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IN CUSTODY

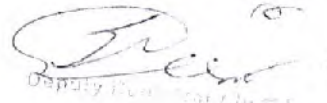
IN THE HIGH COURT OF SINDH AT KARCHI
(Criminal Appellate Jurisdiction)

Cr. Accountability Appeal No. of 2018

Fawad Ahmed Batra
Son of Haji Muhammad Yousaf
Resident of House No. B-35,
Al-Muslim Society
Opp. Memon Hospital
Safoora Goth, Karachi
(Presently Confined at
Central Prison,
Karachi

54

PRESENTED ON
08-10-2018


Deputy Registrar (D.A.)

3522

..... APPELLANT

Versus

The State through Chairman
National Accountability
Bureau Attaturk
Avenue, G-5/2,
Islamabad

..... RESPONDENT

CRIMINAL APPEAL: UNDER SECTION 32 OF THE NATIONAL ACCOUNTABILITY ORDINANCE, 1999 AGAINST JUDGMENT DATED 29.09.2018 PASSED BY THE LEARNED ACCOUNTABILITY COURT NO. IV, SINDH IN REFERENCE NO. 9 of 2009

Being aggrieved and dissatisfied with the Impugned Judgment dated 29.9.2018 passed by the learned Judge Accountability Court No. IV, Sindh at Karachi in Reference No. 9 of 2009, whereby, the Accountability Court convicted the Appellant to suffer eight years R.I. Us 265-H(ii) Cr. P.C. and fine of Rs. 20,612,190/- and in case of default of payment of fine to suffer further R.I. for two years, the Appellant prefer this appeal and pray that this Hon'ble Court may very graciously be pleased to call the record and proceedings of Reference No. 9 of 2009 from learned Accountability Court No. 4, Karachi and after hearing both the parties may further be pleased to ~~re-consider~~ the Impugned Judgment, acquit the Appellant or to pass any

IN THE HIGH COURT OF SINDH AT KARACHI

(Extra Ordinary Constitutional Jurisdiction)

Constitution Petition No. D ⁸⁷⁹⁴ of 2018

presented on 19-12-18

Additional Registrar (Writ)

Mr. Fawad Ahmed Batra
 Son of the (late) Haji Muhammad Yousaf
 Resident of House No. B-35,
 Al-Muslim Society
 Opposite Memon Hospital
 Safoora Goth,
Karachi
 (Presently Confined at
 Central Prison, Karachi).....PETITIONER

Versus

The Chairman
 National Accountability Bureau (NAB)
 A statutory organization formed under
 NAB Ordinance, 1999, at NAB House,
 Ata Turk Avenue, G-5/2, Islamabad,
 Through its Director General, Sindh (Karachi)
 Regional Office at PRCS Building 197/5,
 Dr. Daudpota Road, Cantt;
Karachi.....RESPONDENT

**WRIT PETITION UNDER ARTICLE 199 OF THE
 CONSTITUTION OF THE ISLAMIC REPUBLIC OF
 PAKISTAN, 1973 FOR SUSPENSION OF SENTENCE
 AWARDED VIDE JUDGMENT DATED 29.09.2018 PASSED BY
 ACCOUNTABILITY COURT NO. IV, KARACHI IN
 REFERENCE NO. 09 OF 2009.**

BRIEF FACTS OF THE MATTER

Respectfully Sheweth

1. That the addresses of the parties as given in the title of the instant Petition are correct and sufficient for their respective service.
2. That brief facts giving rise to filing of the titled Writ Petition are that on 05.08.2009 the National Accountability Bureau, inter alia.

09-10-2018

Ety 09/10/18

IN THE HONORABLE HIGH COURT OF SINDH AT KARACHI

3551.

①

Accountability Appeal No- SS OF 2018

Shah Habib Khan
S/o Gul Ameer
R/o H No.B-279, Block-5,
Metroville, SITE,
Karachi.

Presently confined at
Central Prison, Karachi..... Appellant

VERSUS

The Director General,
National Accountability Bureau (Sindh),
197/5, PRCS Building
Dr. Daud Pota Road,
Karachi Respondent

APPEAL UNDER SECTION 32 OF NATIONAL ACCOUNTABILITY**ORDINANCE 1999 READ WITH SECTION 410 CRPC**

Being aggrieved and dis-satisfied with the Impugned Judgment dated 29-09-2018 passed by the learned Accountability Court No.4, Sindh Karachi, in Reference No.09/2009, whereby he has been pleased to convict the Appellant u/s. 9(a) (iii)(iv)(vi) & (xii) of N.A.O., 1999 and sentenced for 05 years R.I. and fine of Rs. 80,00,000/- and in case of default in payment of fine, the Appellant further shall suffer R.I. for 02 years. Hence this appeal with prayer that this honorable court may be please to recall R&P of Reference No.09/2009 from Accountability Court No. IV Sindh at Karachi and after examining the impugned judgment may be please to set it aside and the appellant may be acquitted on consideration the following facts and grounds:-

(COPIES OF THE IMPUGNED JUDGMENT DATE 29.09.2018 IS HEREWITH AND MARKED A ANNEXURE "A-1")

①

IN THE HONORABLE HIGH COURT OF SINDH AT KARACHICPD No. D-7843 of 2018Presented on 08-11-18
Additional Registrar (Writ)

Shah Habib Khan
S/o Gul Ameer
R/o H No.B-279, Block-5,
Metroville, SITE,
Karachi.

