

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-4038 of 2019

Date Order with signature(s) of Judge(s)

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Yousuf Ali Sayeed

Abdullah Shoukat.....Petitioner

Versus

Federation of Pakistan & another.....Respondents

31.03.2020

Khawaja Naveed Ahmed, Advocate for the Petitioner.
Mr. Sattar Muhammad Awan, Special Prosecutor, NAB.
Mr. Kafeel Ahmed Abbasi, D.A.G.

Muhammad Ali Mazhar, J. The learned counsel for the petitioner argued that the name of the present petitioner was not mentioned in the original reference No.09/2014, however, he has been implicated in the supplementary reference filed by the NAB in the NAB Court on 16.06.2016. He further argued that the allegation against the present petitioner is that he was head of the department of Darul Ifta Jamia Benoria Town Mosque, Karachi and he issued a Fatwa with co-accused Moulana Mufti Saifullah Jameel and Nadir Jan. He further argued that the main accused in the case is Shafiq-ur-Rehman who is already on bail, whereas two other persons who signed the Fatwa with the petitioner i.e. Moulana Mufti Saifullah Jameel and Nadir Jan are also on bail and he claims that under the rule of consistency the present petitioner is also entitled for the same treatment. He has also filed a statement to show that Moulana Mufti Saifullah Jameel was granted bail in C.P. No.D-4162/2016 vide order dated 20.02.2017, whereas Nadir Jan was also granted interim bail on 27.06.2016 in C.P. No.D-3795/2016 which was subsequently confirmed vide

order dated 20.03.2017. He further argued that the petitioner was arrested on 01.01.2019 and the prosecution has cited 102 witnesses out of which only 16 witnesses have been examined so far. He further argued that according to the investigation report, some amount was credited in the bank account of the petitioner from the account of main accused Shafiq-ur-Rehman and some amount was already lying in the bank account of the petitioner which needs to be thrashed out during the course of evidence and for all intents and purposes the role of the present petitioner requires further inquiry.

2. The learned Special Prosecutor NAB argued that during investigation it revealed that on the basis of Fatwa signed by the petitioner the public at large was lured and they invested their huge amount on the basis of that Fatwa. He further argued that some amount was also transferred from the account of main accused to the account of the petitioner who is himself a beneficiary of that amount, however, he admits that the matter is still pending and only 16 witnesses have been examined and he is not aware as to when the proceedings will be concluded due to long list of the witnesses.

3. In the bail order passed in C.P. No.D-4162/2016 (Moulana Mufti Saifullah Jameel vs. NAB) the post arrest bail was granted to Moulana Mufti Saifullah Jameel. The entire facts are almost similar to the facts of the case of the present petitioner who is rightly so claiming the rule of consistency. In the investigation report some amounts are shown to have been lying in the account of the petitioner but besides that a sum of Rs.1,16,25,000/- was directly transferred in the bank account of the petitioner from the account of main accused Shafiq-ur-Rehman. Whether he was directly beneficiary of the rest of the amount lying in his bank account or account of his own receipts or earnings which all require further inquiry and at this juncture it cannot be decided as to whether the petitioner in league with other co-accused

misappropriated or benefitted from any amount of the investors in the alleged Modarba business.

4. Whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail and in such a situation it would be better to keep him on bail than in the jail during the trial. Prosecution in order to make out a case for refusal of bail to an accused is primarily supposed to place on record material on basis of which he is believed to be involved in a non-bailable offence, but in absence of such material the court for the purpose of releasing the accused on bail, instead of dilating upon the facts of the case in details, can dispose of the matter by holding that his detention is unjustified or unreasonable. Reference can be made to **PLD 1996 S.C. 241 & PLD 2002 S.C. 572**. In the bail order authored by one of us (Muhammad Ali Mazhar-J) in the case of co-accused **Shafiq-ur-Rahman (CP.No-D-3294/2014)** the court held that further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that deeper appreciation of evidence is not permissible at bail stage simultaneously it is also well settled that object of trial is to make an accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Accused is entitled to expeditious access to justice, which includes a right to fair and expeditious trial without any unreasonable and inordinate delay. The intention of law is that the criminal case must be disposed of without unnecessary delay it is not difficult to comprehend that inordinate delay in imparting

justice is likely to cause erosion of public confidence in the judicial system on one hand and on the other hand it is bound to create a sense of helplessness, despair feeling of frustration and anguish apart from adding to their woes and miseries. Reference: **Ali Anwar Ruk, Abdul Jabbar, Syed Mansoor Ali and Sardar Amin Farooqui reported in 2014 SBLR 766, PLJ 2014 Karachi 251=2014 CrLJ 777, PLJ 2014 Karachi 254=2014 UC 784 and PLJ 2014 Karachi 268.**

5. As a result of above discussion, the petitioner (Abdullah Shoukat) is granted bail subject to furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Lac) with P.R. bond in the like amount to the satisfaction of the trial court. In addition to the surety, the petitioner shall also furnish tangible security in the sum of Rs.1,16,25,000/- in the trial court and will also deposit the original valid passport in the trial court and shall not leave the country without permission of the trial court. The above findings are tentative in nature and shall not prejudice the case of the either party. The petition is disposed of.

Judge

Judge

Asif