

# IN THE HIGH COURT SINDH BENCH AT SUKKUR

Cr. Bail App. No. D - 110 of 2022

*Present:*

**Justice Zafar Ahmed Rajput**  
**Justice Irshad Ali Shah**

**For the Applicant** : Mr. Arshad Mehmood Sundrani,  
Advocate.

**For the State :** M/s Mujeeb-ur-Rehman Soomro  
and Bahawal-ud-Din Shaikh,  
Special Prosecutors NAB.

**Date of Hearing** : 07.02.2023

**Date of Order** : 07.02.2023

## ORDER

**ZAFAR AHMED RAJPUT, J. -** Having been rejected his earlier application for grant of bail in Reference No.03 of 2019 ("**Reference**") by the Accountability Court, Sukkur, vide order dated 23.11.2022, applicant Abdul Qayoom S/o Abdul Razzak Massan seeks same relief from this Court through instant Criminal Bail Application.

2. Learned Counsel for the applicant contends that the applicant is innocent and has falsely been implicated in the Reference; that the investigation report reveals that accused No.1 to 17 (*Officers/Officials of T.M.A. Garhi Yaseen*), during their respective incumbencies from August 2013 to April 2016 as Administrator, Taluka Municipal Officer, Accountant, Assistant Executive Engineer and Sub-Engineer, respectively, in connivance and collaboration with accused No.18 to 46 (*Government Contractors*) misused their authority to allow unauthorized, illegal and unlawful payments to the contractors in different schemes where no work was executed or executed work was not according to the specification as recorded in the measurement books of T.M.A. Garhi Yaseen by signing cheques and issuing of payments through cheques; that the investigation report further reveals that the drawn payments without execution of any work is in violation of all payments rules i.e. West Pakistan Municipal Audit Rules, 1964, Sindh Local Council Rules, 1983 and Sindh Public Procurement Regulatory Authority (SPPRA) Rules, 2010, hence, accused No.1 to 17 accorded illegal benefits/favours to accused

No.18 to 46 which caused loss to Government Exchequer to the tune of Rs.11,04,57,507/-, while individual liability against the present applicant was worked out as Rs.8,63,910/-; that the applicant is confined in judicial custody since his arrest made in November 2019; that co-accused Muhammad Aslam Dayo has already been admitted to post-arrest bail by this Court, vide order dated 17.08.2022, passed in Criminal Bail Application No. D-65 of 2022; hence, the applicant is also entitled to the concession of bail on the principle of *Rule of Consistency*.

3. On the other hand, learned Special Prosecutor NAB opposes grant of bail to the applicant on the ground that sufficient material is available with the NAB to connect the applicant with commission of the alleged offence. He, however, concedes to the fact that co-accused Muhammad Aslam Dayo has been admitted to post-arrest bail by this Court and his bail order has not been assailed by the NAB authorities before the Apex Court; hence, the same has attained finality.

4. Heard learned Counsel for the applicant as well as learned Special Prosecutor NAB and perused the material available on record.

5. It appears that the Reference was filed by the NAB authorities against 46 accused persons including the applicant and most of the applicants are on bail including one Muhammad Ali Dayo, referred to above, by this Court while observing as under:

*"4. Admittedly the purpose of National Accountability Ordinance, 1999 is to pursue the mega corruption cases. In the case in hand the allegation against the applicant is that he allegedly embezzled amount of Rs.11,59,590/- whereas NAB authorities had submitted report in respect of Reference No.03/2019 Re. State vs. Abdul Rasheed Malik and others whereby liability shown against each accused has been given and the name of applicant/accused is placed at serial No.08 and amount allegedly embezzled by him is shown in the report is Rs.289,988/- and co-accused are enjoying liberty on account of the grace extended to them through ad-interim pre-arrest bail granted by the trial Court, therefore, rule of consistency is very much applicable and propriety of law demands applicant may also be given constant treatment. It is well settled principle of law that one cannot be kept behind the bars without progress in his trial and evidence whatever is available is in possession of prosecution itself which is yet to be scrutinized by the trial Court at the time of trial. Moreover, the allegations whatever alleged against the applicant does not control quantum of punishment hence mere difference of alleged amount is not sufficient to deny the benefit of principle of rule of consistency. Moreover, the petitioner / accused is no longer required for investigation purpose, his incarceration would serve no purpose."*

6. The case of the present applicant is almost on the same footing except that the liability amount against said co-accused Muhammad Aslam Dayo was calculated by the NAB authorities to the tune of Rs.2,89,988/-, while against the applicant as Rs.34,55,622/-; hence, the applicant appears to be entitled for the grant of bail on the *Rule of Consistency*.

7. For the foregoing facts and circumstances of the case, the applicant is **admitted to bail** subject to his furnishing solvent surety in the sum of Rs.20,00,000/- (Rupees twenty lac) with P.R. bond in the like amount to the satisfaction of the trial Court.

The Criminal Bail Application stands **disposed of** in the above terms.

JUDGE

JUDGE

Abdul Basit