

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Muhammad Humayon Khan**

C.P No.2229/2017

Dr. Asim Hussain -----Petitioner.
Versus
Federation of Pakistan & others -----Respondents.

C.P No.D-1696/2016

Dr. Asim Hussain -----Petitioner.
Versus
Federation of Pakistan & others -----Respondents.

C.P No.D-7597/2015

Dr. Asim Hussain -----Petitioner.
Versus
Federation of Pakistan & others -----Respondents.

Dates of hearing:	09.05.2017, 15.05.2017 & 26.05.2017.
Date of Order:	05.06.2017
Petitioner in All three Petitions	Through M/s. Sardar Mohammad Latif Khan Khosa, Anwar Mansoor Khan and Qadir Khan Mandhokhail, Advocates.
Federation of Pakistan:	Through M/s. Shaikh Liaquat Hussain, Assistant Attorney General.
Government of Sindh:	Mr. Qazi Mohammad Bashir, AAG and Mr. Asadullah Lashari, State Counsel.
NAB:	Through Mr. Muhammad Altaf, Special Prosecutor.

ORDER

Muhammad Junaid Ghaffar, J. Through this common order, we intend to dispose of C.P No.D-2229/2017, CMA No.11486/2017 in C.P No.D-1696/2016 and CMA No.11484/2017 in C.P No.D-7597/2015 as they involve common prayer made on behalf of the Petitioner.

2. Precisely stated facts appear to be that the Petitioner was initially detained for a period of 90 days under Section 11E of the Anti-Terrorism Act, 1997 and thereafter was arrested in two References bearing Nos.13 and 19 of 2016. In both these References through a common order passed in C.P Nos.D-1696/2016 and 7597/2015, on 29.03.2017 by a majority decision of two is to one, the petitioner was granted bail on medical grounds. While granting bail, the Petitioner was also directed to deposit his Passports before the Nazir of this Court, whereas, directions were also issued to the Ministry of Interior not to issue any fresh or duplicate Passport and to place the name of the Petitioner on Exit Control List (“**ECL**”). Through both the aforesaid CMAs, it has been prayed to direct the Nazir to return the two Passports of the Petitioner and so also for removal of his name from ECL. Whereas, through C.P No.D-2229/2017, the Petitioner has made the following prayer(s):-

- i. Declare, that the memorandum No.12/260/2015-ECL dated November, 24th 2015 is unconstitutional, without jurisdiction, unlawful, void *ab initio*, and set aside and in consequence the name of the petitioner be removed from the ECL;
- ii. Allow the release of the passports of the petitioner, retained under orders of this Hon’ble Court, with the Nazir of this Hon’ble court, while allowing bails to the Petitioner, in Cr. Bail Application No.993/2016 & C.P No.D-7597/2015 & C.P D-1696/2016, without which the Petitioner obviously would be incapacitated from travelling.
- iii. Permanently and pending disposal of the main Petition suspend the operation of the Memorandum 12/260/2015-ECL dated November, 24th 2015;
- iv. Restrain the Respondents, their officers, agents and their functionaries from hampering, hindering and stopping the

Petitioner's movement within or outside Pakistan in any manner whatsoever;

- v. Any other writ, relief or direction, expedient in the interest of justice may also be issued in vindication fo the grievance afore referred.”

