

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**PRESENT:-**  
**MR. JUSTICE MUHAMMAD IQBAL KALHORO**  
**MR. JUSTICE SHAMSUDDIN ABBASI.**

**Constitutional Petition No.D -1102 of 2019**

Petitioner Abdul Hameed son of Muhammad  
through Mr. Haq Nawaz Talpur a/w Mr.  
Muhammad Asad Ashfaq, Advocates.

Respondent National Accountability Bureau & another  
through Mr. Riaz Alam Khan, Special  
Prosecutor NAB a/w I.O. Mr. Ali Raza  
Talpur.

Date of hearing **31.07.2019 and 02.08.2019**

Date of order **09.08.2019**

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**ORDER**

**SHAMSUDDIN ABBASI, J:-** By means of instant constitutional petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, the petitioner seeks post-arrest bail in NAB Reference No.13-A of 2016 {Re: The State v Dr. Asim Hussain and others} pending adjudication before Accountability Court No.IV, Sindh, at Karachi.

2. A Reference No.13 of 2016 was filed by Chairman NAB on 23.02.2016 against Dr. Asim Hussain, Abdul Hameed {petitioner herein}, Syed Athar Hussain, Masood Haider Jaffery, Muhammad Ejaz Choudhery and Safdar Hussain leveling different allegations and assigning different role having no nexus with each other except Dr. Asim Hussain, who is alleged to have been connected with all allegations and NAB has accumulated different offences in one and single reference. In the said reference the present petitioner was shown as absconder. He sought protective/transitory bail from this Court vide C.P. No.D-2820 of 2016 by an order dated 16.05.2016. After his arrival at Pakistan, the petitioner approached this Court and sought pre-arrest bail vide C.P. No.D-3026 of 2016 by an order dated 24.05.2016. Subsequent thereto he approached the learned trial Court where his case was bifurcated and numbered as Reference No.13-A of 2016. However, after hearing arguments, this Court dismissed the petition for seeking pre-arrest bail vide order dated

29.11.2018. The petitioner was arrested on the same day viz 29.11.2018 and since then he is in custody.

3. Paragraphs 7, 12, 13, 14 and 15 of the reference are relevant for establishing role of the petitioner, which are reproduced hereunder for convenience.

{7}. *That the investigation reveals that accused No.1 in connivance with accused No.2 Abdul Hameed has been misusing the Trust as a vehicle for money laundering where black money is placed and integrated to be whitened. The accused No.1 was actively facilitated and abetted by accused No.2 in the illegal conversion, placement & integration of illegal money & then converted the same into assets abroad & in Pakistan so both have been found involved in commission of offence of money laundering u/s 3 /4 AMLA 2010. Accused No.2 has been deliberately absconding since start of investigation and is currently looking after the medical clinic of accused No.1 at Dubai.*

{12}. *That the investigation further reveals that bank details of accused No.1 and his family as well as accused No.2, Chief Finance Advisor, Ziauddin Hospital were seized which showed the abnormal transactions indicative of offence of money laundering encompassing placement, layering, integration and recycling of illicit money into assets in Pakistan and Abroad. In this regard, the bank accounts of accused No.1 were analyzed which revealed that the accused No.1 has been depositing cash amount received from unknown sources and siphoning them off without any justification. The investigation further led to unearth that being holder of public office, the accused No.1 was involved in receiving illicit money which he used to mix into income generated from so called trust only to deceive the system. The accused No.1 failed to justify and provide any plausible explanation regarding the huge bank transactions vis a vis the income shown in statement of the accounts, ledger books and balance sheet of Ziauddin Hospital. Hence, the accused No.1 has amassed assets in Pakistan and abroad illegally.*

{13}. *That the investigation also reveals that accused No.2 who had been receiving cash amounts from accused No.1 and placing the same into his own bank accounts and subsequently layering the same into other accounts, which was established through documentary as well as oral evidence. In this regard statement of witness Zahid Raza was recording revealing that usually accused No.1 while being minister during his visits to Karachi, used to give*

*cash to accused No.2 for disguising. Later on accused No.2 used to deposit same cash into his own accounts through him i.e. Zahid Raza and Saad Moeen, a confident of accused No.1, then same was withdrawn intermittently by accused No.2 for purchase of property. He further stated THAT ACCUSED No.2 used to make payment through pay order/demand draft etc in respect of various persons for investment in Pakistan and abroad on behalf of accused No.1. Once the transaction was over accused No.2 used to intimate through coded conversation to accused No.1 about placement and layering of money mentioned above. The pattern of transaction mentioned above has been termed as classical type of money laundering by an expert compliance manager Samba Bank, Karachi whose statement was recorded as per law.*

