

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-336 of 2021
Cr. Appeal No.D-39 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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17.03.2021

Mr. Ayaz Hussain Tunio, Advocate for petitioner / appellant.
Mr. Jangoo Khan, Special Prosecutor NAB.

ORDER

ARSHAD HUSSAIN KHAN, J. Through the instant constitutional petition (C.P.No.D-336 of 2021) under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Sections 426 and 561-A, Cr.P.C., the petitioner Irshad Ali Jessar seeks suspension of sentence awarded to him in NAB Reference No.20/2016 by learned Accountability Court at Hyderabad. Learned Accountability Court after full dressed trial, vide its judgment dated 01.03.2021 convicted the petitioner for an offence punishable under section 10 of National Accountability Ordinance, 1999 and sentenced to suffer R.I. for One (01) year and to pay fine of Rs.50,00,000.00 and in case of default in payment of fine, it can be recovered as arrears of land revenue from him provided under section 33-E of National Accountability Ordinance, 1999.

2. The petitioner/appellant preferred Criminal Accountability Appeal No.D-39/2021, in which he has assailed the judgment passed by the learned Accountability Court at Hyderabad and the same has been admitted to regular hearing.

3. Learned counsel appearing for the petitioner / appellant has mainly argued the case for suspension of sentence and grant of bail to the appellant on the ground that the sentence awarded to the appellant is short one of being 01 year and further on medical ground as the petitioner is of feeble health suffering from several diseases.He further submits that keeping in view the backlog of the cases in this Court this appeal is not likely to be heard on merits in near future and by that time it is taken up the appellant would have served the entire sentence leaving only issue of fine. Learned counsel in support of his contention has placed reliance on the cases of ABDUL

HAMEED v. MUHAMMAD ABDULLAH and others [1999 SCMR 2580], TALLAT ISHAQ v. NATIONAL ACCOUNTABILITY BUREAU through Chairman, and others[PLD 2019 Supreme Court 112], FAWAD HASSAN FAWAD v. FEDERATION OF PAKISTAN and others [2020 P.Cr.L.J 1438], RAHIM BUX SOOMRO v. THE STATE through Director General (NAB)[2019 MLD 358] and MUHAMMAD IRFAN and others v. THE STATE through NAB, Karachi[2019 YLR 1606].

4. On the other hand, learned Special Prosecutor NAB opposes the petition for suspension of sentence and release of the petitioner on bail, on the ground that no fresh medical report in respect of petitioner's ailment is available on record.

5. We have heard the learned counsel for petitioner and Special Prosecutor NAB and perused the material available on record.

6. Admittedly, the petitioner / appellant has been convicted and sentenced to 01 year R.I and to pay fine of Rs.50,00,000.00. We are inclined to suspend the sentence of petitioner on the ground that the same being short one and that hearing of appeal due to heavy backlog will take sufficient time for its disposal. Insofar as the contention of learned Special Prosecutor NAB that he has not received any fresh report with regard to ailment of petitioner carries no weight as it has been clearly mentioned in the impugned judgment of the learned trial Court that "*he is of feeble health suffering several diseases and that prosecution has not collected any evidence as to his accumulation of illegal assets.*" We are also fortified with the case of Abdul Hameed (Supra), wherein it was held that five years is short sentence whereas the sentence in the case in hand is of 01 year only.

7. The upshot of the above discussion is that 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 01.03.2021, till final disposal of Criminal Accountability Appeal No.D-39 of 2021, and order release of petitioner / appellant on bail provided he is not required to be detained in any other crime / offence and subject to his furnishing solvent surety in the sum of Rs.5,00,000/- (Rupees five hundred thousand only) and P.R. Bond in the like amount to the satisfaction of

Additional Registrar of this Court. Petitioner shall deposit his original passport with the Additional Registrar of this Court.

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

Petition bearing No.D-336/2021 stands allowed in the above terms while the Criminal Accountability Appeal No.D-39/2021 is hereby adjourned.

JUDGE

JUDGE

Tufail