3. Learned Counsel for the Petitioner has contended that initially the Petitioner was detained under Section 11EEEE of the Act, 1997 and thereafter was taken into custody by the NAB Authorities; though neither any inquiry, investigation or reference was pending. He has further submitted that during this period, the petitioner's name was placed on ECL through Letter dated 24.11.2015 and thereafter two References bearing Nos.13 and 19 of 2016 were filed in which Petitioner has been granted bail on medical grounds. He has contended that insofar as the case registered under the Anti-Terrorism Act is concerned, the petitioner was earlier granted bail through Order dated 01.11.2016 by a Division Bench of this Court, whereas, the Anti-Terrorism Court has granted permission to travel for Medical treatment against surety of Petitioners Medical Hospital. Learned Counsel has contended that the Medical Reports of the Petitioner on the basis of which he was granted bail by this Court very clearly suggests that the Petitioner suffers with a number of diseases. He has contended that *Lumber Disc* replacement of the Petitioner is to be carried out, which facility is not available in the Country. Learned Counsel has referred to various Reports of Aga Khan Hospital, OMI Hospital, Liaquat Medical University, Dow Medical University and has contended that none of them have stated that such medical treatment is available in Pakistan. Learned Counsel has further contended that the Petitioner has already furnished surety and is further willing to give any additional surety, if so directed, whereas, the learned Judge whose view was also endorsed by the Referee Judge very clearly provides in the bail granting order; that deposit of Passport and placing of the Petitioner's name on ECL is until further orders, and therefore, while looking at the health status of the Petitioner, the Passports may be directed to be returned and Petitioner's name be removed from ECL placed by the Ministry of Interior on the directions of this Court. Insofar as Memorandum dated 24.11.2015 issued by the Ministry of Interior for placing the name of the Petitioner on ECL and challenged through C.P No.D-

2229/2017 is concerned, learned Counsel has contended that the Petitioner was never informed about such action taken by the Ministry of Interior, whereas, even otherwise no reasons have been assigned while placing the name of the Petitioner on ECL. Per learned Counsel the Petitioner should have been informed, whereas, the Memorandum has been issued without any application of mind on the directions of NAB, which is impermissible in law. He has further submitted that till 24.11.2015 there was no Reference pending against the Petitioner; therefore, even otherwise, the Petitioner's name could not have been placed on ECL. In support learned Counsel has relied upon **PLD 2014 Sindh 389** (*Gen. (Retd.) Pervez Musharraf through Attorney v. Pakistan through Secretary Interior and others*), **PLD 2016 Supreme Court 570** (*Federation of Pakistan through Secretary, M/O Interior v. General No. Pervez Musharraf and others*), **PLD 1997 Lahore 617** (*Wajid Shamas-ul-Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad*), **PLD 1999 Karachi 177** (*Saleem Akhtar v. Federation of Pakistan and another*), **PLD 2008 Lahore 341** (*Sohail Latif and 2 others v. Federation of Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad and 2 others*), **PLD 2010 Lahore 230** (*Mian Ayaz Anwar v. Federation of Pakistan through Secretary Interior and 3 others*), **PLD 2011 Karachi 385** (*Messrs Zurash Industries (Pvt.) Ltd. through Director and 4 others v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 3 others*), **PLD 2009 Karachi 361** (*Abdul Qayyum Khan v. Federal Government of Pakistan through Federal Secretary, Ministry of Interior & 2 others*), **1998 MLD 490** (*Arshad Sami Khan v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 3 others*), **2006 YLR 2797** (*Mirza Muhammad Iqbal Baig v. Federation of Pakistan and others*), **2008 YLR 1857** (*Mian Tahir Jahangir v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and another*), **2008 YLR 1508** (*Mian Munir Ahmed v. Federation of Pakistan and others*), **2008 SCMR 1448** (*Ali Sheharyar v. The State*) **PLD 1970 Supreme Court 335** (*Gulzar Hassan Shah v. Ghulam Murtaza and 4 others*), **2014 P.Cr.L.J 1179** (*Muhammad Yaseem v. The State and another*), **PLD 1999 Lahore 459** (*Munawar Ali Sherazi v. Federation of Pakistan through Ministry of Interior, Government of Pakistan, Islamabad and 3 others*), **PLD 2003 Peshawar 102**

(Sikandar Hayat Khan and 4 others v. Government of Pakistan through Federal Secretary, Ministry of Interior, Islamabad and 5 others), 2007 YLR 560 (*Rauf B. Kadri v. Federation of Pakistan and others*) and an unreported Judgment of Honourable Supreme Court passed in Civil Petitions No.781 and 896 of 2016 and CMA No.1986 of 2016 in Civil Petition No.781 of 2016 A/W Civil Petitions No.207-K of 2016 (*Mahboob Ali Abro v. Ayyan Ali and others*)

4. On the other hand, the learned Assistant Attorney General has read out the comments of Ministry of Interior and has submitted that name of the petitioner was placed on ECL on the request of NAB Authorities as the Petitioner is an accused, whereas, this Court while granting bail has also directed the Ministry of Interior to place the name of the Petitioner on ECL, which has accordingly been done.

