that cases can be heard more frequently and decided more speedily as was the intention of the legislature which is made abundantly apparent through both the preamble and S.16 (a) NAO requiring trials to be heard on a day to day basis and decided within 30 days. Every thing of course, however, in a hardship cases will turn on the particular facts and circumstances of each case and as such the **Atta Abbas Zaidi** (Supra) considerations/factors may prove to be useful in making such determinations.

33. Thus, it would almost seem that we are back to the **Atta Abbas Zaidi** (Supra) considerations/factors in NAB cases for the grant of bail on hardship grounds the main ones being the length of time spent in jail; whether any delay has been caused by the fault of the petitioner and based on the particular facts and circumstances of the case realistically how much longer is the trial likely to conclude and whether a direction to complete the within 6 months would enable the trial to conclude."

14. It would seem that the Hon'ble Supreme Court is continuing with such an approach in NAB cases vis-a-vis bail on hardship grounds as can be seen by its order dated 17-11-2017 in the case of **Hamood Ur Reham Qazi V Government of Sindh** (unreported) in Civil Petition 3381/17 which is set out below for ease of reference:

1. Petitioner who is facing Reference No.42/2015 before the Accountability Court No.II at Karachi when failed to get the concession of bail from the High Court, in the second round, asked for indulgence of this Court **mainly on the ground that more than two years have passed yet conclusion of his trial is not in sight.**

2. Learned Special Prosecutor appearing on behalf of NAB contended that where connivance and complicity of the petitioner is patent and palpable from the record grant of bail would amount to encouraging the commission of such crime and that five witnesses have already been examined and those who are left would be examined in a few months.

3. We have gone through the record carefully and considered the submissions of the learned ASC for the petitioner as well as learned Special Prosecutor, NAB.

4. **Petitioner on merits may not have a case for grant of bail but the fact is that he has been in jail for two years and two months yet conclusion of his trial is not in sight. In the circumstances, the petitioner cannot be kept on tenterhooks for an indefinite period of time. We thus, convert this petition into appeal, allow it and admit the petitioner to bail if he furnishes bail bonds in the sum of Rs.10,00,000/- (Rupees Ten Millions) alongwith two sureties in the like amount to the satisfaction of the Accountability Court.(bold added)**

15. In our view for bail on hardship grounds to be granted whether the bail on merit has been dismissed by this court or the supreme court and the

amount of loss to the exchequer must be given some weight but the main considerations as distilled from the latest supreme court authorities appear to be (a) how long has the petitioner been in custody with more weight being given to the ground of hardship the longer the petitioner has been in custody e.g for over 2 years and (b) whether the delay in the trial has been caused by the petitioner and (c) whether the trial is currently proceeding expeditiously and (d) whether there are prospects of the trial concluding in the near future in which case another direction to complete the trial within a specific period of time would be the appropriate course and (e) the particular facts and circumstances of each case and (f) if bail is granted the imposition of a heavy surety.

16. **Turning to the instant case.** Petitioners Syed Shoaib Hassan and Irshad Yousuf have been in custody for around 9 months and it appears that considerable delay has been caused by Syed Shoaib Hasan and in our view 9 months in custody would prima facie exclude them from bail on hardship grounds especially as Syed Shoaib Hasan has caused some delay in the conclusion of the trial.

17. Petitioner Salman Ali has been in custody for around 15 months and petitioners Muhammad Yousif and Arif Yousif have been in custody for around 18 months with little delay being caused on their part. Thus prima facie they may qualify for bail on hardship grounds.

18. **The crucial question therefore appears to be what is the stage of the case and how is the trial proceeding?** At this point in time 30 out of 80 PW's have been examined and the trial is in full swing with 4 PW's being examined on the last date of hearing i.e 24.09.2018. In this case there is the prospect of some PW's being given up and importantly there are only 5 accused which means that there will only be 5 cross examinations per witness. Thus, in our considered view we are of the opinion that the trial can be completed within a period of 3 months from the date of this order. In this regard we are fortified by the cases of **Muhammad Nawaz V State** (2002 SCMR 1381) and **Rehmatullah V State** (2011 SCMR 1332). **Thus the bail petitions of all the petitioners are dismissed on hardship grounds** and the trial court is directed to proceed with the trial on a day to day basis and not allow any adjournment on any flimsy ground and complete the trial within 3 months of the date of this order. The Adl.Registrar of this court shall send a copy of this order immediately to the accountability court in Hyderabad for

information and compliance which shall submit fortnightly progress reports to this court.

19. All the petitions stand disposed of in the above terms.