

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-627 of 2016.
6. C.P. No.D-28 of 2017.

DATE

ORDER WITH SIGNATURE OF JUDGE

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, Muhammad Irfan and Ghulam Nabi 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.

=

By dent of this order, we decide captioned petitions wherein five petitioners (Mir Khan, Nizamuddin, Muhammad Yameen, Muhammad Irfan and Ghulam Nabi) 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 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 been passed but trial Court has not concluded the trial. Calendar shows total witnesses are 43, whereas 08 witnesses have been examined. 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.

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, which has not been done in accordance with law; thereby they have caused loss of Rs.44,00,000/- to the public / members of Railway Society. 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 be vary and discretion is left upon the trial Court to decide such quantum of sentence.

Under these circumstances, interim pre-arrest bail earlier granted to petitioners Mir Khan, Nizamuddin, Muhammad Yameen, Muhammad Irfan and Ghulam Nabi 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.

JUDGE

JUDGE