5. Learned Special Prosecutor NAB has contended that this Court while granting bail on medical grounds has apprised all such Medical Reports, which are now being relied upon on behalf of the Petitioner and despite all these reports specific directions were given to retain the Passport of the Petitioner and so also his name was placed on ECL. He has contended that such order was consciously passed by the Court, which cannot be altered or modified through miscellaneous application or through an independent Constitution Petition. He has also placed on record copy of Order dated 19.04.2017 passed in C.P No.D-214/2016, in the case of **Zuhair Siddiqui v. Chairman NAB** and others in one of the very References, whereby, such request of the Petitioner for return of Passport has been disallowed. Insofar as the Memorandum dated 24.11.2015 is concerned, learned Counsel has referred to Section 2 of the ECL Ordinance, 1981 as well as Rule 2 of The Exit From Pakistan (Control) Rules 2010, and has contended that the Petitioner is involved in huge corruption of billions of rupees, therefore, NAB was justified in requesting the Ministry of Interior to place the name of Petitioner on ECL. He has further contended that alternate remedy was available under Section 3 of the said Ordinance to challenge such Memorandum and therefore, the Petitioner has not approached this Court with

clean hands. Learned Special Prosecutor NAB has further contended that all such case law relied upon on behalf of the Petitioner is distinguishable in facts, therefore, the Petition as well as miscellaneous applications be dismissed. He has relied upon the cases reported as **PLD 2009 Karachi 243** (*Habibullah Niazi v. Federation of Pakistan through Federal Secretary, Ministry of Interior, Pakistan Secretariat, Islamabad and 2 others*), **2016 YLR 177** (*Asif Kamal v. Government of Pakistan and others*), **PLD 1997 Karachi 513** (*Miss Naheed Khan v. Government of Pakistan and others*) and **2011 SCMR 271** (*Prime Minister Inspection Team national Highway Authority v. Zaheer Mirza and others*).

6. While exercising his right of rebuttal, learned Counsel for the Petitioner has referred to Chapter XXVI of the Criminal Procedure Code and has contended that order, whereby, bail was granted is not a judgment, which could have attained finality, and therefore, the same can be modified or varied, if the circumstances so required.

7. We have heard the learned Counsel for the Petitioner, learned Special Prosecutor NAB as well as learned Assistant Attorney General and have perused the record. The facts have already been discussed hereinabove and for the sake of brevity need not be repeated. The Petitioner while in custody filed two separate Petitions bearing Nos.D-7597/15 and 1696/2016, wherein, hearing was concluded on 18.01.2017 and thereafter the order was announced on 03.02.2017 and both the learned Judges had differed in their opinions as one of them (Karim Khan Agha.J) had granted bail on medical grounds, whereas, the other learned Judge (Muhammad Farooq Shah.J) had dismissed the petitions. Thereafter the matter was referred to a Referee Judge by the Honourable Chief Justice, who vide order dated 22.03.2017 agreed with the opinion/decision of the learned Judge, who had granted bail on the medical grounds to the petitioner. The operative part of the bail granting Order dated 03.02.2017 reads as under:-

“34. Thus, based on the discussion above, the petitioner is hereby granted bail on medical grounds as we have found based on the above discussion that (a) the sickness or ailment with which the petitioner is suffering is such that it cannot be properly treated within the premises of jail (greater emphasize) and that some specialized treatment is needed and his continued detention in jail is likely to effect his capacity and is

hazardous to his life in both of the above mentioned references subject to him furnishing solvent surety in the sum of Rs.25 Lacs in respect of each reference and PR bond in the like amount in each reference subject to the satisfaction of the Nazir of this court and depositing his original passport with the Nazir of this court. The Ministry of Interior is directed not to issue the petitioner with any fresh or duplicate passports until the further orders of this court and to place the name of the petitioner on the ECL.”