Presently confined at
Central Prison, Karachi..... Petitioner

VERSUS

The Director General,
National Accountability Bureau (Sindh),
197/5, PRCS Building
Dr. Daud Pota Road,
Karachi Respondent

CONSTITUTIONAL PETITION UNDER ARTICLE 199
OF THE ISLAMIC REPUBLIC OF PAKISTAN-1973

Being aggrieved and dis-satisfied with the Impugned Judgment dated 29-09-2018 passed by the learned Accountability Court No.4, Sindh Karachi, in Reference No.09/2009, whereby he has been pleased to convict the Petitioner u/s. 9(a) (iii)(iv)(vi) & (xii) of N.A.O., 1999 and sentenced for 05 years R.I. and fine of Rs. 80,00,000/- and in case of default in payment of fine, the Petitioner further shall suffer R.I. for 02 years. The Petitioner prefers this Petition for suspension of sentence and released on bail till final disposal of Cr. Acc. Appeal No. 55/2018 (Shah Habib Khan V/S NAB) pending before this Hon'ble Court, on consideration the following facts and grounds:-

(COPIES OF THE IMPUGNED JUDGMENT DATE
29.09.2018 AND MEMO OF CR. ACC. APPEAL NO
55/2018 ARE HEREWITH AND MARKED A
ANNEXURE "A-1 & A-2")

FACTS

1. That the brief facts of the prosecution case and role attributed in reference at para-9 & 10 to the Petitioner as under:

IN THE HIGH COURT OF SINDH AT KARACHI PAKISTAN.

REFERENCE NO 09 OF 2009

Appeal NO 12018

1

FARUQ AHMED BATRA & OTHERS - - - - - Accused.

SYED MASOOD AHMAD S/O

SYED RAFI AHMAD

Presently Confined in Central prison

KARACHI Pakistan

Appellant.

VERSUS

The state

Respondent.

U/S 9 (a) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii)

NAO 1999

P.S. NAB Karachi.

Against Conviction Under Section 410 Cr.Pc.

I am and Dissatisfied with The impugned judgement

dated 23rd September 2018 passed by The Accountability

Judge at Karachi, where by convicted The

accused and Sentence him for under Section

410 Cr.Pc. To suffer Rigorous imprisonment for five (05)

years and a fine of Rs. 80,00,000/- The fine shall be

paid in installments of Land Revenue in Terms of Session

Order. In Case of Default in payment

the accused shall suffer Rigorous imprisonment for

one year. The accused shall be entitled to The

benefit of Section 410 Cr.Pc. Over The Appellant.

As per Section 15 of Ordinance

of 1999, the accused shall be deemed to be

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Muhammad Saleem Jessar.

Criminal Accountability Appeal No.54 of 2018 a/w
C.P. No.D-8794 of 2018.

Appellant/Petitioner: Fawad Ahmed Batra S/o. Haji Muhammad Yousaf, through Mr. Abdul Qayyum Abbasi, Advocate.

Criminal Accountability Appeal No.55 of 2018 a/w
C.P. No.D-7843 of 2019.

Appellant/Petitioner: Shah Habib Khan S/o. Gul Ameer through Mr. Zahid Hussain Rajpar, Advocate.

Criminal Accountability Jail Appeal No.65 of 2018

Appellant: Syed Maqsood Ahmed S/o. Syed Rafi Ahmed through Mr. Iftikhar Ahmed Shah, Advocate.

Respondent/State (NAB) Mr. R.D. Kalhoro, Special Prosecutor NAB.

Date of hearing: 28.02.2020

Date of Judgment: 13.03.2020.

