

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

C.P No.D-869 of 2018

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**DATE ORDER WITH SIGNATURE OF JUDGE**

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1. For orders on office objection
2. For Katcha Peshi.
3. For hearing of MA 4649/18

Present:

*MR. JUSTICE NAIMATULLAH PHULPOTO*  
*MR. JUSTICE SHAMSUDDIN ABBASI*

Date of hearing: 09.04.2018.  
Date of Announcement of order: 16.04.2018

Mr. Mukesh Kumar Khatri, Advocate for petitioner.  
Mr. Jangoo Khan, Special Prosecutor NAB.

**O R D E R**

SHAMSUDDIN ABBASI, J: Petitioner Rahim Bux Soomro seeks suspension of sentence in Reference No.8/2016 filed by NAB against the petitioner in the court of learned Accountability Court at Hyderabad. After full dressed trial the petitioner was convicted vide judgment dated 14.12.2017 for an offence punishable under section 10 (a) of National Accountability Ordinance, 1999 and sentenced to suffer R.I for four (04) years and to pay fine of Rs.4,748,979/- and in case of default in payment of fine, it can be recovered as arrears of land revenue from him provided u/s 33-E of National Accountability Ordinance, 1999.

2. The petitioner / appellant preferred Criminal Accountability Appeal No.D-138/2017, in which he has assailed the judgment passed by the learned Accountability Court at Hyderabad.

3. This Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 r/w section 426 and 561-A Cr.P.C has been filed by the petitioner / appellant for suspension of sentence.

4. Learned counsel for petitioner / appellant contended that the petitioner / appellant has been sentenced for four (4) years R.I and to pay fine of Rs.4,748,979/-. Learned Counsel further contended that sentence of four

years is short sentence and hearing of appeal will take time due to heavy backlog of cases in this court. He further contended that there are glaring chances of acquittal of petitioner / appellant on merit and judgment passed by the learned trial court is a result of misreading and non-reading of evidence. He also contended that the petitioner /appellant was on bail during trial and he did not misuse the said concession of bail granted by this court. He further contended that the petitioner /appellant is an old aged retired person with feeble health. Lastly, he contended that the petitioner is in jail for the last four months and is suffering from various diseases, which are not curable inside the jail and finally he prayed that sentence awarded to the petitioner / appellant may be suspended during pendency of Appeal.

5. On the other hand learned Special Prosecutor NAB contended that prosecution has established it's case against the petitioner /appellant and learned trial court has rightly convicted him. Learned Prosecutor NAB opposed the prayer for suspension of sentence.

6. Heard learned Counsel for the petitioner /appellant as well as learned Special Prosecutor NAB and perused the record.

7. Petitioner / appellant has been convicted and sentenced to 04 years R.I and to pay fine of Rs.4,748,979/-. We are inclined to suspend the sentence as sentence is short one and hearing of Appeal due to heavy backlog will take time. We are supported by an unreported authority of Honourable Supreme Court whereby order of this Court was challenged by NAB and filed Criminal Petition No.750/2015 (re: Chairman NAB, Islamabad vs. Syed Ali Nawaz Shah and others), whereby sentence of five years was suspended under section 426, Cr.P.C. In this order, apex court has held that the High Court has no power to grant bail under section 497, Cr.P.C or suspend the sentence u/s 426, Cr.P.C under NAB Law but in the light of Khan Asfandyar Wali's case reported in PLD 2001 Supreme Court 607 this court has jurisdiction to

entertain the application for suspension of sentence under writ jurisdiction.

The relevant portion of said order is reproduced herein below:-

*“A look at para 197 of the judgment rendered in the case of Khan Asfandyar Wali Vs. Federation of Pakistan would reveal that the jurisdiction of superior courts cannot be taken away by sub-constitutional legislation. Section 9(b) of the NAB Ordinance, in this view of the matter, was declared ultra vires and directed to be suitably amended. Accordingly, the law was amended and word ‘High Court’ was omitted from Section 9(b) of the NAB Ordinance, 1999. This omission is deliberate and purposeful. After this deletion, it cannot be said that the High Court has no power to grant bail under Section 497 or suspend sentence under Section 426 Cr.P.C. We, therefore, don’t agree with the learned Special Prosecutor NAB that the order suspending the sentence has been passed without jurisdiction. Even if for a while it is assumed that despite amendment, the High Court under Section 426 Cr.P.C. has no jurisdiction, we would not like to interfere therewith, when it could pass such order by treating the CMA as Constitutional Petition. Apart from this where the respondents deposited the amount, they received over and above their entitlement, we don’t think suspension of sentence in the circumstances of the case is unjustified. That too, where the respondents have been awarded sentences upto to 5, 4 & 3 years respectively.”*

8. In the case of Abdul Hameed v. Muhammad Abdullah (1999 SCMR 2589) it was held that five years is short sentence. Since the sentence awarded to the petitioner / appellant is short one and possibility of hearing of the appeal, in wake of huge backlog of cases, in near future is foresighted, therefore, we suspend the sentence awarded to the petitioner / appellant by the learned Accountability Court at Hyderabad vide judgment dated 14.12.2017, till final disposal of Criminal Accountability Appeal No.D-138 of 2017, and order release of petitioner / appellant on bail subject to furnishing solvent surety in the sum of Rs.1000000/- (one million) and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. Petitioner shall deposit original passport with the Additional Registrar of this Court.

Let the copy of order be sent to the Ministry of Interior, Government of Pakistan, Islamabad by fax.

Petition stands allowed in the above terms. Listed application is also disposed of.

JUDGE  
JUDGE