8. The learned Referee Judge (Aftab Ahmed Gorar.J.) through order dated 22.3.2017 while agreeing with the said Order observed as follows:-

“In view of the above circumstances and the dicta laid down by the Honourable Supreme Court of Pakistan as well as this Court in the case of Muzammil Niazi versus the State reported in PLD 2003 Karachi 526, referred to above, I am agreed with the opinion/decision of my learned brother Mr. Mohammad Karim Khan Agha J.

9. The final order of the Court dated 29.03.2017 reads as under:-

“By majority View, the opinion/decision tendered by my learned brother Mr. Muhammad Karim Khan Agha, J. on 03.02.2017, in captioned C.P No.D-1696/2016 and C.P No.D-7597/2015 shall prevail. The petitions to the extent of bail plea are allowed.”

10. Insofar as the contention of the learned Counsel for the Petitioner to the effect that the bail granting order passed by our learned Brother Mr. Muhammad Karim Khan Agha J. is until further orders of this Court is concerned; we may observe that such part of the order is only applicable and relatable to the directions of the Court, whereby, Ministry of Interior was directed not to issue the Petitioner any fresh or duplicate Passport. Whereas, it has no nexus with the directions given while granting bail subject to furnishing solvent surety in the sum of Rs.25,00,000/- in respect of each reference and P.R bond in the like amount and deposit of his original Passport with the Nazir of this Court. It is only the directions to the Ministry of Interior regarding issuance of any duplicate Passport for which words **“until further orders”** have been used. In our considered view it had no nexus with the deposit of Passport with the Nazir of this Court and so also for placing the name of the Petitioner on ECL, therefore, this contention is misconceived and is hereby repelled.

11. Whereas, even otherwise, we are of the view that the said order has been passed after a detailed examination of at least ten (10) Medical Reports of the various Boards constituted from time to

time on the directions of the Trial Court, including two letters from Hospitals. The learned Judge has examined all such Medical Reports threadbare and while granting bail has made a definitive conclusion that the treatment so required by the Petitioner is not available within the jail premises and further that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity and is hazardous to his life. Learned Judge while coming to such conclusion must have kept in mind the Medical Reports and the findings therein, however, notwithstanding the said Medical Reports, the learned Judge while granting bail on medical grounds felt satisfied that the Petitioner's Passport be retained and his name be placed on ECL. It is also a fact that in various Medical Reports discussed in the said order; time and again the Surgery aspect of the **Lumber Disc Replacement** has been mentioned and has even been highlighted by the Judge in his order. Such order of the learned Judge was passed consciously and so also keeping in mind that the Petitioner requires medical treatment including Lumber Disc Replacement, but even then his Passport was retained and his name was also placed on ECL. If there would have been any other situation or thinking on the part of the learned Judge, who had gone to the extent of granting bail purely on medical grounds, learned Judge would not have issued such directions and would have rather ordered for release of the Petitioner on mere surety. But this is not the case as in addition to the surety, very conscious directions were issued, whereby, the Petitioner was directed to surrender his Passports with the Nazir of this Court and Ministry of Interior was also directed to place his name on ECL. Such order in our opinion has attained finality and the only recourse available to the Petitioner was to challenge the same further before the Honourable Supreme Court. It further appears that the learned Referee Judge who has agreed with the view taken by our learned Brother Muhammad Karim Khan Agha J. has done so in totality including the conditions attached in the bail granting order, notwithstanding that petitioner was being bailed out on medical grounds. This again is conscious view of the learned Referee Judge. Insofar as reliance on order of the Court dated 29.03.2017 to the effect that there are no such directions in the final order is concerned; again we may observe that this contention is also misconceived inasmuch as it has been very

clearly observed by the Court that by majority view the opinion/decision tendered by our learned Brother Muhammad Karim Khan Agha J. dated 03.02.2017 shall prevail and Petitions to that extent of bail plea are allowed. This is nothing but endorsing the view taken by our learned Brother Muhammad Karim Khan Agha J. duly affirmed by the Referee Judge, and in both these opinions there are direction to deposit the Passport of the Petitioner and for placing his name on ECL.

