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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Irfan Saadat Khan
Mr. Justice Mohammed Karim Khan Agha

C.P. No.D-1865 of 2016

Atta Abbas Zaidi

Vs.

Chairman NAB & others

Dates of hearing:	23.08.2016 and 08.09.2016.
Date of Order	03-10-2016
Petitioner:	Through Mr. Shoukat Hayat, Advocate.
Respondents:	Through Mr. Noor Muhammad Dayo, ADPGA (NAB).

ORDER

Mohammed Karim Khan Agha, J. This petition has been filed by Atta Abbas Zaidi (the petitioner) for grant of post arrest bail on statutory grounds of delay in National Accountability Bureau (NAB) Reference No.27 of 2015 The State v. Fareed Ahmed Yousafani & others which was filed by the NAB at Karachi on 12-09-2015 on account of the petitioner's and other co-accused's involvement in corruption and corrupt practices under the National Accountability Ordinance 1999 (NAO). By Order dated 18-12-2015 the petitioner along with some other co-accused had been declined post arrest bail on merits by this Court.

2. In essence the allegation against the petitioner as per reference is that he was one of the officers/officials of Lines Area Redevelopment Project (LARP) who in connivance with other accused made illegal bifurcation of large commercial auction plots into small plots, then amalgamated the same and leased them out to private parties at the rate of Rs. 200 per sq. yard instead of being auctioned at a reserve rate of Rs. 50,000/- per sq. yard. This amounted to a misuse of authority which caused a colossal loss of RS 363,200,000. An additional loss of RS 36,038,196 was caused to the national exchequer on account of non recovery of non utilization fee against plot #MC 06. Thus a total loss of RS 399.238 million was caused to the National Exchequer.

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3. The allegation upon the petitioner as disclosed in the said reference is that being Additional Director Coordination & Shifting LARP he was involved in processing of mutation in illegal allotments of 32 sq. yard commercial plots carved-out from large auction plots.

4. At the outset learned counsel for the petitioner made it clear that he was only pressing this petition on statutory grounds of delay. He submitted that the petitioner was entitled to statutory bail since as per order sheets he had been in continuous confinement for more than one year and no delay had been caused on his part or by any other person acting on his behalf in completing the trial. In addition he further submitted that if any delay had been caused by him this was on account of bona fide medical reasons which he had reproduced in his bail application and were to a large extent mentioned in the relevant order sheets.

5. Learned counsel for the petitioner in support of his submissions placed reliance on the cases of **Khan Asfand Yar Wali v. Federation of Pakistan** (2001 PLD S.C. 607), **Muhammad Bashir v. The State** (1987 P.Cr. L.J. 230), **Muhammad Saeed Mehdi v. The State** (2002 SCMR 282), **Mian Manzoor Ahmed Wato v. The State** (2000 SCMR 107), **Sanjay Chandra & others v. Central Bureau of Investigation** (2012 SCMR 1732 S.C, India), **Makhdoom Javed Hashmi v. The State** (2003 P. Cr. L. J. 266), **Amir v. The State** (1991 P.Cr.L.J. 534), **Razia Bibi v. The State** (2011 YLR 1008), **Ch. Zulfiqar Ali v. The State** (PLD 2002 S.C. 546), **Munawar Hussain Mang v. The State** (2000 SCMR 1585), **Imran Amin v. The State** (2002 MLD 1416), **Nazir Hussain v. Ziaul Haq** (1983 SCMR 72), **Barkhurdar v. Liaqat Ali & others** (PLD 1977 SC 434), **Muhammad Aslam v. The State** (1999 SCMR 2147), **Fazal Rehmat v. Naqshay & others** (1997 SCMR 1579) and **Muhammad Afzal Butt v. The State** (2015 SCMR 1696).

6. Conversely learned ADPGA NAB vehemently opposed the grant of bail on the ground of statutory delay as according to him as indicated by the order sheets much of the delay had been caused by the petitioner or those acting on his behalf. With regard to the petitioner's illness according to learned counsel this was not of a serious nature and could be adequately treated from within the jail without endangering the life of the petitioner and as such the petitioner was not entitled for the grant of statutory bail on

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account of delay and his petition ought to be dismissed. In support of his contentions learned counsel placed reliance on the case of **Muhammed Jahanghir Badar V State** (PLD 2003 SC 525).

7. We have considered the submissions of learned counsel for the parties, perused the record, considered the relevant law and case law cited at the bar.

