

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

C.P No.D-398 of 2019

Present:-

Mr. Justice Muhammad Iqbal Kalhoro,
Mr. Justice Amjad Ali Sahito.

Petitioner: Zahid Hussain through Mr. Muhammad Zainuddin Baloch, Advocate

Respondent: The State through Chairman NAB Karachi, Sindh through Mr. Jangu Khan Rajput Special Prosecutor NAB.

Date of hearing: 06.08.2019.

Date of Order: 06.08.2019.

ORDER

AMJAD ALI SAHITO, J. Through instant petition, the petitioner/accused is seeking post arrest bail in a Reference bearing No.70 of 2007 [old] New Reference No.16 of 2010 filed under section 18[g] read with section 24[b] of NAB Ordinance, 1999, which is pending adjudication before Accountability Court, Hyderabad.

2. The petitioner/accused has been booked with the allegation as mentioned in above NAB Reference as under:-

“7. The investigation Report reveals that Mr. Zahid Hussain Rajpar (Accused No.4) and Thaku Mal (Accused No.5) connived for sale of the said land located near the village of Khalilullah Jan Sarhandi (Accused No.6). The accused No.4, 5 and 6 deceitfully negotiated for Sale of the land, at the rate of Rs.22,000/- per acre to Khalilullah Jan Sarhandi (Accused No.6). The Accused No.6, paid a sum of Rs.0.5 Million vide cheque

No.701040 dated 1 April 2006 drawn on Habib Bank Limited Tando Muhammad Khan Branch and took possession of the land.”

3. Learned counsel for the petitioner/accused during the course of his arguments while reiterating the contents of petition has argued that the petitioner/accused is innocent, respectable and has been falsely implicated; that the charge against the petitioner/accused was framed in the year 2007 since then no progress has been made; that the petitioner/accused was continuously working in Thatta Cement Company Limited but no notice was issued to him to believe that he was required by the NAB authorities / trial Court; that there are sufficient grounds being tentative assessment at bail stage for granting concession of bail as the petitioner/accused is in custody since 4/5 months; that the petitioner/accused is no more required for further investigation; that main accused Sikandar Ali Memon, co-accused Nazeer Ahmed, Khalilullah Jan Sarhandi and Hafeez Jan Sarhand have been admitted to bail by this Court. Learned counsel for the petitioner/accused further contended that co-accused namely Thaku Mal, involved in the same reference with similar allegation, whose bail was dismissed by this Court, has been admitted to bail by the Hon’ble Supreme Court of Pakistan, hence, he prayed for the same relief to be given to the petitioner/accused on the rule of consistency.

4. On the other hand, learned Special Prosecutor, NAB, has vehemently opposed the grant of bail to the petitioner/accused on the ground that there is sufficient evidence against him to prove that he has committed the offence with which he is charged in NAB Reference beyond a reasonable doubt; that the petitioner/accused has remained fugitive from law and was trying to escape from Pakistan but he was apprehended, hence, the petitioner/accused does not deserve for any concession including on the principle of consistency.

5. We have heard the learned counsel for the petitioner/accused, Special Prosecutor NAB and perused the record.

6. Record reflects that charge against accused was framed in the year 2007 and no progress has been made out in the matter. Petitioner/accused is no more required for further investigation as the Reference is pending adjudication before learned trial Court. Petitioner/accused is behind the bars since 4/5 months and there would be no fruitful result if he is kept behind the bars for an indefinite period. It is for the prosecution to prove the reasonable grounds to believe that the petitioner/accused has committed the crime, in other words it can be said that liberty of person is prime consideration as envisaged by all laws, only subsection (1) of section 497, Cr.P.C, prohibits the release of accused in certain conditions, such conditions must be proved by prosecution, else every citizen has right of liberty and cannot be put in jail especially when there is no progress in the trial.

7. In the instant matter, main accused Sikandar Ali Memon, co-accused Nazeer Ahmed, Khalilullah Jan Sarhandi and Hafeez Jan Sarhand have been admitted to bail by this Court. Earlier, bail plea of accused Thaku Mal was dismissed by this Court but subsequently the said accused Thaku Mal approached the Honourable Supreme Court of Pakistan by preferring a Civil Petition No.248-K of 2012, whereby he was admitted to bail. For the sake of convenience, the relevant portion of the order is reproduced as under:-

“3. There is no cavil with the proposition that the State machinery has a right to arrest the culprits and put them to trial for establishing guilt against them but at the same time, it has no authority to play with the liberty and life of an accused under detention because no one can be allowed to remain in custody for an indefinite period without trial, especially when the law itself provides a specific period for conclusion of trial. In this case the petitioner is behind the bars for about two years without

any trial, coupled with the fact that so far, not a single witness has been examined by the prosecution, which delay on the part of the prosecution has gone unexplained.

4. *In above view of the matter, we are of the considered view that the petitioner has made out a case for grant of bail.*

5. *Herein above are the reasons of our short order of even date, which reads as under:-*

“For the reasons to be recorded separately this criminal petition is converted into appeal and allowed. The petitioner Thakumal is ordered to be released on bail, subject to furnishing two sureties in the sum of Rs.1.00 million and P.R. Bonds in the like amount to the satisfaction of the trial Court concerned. Moreover, until further orders his name shall remain on ECL.”

8. It is well settled law that while deciding bail plea only tentative assessment is to be made; it is to be seen whether *prima facie*, existence of reasonable grounds are available against the petitioner/accused for the offence falling within the prohibitory clause of section 497, Cr.P.C., or otherwise.

9. Admittedly co-accused Thaku Mal, against whom role assigned is similar to that of present petitioner/accused, hence, as per principle of consistency, the petitioner/accused is also entitled to be admitted on bail. Accordingly, petitioner/accused Zahid Hussain is granted bail, subject to his furnishing two solvent sureties in the sum of Rs. 1.00 million and PR bonds in the like amount to the satisfaction of learned trial Court. The said petitioner/accused shall also surrender his latest Passport to the learned trial Court, if not surrendered yet, which shall be kept in safe custody till the conclusion of trial. In case, the name of petitioner/accused is already placed on the Exit Control List, which shall remain continue till further orders by the trial Court otherwise, the NAB authorities are directed to approach the

Ministry of Interior for placing the name of petitioner/accused on the Exit Control List [ECL].

10. It is made clear that our findings are tentative in nature and shall not prejudice the case of either party at trial, which will be decided by the Accountability Court on merits based on the evidence before it. Needless to mention here that if the petitioner/accused after getting bail will not appear before the trial Court and the trial Court is satisfied that the petitioner/accused becomes absconder and he has chosen to be fugitive to law, then the trial Court is fully competent to take every action against him and his surety including cancellation of his bail without making a reference to this Court. These are the reasons for our short order passed on **06.08.2019**.

Petitions stands **allowed**.

JUDGE

JUDGE

Abdullah Channa/PS
Hyderabad
Dated: 07.08.2019.