

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.D-28 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 13.03.2025

Date of decision: 21.03.2025

M/s. Farooq H. Naek, Taimoor Ali Mangrio and Syed Qasim Ali Shah,
Advocates for applicant.

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

ORDER

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. Mahvish) has been arrayed as accused No.12 in the Reference, who is the wife of the accused Muhammad Faheem Soomro, who is accused No.8 in the Reference. The

allegations against the present applicant in the Reference, as narrated at para-17 are as follows:

“That investigation further revealed that accused No.12 (Mahvish Faheem Soomro) connived with accused No.8 (Muhammad Faheem Soomro) by receiving and possessing crime proceeds to the tune of Rs.65,500,000/- by seeling plot No.310/II (initially acquired by accused No.9 (Zahida) through crime proceeds, bifurcated and ultimately transferred / gifted to her).”

3. Interim pre-arrest bail was granted to the applicant by the Accountability Court under section 498 Cr.PC., which was later on declined vide order dated 08.02.2025. The subsequent post arrest bail was also declined by the Court vide order dated 26.02.2025.

4. At the very outset, it has been argued by learned senior counsel for the applicant that the applicant is the wife of accused Muhammad Faheem Soomro and she has been falsely roped in this case. He contends that the applicant is a female, housewife, no record of previous conviction and she is a mother of two minor children and there is no one else to look after them, hence her case falls under the Proviso to section 497 Cr.P.C. To support this fact, copies of passports of the two children (one male and one female) have been furnished. Further contends that Charge has already been framed in the case (available at 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. He argued that the only allegation against the applicant is that the property No.310, 29th Street, Phase VIII, DHA, Karachi, which was in the name of Mst. Zahida (her mother-in-law) was bifurcated into 2 plots and then each respectively transferred/ gifted in the names of Mst. Mahvish and her son Hasan Soomro (accused No.11). He submitted that not a single material is available in the Reference or the Investigation Report which could establish the fact that Mst. Mahvish was personally aware about the source of funds through which the property was purchased, and therefore existence of *mens rea* could not be presumed automatically against her; that there is no material to establish that she is a beneficiary and *mens rea* could not be presumed automatically against her; that the present owner of the property namely Saleem Malik has not been arrayed by NAB as an accused but prosecution has made him a Prosecution witness which is a fit case of pick and choose. 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. Lastly submitted 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. 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 depict that the property which was purchased through crime proceeds in the name of Mst. Zahida, was later on bifurcated and then transferred in the name of Mst. Mahvish 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. It has been primarily claimed that applicant's case is covered under the first proviso to section 497 Cr.PC., which 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), 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 another*'³, wherein female applicants were

alleged to be the master mind of the offence, it was held by the Supreme Court 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., 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; '*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 applicants (arrayed as accused persons in NAB case) were 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 '*Ishrat Bibi*'² and '*Ghazal Bibi*'³ *ibid*, that the exceptions which justify refusal to 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 can be placed upon '*Tariq Bashir v. State*'⁹; '*Zafar Iqbal v. Muhammad Anwar*'¹⁰; '*Muhammad Tanveer v. State*'¹¹ and '*Iftikhar Ahmad v. State*'¹².

8. Hence, without touching the merits of the case and applying the above principles to the facts and circumstances of the present case, it appears that the applicant is a female and also mother of two minor children; that she is a housewife and there is no previous record of her conviction. The main thrust of the prosecution case, in this category of his family members, is against the accused Muhammad Faheem Soomro who allegedly conducted illegal transactions with the contractors, whereas no material has been shown to establish that the female applicant was aware about the source of purchase of such property. The absence of allegation of misuse of earlier interim bail by the applicant is also seen and considering her status as female and being mother of two minors, there is lesser likelihood of her abscondence to escape trial, or tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice, or repeating the offence. The case law relied by the learned prosecutor are distinguishable

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

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 deposit of her 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 can be cancelled by the learned 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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