8. It appears that both this Court and other High Courts have up till now from time to time been entertaining petitions for grant of bail on the statutory ground of delay. For example, in the cases of **Syed Mansoor Ali V Chairman NAB** (PLD 2016 Sindh 41), **Ali Anwar Ruk V NAB** (2015 YLR 216) **Noor Muhammad V NAB** (CP 2876/2015 Sindh unreported dated 24-08-2016) and **Bakht Zameen V Chairman NAB** (WP 3447/2015 Peshawar unreported dated 03-03-2016). However, it would seem that this ground is no longer open to petitioners in NAB cases.

9. It would appear that bail in NAB cases was being granted on occasion on the grounds of statutory delay following it seems the decision of a 3 member bench of the Hon'ble Supreme Court in the case of **Haji Ghulam Ali V State** (2003 SCMR 597) where it was held as under at P.602

"The consideration relevant for the purpose of grant of bail under section 497, Cr.P.C. may also be relevant for seeking such concession in a Constitution petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 but the effect of omission of words "High Court" in un-amended section 9(b) *ibid*, through Ordinance No.35 of 2001 dated 10.8.2001 would not entitle a person facing prosecution under NAB Ordinance, 1999, to invoke the jurisdiction of High Court under section 497, Cr.P.C. and 498, Cr.P.C. The re-constituted 9(b) of the NAB Ordinance 1999 in the light of law laid down by this Court in **Khan Asfandiyar Wali v. Federation of Pakistan** (PLD 2001 SC 607).

"All offences under this Ordinance shall be non-bailable and, notwithstanding anything contained in sections 426, 491, 497, 409 and 561-A or any other provision of the Code, or any other law for the time being in force no Court shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance.

We may point out that the use of word "notwithstanding" in the said section would still

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exclude the applicability of section 497, Cr.P.C in the cases under NAB Ordinance, 1999. **However, as held in the above said judgment, the power of High Court for grant of bail in writ jurisdiction would be available and an accused of an offence under NAB Ordinance, 1999 is at liberty to take *any ground* for grant of bail on the basis of which bail can be granted under section 497, Cr.P.C.** The conclusion is that even after amendment in section 9(b) of NAB Ordinance, 1999, the legal position regarding the maintainability of a bail application under section 497, Cr.P.C. in a case under the said Ordinance was not changed." (bold added and italics added)

10. It may be however, since the above mentioned case, the Hon'ble High Courts had not been given adequate assistance on this issue. This is because despite no authority to this effect being relied upon by NAB we have come across a recent order by a two member Bench of the Hon'ble Supreme Court of Pakistan in CP.No.1618/2016 **Mir Shan Jehan Khan Khetran V NAB** dated 03-08-2016 whereby at Para 6 it was held as under:

"Para 6. Earlier, Civil Petition No.2859 of 2015 filed by petitioner for post-arrest bail was declined by this Court on 17.12.2015 on merit, hence merits of the case are not required to be discussed in view of Zuabir's case (PLD 1986 SC 173). **Section 497 Cr.P.C. has been ousted in NAB cases hence this Court in earlier judgments observed that the High Court under Constitutional jurisdiction can grant bail in hardship cases.** The petitioner while filing Civil Petition No.2859 of 2015 had also sought bail on the ground that he had been incarcerated for more than eight months at that time and his trial has not been concluded but this ground did not get favour of this Court and vide order dated 17.12.2015, bail was refused to him. Today learned counsel referred the statutory period mentioned in Section 497 Cr.P.C. and claimed that it is a fresh ground. **We had already observed that in NAB cases bail under constitutional jurisdiction can be granted only in hardship cases and the said ground was earlier not found favourable by this Court.** The trial court after framing of the charge, has recorded statements of as many as twelve prosecution witnesses. The record appended with this petition also reveals that petitioner is also responsible for the delay in conclusion of trial because the power of attorney on behalf of petitioner was submitted in Court on 06.01.2016 and certain documents were delivered to his learned counsel under Section 265-C Cr.P.C. Again on 09.03.2016 the defence counsel without any justification demanded documents under Section 265-C Cr.P.C. learned defence counsel even on 21.04.2016 demanded certain copies and the charge could not be framed but ultimately on 28.04.2016 the learned defence counsel conceded that they had already received all the

