

## IN THE HIGH COURT OF SINDH, KARACHI

Before:-

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

Mr. Justice Mohammed Karim Khan Agha, J.

C.P. No.D-7561 of 2017 Waseem Iqbal V Chairman NAB & others.

Waseem Iqbal S/o Shaikh Nooruddin (the petitioner).

Through M/s. Shoukat Hayat and Abdul Hafeez, Advocates.

### **Counsel for the Respondents.**

Mr. Muhammad Altaf, Special Prosecutor, NAB.

Date of Hearing: 19-12-2017

Date of Order: 28-12-2017

## **ORDER**

**Mohammed Karim Khan Agha, J.** By this order, we propose to dispose of the above petition which has been filed and plead by learned counsel for the petitioner (Waseem Iqbal) for seeking post arrest bail in **Reference No.27 of 2015 (State v. Fareed Ahmed Yousafani)**, solely on the grounds of hardship coupled with the rule of consistency.

2. The brief facts of the case are that the petitioner was charged along with 39 other co-accused in National Accountability Bureau (NAB) reference No.27/2015 for acts of corruption and corrupt practices under S.9 of the National Accountability Bureau Ordinance 1999 (NAO) in connection with the Lines Area Redevelopment Project (LARP) which acts of corruption caused a loss of millions of rupees to the national exchequer.

3. The role which has been assigned by the petitioner as set out in the Reference No.27 of 2015 alleged therein that Waseem Iqbal/petitioner, Deputy Director Lease LARP (accused No.6) has processed all the lease files. He had the responsibility to check approved planning before allowing leases of these allotments of 32 sq. yard commercial plots in departure to approved Master Plan. All the allotments of 32 sq. yard plots carved out from the proposed large auction plots in the approved master plan and their leases have been cancelled as mentioned in the report submitted by the incumbent Project Director LARP and consequently eviction notices have been dispatched to the beneficiary accused person and a new committee has been constituted to revise the minimum auction price as per market value.

4. In the last it is further alleged that the accused persons 1 to 7 (including the petitioner) have committed misuse of authority by maneuvering the entire fraud through fake and forged minute sheets to allot land measuring 7,264 sq. yards reserved for auction at a minimum reserve price of Rs.50,000/- per sq. yard. Further allotting the same through small commercial plots of 32 sq. yards at a nominal rate of Rs.200/- per sq. yard, **thus causing colossal loss of Rs.363,200,000/-** to the government exchequer. **An additional loss of Rs.36,038,196/-** was caused to national kitty on account of non-recovery of Non-utilization fee against plot # MC-06. **Thus total loss of Rs.399.238/- million** has been caused to the government exchequer by the petitioner in

collusion and connivance with the other official co-accused in order to favour the beneficiary co-accused.

5. Learned counsel for the petitioner submitted that the petitioner was arrested on 15.06.2015 and since then the petitioner is confined in jail and the case has not been concluded till this date despite the lapse of almost 2 years and 6 months. He further submitted that the delay in conclusion of the trial is not on the part of the petitioner or his counsel and as such he was entitled to bail on hardship grounds. He also relied on the rule of consistency whereby his co-accused Shahid Umar who had played a similar role as him in the alleged offense had been granted post arrest bail on similar grounds by this court vide its order dated 12-10-2017 in the case of **Shahid Umar V Chairman NAB** C.P. No. D-5369 of 2017 and as such he was entitled to equal treatment based on the rule of consistency and as such the petitioner should be granted post arrest bail. Apart from **Shahid Umar's case** (supra) he also placed reliance on the diary sheets throughout his period of incarceration to show that no delay had been caused on his part.

6. On the other hand, learned Special Prosecutor, NAB vehemently opposed the grant of bail on the ground of hardship and the rule of consistency as the delay in proceeding and deciding the case was purely on the part of the petitioner as reflected from the order sheets submitted by the petitioner himself and his case was not on the same footing as **Shahid Umar's case** (Supra) and as such the

petitioner was not entitled for the grant of bail on hardship ground and/or the rule of consistency and as such his petition for bail should be dismissed. In support of his contentions he placed reliance on **Faisal Hussain Butt V The State** (2009 SCMR 133).

