

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

Criminal Bail Application No.S-110 of 2023
Criminal Bail Application No.S-283 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>25.05.2023</u>	For orders on office objection. For hearing of main case.
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Mr. Ishrat Ali Lohar, advocate for applicant/accused Niaz Akhtar in Criminal Bail Application No.S-110 of 2023.

Syed Tarique Ahmed Shah, advocate for applicant/accused Muhammad Tashfeen in Criminal Bail Application No.S-283 of 2023.

Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan @ Hyderabad along with Ghulam Akbar Soomro, I.O./FIA Crime Circle, Hyderabad.

Amjad Ali Sahito, J:- Through instant bail applications, the applicants/accused namely, Niaz Akhtar Shaikh and Muhammad Ashfeen Khatak seek pre-arrest bail in crime No.11/2021 registered at PS F.I.A. Hyderabad for the offences under sections 409, 420, 468, 471, 109 PPC read with section 5 (2) PCA 1947. Earlier, the bail pleas of the applicants/accused were declined by the learned Special Judge Anti-Corruption (Central) Hyderabad through orders dated 14.02.2023 and 11.03.2023 respectively.

2. The details and particulars of the FIRs are already available in the bail applications and FIR, same could be gathered from the copy of FIRs attached with such applications, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants submit that the applicants were booked in the instant case allegedly for committing fraud and cheating which caused a loss to the government exchequer. They further submit that applicant Niaz Akhtar was arrested on 23.05.2021 while applicant Muhammad Tashfeen was taken into custody by the learned trial Court when his bail plea was dismissed on 14.12.2021 and still they are continuously in custody. They

further submit that the trial is pending since 2021 but could not be concluded for the one reason or the other and delay in the trial is not caused on the part of applicants/accused. They further submit that it is mandatory provision of law to conclude the trial within the specified time; however, despite pendency of more than two years of the trial and confinement of the applicants behind the bars for more than 1 ½ years, the trial is yet awaited to its conclusion. They point out that on 03.02.2022 the charge was framed and then amended charge was also framed on 13.06.2022; however, out of 23 prosecution witnesses only 13 witnesses have been examined and still 10 prosecution witnesses are yet to be examined. In such situation they have shown grave concerns that it is unsure as to whether the remaining prosecution witnesses would be examined within a short time leading the trial to its conclusion; however, the applicants/accused who are already in custody since more 1 ½ years will continue to hardship for their further unclear incarceration behind the bars. They submit that though earlier the bail pleas of the applicants/accused were dismissed on merits; however, this is a fit case for grant of bail to the applicants/accused on the ground of delay in the trial, which is not likely to conclude in near future due to backlog of the cases pending before the learned trial Court and they pray for grant of bail in favour of the applicants/accused on the applicants/accused are not previous convict or involved in such type of offences nor they are criminal, hardened or desperate. Notwithstanding with the above, learned counsel further submit that so far loss to the government exchequer is concerned, there are six accused involved to have joint allegation that they have caused loss of an amount of Rs.58,067,986.00 [Rupees five crores, eighty lacs, sixty seven thousands, nine hundred and eighty six only], as such, the applicant/accused Niaz Akhtar is involved for such loss to about Rs.20,000,000.00 [Rupees two crores] whereas, allegedly loss caused to the government exchequer by the applicant/accused Muhammad Tashfeen Khatak is only Rs.2,065,315.00 [Rupees twenty lacs, sixty five thousand, three hundred and fifteen only], as such, the applicant Niaz Akhtar is ready to furnish a surety in cash amount

equivalent to the alleged misappropriated amount i.e. Rs.20,000,000.00 [Rupees two crores] and applicant/accused Muhammad Tashfeen Khatak Rs.2,000,000.00 [Rupees twenty hundred thousand only]. They further submit that if the applicants/accused fail to disprove the prosecution allegations and they are convicted and sentenced, and fine or compensation is imposed, then such compensation/fine may be honored from the cash amount to be deposited as surety, in view of impugned judgment to be delivered by the learned trial Court OR if they are acquitted of the charge, the cash amount be returned to the applicants/accused.

4. Learned A.A.G. for Pakistan raises objection on the submissions made by the learned counsel for the applicants/accused and prays for dismissal of bail applications. However, he admits that the charge was framed on 03.02.2023 and amended charge on 13.06.2022 and only 13 PWs have been examined out of 23 prosecution witnesses.

5. Heard and perused.

6. From the perusal of record, it further reflects that the applicants have been booked in the instant crime for causing loss to the government exchequer by committing fraud and cheating. The applicants/accused including co-accused were involved in corruption and embezzlement of public funds in the Lakhra Coan Mining Project of PMDC Hyderabad through fake transactions, which resulted difference between the computerized cash book balance and bank statement and also showing dummy transaction in cash by recording journal vouchers operating the amounting software. Fake entries are stated to have been made in software system of PMDC to hide corruption and issued CRs without having any provision in PMDC for sale of coal on credit. The applicant/accused Muhammad Tashfeen Khatak is alleged to have caused loss of Rs.2,065,315.00 [Rupees twenty lacs, sixty five thousand, three hundred and fifteen only] whereas, all accused including applicant/accused Niaz Akhtar have caused loss of Rs.58,067,986.00 [Rupees five crores, eighty lacs, sixty seven thousands, nine hundred and eighty six only]. Earlier the bail pleas of the applicants/accused were dismissed on

merits; however, they seek their bail on the ground of delay caused in conclusion of the trial. It reflects that on 23.05.2021 the applicant Niaz Akhtar was arrested whereas, applicant Muhammad Tashfeen was taken into custody by the learned trial Court on dismissal of his bail plea on 14.12.2021 since then they are in judicial custody. The arrest / judicial custody of the applicants/accused is not disputed. The case against the applicants/accused is pending since 2021 i.e. more than two years; however, still the trial could not be concluded before the learned trial Court despite pendency of more than two years.