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relevant documents. The order dated 11.05.2016 indicates that even on the said date the charge was not framed for the reason that petitioner made a request to the Court that the charge should be framed in presence of his learned counsel who was not available. Even thereafter on 21.06.2016 witnesses were present and examination in chief of PW-6 was recorded but matter was adjourned and cross-examination was reserved of the said PW on the request of learned counsel. Likewise, on 23.06.2016 when the case was fixed for cross-examination on PW-6 and recording of evidence of remaining witnesses the matter was adjourned because the learned counsel for the petitioner was not available. Subsequently, on 25.07.2016 when trial Court started recording the statement of the witnesses, the petitioner made a request that even examination in chief of the said witnesses be recorded in presence of his counsel who was not available. **Under the ordinary law, if any delay is occasioned by the accused or any person acting on his behalf, then he cannot claim bail even on statutory ground. It has also been brought on the record that one of the witnesses namely Gohar Ayub had made an application to the trial Court that he be given security as he is being threatened not to make statement in the Court. In this case trial is in progress and statements of twelve witnesses have already been recorded and the trial Court is making efforts to conclude the trial.....** Resultantly, this petition is dismissed and leave to appeal is declined.(bold added)

11. It has also come to our attention that the Peshawar High Court in WP 3447/2015 in the case of **Bakht Zameen V Chairman NAB** by order dated 03-03-2016 had granted bail to the petitioner on statutory grounds of delay in a NAB case. However, the aforesaid order was challenged before the Hon'ble Supreme Court by NAB in the case of **NAB V Bakhat Zameen** where one of the grounds cited was that bail could not be granted under S.497 Cr.PC on the ground of statutory delay in the presence of section 9 (b) NAO 1999 which clearly provides that all offenses under the ordinance shall be non bailable and S.497 Cr.PC along with other sections relating to bail have been specifically barred.

12. In the above petition a three member bench of the Hon'ble Supreme Court by short order dated 26-08-2016 held as under:

"Heard the learned Special Prosecutor NAB and the learned ASC for respondent No.2. For reasons to be recorded separately, **this petition is converted into appeal and allowed. Resultantly, the impugned order dated 03.03.2016 passed in Writ Petition**

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No.3447-P/2015 is set aside and the respondent No.1 is directed to be taken into custody."

13. Although the detailed reasons for the short order are as yet not available it would seem apparent that the order of the Peshawar High Court had been set aside as the ground of statutory bail on account of delay was not available in NAB cases falling under the NAO and the aforesaid order which had been set aside had allowed bail only on statutory grounds of delay. **As per our interpretation of the case of Mir Shan Jehan Khan Khetran V NAB (Supra) and the NAB V Bakhat Zameen case (Supra) it would therefore appear that bail on the statutory ground of delay is no longer applicable (if it ever was) in NAB cases falling under the NAO.**

14. A part from pre arrest bail and bail on merits what however may be available to the petitioner in NAB cases is bail on account of the fact that his case can be regarded as a hardship case on account of delay. All therefore is not lost to the petitioner on account of the exclusion of the statutory ground on account of delay in NAB cases. This is more so since the superior courts had observed even when the statutory ground of delay had been removed from the Cr.PC that it could still grant bail in hardship cases where the delay had lead to an abuse of the process of law. The question is therefore what would amount to a "hardship" case in a NAB case under the NAO?

15. In the recent Supreme Court case of **Hamesh Khan V NAB** (2015 SCMR 1092) the Hon'ble Supreme Court at P.1095 held as under:

"11. The contention of the learned Senior Advocate Supreme Court for the Bank of Punjab that the petitioner even after such a long delay in the conclusion of the trial cannot be let free on bail because application of section 497, Cr.P.C. with its 3rd proviso relating to grant of bail on ground of statutory delay is inapplicable and not attracted at all to his case, in our view, is not of paramount consideration.

12. Pakistan is a welfare State where liberty of individual has been guaranteed by the Constitution beside the fact that speedy trial is inalienable right of every accused person, **therefore, even if the provision of section 497, Cr.P.C. in ordinary course is not applicable, the broader principle of the same can be pressed into service in hardship** ✓✓

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cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period. This principle may be vigorously pressed into service in cases of this nature if the objects and purposes of mandatory provision of section 16 of the National Accountability Ordinance, 1999 is kept in view, which is reproduced below:-

"S. 16 (a) Notwithstanding anything contained in any other law for the time being in force an accused shall be prosecuted for an offence under this Ordinance in the Court and the case shall be heard from day to day and shall be disposed of within thirty days."