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- The appellants Fawad Ahmed Batra S/o. Haji Muhammad Yousuf, Shah Habib Khan S/o. Gul Ameer and Syed Maqsood Ahmed S/o. Syed Rafi Ahmed were convicted by the Accountability Court No.IV, Sindh at Karachi vide Judgment dated 29.09.2018 in Reference No.09/2016 under section 265-H(ii) Cr.P.C. and sentenced as under:-

"Convicted the accused (1) Fawad Ahmed Batra S/o. Haji Muhammad Yousuf under section 265-H(ii) Cr.P.C. to suffer R.I. for Eight (08) years and also pay fine of Rs.20,612,190/-, (2) accused Shah Habib Khan S/o. Gul Ameer was sentenced under section 265-H(ii) Cr.P.C. to suffer R.I. for five (05) years and also pay fine of Rs.80,00,000/- and accused (3) Syed Maqsood Ahmed S/o. Syed Rafi

Ahmed was sentenced under section 265-H(ii) Cr.P.C. to suffer R.I. for five (05) years and also pay fine of Rs.80,00,000/-. The fine shall be recoverable as arrears of land revenue in terms of Section 33-E of the National Accountability Ordinance 1999 (NAO). In case of default in payment of fine, the appellants were ordered to suffer further R.I. for two (02) years each. The benefit of section 382-B Cr.P.C. has also been extended to the appellants.

The accused were also subject to the penalties and sentences as set out in S.15 NAO"

2. Briefly the facts of the case as alleged in the instant Reference are that accused Fawad Ahmed Batra S/o. Haji Muhammad Yousuf joined HBL Garden Branch on 10.02.2005 as Branch Manager and remained there till 08.05.2006. During this period, accused Fawad Ahmed Batra in capacity of Branch Manager along with co-accused Shah Habib Khan who was posted as Cashier in the said branch from 20.07.2004 to 08.05.2006 and Syed Maqsood Ahmed as Assistant on 01.04.2002 and remained at the same branch till 12.08.2006 committed the act of alleged fraud, embezzlement and criminal breach of trust as Banker thereby causing loss approximately of Rs.70.179 million to the funds of the Bank.
3. After inquiry and investigation by the National Accountability Bureau (NAB) Reference No.09 of 2009 was filed against the accused for acts of corruption and corrupt practices under the NAO before Accountability Court No.IV at Karachi.
4. The Charge was framed against the accused persons to which they all plead not guilty and claimed trial.
5. To prove its case the prosecution examined 35 prosecution witnesses and exhibited numerous documents and other items in support of its case and thereafter closed its side. The accused gave their statements under S.342 Cr.PC and under Oath whereby they denied the allegations against them and claimed their innocence. The defence examined 03 witnesses on behalf of accused Umar Abul Hassan.
6. After hearing the parties and appreciation of the evidence the learned accountability court convicted and sentenced the appellants as mentioned above vide the impugned judgment. Hence the appellants all filed appeals

against conviction and for their release on bail under S. 426 Cr.PC, S.561 (A) Cr.PC and Article 199 of the Constitution.

7. As a rule we would proceed to decide these appeals on merits however owing to the particular facts and circumstances of the case and its rather **exceptional** nature as narrated below today we are not deciding the appeals against conviction against any of the appellants but are rather considering their petitions under S.426 Cr.PC and S.561 (A) Cr.PC read with Article 199 of the Constitution.

8. At this stage it is pertinent to note that appellant Syed Maqsood Ahmed has not filed a petition for suspension of sentence and release on bail pending his appeal as he has already been released after serving out his sentence. However his appeal still remains in tact as he wants to argue the same and prove his innocence.

9. Learned Counsel for petitioner Shah Habib contended that he was not the main accused in this case, that the evidence against him was very tenuous and that even otherwise he had served out his substantive sentence and was only behind bars on account of the failure to pay the fine imposed on him and thus his sentence should be suspended and he be released on bail.

10. Learned Counsel for petitioner Fawad Ahmed Batra contended that the evidence against him was tenuous, that he had already served over half of the substantive sentence which had been handed down to him and that he was suffering from serious medical ailments which were potentially life threatening and thus his sentence should be suspended and he be released on bail. In support of his contentions he placed reliance on a medical report and the following cases **Nazir Ahmed Soomro and another versus The State** (2017 P Cr.L.J Note 220), **Rana Muhammad Tajammal Hussain versus Rana Shaukat Mahmood** (PLD 2007 Supreme Court 277), **Malik Muhammad Yousuafullah Khan versus The State** (PLD 1995 Supreme Court 58), **Muhammad Saleh versus The Chief Settlement Commissioner Lahore and 2 others** (PLD 1972 Supreme Court 326), **Haji Muhammad Siddique versus Administrator, Lahore Municipal Corporation** (1980 CLC 1289), **Yar Muhammad Khan versus The State** (2009 P Cr.L.J. 527), **Makhdoom Javed Hashmi versus The State** (2008 SCMR 165), **Chairman National Accountability Bureau, Islamabad through Prosecutor-General**

Accountability, Islamabad versus Mian Muhammad Nawaz Sharif and 2 others (PLD 2019 Supreme Court 445), **Aarab alias Katoo versus The State** (2005 P. Cr.L.J 555), **Rahib Hussain versus The State** (2005 P. Cr.L.J. 699), **Guloo alias Gul Hassan versus The State** (2005 P. Cr.L.J 715), **Ghulam Abbas alias Abasi and others versus The State** (PLD 2005 Karachi 255), **Allahdino and another versus The State** (1999 P Cr.L.J 1701), **Wajid Ali Gan versus The State** (2005 MLD 1247), **Mst. Afroze alias Afshan versus The State** (2010 MLD 907), and **Muhammad Saeed Mehdi versus The State and 2 others** (2002 SCMR 282).