12. It may further be observed that reliance of various letters of Hospitals, like Aga Khan Hospital, OMI Hospital, Liaquat Medical University, Dow Medical University etc is also of no help inasmuch as all these letters are prior to the passing of order of bail on 3.2.2017, and were either not placed before the Court, or shall be deemed to have been placed or considered. Now at this stage of the proceedings when the petitions stands decided we cannot go into facts which had already been considered or new facts as well, as the order has attained finality. In our view on subsequent application(s) like these, the said order cannot be interfered with so as to review it or otherwise modify, which has been passed by the Court after due care and by exercising its own discretion in the matter so vested in it. In our understanding the appropriate remedy to the Petitioners was to further challenge the said portion of the order by which they were aggrieved. By entertaining these applications subsequently, we would be either amending the order or modifying it after disposal of these petitions, which we are afraid, cannot be done through such applications.

13. A learned Division Bench of Lahore High Court in the case of ***Tariq Masood v. Director General, National Accountability Bureau, Lahore and another (PLD 2012 Lahore 287)*** had the occasion to decide a miscellaneous application, in a matter under the NAB Ordinance, whereby, the Petitioner was though granted bail in the sum of Rs.200,000/- with two sureties each in the like amount, however, additionally was also ordered to deposit a security of Rs. 25,00,000/- as well. The Petitioner had subsequently moved an application which was initially dismissed, whereafter it was challenged before the Honorable Supreme Court but was withdrawn. Thereafter the petitioner filed another application in

respect of the condition of deposit in the bail order. The Petitioners' contention was that the condition of deposit of cash security was not in accordance with law and while referring to Sections 497 and 499 Cr.P.C. reliance was placed on a number of citations as mentioned in Para-4 of the said Judgment. This application was opposed on behalf of NAB on the ground that a white collar crime by misappropriating funds was committed, and therefore, keeping in view the spirit of NAB Ordinance, the Court had rightly directed the Petitioner to deposit the cash security. The said application was dismissed by the learned Division Bench of the Lahore High Court and the relevant observation reads as under:-

"A bare perusal of the aforementioned provision of law would reveal that sections 497, 498 and 561-A, Cr.P.C, or any other provision of the Code, or any other law for the time being in force, are not applicable to the offences falling under National Accountability Ordinance, 1999. Even otherwise, according to section 3, the provisions of the National Accountability Ordinance, 1999, have an over-riding effect notwithstanding anything contained in any other law for the time being in force. However, High Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has the jurisdiction to grant bail to an accused facing prosecution for an offence under the National Accountability Ordinance, 1999. In the case of **Abdul Aziz Khan Niazi v The State through Chairman, NAB, Islamabad** (PLD 2003 Supreme Court 668), it was pronounced that High Court has the power to grant bail under Article 199 of the Constitution, independent of any statutory source of jurisdiction such as section 497, Cr.P.C. Needless to observe that ouster of jurisdiction of High Court to grant bail in scheduled offences has been done away by amendment in section 9(b) of National Accountability Ordinance, 1999, after omission of the word "including the High Court". The High Court, while considering the question of bail in its Constitutional jurisdiction, in the interest of safe administration of justice, can examine the nature of allegations on the basis of tentative assessment of the evidence in hands of prosecution to ascertain, prima facie, the question of guilt or innocence of an accused for the purpose of grant or refusal of bail and without expressing any opinion on merits of the case, lest it should prejudice the accused or prosecution. The rule of departure from the provisions of section 497 Cr.P.C. in presence of the special enactment is enunciated in the case of **Chaudhry Shujat Hussain v. The State** (1995 SCMR 1249), wherein, it has been observed that in case of conflict between the provisions of the Offences in Respect of Banks (Special Courts) Ordinance of 1984, and the provisions of the Code of Criminal Procedure regarding scheduled offences, the Ordinance, 1984, being a special law, would prevail. Therefore, the provisions of sections 497 and 499, Cr.P.C. will not stricto sensu apply to the cases falling under the National Accountability Ordinance, 1999, in view of sections 3 and 9(b) of the Ordinance ibid. In the case of **The State v. Muhammad Hasham Babar** (PLD 1997 Lahore 605), it was held that the area of asking security from the accused, who is allowed bail, is vacant and the Court is not enjoined under the law to mathematically follow the system of securities, provided in the Code of Criminal Procedure. In the case supra, it was laid down that under the new dispensation, i.e. Ehtesab Ordinance (XX of 1997), which was an earlier enactment on the subject of accountability, the Court has ample power to ask for cash security in appropriate cases." (Emphasis supplied)