7. We have heard the parties, considered the record and the case law cited by them at the bar.

8. In recent times as pointed out in **Shahid Umar's case** (Supra) in hardship cases the superior Courts have tended to consider the factors laid down in the case of **Atta Abbass Zaidi V Chairman NAB** (SBLR 2017 1011) and in particular (a) how long the petitioner has been in jail, (b) whether any delay has been caused by the petitioner or someone acting on his behalf and (c) whether the conclusion of the trial is in sight with each case being considered on its own particular facts and circumstances.

9. In **Shahid Umar's case** (Supra) we found that (a) the petitioner had been in jail for 2 years and 3 months (b) that the petitioner or those acting on his behalf had been responsible for about 4 delays in the proceedings and (c) there were more than 30 accused, at least 5 witnesses yet to be examined and a battery of lawyers for the accused to cross examine each PW and as such in our view realistically the trial was most likely to take a significant period of time to conclude. Thus we granted bail to Shahid Umar.

10. In the **later** case of C.P. No.D-2310 of 2017 **Tahir Jameel Durrani V NAB** dated 01-11-2017 which arose out of the same reference and the petitioner had relied on hardship grounds and the rule of consistency (**Shahid Omar's case** (Supra) we rejected the petitioners petition for post arrest bail for the following reasons as set out in para's 11 to 14 of the aforesaid order which are reproduced as under;

11. We consider that the instant case is distinguishable from the case of **Syed Rashid Hussain Rizvi** (supra) and **Shahid Umer** (supra). This is because the petitioner's role as mentioned in paragraph 4 of the reference in the commission of the crime is much greater than the other petitioners in the same case who had already been granted bail on the grounds of hardship. Furthermore in both the other cases, **Syed Rashid Hussain Rizvi** (supra) and **Shahid Umer** (supra) the petitioners had both spent well over two years in jail whereas in this case the petitioner has only served 17 months in jail. **Most significantly** a review of the order sheets from the date on which the petitioner's bail was last declined on hardship grounds i.e. diary sheets between 22.3.2017 to 07.08.2017 being approximately four months which is roughly the period the court directed the trial to be concluded reveal that **the reference came up for hearing 11 times and on 06 occasions (over 50%) the defense counsel for the petitioner was called absent.** In our view such a casual attitude by the defense counsel of the petitioner indicates that he had no genuine desire to proceed with the case and was simply passing time until the time given in the direction to complete the trial by the High Court expired so that he could again apply for bail on hardship grounds with the high possibility of such bail being granted.

12. We consider that such tactic on the part of the petitioner was a deliberate attempt to abuse the concept of the grant of bail on hardship grounds as well as to defeat the directions of the court to complete the case within a timely manner and we consider that when exercising our discretion that such conduct cannot be ignored and goes against the petitioner.

13. We also observe that since the above referred two earlier cases **Syed Rashid Hussain Rivzi** (supra) and **Shahid Umer** (supra) there are now only 17 accused persons out of 33 as a number of earlier accused have entered into plea bargains and only 4 PW's remain to be

examined and as such there is a greater possibility of the trial being concluded in the near future with an appropriate direction given to the trial court to complete the case within a given period of time. We also note from the order sheets that there appears to be a strategy amongst the numerous accused to deliberately delay the trial on one pretext or another which also needs to be discouraged.

14. Thus, for all the reasons mentioned above we find the case of the petitioner distinguishable from the cases of **Syed Rashid Hussain Rizvi** (Supra) and **Shahid Umer** (supra) which although arising out of the same reference are distinguishable on, amongst others, the following grounds and as such the rule of consistency is **not** applicable:

(a) That the petitioner played a far greater role in the offence which caused colossal loss to the State.

(b). That the petitioner has spent 17 months in jail being 10 months less than the other co-accused who were granted bail on hardship grounds.

