

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Accountability Appeal No.27 of 2022

Date	Order with signature of Judge
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1. For orders on office objections & reply of Adv. At flag "A".
2. For hearing of main case.
3. For hearing of M.A. No. 14316/2022.

07.12.2022.

Mr. Muhammad Ali Akbar, Advocate for the Appellant
Dr. Raja Muhammad Ali, Special Prosecutor NAB

It appears that the Appellant (Afzalul Haq) has impugned judgment dated 07.12.2001 passed by the Accountability Court No.IV Sindh Karachi. On 02.12.2022, Counsel for the Appellant was directed to come prepared and satisfy as to how time barred Appeal can be entertained, whereas, notice was ordered on this Criminal Accountability Appeal. Counsel for the petitioner has filed *application at Serial No.3 under section 426 Cr.P.C*, for suspension of the sentence pending final decision on the Appeal.

Today, learned Counsel for the Appellant submits that the Appellant has been arrested pursuant to conviction warrants dated 24.11.2022. He submits that the impugned judgment has been passed in terms of Section 31A of the NAB Ordinance, 1999, in absentia and Courts have always regarded such conviction as against the law and the principles of natural justice. According to him after conviction in terms of Section 31A *ibid*, the case of the Appellant was placed on dormant file and he is now facing trial in the same Reference and the present Appeal is only in respect of such conviction in absentia. He lastly submits that the sentence is also a short sentence, whereas, the Appeal is not likely to be heard and decided in near future; hence, the application be granted by suspending the sentence and impugned judgment.

It appears that the Appellant was convicted by way of judgment dated 07.12.2001 passed by the Accountability Court No.IV Sindh Karachi, in Reference No.35/2000 in the following terms:-

"Point No.5 The absconding accused *Afzalul Haq S/o Mohammad Ishaque is convicted u/s 31-A of National Accountability Bureau Ordinance 1999 for concealing himself to avoid being served with the process of the Court to screen from the proceedings of this case and he is sentenced to undergo 3 years R.I."*

Through this application, Appellant seeks suspension of the impugned judgment on the ground that he was convicted under Section 31-A of National Accountability Ordinance, 1999 and is sentenced for 3 years in absentia which is a short sentence, whereas, he is and old aged person of 75 years and also a severe patient of “Parkinson” and not at all in condition to stay alive without family members and continuous care and medical aid. It is his further case that the appellant has also brain disorder issues and his stay in jail would cause him serious prejudice due to drained physical and mental health. It has been further stated that the co-accused Intikhab Ali Syed has also been granted bail by this Court, therefore, the sentence be suspended and he may be released on bail.

On perusal of the record it appears that the appellant was convicted for three years in absentia in terms of Section 31A of the NAB Ordinance, 1999. Per settled law before a conviction under Section 31A *ibid* can be awarded, the trial Court is required to follow the procedure in terms of Criminal Procedure Code to seek attendance of an absconding accused¹. It is further settled that for fulfilment of the requisite conditions for invoking the provision of Section 31A *ibid*, evidence has to be recorded, whereas, conviction of absconder in absentia without any trial and on the basis of statement of process server recorded for proceedings under Section 87 and 88 Cr.P.C. cannot be sustained². Besides this, the Appeal in question is pending and cannot be taken up for regular hearing due to pendency of a number of other cases, filed much prior in time, whereas, the sentence awarded to the Appellant is also a short sentence coupled with the fact that the appellant is suffering from severe illness and is an old age person.

Learned Special Prosecutor NAB has not been able to seriously oppose this application whereas, the appellant is now facing the trial in the main case, whereas, pursuant to amendment in Section 32 of the NAB Ordinance, 1999, the provision of Section 426 Cr.P.C. is now applicable to the cases of convicts under the NAB Ordinance, and therefore this Court can exercise such powers in NAB cases as well. On the facts and circumstances as above this is a fit case to exercise such powers vested in this Court.

¹ 2021 P Cr.L J 1447

² PLD 2006 Karachi 678

In view of such position since the sentence awarded to the Appellant is short and possibility of hearing of this Appeal, in the wake of huge backlog of cases, in near future is farsighted, coupled with the fact that the Appellant is an old age person, therefore, following the dicta laid down by the Hon'ble Supreme Court, in the case reported as ***Abdul Hameed v. Muhammad Abdullah (1999 SCMR 2589)***, the Application bearing application at Serial No.3 bearing CMA No.14316 of 2022 merits consideration and is accordingly allowed by suspending the sentence of the Appellant awarded by the learned Trial Court in the above crime as recorded in **Point No.5** of the impugned judgment till final hearing of this Appeal by admitting the Appellant namely ***Afzalul Haq S/o (Late) Muhammad Ishaque*** to bail on his furnishing solvent surety in the sum of Rs.200,000/- and P.R. Bond in the like amount to the satisfaction of Nazir of this Court.

JUDGE

JUDGE

Ayaz ps.