11. On the other hand Special prosecutor NAB has contended that neither of the petitioners should be extended any benefit under S.426 Cr.PC , S.561 (A) Cr.PC and Article 199 of the Constitution as they had caused a great loss to the exchequer and that the evidence against them was very compelling and as such their petitions should be dismissed. In support of his contentions he placed reliance on **The State and others versus Muhammad Kaleem Bhatti** (2019 SCMR 1321), **Malik Din versus Chairman National Accountability Bureau and another** (2019 SCMR 372).

12. We have heard the arguments of the learned counsel for the parties, briefly reviewed the evidence on record and have considered the relevant law.

13. We would like to make it clear that our findings in this order are based only on a tentative assessment of evidence and not a deeper appreciation of the same and that this order shall have no influence on the Bench which hears the appeals of the petitioners which shall be decided on merits based on the relevant law and evidence on record.

14. **With regard to petitioner Shah Habib** the jail roll reveals that he has served out the substantive sentence which was handed down to him being 5 years and that he is only behind bars on account of the additional 2 years of imprisonment which he has to undergo as he has not paid the fine imposed on him and that out of this additional period of two years he only has about 8 months to undergo. We have also noted that the fine imposed on him was approximately 80 lacs (which equates to the loss caused by him) which is not a particularly massive amount when contrasted with NAB's primary mandate to deal with mega corruption cases. His appeal has been pending hearing for over one year and it is unlikely to be heard in the near future,

certainly not before the petitioner would have been released from jail which is probably within the next 6 months once his remission is considered, due to the substantial number of NAB appeals which are pending before this court and the fact that the evidence of 35 PW's needs to be read out before deciding the appeal. A brief review of the evidence on record also reveals that prima facie on appeal the petitioner may have a reasonable case and thus taking into account all of the above factors mentioned above and based on the particular facts and circumstances of this case which we find rather **exceptional** we hereby suspend the sentence of the petitioner and enlarge the petitioner on bail pending final disposal of his appeal **subject to the following conditions** (a) that the petitioner deposits RS 1,000,000 (ten lacs) as solvent surety with PR bond in the like amount to the satisfaction of the Nazir of this court and (b) that the name of the petitioner be placed on the ECL till final disposal of his appeal against conviction.

15. **With regard to petitioner Fawad Batra** the jail roll reveals that he has served over 5 years out of the 8 years handed down to him which is a substantial part of his sentence. We have also noted that the fine imposed on him was approximately RS 2 crore (which equates to the loss caused by him) which is not a particularly massive amount when contrasted with NAB's primary mandate to deal with mega corruption cases. His appeal has been pending hearing for over one year and it is unlikely to be heard in the near future due to the substantial number of NAB appeals which are pending before this court and the fact that the evidence of 35 PW's needs to be read out before deciding the appeal. A brief review of the evidence also reveals that prima facie on appeal the petitioner may have a reasonable case. **Equally as importantly**, the petitioner is a known sufferer from a severe mental illness which he was suffering from **before** he committed the offense and for which he has been suffering ever since and continues to suffer from. Namely, Bipolar disorder. The medical reports which we have considered and in particular one of a 7 member medical board has opined that his continued confinement in jail may be detrimental to his health and thus taking into account all of the above factors mentioned above and based on the particular facts and circumstances of this case which we find rather **exceptional** we hereby suspend the sentence of the petitioner and enlarge the petitioner on bail pending final disposal of his appeal **subject to the following conditions** (a) that the petitioner deposits RS 2,000,000 (twenty lacs) as solvent surety with PR bond in the like amount to the satisfaction of

the Nazir of this court and (b) that the name of the petitioner be placed on the ECL till final disposal of his appeal against conviction and (c) the petitioner continues to receive psychiatric treatment for his mental disorder from a doctor of his choice.

16. A copy of this order shall also be transmitted to the Secretary Ministry of Interior Government of Pakistan who is directed to immediately place the names of the petitioner's on the ECL.

17. Let this matter come up for hearing of the appeals on 04-06-2020 according to Roster.

18. The above petitions stand disposed of in the above terms.

Anif