(c). That since the date of the direction of this court to the trial court to complete the trial within a period of three months on **more than half the dates in which the reference was called the petitioner's counsel remained absent** which in our view was a deliberate tactic on the part of the petitioner to enable the petitioner to file another petition on hardship grounds within a short period of time and to defeat the directions to conclude the trial given by this Court to the Accountability Court within a three month period.

(d). That now there are only 17 co-accused and four PW's left to be examined and the conclusion of the trial is within sight.

11. We shall now turn to the case of the petitioner in terms of our three pronged test all of which factors must be present to qualify for hardship and in this case the rule of consistency based on **Shahid Umar's case** (Supra):

(a) the petitioner (Waseem Iqbal) has served around 2 years and 6 months in jail which in our view would prima facie qualify him for bail on hardship grounds.

(b) He has however, after a careful review of the order sheets, been responsible either through himself or

his counsel for a minimum of 21 delays in the proceedings not including hearings when his counsel was absent but the case could not proceed on other grounds. When we consider that the reference has been called for hearing 88 times over his period in jail it appears that he has been responsible for more than 20% of the total delay in the conclusion of the trial and that he has been instrumental in delaying the trial and thus he would **neither** qualify for bail on hardship grounds when this factor is considered **nor** would his case be on the same footing as that of **Shahid Omar** (Supra)

- (c) **Most significantly**, with regard to whether the conclusion of the trial is within sight we observe that all the PW's have now been examined (as opposed to 4 PW's left to be examined in **Shahid Umar's case** (Supra). That the IO has completed his examination in chief and on the last date of hearing all the defense counsel (**including the petitioner's counsel**) sought an adjournment so yet another delay was caused on the part of the petitioner whose counsel could have cross examined the IO if he so choose to do so but instead requested an adjournment along with the other defense counsel to prepare their cross examination for which they wanted more than 2 days to prepare. That after plea bargains by the beneficiaries there are only now about 15 co-accused (as opposed to 30 in **Shahid Umar's case** (Supra)) remaining.
- (d) The order sheets reveal that the trial is now moving very quickly and is being heard regularly and most adjournments, if any, are being caused by the defense and **thus in our view the completion of the trial is within sight and since it is moving expeditiously now there is no reason why it cannot be completed within 6 weeks of the date of this order provided that the accused do not cause any delay**. It is also note worthy that the petitioner is one of the main accused, the loss to the exchequer is substantial and his post arrest bail was previously declined by this court on merits.

12. It thus appears that the case of the petitioner **Waseem Iqbal** is more on the same footing as the case of **Tahir Jameel Durrani** (Supra) whose bail was rejected by this court whilst relying on hardship grounds and the rule of consistency.

13. Additionally, we also have to take into account that the trial is likely to be completed shortly and there are serious allegations against the petitioner. Furthermore, the Hon'ble Supreme Court in such circumstances has generally not approved of the granting of bail. In this respect reliance is placed on the case of **Rehmatullah V State** (2011 SCMR 1332) where at P.1333 it was held as under:

**"Heard. The petitioner was granted bail on 21.11.2008, which was cancelled by the learned High Court on 19.3.2009, when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor-General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial court to conclude the trial of the case within specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial court to conclude the trial of the case expeditiously."** (bold added)

14. The case in hand **is now proceeding expeditiously and is likely to conclude shortly provided that the accused do not cause any further unnecessary delay, as the IO has now recorded his evidence** and as such this case can be dealt with by giving appropriate directions to the trial court.

15. Thus, based on the above discussion/reasons, we are not inclined to exercise our discretionary jurisdiction to grant post arrest bail to the petitioner on the grounds of hardship and the rule of consistency, as his case is distinguishable from those which he relied upon, and as such the petition for post arrest bail is dismissed and the trial court is directed to

complete the trial **within 6 weeks** of the date of this order by proceeding on a day to day basis and not adjourning the trial on any flimsy ground. A copy of this order shall be transmitted by the office immediately to the concerned trial court for compliance .

16. The petition stands disposed of in the above terms.