

# IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammed Karim Khan Agha, J.

## ***Constitution Petition No. and name of petitioner along with counsel.***

C.P.No.D-4517 of 2017 Fareed Ahmed Yousfani V NAB through its Chairman & others.

Fareed Ahmed Yousfani S/o Ghulam Haider Yousfani through Barrister Mohsin Shahwani, Advocate.

## **Counsel for the Respondents.**

Mr. Mohammed Altaf, Special Prosecutor, NAB.

Date of Hearing: 30-11-2017

Date of Order: 05-12-2017

## **ORDER**

**Mohammed Karim Khan Agha, J.** Through this petition, the petitioner Fareed Ahmed Yousfani seeks post arrest bail on medical grounds in Reference No.27/2015 which is proceeding before Accountability Court II at Karachi.

2. Brief facts of the case are that the petitioner is nominated accused in Accountability Reference No.27/2015 relating to bifurcation of large auction plots fraudulently on forged papers without due approval of the competent authority which caused a huge loss to the public exchequer. In particular the investigation revealed that the petitioner Fareed Ahmed Yousfani ex-Project Director LARP (accused No.1) was involved in forgoing and fabricating a minute sheet through forged/false signatures of Roshan Sheikh, the then DCO Karachi to seek changes in approved planning in respect of large auction plots, which were earmarked to be auctioned through a minimum reserve price of Rs.50,000 per sq. yds. This was done to illegally allot these plots in the shape of 32 sq. yds. plots in Sector 1 Lines Area, the purported minute sheet never existed in the record. In addition to this, the accused No 1 signed allotment orders in the shape of 32 sq

yd. plots which were carved out from the large reserved auction plots. As a result of this misuse of authority in connivance with other co-accused the aforesaid reference was filed against the petitioner and other co-accused by National Accountability Bureau(NAB) under S.9 of the National Accountability Ordinance 1999 (NAO) for the offense of corruption and corrupt practices.

3. Learned counsel for the petitioner submitted that the petitioner was seriously ill and was entitled to bail on medical grounds and in this respect placed reliance on a report of a medical board dated 15-11-2017 which had been constituted on the orders of the accountability court.

4. On the other hand the Special Prosecutor NAB opposed the grant of bail to the petitioner on medical grounds as according to him the petitioner's case did not meet the legal requirements to justify the grant of bail on medical grounds.

5. We have considered the submissions of the parties, reviewed the report of the medical board assisted by its members and considered the relevant case law.

6. It is now settled law since the case of **Mohammed Yousafullah Khan V State** (PLD 1995 SC 58 Relevant P.65) that the test for the grant of medical bail is as under:

"From the above discussed position it is clear to us that the bail on medical ground can be granted under section 497, Cr.P.C. if the Court reaches the conclusion **on the basis of medical report** that the ailment with which the accused is suffering is such that it cannot be properly treated while in custody in Jail. The fact that the appellant is not suffering from any particular type of injury (as observed by the learned Judge that there was no fracture of bone in that case), would not be a ground either to refuse or grant the bail on medical ground. **The correct criteria for grant of bail to an accused in a non-bailable case, on medical ground, in our view, would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail and that**



**some specialized treatment is needed and his continued detention in Jail is likely to affect his capacity or is hazardous to his life".** (bold added)

7. The test would therefore appear, in non bailable cases such as the instant case, to have the following limbs as set out below all of which in turn the court would need to be satisfied of, based on the medical reports, before the Court before bail on medical grounds can be granted under the first proviso to S.497 (1) Cr.PC

- (a) the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail **and**
- (b) that some specialized treatment is needed **and**
- (c) his continued detention in Jail is likely to affect his capacity **or** is hazardous to his life.

8. In the instant case a medical board was established pursuant to the orders of Accountability Court II at Karachi which on 15-11-2017 opined as under in respect of the medical condition of the petitioner.

NO.F.2-12/2017-GENL-K/4399/JPMC  
GOVERNMENT OF SINDH  
JINNAH POSTGRADUATE MEDICAL CENTRE  
KARACHI.75510.

The Superintendent  
Central Prison  
Karachi.

Dated the 15/11/2017

Subject: Minutes of Medical Board of accused Fareed Ahmed Yousufani S/o Ghulam Haider Reference No.27/2015 Ref:- AS/MED/Med-Trt/32066/67, dated 28.10.2017.

A meeting of the Medical Board of accused Fareed Ahmed Yousufani S/O Ghulam Haider was held on 3<sup>rd</sup> November, 2017 in the Committee Room No.1 Administration Block JPMC Karachi. The following consultants attended the meeting.

. Prof. Khalid Sher  
. Prof. Tariq Ashraf, NICVD  
. Dr. Nousheen Ahmed  
. Dr. Nascem Ahmed

Chairman  
Member  
Member  
Member

Dr. Yahya Khan Tunio

Secretary.

**H/O:** Diabetes, Hypertension, Non smoker and Angioplasty done in 2015 at NICVD.

Diagnosed case of obstructive sleep apnea.

**C/O:** Exertional dyspnea day time sleepiness and Numbness in legs:

**Patient taking following treatment:**

Tab: Coplarix Tab: Concor 5mg Tab: Sert 50mg Tab: Sofvasc  
10mg Tab: Lipiget 10 mg Tab: Daonil 5 mg Tab: Glucophage  
850 TDS.

**On examination:**

Medical Board examined the patient and reviewed available medical record.

BP: 160/90 mm Hg Pulse: 73 min, Saturation 98/ and Bilateral pedal edema present.

Chest: Bilateral normal vesicular breathing no added sound.

CVS: No significant finding or

Higher mental functions normal cranial nerves intact.

Motor system: Depressed reflexes in lower limbs with down going planters.

There was subjective complaint of sensory impairment in stocking distribution. He was found to have ataxia upon Romberg testing with down going planters.

**Advice:**

>Continue above mentioned medicines CPAP therapy as already prescribed

>Percent thallium

X Ray PA view

>ABG's

EMG / NCV

to rule out poly radicular & neuropathy.

He is further advised to consult General Physician and neurosurgeon to rule out diabetic complications and for evaluation of Lumbosacral Spine.

Sd/-

Dr. Yahya Khan Tunio

Deputy Director

Copy forwarded for information and necessary action to the Honorable Judge, Accountability Court No. II, Karachi.

9. After carefully considering the medical report this court was unable to fully ascertain whether or not the petitioner met the legal requirements for bail on medical grounds. As such we called the medical board on 30-11-2017 and asked them whether the legal requirements as set out in **Mohammed Yousafullah Khan's case (supra)** had been met as per their report.



10. The board informed us that as per their medical report although the petitioner was aged and was suffering from a number of ailments at the time of examination he could be adequately treated in jail hospital and that his continued detention in jail would not be hazardous to his life.

11 Keeping in view the report of the medical board and their clarifications in our view the petitioner has not been able to meet the legal requirements to justify the grant of bail on medical grounds and as such his petition is dismissed and the petitioner is ordered to be returned forthwith to jail.

12. A copy of this order shall be transmitted to superintendent central jail Karachi and the concerned Accountability Court for information and compliance.

13. These are the reasons for our short order dated 30-11-2017 whereby the petition was dismissed.