

Order sheet
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi.

Constitutional Petition No.D-886 of 2021

Muhammad Younus Baloch

Versus

The Chairman, NAB & others

Constitutional Petition No.D-1307 of 2021

Muhammad Younus Baloch

Versus

The Chairman, NAB & others

**Date of Hearing & : 03.05.2021
order**

Mr. Shoukat Hayat, advocate for, advocate for petitioner
Mr. Riaz Alam, Special Prosecutor, NAB

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioner standing a trial in two different References No.01/2019 & 06 of 2017 respectively has applied for post-arrest bail mainly on the grounds of hardship and rule of consistency. He has cited the case of co-accused Muhammad Siddiq Rajar, who vide an order dated 16.02.2021 (C.P. No.D-5400/2020) has been granted bail on hardship ground to impress his right to the same relief on the rule of consistency.

2. His counsel in arguments has further revealed that in Reference No.01/2019, out of 43 not a single witness, and in Reference No.06/2017 out of 89, only 6/7 witnesses, have been examined by the prosecution. The petitioner is in jail since 04.07.2019 without any tangible progress in the trial, which is not only shocking but defeats the very purpose of putting an accused in jeopardy in absence of a predicted end to the trial.

3. Learned Special Prosecutor, NAB has however, questioned his stance and has submitted a statement with a detail to pronounce that prosecution has not been at fault for the delay in the trial. Nonetheless, he has not been able to rebut an apparent failure of prosecution to take a robust stand against lackluster toil the trial court is proceeding with the matter;

and/or to counter, through proper applications, endeavors of the defence aimed at that end. The prosecution seems to be content over the pace of the trial ignoring unconscionably continuous peril the petitioner is in for the last 22 months. Prosecution's failure to examine even a single witness in Reference No.01/2019 and only 6/7 out of 89 witnesses in Reference No.06/2017 is an additional indictment casting a shadow to the seriousness and rigor normally required from the prosecution to pursue its case; and which undoubtedly has contributed to an extent intangible progress in the case.

4. Going by such extrapolation, it is not hard to estimate the time prosecution is likely to take to conclude the trial. Petitioner is in jail for 22 months and nothing has been brought on the record suggestive of his hand in the state of affairs obtaining in the trial. No law would sanctify scheme of continuous detention of an accused, sans a concrete progress in the trial. The failure of prosecution in this case in all respects to ensure speedy trial, a right granted to the accused under Constitution, coupled with a long incarceration of petitioner without his fault is a sufficient circumstance inducing a sense calling for an urgency to turn over this seemingly unending disposition in favour of the petitioner; and grant him a relief, when it is temporary in nature and subject to a conclusion to be drawn at the end of the trial regarding his guilt or otherwise.

5. Resultantly, this petition is allowed and the petitioner is granted bail subject to his furnishing two solvent sureties in the sum of Rs.500,000/- (Five lac only) in each case and P.R. bond in the like amount to the satisfaction of Nazir of this Court. He is directed to cooperate in the proceedings of the trial and the trial court, if finds the petitioner causing any delay in the trial, may file a reference before this court for recalling the concession granted to him by means of this order.

6. Petitions stand disposed of in the above terms. The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE