

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

Criminal Bail Application No.D-29 of 2025

Present

Mr. Justice Amjad Ali Sahito

Mr. Justice Miran Muhammad Shah.

Applicant: Faheem Ahmed through Mr. Barrister Zameer Hussain Ghumro, Advocate along with Mr. Muhammad Saleem Khaskheli, Advocate.

Respondents: NAB through Mr. Moazam Ali Shaikh, Special Prosecutor NAB along with Waqar Anwar Deputy Director, NAB.

Date of hearing: 27.03.2025

Date of Judgment: 27.03.2025

ORDER.

AMJAD ALI SAHITO, J.- Through this criminal bail application, the applicant seeks post-arrest bail in a Reference No.02 of 2021 filed by the National Accountability Bureau in terms of 18 (g) read with section 16 (e) and 24 (b) of the National Accountability Ordinance, 999, which is pending before Accountability Court-I, Hyderabad wherein the bail application earlier filed by the applicant was dismissed through the impugned order dated 22.02.2025.

2. Instant case stems from FIR No. 01/2020, registered following an inquiry into Complaint No. GO-84/2019, by the Anti-Corruption Establishment (ACE) Jamshoro, with approval from the competent authority. According to the FIR, an inquiry was conducted regarding the project "Extension of Right Bank Outfall Drain from Sehwan to Sea, Dadu and Thatta District (RBOD)." The inquiry was led by Zahid Hussain Shaikh, Chief Engineer/Project Director, Small Dams, and subsequently referred to the ACE. During the inquiry, it was discovered that officers and officials of RBOD-II Division-III Thatta had fabricated bogus bills and liabilities related to flood fighting and damage control works for the financial years 2017-18 and 2019.

These fraudulent transactions, amounting to Rs.3,527,374,695/-, were executed in collusion with contractors and companies, without proper verification by PSMT.

3. As per reference, a technical inspection was conducted at the site by Irshad Ahmed Memon, Technical Officer, ACE Sindh Karachi. His report confirmed that no such work had been executed. Further verification was sought from the Director Regulation, Karachi Irrigation Department, Government of Sindh, who, in a letter dated 31.10.2019, provided flood data for Sukkur Barrage (downstream) and Kotri Barrage (upstream and downstream) for the years 2014-2019. The records indicated that no floods occurred in 2017-18 and 2019. Furthermore, the inquiry found that Imran Shaikh, Superintendent Engineer, RBOD-II, during his tenure in 2014-2015, awarded new work packages without awaiting the administrative approval of the second revised PC-I, which was received only on 29.11.2016. This was done in abuse of official authority, leading to the fraudulent withdrawal of Rs.3,527.37 million, thereby causing a significant loss to the national exchequer.

4. An interim challan was submitted by the ACE before the Special Judge Anti-Corruption (Provincial) Hyderabad. Subsequently, on an application under Section 16A (a) of the NAO, 1999, the matter was transferred to the NAB Court by the National Accountability Bureau (NAB) through its Chairman. After seeking Court's permission, further investigation was conducted and a supplementary reference was filed on 08.07.2023. In the investigation of NAB, it revealed that Munawar Ali Bozdar, Project Director RBOD-II, was primarily responsible for expenditure and payments from exchequer funds. He authorized the disbursement of Rs. 3,527,374,695/- towards illegal and bogus payments under the guise of emergency flood-fighting works. The accused persons have been charged under Sections 9(a)(i), (iii), (iv), (vi), (xi), and (xii) of the NAO, 1999, as well as under Section 3 of the Anti-Money

Laundrying Act (AMLA) 2010, punishable under Section 4 of the same Act.

5. As per investigation the allegation against the applicant is that he along with co-accused had misplaced the record including Measurement Book etc. regarding the illegal payments.

