

Not for Reporting
NAB: Bail Hardship - Rejection.

681

(1)

In Jail Custody
Since 05.06.2018

IN THE HIGH COURT OF SINDH AT KARACHI
(Constitutional Jurisdiction)

Constitutional Petition D-No.

4643

Presented on
of 2019

11-7-19

Additional Registrar (Writ)

Ali Asghar Bambhan
S/o Karim Bux,
Muslim, Adult,
R/o House No. A-5,
Town Houses 21, Scheme-33,
Malir Cantonment, Karachi,
presently confined in
Landhi Jail, Karachi

Petitioner

VERSUS

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

Director General,
National Accountability Bureau (Sindh)
PRCS Building 197/5,
Dr. Daudpota Road,
Cantonment, Karachi

Irfan Ali
Investigation Officer/ Assistant Director,
National Accountability Bureau (Sindh)
PRCS Building 197/5,
Dr. Daudpota Road,
Cantonment, Karachi

Respondents

CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

It is respectfully submitted on behalf of the Petitioner as under:

1. That the Petitioner is a law-abiding citizen of Pakistan guaranteed with fundamental rights enshrined in Constitution of Pakistan 1973. Petitioner is serving as Assistant Engineer in SITE in Grade-17, who was initially appointed in the year 1990 and has served the public with full

THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4643 of 2019.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi,

Petitioner: Ali Asghar Bambhan through Mr. Farooq H. Naek, Advocate.

Respondent/State: Through Mr. Raja Muhammed Special Prosecutor NAB.

Date of hearing: 13.05.2020.

Date of Judgment: 19.05.2020.

ORDER

Mohammad Karim Khan Agha-J. The petitioner Ali Asghar Bambhan has filed this petition for post arrest bail. Initially his pre-arrest bail had been recalled by this court vide order dated 22.05.2018. Thereafter he approached the Supreme Court on 05.06.2018 and after arguing at some length the petitioner withdrew his petition. On 29.04.2019 the petitioner moved an application for post arrest bail before this court which was withdrawn after this court gave a direction to the trial court to complete the trial within a given period of time.

2. The proceedings against the petitioner arise out of **Reference No.26/2017 the State v. Ali Asghar Bambhan** where in essence the petitioner was charged with corruption and corrupt practices under section 9 of the National Accountability Ordinance, 1999 (NAO) on account of him having assets beyond his known source of income for which he could not account for.

3. The brief facts of the case are that a complaint was made to the NAB against the petitioner for accumulating assets beyond his known source of income. Accordingly an inquiry which later on was converted into investigation was authorized during which it was found that the petitioner was appointed as Sub-Engineer (BPS-11) in Sindh Industrial Trading Estate (SITE) in the year 1999. At the time of investigation he was

posted at SITE Nooriabad as Assistant Engineer (BPS-17). The total salary that the petitioner received during entire tenure of his service was calculated to be Rs.5,564,531/-. However, in his name a large number of chunks of agriculture land; commercial and residential plots in Mehrapur City which he had purchased either in his name or his family members were found. The worth of such properties was calculated to be Rs.3,82,77,000/-. Besides the petitioner was found to be owner of one house 126 Sq. Yds. in Malir Cantt. Karachi, a plot 350 Sq. Yds. in Karachi Callachi Cooperative Society, Karachi, a plot 200 Sq. Yds. in Ahsenabad Scheme 33, KDA, Karachi and a plot 250 Sq. Yds. in Bahria Town, Karachi. The NAB also found that petitioner was operating five Bank accounts in different Banks wherein he had deposited in all Rs.13,74,28,235/- from 2004 to 2016. The petitioner was also found to be owner of a petrol pump namely Al-Mustafa Petroleum Service situated at National Highway Kotri Kabir Mehrapur in partnership with two others. The petrol pump was purchased for Rs.50 million and the accused being shareholder of 36.67% had paid Rs.18.3 million as his share. In the investigation, it was also found that petitioner had completed construction of a bungalow on his plot at Callachi Cooperative Society, Karachi and the cost of such construction was estimated to be Rs.6,000,000/-. The investigation further revealed that the petitioner and his family was in use of three cars of different make and models. Total liability of the accused determined by NAB on the basis of cash flow chart was estimated to be Rs.25,18,25,004/- for which he could not account for. On the basis of such investigation a reference bearing No.26/2017 has been filed against the petitioner.

4. Learned counsel for petitioner has approached this court for post arrest bail on the fresh ground of hardship. He has contended that the petitioner was taken into custody on 05.06.2018 and has nearly served 2 years in jail; that except on a few occasions no delay in the trial has been caused on either his part or counsel acting on his behalf; that the only a few PW's have been examined and that trial cannot be concluded in the foreseeable future, that the direction to complete the trial within a given period of time by this court has not been complied with and even otherwise by reference to the investigation report he contended that the case against the petitioner on merit is weak and as such he is entitled to bail on hardship grounds. In support of his contentions he has placed