*{14}. That the investigation further reveals that the Bank Accounts of accused No.1, benamidars and front-man accused No.2 were analyzed which showed a classical pattern of mixing of dirty money into income purportedly generated from hospitals for the purpose of money laundering. The activity in the first place shows predicate offence which is amassing of illegal money, fraudulent land allotment and annexation as established during investigation. Trust fraud also established irrefutable as mentioned above, illegal gains from KDLB Hospital through arbitrary billing and also through misuse of authority. The details of Bank Accounts has been mentioned at para No.29 of investigation report”.*

4. The learned counsel appearing on behalf of the petitioner has pressed mainly this petition on the grounds, inter-alia, that out of 37 witnesses 26 have been examined, but none of them have supported the case of the prosecution with regard to involvement of present petitioner in the commission of offence. In support of this submission, he has placed copies of depositions of witnesses and submitted that such evidence can be assessed even at bail stage. In support, he has placed reliance on the cases of *Salahuddin v The State* {1996 SCMR 1124}, *Shoaib Mahmood Butt v Iftikhar-ul-Haq and 3 others* {1996 SCMR 1845}, *Khalid Javed Gillani v the State* {PLD 1878 Supreme Court 256} and *Zaigham Ashraf v The State* {2016 SCMR 18}.

5. In contra, the learned Special Prosecutor NAB has controverted submissions of learned counsel for the petitioner and submits that the witnesses in their respective statements have

supported the case of the prosecution and implicated the petitioner with the allegations leveled against him. He also points out that bail plea of petitioner has already been declined by this Court on merits, therefore, the petitioner does not deserve concession of bail without furnishing any fresh ground.

6. We have given anxious consideration to the submissions of both the sides and perused the entire material available before us with their able assistance.

7. A tentative assessment of the evidence placed on record reflects that the witnesses have supported the case of the prosecution against the petitioner. As for submission of learned counsel for the petitioner that in cross-examination the witnesses have changed their version as given in examination-in-chief, suffice it to say that an exercise to appreciate cross-examination would amount to deeper examination of the material, which in a petition for bail cannot be undertaken in view of well settled proposition of law that while deciding bail matters the merits of the case are not to be touched deeply. The Hon'ble Superior Courts have taken a note that deep appreciation of evidence and drawing of conclusion therefrom is the exclusive function of the trial Court and the Superior Courts should not anticipate it while dealing with bail matters. Reliance may well be placed to the case of *Chiragh Din v The State* {PLD 1967 Supreme Court 340}, wherein it has been observed as under:-

*"The appreciation of evidence and the drawing of conclusion therefrom in relation to all the circumstances is the function exclusively of the trial Court. It cannot be anticipated by a Superior Court dealing with an ancillary matter, e.g. the grant of bail, pending trial."*

8. The rule that the Superior Courts rarely enter into the merits of the case for the purposes of granting, or refusing the bail seems to be quite sound because the appreciation of the evidence is the exclusive function of the trial Court. We honour this rule and would avoid going into deep appreciation of evidence. Besides, the petition for grant of pre-arrest bail of the petitioner, on the same sets of grounds, has already been declined by this Court on merits vide order dated 29.11.2018 after having considered the prosecution case and over all facts and circumstances therein, hence this petition for

seeking bail, without furnishing any fresh ground, is devoid of merits. Reliance may well be placed to the case of *Muhammad Aslam v The State and others* reported as PLD 2015 Supreme Court 41, wherein the Hon'ble Supreme Court observed as follows:-

*“It is not disputed that first petition for bail {Criminal Miscellaneous No.12657-B of 2013} filed by the appellant for his post-arrest bail in the present criminal case had been dismissed by the Lahore High Court, Lahore as having been withdrawn vide order dated 23-10-2012 after the learned counsel for the appellant had argued the case at some length but had remained unable to persuade the said Court to grant bail to the appellant. The second petition filed by the appellant {Criminal Miscellaneous No.5422-B of 2013} seeking the selfsame relief, did not disclose any fresh ground for admission of the appellant to bail and, thus, in view of the law declared by this Court in the case of Nazir Ahmed and another {supra} the said second petition filed by the appellant before the Lahore High Court, Lahore was not maintainable. In this view of the matter we have not been able to take any legitimate exception to the impugned order passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore on 7-6-2013. This appeal is, therefore dismissed”.*

9. We have also noticed that the trial is at fag-end as 26 out of 36 witnesses have been examined and the matter is proceeding expeditiously. At this juncture, undertaking an exercise of conducting deep appreciation of evidence would be against the well-established norms of justice.

10. For what has been discussed herein above, we are of the considered view that the petitioner is not entitled to the relief{s} claimed including concession of bail. Needless to say that the observations, made herein above, are purely tentative in nature and the same are only meant for the purpose of bail and would have no impact or effect on any party during the trial. We are optimistic that the Accountability Court would further expedite the matter and dispose it of at an earliest preferably within a period of two months under intimation to this Court through M.I.T-II.

11. This petition stands dismissed in the foregoing terms.

JUDGE

JUDGE