7. It is mandatory obligation to conclude the trial within the specified time; however, despite pendency of more than two years of the trial and imprisonment of the applicants behind the bars for more than 1 ½ years, the trial could not be concluded. Record reflects that the charge was framed on 03.02.2022 and then amended charge was framed on 13.06.2022. Only 13 prosecution witnesses have been examined out of total 23 prosecution witnesses within two years during trial. Yet there are still 10 prosecution witnesses to be examined and it is not confirmed that when the rest of prosecution witnesses would be examined and for how much period the applicants/accused will remain in confinement behind the bars. Learned counsel have taken plea that that there is heavy backlog of the cases before the learned trial Court. The bail plea on the ground of delay in trial appears to be convincing as the applicants/accused are behind the bars since more than 1 ½ years which certainly causes hardship. There appears no fault on the part of applicants/accused in conclusion of the trial. The applicants/accused are stated to be not previous convict or criminal, hardened or desperate. Such a long delay does constitute “inordinate and unconscionable delay” as held in ***Talat Ishaq v. NAB (PLD 2019 SC 112)***. The Hon’ble Supreme Court in the case of *Tallat Ishaque (supra)* has held in para-23 (f) that “ordinarily bail is allowed to an accused person on the ground of delay only where the delay in trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise.” In another

case of *Himesh Khan v. The National Accountability Bureau (NAB) Lahore (2015 SCMR 1092)*, the Hon'ble Supreme Court of Pakistan has held that;-

“14. The grant of bail on account of inordinate delay in prosecution was discussed and guiding principle was laid down by this Court in the case of Riasat Ali v. Ghulam Muhammad and the State (PLD 1968 SC 353,) which is to the following effect:-

“Criminal Procedure Code, S.497--- Grant of bail in non-bailable offences:-

Delay in prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out accused however, delay in prosecution of each case as a ground for bail is to be weighed and judged, in each case on its merits.”

There is also a long chain of authorities and dicta of this Court where bail has been granted on account of shocking delay in the conclusion of trial in cases falling under the NAB laws. Reference in this regard may be made to the case of Anwar Saifullah Khan v. The State (2001 SCMR 1040) where it was held that bail cannot be withheld as a punishable on the ground that the offences, the accused is charged for, are not bailable or grant of bail therein was falling within the prohibition.”

8. In view of the above, the learned counsel for the applicants/accused have succeeded to make out the case of the applicants/accused for grant of bail on the ground of “inordinate and unconscionable delay”. Accordingly, the instant Criminal Bail Applications are **allowed**. Since the applicants/accused have been booked in the instant crime for causing loss to the government exchequer by committing fraud and cheating. The applicant/accused Muhammad Tashfeen Khatak is alleged to have caused loss of Rs.2,065,315.00 [Rupees twenty lacs, sixty five thousand, three hundred and fifteen only] whereas, all accused including applicant/accused Niaz Akhtar have caused loss of Rs.58,067,986.00 [Rupees five crores, eighty lacs, sixty seven thousands, nine hundred and eighty six only], as such, the applicant/accused Niaz Akhtar is involved for such loss caused to the government exchequer for about to Rs.20,000,000.00 [Rupees two crores]. Learned counsel for the applicants/accused have also submitted

that the applicants/accused are ready to deposit surety as 'Cash Amount'. Accordingly, the applicant/accused Niaz Akhtar shall deposit Cash Amount of Rs.20,000,000.00 [Rupees two crores] whereas, applicant/accused Muhammad Tashfeen Khatak shall deposit Cash Amount of Rs.2,000,000.00 [Rupees twenty lacs] as Sureties with PR bond in the like amount to the satisfaction of learned Additional Registrar of this Court. Once the Cash Amount is deposited, the Accountant of this Court shall deposit the same in a profitable scheme till the disposal of case before learned trial Court.

9. It is made clear that in case the applicants/accused fails to prove their innocence; the prosecution allegations are proved and they are convicted and sentenced with fine or compensation, then such compensation/fine may be honored from the cash amount to be deposited as surety, in view of impugned judgment to be delivered by the learned trial Court. And; in case, applicants/accused are acquitted of the charges, the cash amount if deposited is to be returned to the applicants along with certain profit earned in a profitable scheme.

10. Needless to state that any observation in the foregoing paragraphs is of tentative nature and shall not influence the learned Trial Court while handing down the Judgment.

11. Criminal Bail Applications stand allowed in the above terms.

JUDGE