13. An accused person cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. **The inordinate delay in the conclusion of trial of detained prisoners cannot be lightly ignored provided it was not caused due to any act or omission of accused.** In the case of *The State v. Syed Qaim Ali Shah* (1992 SCMR 2192) the accused was facing charges under the Suppression of Terrorist Activities (Special Courts) Act (XV of 1975) where under section 7 thereof grant of bail even in bailable offences was taken out of the discretion of the Court, however, it was held that despite of exclusion clause beneficial provision of section 497, Cr.P.C. can be pressed into service in some genuine and rare cases to provide relief of grant of bail to a highly deserving accused, incarcerated in prison for a longer duration.

14. The grant of bail on account of inordinate delay in prosecution was discussed and guiding principle was laid down by this Court in the case of *Riasat Ali v. Ghulam Muhammad and the State* (PLD 1968 SC 353), which is to the following effect:-

"Criminal Procedure Code, S. 497---Grant of bail in non-bailable offences:-

Delay in prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out accused however, delay in prosecution of each case as a ground for bail is to be weighed and judged, in each case on its merits." (bold and italics added)

16. Generally speaking the superior judiciary has tended to classify hardship cases as being those where there has been a "shocking" or "in ordinate" or "repulsive and unconscionable" delay in completing the trial, which often runs into a delay of a number of years and where there seems little chance of the trial being completed in the near future, as opposed to a lesser degree of delay. For example, in cases such as **Hamesh Khan V NAB** (2015 SCMR 1092 almost 5 years delay), **The State V. Syed Qaim Ali**

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Shah (1992 SCMR 2192), **Riasat Ali V. Ghulam Muhammad and the State** (PLD 1968 SC 353), **Gul Hasan Penhyar V The State** (1997 SCMR 390 around 6 years delay) **Muhammad Azim V The State** (2009 P Cr. L J 1314, Kar. Around 6 years delay), **Hashim V The State** (2009 YLR 1777, Kar. Around 6 years delay) **Shah Nawaz V The State** (2010 YLR 3182, Kar. Around 3 years delay) **Anwar Ali V The State** (2002 P Cr. L.J 186, Kar. Around 2 years to even frame the charge)

17. In our view based on **Hamesh Khan's case** (Supra) and **Mir Shan Jehan Khan Khetran's case** (Supra) it would seem that the primary guideline for determining hardship cases appears to be the duration in which the accused has been in custody, whether or not any delay in the conclusion of the trial has been caused by the accused and how much longer the trial is likely to take to conclude. It may be that even if the accused has been in jail for over 2 years if there are very few PW's left to be examined and the trial is in full swing the case might not be regarded as a hardship case. Likewise if a large amount of the delay was attributable to the conduct of the accused or those acting on his behalf.

18. It would appear however that the passage of one year in jail without conclusion of the trial due to no fault of the accused or some one acting on his behalf may not on its own be enough to make out a hardship case. This is because the concept of bail on statutory grounds of delay and hardship although to a degree both have their genesis in delay the two grounds are distinct. Statutory bail on account of delay is generally a right whereas a hardship case although involving delay is not a right and is in the discretion of the Court. Much therefore would depend on the particular facts and circumstances of each case to determine whether it qualifies as a hardship case. For example, along with delay, the age of the accused, the medical condition of the accused, the amount of loss caused to the exchequer, whether the accused was the main accused and other relevant factors would need to be weighed on the scales to see if a case of hardship had been made out.

19. Perhaps conversely, a case may even be considered as a hardship case if the accused had been in custody for say 11 months in a NAB case and no reference had even been filed against him let alone any charge framed against him which could be

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deemed as a shocking delay or inordinate delay in the context of his criminal trial not even starting let alone concluding and not even knowing the number of witnesses against him. Or for example, if the charge had been framed and no PW's out of a considerable number of PW's had given evidence and no progress had been made in the case for again say 11 months since the Court was vacant due to the absence of the Accountability Court Judge. So it may be that hardship could be deemed to have taken place at different levels depending on the facts and circumstances of the particular case. As such, in our view, the concept of hardship outside that of statutory bail purely on account of delay may cut both ways based on the facts and circumstances of each case which facts and circumstances are likely to be different in nature in each case.

20. Although, as indicated above, no hard and fast rule can be set out as to what might amount to a hardship case in NAB cases, as opposed to other criminal cases where statutory bail on the ground of delay is applicable, as each case will depend upon its own particular facts and circumstances we have in determining whether the instant case is a hardship case been mindful of the following in exhaustive considerations /factors.

