

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

C.P.No.D- 476 of 2018
C.P.No.D- 478 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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12.04.2018.

Mr. Muhammad Akram Rajput, Advocate for petitioner in C.P.No.D-476/2018.

Mr. Farhad Ali Abro, Advocate for petitioner in C.P.No.D-478/2018.

Mr. Lutufullah Arain, D.A.G.

Mr. Ghous Bux Kehri, Special Prosecutor NAB.

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Petitioners Muhammad Yousuf and Haji Muhammad Ilyas alongwith two other accused were tried by the learned Judge Accountability Court at Hyderabad in Reference No.11/2016. On the conclusion of trial, vide judgment dated 07.09.2017, the present petitioners and two other accused were convicted and sentenced as under:-

“60. In view of the findings as recorded in above point, I am of the humble opinion that prosecution has successfully proved the charge against accused persons each namely, Muhammad Aqeel Munawar Abro s/o Abul Qadir Abro and Abdul Rasheed Kaka s/o Jumon Kaka. It has been established that both accused persons by misusing their authority have committed offence of Corruption and Corrupt practices which falls within the definition of corruption and corrupt practices of sub section (a) of (vi) of Section 9 of the National Accountability Ordinance, (NAO) 1999 and punishable u/s 10 of the Ordinance. Therefore, both accused persons each namely, Muhammad Aqeel Munawar Abro s/o Abul Qadir Abro and Abdul Rasheed Kaka s/o Jumon Kaka are convicted and sentenced u/s 10 of NAO, 1999 r/w 265-H(ii) Cr.P.C. to suffer rigorous imprisonment for seven years each and they are further directed to pay the fine of Rs.5,00,000/- each. In case of default in non-payment of fine they shall suffer SI for the period of six months and it can be recovered as arrears of Land Revenue from both accused persons each as provided u/s 33-E of NAO 1999. Since the case against co-accused persons each namely Muhammad Yousuf Rajput s/o Taj Muhammad Rajput and Haji Muhammad Ilyas s/o Azizo Rajput is distinguishable from the case of above accused persons as they have been

alleged to the extent that they recorded their statements before co-accused Abdul Rasheed Kaka, the then Mukhtiarkar Revenue Hala confirming that the land was owned by convict accused Nisar Ahmed hence there appear mitigating circumstances for the purpose of lesser punishment as compared to the above accused persons. Therefore, both accused persons each namely, Muhammad Yousuf Rajput s/o Taj Muhammad Rajput and Haji Muhammad Illyas s/o Azizo Rajput are convicted and sentenced to u/s 10 of NAO, 1999 r/w 265-H(ii) Cr.P.C, to suffer Rigorous Imprisonment for two years each and they are further directed to pay the fine of Rs.1,00,000/- each. In case of default in non-payment of fine they shall suffer SI for the period of four months each and it can be recovered as arrears of the Land Revenue from both the accused persons each as provided u/s 33-E of NAO 1999.

61. It is further directed that all accused persons each namely, Muhammad Aqeel Munawar Abro s/o Abdul Qadir Abro, Abdul Rasheed Kaka s/o Jumon Kaka, Muhammad Yousuf Rajput s/o Taj Muhammad Rajput and Haji Muhammad Illyas s/o Azizo Rajput shall forthwith cease to hold public offices, if any. Further, they shall not be allowed any financial faculties in the form of any loan or advances from any bank or financial institution (owned or controlled by government) for a period of ten years from the date of conviction. All the accused persons shall be entitled to benefit under section 382-B Cr.P.C. Their bail bonds stand cancelled and sureties discharged.”

2. Petitioners and others filed appeals against their conviction and sentence. Petitioners separately filed instant constitution petitions No.D-476 and 478 of 2018 for seeking suspension of their sentence during the pendency of appeals. Notices were issued to the respondents, Special Prosecutor NAB as well as D.A.G.

3. Learned counsel appearing for the petitioners Muhammad Yousuf and Haji Muhammad Ilyas mainly contended that the appeals have been admitted and the hearing of appeals will take some time. They further contended that sentence of two years is short one, therefore, the same may be suspended. In support of their submissions, the learned counsels have relied upon the case of ABDUL HAMEED V. MUHAMMAD ABDULLAH and others (1999 SCMR 2589).

4. Special Prosecutor NAB halfheartedly opposed the petition filed for suspension of sentence.

5. We are inclined to suspend the sentence of the petitioners for the reasons that sentence is short one and hearing of appeals will take some time due to the heavy pendency of cases in this court. Rightly reliance has been placed on the above cited authority, wherein it has been held as under:-

“We are inclined to hold that since the sentence was short one and as the sentence was enhanced by the learned Additional Sessions Judge from 03 years to 05 years, it was fit case in which the learned Judge in chamber should exercised the discretion in favour of the convict. We convert the above petition into appeal and admit the petitioner to bail in the sum of Rs.2,00,000/- (two lacs) with one surety in the like amount to the satisfaction of the trial court.”

6. Accordingly, sentence of the petitioners Muhammad Yousuf and Haji Muhammad Ilyas is suspended during pendency of appeals, subject to their furnishing solvent surety in the sum of Rs.200,000/- (Rupees two lac) each and P.R. Bonds in the like amount to the satisfaction of the Additional Registrar of this court. Petitioners are directed to deposit their original passports with the Additional Registrar of this court. Let the copy of this order be sent to the Secretary, Ministry of Interior, Government of Pakistan Islamabad by fax.

Both Constitution Petitions stand disposed of in above terms.

JUDGE

JUDGE

Tufail