

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Naimatullah Phulpoto, J.

Mr. Justice Mohammed Karim Khan Agha, J.

CONST. PETITION NO.D-8669 OF 2018

Syed Hur Riahi Gardezi

son of Syed Abbas Hussain Gardezi.....Petitioner

VERSUS

National Accountability Bureau

and another.....Respondents

Counsel for the Petitioner.

Mr. Makhdoom Ali Khan, Advocate.

Counsel for the Respondent.

Mr. R.D. Kalhor, Special Prosecutor NAB.

Dates of hearing:

20.12.2018.

Date of order:

24.12.2018

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- The Petitioner (Syed Hur Riahi Gardezi) along with other co-accused was tried before Accountability Court No.III Sindh Karachi for acts of corruption and corrupt practices under the National Accountability Ordinance 1999 (NAO) in National Accountability Bureau (NAB) Reference No.02/2014 The State V Muhammed Ayaz Khan Niazi and others. After a full dressed trial the petitioner along with other co-accused was convicted and sentenced by the aforesaid Accountability court vide judgment dated 08-12-2018 to under go R.I for 7 years, was barred from holding public office for a period of 10 years after his release from prison and from availing financial assistance from any government financial institution for a period of 10 years after his release from prison. He was however given the benefit of S.382 (B) Cr.PC.

2. Through this petition under Article 199 of the Constitution r/w S.426 and 561-A Cr.PC the petitioner has moved this court for suspension of his sentence pending his appeal against the judgment.

3. The brief facts of the case are that the National Insurance Corporation of Pakistan Limited (NICL) allegedly purchased 10 acres of land in Karachi at exorbitantly inflated prices in order to benefit certain individuals which caused a loss of around RS 487 M to the National Exchequer. At the time of the

offense it was alleged that the petitioner who was a member of the Board of Directors of the NICL in collusion with the other co-accused misused his authority in approving the purchase of the aforesaid land at exorbitant rates in order to unduly favour others which caused colossal loss to the national exchequer.

4. Learned counsel for the petitioner submitted that he was not the main accused as this was Ayaz Khan Niazi who was the Chairman of the NICL at that time; that he was also not a beneficiary and indeed all the alleged loss to the National Exchequer had now been made good; that he was not a part of any of the committees in which the price of the land was negotiated and that he had simply been roped into the reference because he happened to be a member of the Board of Directors who ultimately approved the purchase of the land at the price recommended to the Board by the negotiating committee; that no witness had given any evidence against him and this was a case of absolutely no evidence and as such he was entitled to have his sentence suspended and be released on bail pending the final outcome of his appeal. In support of his contentions he relied on, amongst others, the following authorities **Soba Khan v. The State and another** (2016 SCMR 1325), **Mukaram Ul Haq V NAB** (2006 SCMR 1225), **Junaid Asad Khan and another v. The State** (2018 P. Cr.L.J. 610) and **Abdul Quddus V State** (2002 YLR 3996).

5. On the other hand, senior prosecutor for the NAB vehemently opposed the petition; he contended that the petitioner was fully involved in the offense for which he had been rightly convicted based on the evidence on record. He was present in the 60th Board Meeting which approved the purchase price of the land and knew full well that this was an exorbitant unjustified price which he had fixed in collusion with the other co-accused in order to illegally benefit others and as such the petition should be dismissed.

6. We have considered the arguments of the parties, gone through the record with the able assistance of the learned counsel for the parties and considered the case law cited at the bar.

7. To start with we would like to set out some general principles governing the suspension of the sentence during the pendency of the appeal.

- (a) This is a **discretionary ground** and only a tentative assessment of the evidence may be made; not a deeper appreciation and in no case can the court go into the merits of the case as this may prejudice the outcome of the appeal which will be decided after a full blown appellate hearing. In this respect reliance is placed on **Raja Shamshad Hussain V Gulraiz Akhtar** (PLD 2007 SC) and **Manzoor Ahmed V Fazal Ahmed** (2013 SCMR 1403)

(b) That the sentence could not be suspended under S.426 Cr.PC unless it was shown that the conviction was based on no evidence and that there was no ultimate possibility of the conviction being sustained. In this respect reliance is placed on **Makhdoom Javed Hashmi V The State** (2007 SCMR 246)

8. 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 appeal of the petitioner which shall be decided on merits based on the relevant law and evidence on record.

9. It would appear that in this case the petitioner is neither the main accused nor a beneficiary and that his role is restricted to being a member of the Board of Directors which ultimately approved the purchase of the land at the price recommended by the negotiating committee. It is true that the petitioner was a part of the investment committee established by the Board of Directors but significantly he was absent from the crucial 34th Meeting of the Investment Committee when it was decided to purchase the land. He also played no role in selecting the members of the negotiating team who were to negotiate the price of the land with the sellers and importantly he was not a member of the negotiating team. We have also not while skimming through the evidence in a tentative fashion prima-facie seen any evidence on record to show that he was involved in any way in the price negotiations or with any of the beneficiaries. It also appears that he did not personally financially or otherwise benefit from the transaction. It is true that he visited the site but such visit does not have any bearing on the negotiation of the price which seems to be one of the key aspects of this case. Interestingly at typed P.12 of the judgment whilst dealing with Point 5 which states, "Whether accused Muhammad Zahoor and Syed Zahid Hussain being member of negotiating committee for purchases of 10 acres land negotiated the sale price of subject land with seller and in connivance of Chief Executive NICL distorted the real and factual position mislead the Board of Directors to purchase the land at high price?" The trial court found as under;

"Both accused Muhammad Zahoor and Zahid Hussain admitted that they were member of negotiating committee, constituted by Investment Committee of Board of Directors NICL for the purpose to negotiate the sale price of subject land with seller. They both admitted that they negotiated the price by keeping in view pre purchase valuation received from M/s. Consultancy Support Services Pvt. Ltd. and EDO Revenue (CDGK) but as discussed above both reports were forged or managed and the management of commercial organization accepted such reports at flimsy face value and settled the price on such managed reports and in connivance with remaining accused persons distorted

the real and factual position and mislead the Board of Directors to purchase the land at high price." (bold added)

10. Thus, prima facie, on a tentative assessment of the evidence it cannot be ruled out that the petitioner was mislead by the Chairman Ayaz Niazi and the members of the negotiating committee into approving the price of the land at a higher value since he would have relied on the report of the negotiating committee and had no personal expertise in land valuation. Whether he colluded with the other co-accused needs to be further considered through a deeper appreciation of evidence which is not permissible at this stage. Learned counsel for the petitioner has also rightly relied on the case of **Soba Khan** (supra) in respect of this matter.

11. Thus based on the particular facts and circumstances of this case, as discussed above, 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 shall deposit 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.

12. 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 petitioner's name on the ECL.