14. It is also of pivotal importance to note that the idea behind seeking surety while granting a bail is to secure the attendance of the accused before the Trial Court. Now what is that will ensure such attendance is for the Court granting bail to decide keeping in view the peculiar facts and circumstances of each case independently. Once such security or surety of whatsoever nature has been incorporated in the bail granting order, no further deviation is permissible for another Division Bench of the same Court to take on a subsequently filed miscellaneous application. If this is permitted as a routine and barring exceptions, then it will disturb the entire spirit, procedure and process of the Court and will never put an end to these proceedings which specially in these matters pertaining to NAB Ordinance, are only confined to the grant of Bail or otherwise. This Court is not the trial Court which normally grants bail and ensures the attendance of the accused. This difference has to be kept in mind while entertaining any such application. In our considered view when bail was granted to the petitioners, it was felt necessary by the Court to procure passports and to place his name of ECL, as the Court while granting bail is duty bound to prescribe the type of surety it needs for securing the attendance of the accused. Even a routine bail order contains certain conditions between the lines. In this matter in our view the order for surrendering passports and placement of name on ECL was done as a practice and routine being followed in bails pertaining to NAB matters and we do not find any illegality otherwise so as to upset it, as it would be an impediment in the proper administration of justice which the learned Court thought it to be fit and just in fact and law. Courts are not required to pass mechanical orders; rather it has to take into consideration the status of sureties, their validity as well as circumstances which would provide satisfaction to the Court that the order of concession of bail would not be misused.

15. In the case of **MUHAMMAD AYUB Versus Mst. NASIM AKHTAR AND ANOTHER (1984 P Cr. L J 160)** the Hon'ble Supreme Court of the Azad Jammu & Kashmir had the occasion to examine the condition attached to a bail granting order. The relevant finding reads as under;

13. The provision of section 498 of the Criminal Procedure Code confers vast discretionary powers on the High Court and the Sessions Court (District Criminal Court). If the High Court and the District Criminal Court has the powers to pass the bail order in a fit and a proper case then surely it has the competency to pass any conditional bail order if in its estimation circumstances of the case so warrant. Though of course the Courts normally would not and should not pass any conditional order beyond those normal conditions visualised under section 499 of the Criminal Procedure Code but to hold that the Court has no power to pass a conditional bail order in a non-bailable case under any circumstance would be a wrong exposition of law. The provisions of sections 498 admit no such limitation. In *Emperor v. H. L. Hutchinson* (A I R 1931 All. 365) a Division Bench case, it was observed that the High Court's power of granting bail is conferred on it under section 498 and is entirely unfettered by any condition. The Legislature has given the High Court and the Court of Sessions discretion to act under section 498 unfettered by any limitation other than that which controls all discretionary powers vested in a Judge Viz. that the discretion must be exercised judicially. In this case the learned Division Bench while allowing bail ordered as: -

"We direct that the applicant Mr. H. L. Hutchinson be admitted to bail to the satisfaction of District Magistrate who will of course see that the bail is adequate but not excessive. Before the applicant be admitted to bail they must give an undertaking in writing to the District Magistrate that they will not take part in any public demonstration or agitation."

