

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. C.P. No.D-3057 of 2015.
2. C.P. No.D-3070 of 2015.
3. C.P. No.D-14 of 2016.
4. C.P. No.D-57 of 2016.
5. C.P. No.D-28 of 2017.

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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20.09.2017.

M/s. Hameedullah Dahri, Ishrat Ali Lohar, Shakeel Ahmed Shaikh, Rao Faisal Ali, Advocate for petitioners.

Petitioners Mir Khan, Nizamuddin, Muhammad Yameen and Muhammad Irfan are present on interim pre-arrest bail.

Mr. Fazal Hussain Jamali, Assistant Attorney General of Pakistan.

Mr. Jangu Khan, Special Prosecutor NAB alongwith Umesh Kumar I.O. / NAB.

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By the dint of this order, we decide captioned petitions wherein five petitioners (Mir Khan, Nizamuddin, Muhammad Yameen and Muhammad Irfan) are seeking pre-arrest bail; whereas petitioner Muhammad Iqbal (C.P. No.D-28/2017) seeks post-arrest bail.

2. At the outset, counsel for petitioner Muhammad Iqbal in C.P. No.D-28/2017, contends that his bail plea was declined up to apex Court on merits; however, direction was given to the trial Court by apex Court by order dated 22.09.2016 that trial shall be concluded within three months from the date of order. ***“In case of failure, it will be open for the petitioner to move fresh bail application before the trial Court.”*** Further, counsel contends that about one year has passed but trial Court has not concluded the trial. Calendar shows that total witnesses are 43 in number whereas only 08 witnesses have been examined so far. He also relied upon ***PLD 2008 Supreme Court 645.***

Relevant paragraph-8 of the same is that;

“The object of criminal law is to ensure availability of the accused to face trial and not to punish him for offence allegedly pending final determination by a competent Court of law. It is well settled principle of law that grant of bail cannot be withheld as punishment on accusation of non-bailable offence against an accused. An accused is entitled to expeditious and inexpensive access to justice, which includes a right to fair and speedy trial in a transparent manner without any unreasonable delay. This intention has been re-assured in section 16 of the N.A.B.

Ordinance laying down criteria for day to day trial and its conclusion within 30 days. But in the instant case such object does not appear likely to be achieved anywhere in the near future and would not constitute a bar for grant of bail to the petitioners. The truth or otherwise of charges levelled against petitioners would only be determined at the conclusion of trial after taking into consideration the evidence adduced by both the parties. It was held by this Court in the case of Aga Jehanzeb v. N.A.B. & others (2005 SCMR 1666) that if trial of case is not concluded within 30 days from date of submission of challan, accused would automatically become entitled to grant of bail.

3. Special Prosecutor NAB though opposed the bail *plea (s)* however could not deny the fact of non-compliance of direction of *Apex Court* with regard to conclusion of *trial* within specific period.

4. Heard and perused the available record *carefully*.

5. Precisely, relevant facts of the case are that it is alleged that petitioners were involved in misappropriation of funds and getting approved the layout plan but in accordance with law; thereby causing loss of Rs.44,00,000/- to the public / members of Railway Society.

6. There can be no denial to legally established principle of law that matter of *corruption* or *corrupt practice* are always to be viewed differently however the position, being so, does not prejudice to other *legally* established principles of law necessary to be kept in view while deciding bail *plea (s)* which are:

- i) *normally curtailing the liberty of a person is a serious step in law;*
- ii) *on ultimate acquittal at the trial there is no reparation or compensation;*
- iii) *keeping one behind the bars is not aim and object of law but to make him face the trial;*
- iv) *with-holding of bail must never be to punish merely on seriousness of alleged offence;*

Reference may be made to case of *Zaigham Ashraf* 2016 SCMR 18. These *prima facie* appear to be reason because of which it was held in para-8 of referred case (***PLD 2008 Supreme Court 645***) as:

“The object of criminal law is to ensure availability of the accused to face trial and not to punish him for offence allegedly pending final determination by a competent Court of law. It is well settled principle of law that grant of bail cannot be withheld

as punishment on accusation of non-bailable offence against an accused. An accused is entitled to expeditious and inexpensive access to justice, which includes a right to fair and speedy trial in a transparent manner without any unreasonable delay. This intention has been re-assured in section 16 of the N.A.B. Ordinance laying down criteria for day to day trial and its conclusion within 30 days. But in the instant case such object does not appear likely to be achieved anywhere in the near future and would not constitute a bar for grant of bail to the petitioners. The truth or otherwise of charges levelled against petitioners would only be determined at the conclusion of trial after taking into consideration the evidence adduced by both the parties. It was held by this Court in the case of Aga Jehanzeb v. N.A.B. & others (2005 SCMR 1666) that if trial of case is not concluded within 30 days from date of submission of challan, accused would automatically become entitled to grant of bail.

The *trial* has not been concluded despite clear and *specific* directions; continuous remaining of accused also *tilts* his case towards grant of bail. Reference may be made to case of Syed Khalid Hussain Shah 2014 SCMR 12 wherein it is held as:

'6... ..The fact that the petitioner has been in jail for more than seven months would also tilt the scales of justice in favour of bail rather than jail. Reference to the case of 'Mumtaz v. The State (supra) ((2012 SCMR 556)) will not advance the case of the respondent as each case being captive of its own facts and circumstances has to be decided accordingly. The case of 'Syed Abdul Baqi Shah v. The State' (1997 SCMR 32) may well be referred to in this behalf where such aspect was considered as a ground for grant of bail.

The prosecution does not claim any *apprehension* of evidence being tampered. Except petitioner Muhammad Iqbal, all petitioners are present on interim pre-arrest bail; they are regularly attending this Court as well trial Court; therefore, prosecution on any occasion, has not agitated that they have misused the concession of said interim bail or they have tried to tamper with the prosecution evidence. It is pertinent to mention that bail cannot be withheld as conviction; maximum punishment as per alleged section is 14 years whereas quantum of lesser punishment can vary and discretion in that regard lies with the *trial* Court hence while deciding bail *plea* the lesser punishment may also be a ground, tilting the scale in favour of accused. All the above circumstances are *prima facie* sufficient that remaining of petitioner Muhammad Iqbal in jail or committing the other petitioners to custody would

serve no purpose of justice nor would help prosecution towards their bounden obligation to conclude the trial *expeditiously*.

7. Under these circumstances, interim pre-arrest bail earlier granted to petitioners Mir Khan, Nizamuddin, Muhammad Yameen and Muhammad Irfan is confirmed on same terms and conditions; whereas petitioner Muhammad Iqbal (C.P. No.D-28/2017) is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.500,000/- (Rupees five lac) and P.R. Bond in the like amount to the satisfaction of Additional Registrar of this Court, as well the petitioner is directed to submit his original passport with the Additional Registrar of this Court.

All captioned petitions stand disposed of.

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