reliance on **Ghani-ur-Rehman v. National Accountability Bureau and others** (PLD 2011 Supreme Court 1144), **Syed Qasim Shah v. The State** (2009 SCMR 790), **Khalid Aziz v. The State** (2011 SCMR 136), **The State and others v. M. Idrees Ghauri and others** (2008 SCMR 1118), **Ayub Masih v. The State** (PLD 2002 Supreme Court 1048), **Muhammad Saeed Mehdi v. The State and 2 others** (2002 SCMR 282) **Mohae-ud-Din v. The State through Prosecutor-General Balochistan** (2015 P. Cr. LJ 621), **Saeed Ahmed Ahmed v. The State** (1995 SCMR 170), **Manzoor and 4 others v. The State** (PLD 1972 Supreme Court 81), **Imtiaz Ahmed v. The State through Special Prosecutor ANF** (2017 SCMR 1194), an unreported Judgment of High Court of Sindh dated 24.01.2020 in C.P. No.D-7137 of 2019, **Inam Akbar S/o. Ghulam Akbar v. Chairman NAB and another** and another unreported Judgment of High Court of Sindh dated 10.03.2020 in C.P. No.D-6899 of 2019 **Mushtaq A. Qaisar v. Chairman NAB**.

5. On the other hand special prosecutor NAB has opposed the grant of post arrest bail to the petitioner. He has contended that the case of the petitioner does not fulfill the legal requirements of grounds necessary to enable release on bail based on hardship grounds since delay has been caused by the petitioner or counsel acting on his behalf and the delay is neither shocking nor unconscionable and as such the bail petition should be dismissed. In support of his contentions he has placed reliance on **Tallat Ishaq v. National Accountability Bureau** (PLD 2019 Supreme Court 112), **Salah-ud-Din v. The State** (2010 SCMR 1962) and **Muhammad Nawaz v. The State** (2002 SCMR 1381).

6. We have heard the parties, carefully reviewed the record and considered the relevant case law including that cited at the bar.

7. We have gone through the authorities cited by each party and are of the view that only the authority of **Tallat Ishaq** (Supra) is mainly relevant based on the particular facts and circumstances of this case. **Tallat Ishaq's** case (supra) was passed by a larger bench of the Supreme Court on 01.10.2018 which considered all the relevant law on hardship grounds in NAB cases and laid down definitive guidelines in this respect.

8. Admittedly the petitioner has been in custody for nearly two years. A review of the report called from the trial court judge however indicates that considerable delay in completing the trial has been caused on the part of the petitioner. The report of the trial court dated 10.02.20 in this respect reveals that delay has been caused by the petitioner on as many as 14 dates and reads as under;

"It is submitted that after filing of Reference till date, the matter was fixed before the Court on sixty nine (69) dates of hearing out of which on thirteen dates of hearing i.e. 15.01.2018, 19.04.2018, 25.04.2018, 19.07.2018, 09.08.2018, 01.09.2018, 10.09.2018, 10.10.2018, 06.12.2018, 29.03.2019, 15.04.2019, 07.05.2019 and 20.01.2020, the delay was caused by the accused in proceeding with the matter"

9. In **Tallat Ishaq's case** (Supra) at Para 23 (f), (g), (h) and (i) it was held as under:-

"(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay.

(g) Before admitting an accused person to bail on the ground of hardship caused by a shocking, unconscionable or inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him.

(h) Even in cases of delay ordinarily bail is not granted straightway and a direction is issued to the trial court in the first instance to conclude the trial within a period fixed for the purpose by the Court itself... ..

(i)It goes without saying that a direction issued by a superior Court to the trial court to conclude a trial within a specified period is an administrative direction and non-compliance of such a direction by the trial court for whatever reason may not entitle the accused person to claim bail as of right.(bold added)

10. With regard to the case of **Tallat Ishaq** (Supra) which NAB has cited in its objection to granting bail. No doubt **Tallat Ishaq's** case (Supra) has made the grant of bail more stringent on hardship grounds but it has not excluded it and it is allowed in exceptional circumstances at the **discretion** of the court.

11. In the current case the petitioner has spent less than two years in jail, has caused considerable delay in completing the trial, according to the NAB 19 PW's have been examined and only 13 remain left to be examined and the NAB intends to give up 4 or 5 of these PW's in due course, an accountability judge for the trial court where the references against the petitioners are proceeding has assumed charge and is fulfilling his duties and as such there is no reason why these references cannot be decided in a reasonable period of time if another direction is given by this court. This is especially true in respect of this case where the petitioner is the sole accused so only one cross examination per witness will take place. With regard to merits we are not persuaded of the petitioners case in this respect or by any comments in the investigation report especially as the petitioner's application for acquittal under S.265K Cr.PC has recently been rejected by the concerned accountability court based on the evidence already recorded before the court.

12. Thus based on the particular facts and circumstances of this case where considerable delay has been caused by the petitioner in concluding his trial, where the petitioner has spent just about two years in custody and the concerned accountability court is now up and running we do not consider the delay in the petitioner's case **at this point in time** to be shocking or unconscionable and as such the petitioners' petition for post arrest bail on hardship grounds is dismissed. **However** the trial court is **directed** to examine the remaining material witnesses next and **hear the reference on a day to day basis and not allow any adjournment on any flimsy ground and to complete the trial of the petitioner within 4 months of the date of this order** and provide a weekly progress report to this court through MIT II. If any adjournment is granted the dairy sheets shall set out which accused or which counsel or NAB as the case may be has caused the delay.

13. The office shall immediately send a copy of this order to the concerned accountability court Judge for information and compliance
14. The petition stands disposed of in the above terms.

Anf