

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

**BEFORE:
MR. JUSTICE MIRAN MUHAMMAD SHAH
MR. JUSTICE MUHAMMAD HASAN (AKBER)**

Criminal Bail Application No.D-27 of 2025

Applicant: Mst. Zahida through M/s. Farooq H. Naek, Taimoor Ali Mangrio and Syed Qasim Ali Shah, Advocates.

Respondents: NAB, through Mr. Moazam Ali, Special Prosecutor NAB Hyderabad along with I.O.

Date of hearing: 13.03.2025
Date of decision: 21.03.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- The Applicant is aggrieved by the order dated 26.02.2025, ("impugned order") whereby the learned Accountability Court No.1 Hyderabad dismissed her post-arrest bail application in NAB Reference No.2 of 2021 (*The State V. Munawar Ali Bozdar and others*) for the offences allegedly committed under section 9(a) of the National Accountability Ordinance 1999 (NAB Ordinance) and sections 3 & 4 of the Anti-Money Laundering Act 2010 (AMLA).

2. We have heard the learned counsel for the parties and examined the record. Brief background of the case is that FIR No.G-0-01/2020 dated 03.03.2020 was registered at P.S Thatta Anti-Corruption Establishment Sindh, against misappropriation and embezzlement of funds allegedly committed by the officers of the Right Bank Out Fall Drain (RBOD-II), Irrigation Department Government of Sindh and its contractors under the garb of flood, lighting/ emergent works. Thereafter, application under section 16-A of the NAB Ordinance was filed before the learned Special Judge Anti-Corruption (Provincial) Hyderabad and vide order dated 15.01.2021, the matter was transferred to the Accountability Court Sindh at Hyderabad. NAB's Investigation, in the form of Investigation Report, culminated into filing of Reference No.2 of 2021. The present applicant (Mst. Zahida) has been arrayed as accused No.9 in the said reference, who is the mother of the accused Muhammad Faheem Soomro. The allegations against the present applicant in the reference, as narrated at para-14 are as follows:

"That investigation further revealed that accused No.9 (Zahida) connived with accused No.8 (Muhammad

Faheem Soomro) by illegally acquiring pecuniary advantage / crime proceeds to the tune of Rs.153.274.000/- from accused No.37 (Manzoor Ali Solangi) i.e Rs.47,974,000/- into her joint account with accused No.8 (Muhammad Faheem Soomro), Rs.105,300,000/- to make payments for plot No.310 measuring 2,000 sq. yards (29th Street, DHA Phase VIII, Karachi. She in active connivance with accused No.8 (Muhammad Faheem Soomro) then transferred the plot No.310 acquired through crime proceeds in his name, who got it bifurcated the same into 02x plots and transferred them in the names of accused No.12 (Hassan Soomro) and accused No.12 (Mahvish Faheem Soomro).”

3. The applicant moved an application under section 498 Cr.P.C based whereon, ad-interim pre-arrest bail was granted by the Accountability Court, which was later on declined vide order dated 08.02.2025. Thereafter post-arrest bail was filed by the applicant before the learned Accountability Court, which was also declined vide order dated 26.02.2025.

4. At the very outset, it has been argued by learned senior counsel that the applicant has been falsely roped in this case and contends that applicant is a female and an old age lady of about 80 years, with poor health and she is a housewife, who has never been a working lady with no record of business activity and is not a previous convict, hence her case falls under the Proviso to section 497 Cr.P.C.; that Charge has already been framed in the case (page 229 of the court file) and there are around 71 witnesses in the Reference, however not a single witness has been examined till date despite passing of four years, and there is no likelihood of conclusion of the trial in near future; that the applicant is the mother of the accused Muhammad Faheem Soomro (accused No.8) and joint account holder with him whereas she had no knowledge about deposit of the subject money in the joint account; that being a joint account holder would not automatically make her part of the alleged crime, nor could *mens rea* be presumed automatically against her only for being the mother and joint account holder with her son; that no material was available on record to establish her conscious participation in the crime with the alleged contractors. Per learned counsel, not a single shred or material was available to establish that the applicant had the knowledge at the relevant time, about the said funds being crime proceeds. With respect to the purchase of property No.310, Phase VIII, DHA, Karachi, it was argued that no record has been produced by the prosecution in the Investigation to the effect that the applicant was personally and knowingly withdrawing or utilising such amount out of the subject five entries; nor was she aware about the source of consideration in purchase of the

property; that the present owner of the property namely Saleem Malik has not been arrayed as an accused but prosecution has extended benefit of doubt and made a Prosecution witness, hence on the same analogy, the applicant is also entitled to benefit of doubt as well; that it has not even been alleged by the prosecution that applicant is the ultimate beneficiary of the funds obtained through sale of the said property. It was further pleaded that the entire case is based upon documentary evidence, which has already been collected and even Charge has been framed, hence the accused is not required for any investigation, nor is there any possibility of the accused tempering with the prosecution evidence or influencing any witness by the applicant and that no purpose would be served by keeping the female accused behind bars for indefinite period. It was also argued that the earlier interim Pre-arrest bail granted to the applicant was never misused or skipped by her, nor is there any possibility of her absconding or tempering with witnesses or the documentary evidence which is already in custody of NAB. It was finally submitted that after the latest amendment in the NAB Ordinance in the year 2022, the Court is empowered to grant bail under section 17 (a) thereof. Reliance was placed upon PLD 2022 SC 764, 2023 SCMR 887, 2025 PCr.LJ 15, 2022 PCr.LJ 883; PLD 2022 SC 497, 2017 PCr.LJ 416 and 2023 MLD 400.