- (a) the time spent in custody without completion of the trial.
- (b) that delay in the completion of the trial should not have been caused by any fault of the accused or someone acting on his behalf.
- (c) the right to an expeditious trial without undue delay as guaranteed by Article 10(A) of the Constitution especially bearing in mind the Preamble to the NAO requiring speedy trials and S.16(a) of the NAO which requires trials to proceed on a day to day basis and be completed within 30 days
- (d) that as pointed out by the Hon'ble Supreme Court in the recent case of **Ziagham Ashraf V State** (2016 SCMR 18) that if an accused is acquitted at trial then no reparation or compensation can be awarded to him in respect of the time he has spent in jail. It is lost time which may have been spent with his family or in other useful pursuits.
- (e) whether there was a reasonable chance of the trial being completed within 6 months of the date of this order which might justify giving appropriate directions to the Accountability Court rather than enlarging the accused on bail.
- (f) whether the charge had been framed yet.

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- (g) whether a majority of the PW's had at the time of hearing the petition been examined.
- (h) how many PW's were left to be examined
- (i) whether there were more than 7 accused left in the reference (some of the original accused may have entered into plea bargain or been declared proclaimed offenders).
- (j) whether the loss to the exchequer had been made up or otherwise how substantial was the loss bearing in mind the time already spent in jail.
- (k) whether the post arrest bail of the accused had been declined on merits
- (l) whether the accused was the main accused in the case
- (m) whether the accused was of an advanced age
- (n) whether the accused suffered from any serious medical conditions.
- (o) the general principle that bail should not be withheld as a punishment.
- (p) the chances of the accused absconding and/or interfering with witnesses if he is enlarged on bail
- (q) whether the accused has been convicted before under any Anti corruption legislation or entered into a plea bargain or voluntary return.
- (r) Whether the circumstances leading to the delay could be said to amount to an abuse of the process of law
- (s) And finally in our constitutional and discretionary jurisdiction under A.199 of the Constitution the requirement that we do complete and substantial justice.

21. Turning to the case in hand. It is not disputed that the petitioner was arrested on 15-06-2015. Thus, it is an admitted position that he has been in custody for around 15 months.

22. The next question is whether based on the order sheets any delay has been caused by himself or anyone acting on his behalf.

23. The order sheets start on 16-06-2015 and end on 16-08-2016 which is a period of more than one year. On a review of the order sheets it appears that on account of medical reasons delay was caused by the petitioner from 04-01-2016 to 18-01-2016 (approx 14 days), then for the same reason from 01-02-2016 to 16-04-2016 (approx 2 months and two weeks) which on two separate

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occasions lead to the non framing of the charge and from 16-08-2016 to 30-08-16. If the above adjournments are taken into account then the petitioner would have hardly completed one year in custody for hardship purposes.

24. However, it may be that some part of this time lost on account of adjournments due to the petitioner's absence can be discounted for genuine medical reasons as the record shows that the petitioner was admitted in hospital and as such it would be harsh to describe the delay as intentional on the part of the petitioner. In such a scenario his imprisonment would be for approximately 14 months.

25. Thus, it appears that the petitioner has completed 14 months in jail on account of the trial not being completed due to no fault of his own.

26. The next issue is whether any other of the above mentioned considerations/factors can be pressed into service to justify this being a hardship case despite the petitioner only having served 14 months in jail. Of the other factors the main ones which weigh against him are that he appears to be one of the main accused, post arrest bail has been denied to him and the loss to the exchequer is very large.

27. On the other hand and which is of greater concern to us is that within this 14 month period only one out of 10 PW's have been examined and there are 38 accused. We have seriously considered this aspect of the case i.e. delay in framing of the charge and only 1 out of 10 PW's being examined so far along with potentially 38 accused which could amount to 38 separate cross examinations by different lawyers of each remaining witness and consider that in the light of A.10 (A) of the Constitution, the preamble to the NAO and S.16 (a) NAO, the medical condition of the petitioner that on balance especially due to the large number of accused and potential cross examinations that realistically in our view there are hardly any chances of this case being completed in the near future as would justify a direction to complete the trial within 6 months as realistically speaking it appears that the trial may yet take at least a year to complete if not much longer. As such based on the above discussion, although bail on the grounds of statutory delay is not open to the petitioner, in the interests of

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justice we consider that the petitioner has made out a case of bail on hardship grounds. In our view A.10 (A) of the Constitution which includes the right to an expeditious trial should be meaningful and should be fully applied in order to protect an undertrial prisoner from prolonged periods of detention during his trial due to no fault of his own. A.10 (A) of the Constitution cannot be seen as a "paper" or "illusory right" but rather a live, practicable and enforceable right.