In A I R 1958 Tripura 34, the petitioner alleged to be a Pakistani was arrested and charged under section 3 read with section 12 of the Official Secrets Act. While allowing the bail the learned Judge passed the order in the following terms: -

"There is no reason as to why the bail should be refused to the petitioner but there appears to be some justification in the request of the learned Government Advocate that in case bail is allowed some safeguard may be imposed to prevent the petitioner froth quietly leaving this territory."

So the learned Judge apart from requiring the bail bond of Rs. 5,000 with two sureties in the like amount also ordered the petitioner not to leave the Municipal bounds of Agartala without written permission of the District Magistrate.

14. In: *re Saradamana and others* (A I R 1965 Andh. Pra. 444), it was held that the Court allowing bail in a non-bailable case if feels necessary has power to, impose condition. Bail in that case was allowed with, the condition that the accused were to stay at a particular place during the whole period of trial whereas the home town of accused was some 200 miles away, While considering the point the learned Judge in the High Court observed that the conditional bail order could legally be passed while allowing bail in a non-bailable case though in that case the condition imposed was considered to be unreasonable and exceptionally hard so it was modified. For the above stated reasons we find that the District Criminal Court had the powers to pass a conditional bail order so therefore, the order passed by the District Criminal Court on 7th August, 1982 requiring the surety to be a Mehram was in accordance with law. The impugned judgment passed by the Shariat Court could not, therefore, be sustained.

15. The order dated 7th August, 1982, passed by the District Criminal Court was to the effect that the respondent was to be released on the surety of Mehram. Broadly speaking the order could be termed as a bail order with a condition precedent yet however, it is different from the conditional bail orders generally passed. Conditions whether incorporated in bail bond or otherwise generally

operate after the release and if found violated those may entail either in the forfeiture of the bond or cancellation of the bail. In the present case the position is however different. On the surety of any one from among the class of Mehram the respondent was to be released. After the release neither the surety nor the respondent were bound by any condition except those visualised under section 499. So the order passed by the District Criminal Court was really a choice of proper surety under the circumstances. We are unable to agree with the arguments advanced by the learned counsel for the respondent that the object of asking for the sureties and the furnishing of bonds is only to ensure the presence of the accused before the Court and beyond that no other condition could be attached.

16. Similarly in the case of ***Hakim Ali Zardari v The State (PLD 1998 SC 1)***, the order of learned Lahore High Court whereby while granting bail a condition for furnishing deposit of Rs.10 Million and surrender of *passport* was made in a case emanating from the Ehtesab Act, 1997 (predecessor law of NAB Ordinance), was maintained by the Hon'ble Supreme Court in appeal by a majority decision of two is to one

17. Moreover, in respect of another accused (Zuhair Siddiqui) in Reference No.19/2016, which is also subject matter of these petitions, we have already dismissed a similar application vide order dated 19.4.2017 in C.P.No.214 of 2016 by following our earlier order dated 7.4.2017 passed in C.P.No.D-6599 of 2015 (**Muhammad Imran v Federation of Pakistan**) and other connected matters. In the circumstances both the CMA's are dismissed

18. Moreover, insofar as prayer clause (ii) in C.P.No.2229 of 2017 is concerned, the same cannot even otherwise be granted through the said petition, as for such purposes an independent application has already been filed in other petitions, whereas, even otherwise, any order passed in a Constitution Petition cannot be challenged and/or modified through a separate petition. Insofar as the other prayer regarding Memorandum dated 24.11.2015 is concerned; since the name of the Petitioner is now placed on ECL on the basis of an order passed by this Court while granting bail to the Petitioner and which we have maintained by dismissing the miscellaneous applications, the same has become meaningless and therefore, no further adjudication on the said Memorandum is required. Accordingly petition is also dismissed.

19. In the given facts and circumstances of this case petition bearing No.D-2229/2017, and both CMA Nos.11486/2017 in C.P No.D-1696/2016 and CMA No.11484/2017 in C.P No.D-7597/2015 are dismissed.

Dated: 05.06.2017

Judge

Judge

Ayaz