6. Learned counsel for the applicant contends that the applicant was working as Senior Clerk (BS-11) on the establishment side for attendance of staff only and he had no concern with awarding contracts, preparation of NITs or bills or issuance of cheques to the contractors and etc. He further contends that there is no material or any kind of evidence to establish the case of corruption and corrupt practices against the applicant, however, cases of procedural irregularity or any infirmity of procedure without any allegation of monetary gain does not warrant the jurisdiction of NAB, as such, in absence of such allegation the sections with which the applicant is booked are not attracted. He further contends that the applicant never remained the custodian of the record inasmuch the question of abetting and aiding for misplacing of record/property does not arise. He contends that the offence with which the applicant is charged is not punishable with death or life imprisonment, hence, it does not come within the ambit of prohibition of section 497 Cr.P.C. but this is a fit case for further inquiry. Lastly he prays for grant of bail to the applicant by relying upon the cases reported as MUZAFFAR AYAZ ABID BALOCH v. NATIONAL ACCOUNTABILITY BUREAU, SINDH [2008 SCMR 1316], DINSHAW HOSHANG ANKLESARIA v. NATIONAL ACCOUNTABILITY BUREAU (NAB) through Chairman and others [2021 SCMR 699], MUHAMMAD IQBAL KHAN NOORI v. NATIONAL ACCOUNTABILITY BUREAU (NAB) and others [PLD 2021 Supreme Court 916], CHAIRMAN, NAB through P.G., Accountability v. NASARULLAH and 5 others [PLD 2022 Supreme Court 497] and CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU, ISLAMABAD v. YAR MUHAMMAD SOLANGI and others [2023 SCMR 1357].

7. On the other hand, learned Special Prosecutor NAB has vehemently opposed the grant of bail in favour of the applicant, on the ground that he is very much involved in the instant case. He contends that though the applicant was posted at establishment side but he was also assigned work in the RBOD-II Division-III Thatta as Senior Clerk and was dealing with the work of RBOD-II Division-III. He further contends that the applicant was responsible for maintain the relevant record but he misplaced the record which includes Measurement Books etc with regard to the illegal payment to the tune of Rs.3,527, 374, 695/- under the garb of flood fighting/emergent works. He lastly contends that the applicant was in connivance with other co-accused persons, as such, he is not entitled for the concession of bail.

8. We have heard the arguments of learned counsel for the applicant, learned Special Prosecutor NAB and perused the material available on record including the case law cited at the bar.

9. After perusal of record, we observe that the primary allegation against the applicant is the misplacement of Measurement Books. However, a crucial aspect that cannot be overlooked is that the work, for which the measurement was to be recorded, was never executed as per claim of NAB. In such circumstances, when no actual work has been carried out, the alleged disappearance or misplacement of the Measurement Books does not, on the face of it, constitute sufficient justification to continue the detention of the applicant. The fundamental principle of criminal jurisprudence is that bail is the rule, and refusal is an exception. Pre-trial detention cannot be used as a means of punishment, particularly when there is no reasonable apprehension that the accused will abscond or tamper with prosecution evidence. Furthermore, where the evidence on record does not sufficiently establish criminal intent or direct involvement in the commission of an offense, bail should not be arbitrarily denied.

10. It is also pertinent to mention that NAB cases are to be scrutinized in light of the guidelines provided by the superior

courts, which emphasize that unless there is cogent material demonstrating active participation in a fraudulent transaction or personal gain, the mere assumption of wrongdoing is not sufficient to deprive a person of his liberty. More so, where the prosecution's case is based on documentary allegations and physical custody of the accused is not required for further investigation, bail should ordinarily be granted where especially the evidence on record does not sufficiently establish criminal intent or direct involvement in the commission of an offense.

11. In the present case, since the applicant is neither alleged to have personally benefited from the alleged offense nor has it been demonstrated that his continued detention is necessary for the collection of further evidence, keeping him behind the bar would serve no meaningful purpose. The prosecution has not placed on record any material to establish that the applicant would tamper with evidence if released on bail.

12. In view of the above, and particularly considering that the work itself was not executed, the bail application is **allowed**. The applicant is admitted to bail upon furnishing surety in the sum of Rs.100,000/- [rupees one hundred thousand only] to the satisfaction learned Additional Registrar of this Court.

JUDGE

JUDGE