28. Accordingly the petitioner is admitted to post arrest bail on the ground of hardship however due to the large loss caused to the exchequer this is subject to him furnishing 2 solvent sureties each of RS 2,500,000 (twenty five lacs each) and PR bonds in the like amount subject to the satisfaction of the Nazir of the Court. The petitioner shall also surrender his original passport to the Nazir of this Court. Secretary Ministry of Interior Government of Pakistan is directed not to issue the petitioner with any fresh or duplicate passport and to immediately place the name of the petitioner on the ECL. It is made clear that this bail granting order may be subject to cancellation if the petitioner causes any delay in the trial

29. Before parting with this order we would like to observe that what appears to be the most troubling aspect of this case is that the charge was only framed on 16-04-2016 i.e. only 4 months ago (and 10 months after the arrest of the petitioner) and only one of the 10 PW's have so far recorded their evidence. There also appears to be around 38 other co-accused. It may be, as indicated from the record, that some of the other co-accused have or may enter into plea bargains however that is still likely to leave a very large number of co-accused all of whom are likely to engage separate lawyers which is likely to lead to a large number of separate cross examinations for each PW which is likely to be extremely time consuming. With accused's lawyers being busy before superior courts, accused not being produced from custody, lawyer's strikes, illness of accused and lawyers, PO's on leave, the heavy work loads of the Accountability Courts, countless miscellaneous applications to decide etc when all added together tend to suggest a trial which has the potential to become unnecessarily prolonged and may impinge on the right of the accused to an expeditious trial under A.10 (A) of the Constitution and hence our above decision to grant post arrest bail on the grounds of hardship.

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30. In particular we have observed in numerous NAB cases, which have come before this Court, that there are usually at least 10 accused (some of whom may already be in custody) and it usually takes the Accountability Court around 4 to 6 months or on occasion even longer to deal with the pre trial procedures under S.87 and 88 Cr.PC before the charge can even be framed. This can hardly be called expeditious justice especially bearing in mind the requirements of the Preamble of the NAO providing for speedy trials, S.16 (a) NAO and A.10 (A) of the Constitution and indeed could be deemed to be a failure in the Accountability process before the Courts whereby trials which are meant to be completed within 30 days are taking, in some cases, up to 5 years to complete with on occasion a few of the accused remaining behind bars during most of this period.

31. In our view in order to ensure expeditious trial of NAB cases before the Accountability Courts, as was the intention of the NAO and the command of A.10(A) of the Constitution, the time has now come for the NAB to consider seriously the number of accused whom it is essential to be included in a reference as accused as opposed to witnesses, the number of PW's it is necessary to call at trial (some of whom may be given up during the course of trial), the number of documents which are required to be exhibited in order to prove its case to the required standard and better case management whereby PW's are present on each and every date along with the required documents and IO's are present if required.

32. Likewise the Accountability Courts need to consider how they can best expedite trials through, for example, resort to S.17 © NAO whereby novel methods may be employed to shorten the usual procedural formalities before the trial can commence and even for shortening the duration of the trial once the charge has been framed provided that A.10 (A) of the Constitution is not infringed. Early separation of trial from absconders should be considered. Starting the evidence a fresh once an absconder is brought before the Court only seems to have the effect of unnecessarily prolonging the trial which would not seem to be in consonance with the letter and spirit of S.16 (a) NAO. Unnecessary adjournments should not be allowed. Could affidavits in evidence of PW's be resorted to subject to cross examination so as to avoid a

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lengthy examination in chief? The Accountability Court Judges also need to employ better and more efficient trial management.

33. Even the competent authorities may consider creating additional accountability courts, where necessary, in order to reduce backlogs and expedite the trials under the NAO so that accused do not languish behind bars for overly long periods of time before their case is decided. The accused who are in custody should not be made to suffer prolonged imprisonment or be penalized further because of a lack of capacity to deal with cases under the NAO (especially as the accused at the end of a prolonged trial may be acquitted and every accused is presumed to be innocent until proven guilty). In our view it is the obligation of the State to ensure that such a situation is avoided and the constitutionally guaranteed rights of its citizens are upheld.

34. A copy of this order shall be sent by the office to all Accountability Courts and Accountability Court Judges in Sindh, the Chairman NAB, DG NAB (Karachi) and (Sukkur) for information and the Secretary Ministry of Interior Government of Pakistan for placing the name of the petitioner on the ECL as earlier directed at para 28 of this order.

35. In summary the petition for post arrest bail is allowed on the ground of hardship subject to the conditions mentioned earlier in paragraph 28 of this order.

Dated: 03-10-2016