5. Conversely, the learned Special prosecutor NAB, duly assisted by the Investigation Officer ably argued the matter and vehemently opposed the bail petition. He drew attention to various documents in the Investigation Report and the Reference, including pages 229, 197, 131 and paragraph 17 of the Reference to show that during 2018, money was deposited in the joint bank account of the applicant and her son accused Muhammad Faheem Soomro and that plot was purchased in the name of the applicant through crime proceeds in the name of Mst. Zahida, which was later on bifurcated and then transferred in the name of Mst. Mahwish and her son Hasan Soomro and ultimately sold to the subsequent purchaser Saleem Malik, the Prosecution Witness. He placed reliance upon 2024 SCMR 1419 and PLD 2022 SC 743.

6. The learned counsel for applicant has primarily claimed that applicant's case is covered under the first proviso to section 497 Cr.PC. That prior to the amendments in the year 2022 in the NAB Ordinance, Bail in NAB matters could only be entertained by the High Courts under Article 199 of the Constitution of Pakistan. However, after such amendment, section 17 provides that the "Court" may grant bail to an accused. Section 497 Cr.P.C. provides that when any person accused of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail,

but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. The first proviso to section 497 provides that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

7. In the case of '*Tahira Batool v. State*'¹ it has been held by the Supreme Court that irrespective of the category of the offence, in cases concerning women accused etc. as mentioned in the first proviso to section 497(1), the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of section 497(1), Cr.P.C. In the cases of '*Mst. Ishrat Bibi v. The State through Prosecutor General, Punjab and another*'², and '*Mst. Ghazala V. The State*' and another³, wherein female applicants were alleged to be the master mind behind murder of their respective husbands, it was held that for the purpose of deciding the prayer for grant of bail in exercise of the discretionary power of the court under section 497(1), Cr.P.C., the availability of sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration. '*Asiya v. State*'⁴; '*Munawar Bibi v. State*'⁵; and '*Liaquat Ali v. Bashiran Bibi*'⁶ and '*Bushra Imran Khan v. The State*'⁷; are other cases wherein same benefit was granted to female accused person. In the case of '*Mrs. Roshan and others v. The State*'⁸, female applicant (arrayed as accused persons in NAB case) was admitted to bail, whose bank accounts were operated and used for illegal activities, and against whom documentary evidence was also available on record. It was further observed in the cases of '*Ishrat Bibi*'² and '*Ghazal Bibi*'³ *supra*, that the exceptions which justify refusal of bail are, the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence. Reliance is place upon '*Tariq Bashir v. State*'⁹; '*Zafar Iqbal v. Muhammad Anwar*'¹⁰; '*Muhammad Tanveer v. State*'¹¹ and '*Iftikhar Ahmad v. State*'¹².

1. PLD 2022 SC 764
2. 2024 SCMR 1528
3. 2023 SCMR 887
4. 2023 SCMR 383
5. 2023 SCMR 1729
6. 1994 SCMR 1729
7. 2025 PCrLJ 15
8. 2002 M LD 639
9. PLD 1995 SC 34
10. 2009 SCMR 1488
11. PLD 2017 SC 733
12. PLD 2021 SC 799

8. Hence, without touching the merits of the case and applying the above principles to the facts and circumstances of the present case, the position which emerges is that the applicant is a female and is also of advance age of about 80 years, with fragile health; that she is a housewife and there is no previous record of her business activity or her previous conviction. The fact of grant of relief of interim bail to the applicant by the Accountability Court and the absence of allegation of misuse of such bail is also part of record. Moreover, there also appears no likelihood that the applicant, if released on bail, after securing sufficient sureties, would abscond to escape trial, or tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice, or repeat the offence. The caselaw relied by the special prosecutor are distinguishable and not applicable to the facts of the instant case. We are therefore convinced that the case of the applicant is fully covered by the first proviso to section 497(1), Cr.P.C. This bail application is therefore accepted, and the applicant is admitted to bail, subject to her furnishing bail bond in the sum of Rs.20,00,000/- with two sureties in the like amount, to the satisfaction of the Additional Registrar of this Court and by depositing Passport with the Additional Registrar of this Court. Needless to mention that the observations made herein are tentative in nature; and that this concession of bail may be cancelled by the trial court in the exercise of its power under section 497(5), Cr.P.C. if the applicant misuses it in any manner, including the causing of delay or otherwise hindering the expeditious conclusion of the trial.

9. Before parting with this Order, we appreciate the young law officer for NAB for ably presenting his case in a composed and professional manner, as against a senior counsel.

JUDGE

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