

NAB Bail granted on hardship grounds.

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ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI.

C.P. No.D-1056 of 2021.

Date	Order with signature of Judge
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1. For order on office objection.
2. For hearing of main case.

22.05.2021.

M/s. Mukesh Kumar Khatri and Kamran Khan Memon,
Advocates for the petitioner.
Mr. Shahbaz Sahotra, Special Prosecutor NAB.

Mohammad Karim Khan Agha, J:- Learned counsel for the petitioner Shahenshah Hussain has moved this post arrest bail application. Initially the petitioner's post arrest bail was declined by this Court vide order dated 09.10.2020. The petitioner then approached the Hon'ble Supreme Court. However, he withdrew his petition on the basis that he would again approach this Court on a fresh ground.

The brief facts of this case are that Sindh Tourist Development Corporation (STDC) and some of its officers including the petitioner had been involved in corruption and corrupt practices under section 9 of the NAO by awarding illegal contracts to the Contractors who were not entitled to be awarded such contracts which caused loss to the national exchequer which lead to a Reference being filed before the Accountability Court against the petitioner and his co-accused.

Learned counsel for the petitioner has stated that he has approached this Court on the fresh ground of hardship and is only pressing his post arrest bail petition on the ground of hardship

and not on merits. According to the petitioner he was arrested on 28.06.2019 which is over 23 months ago and no delay has been caused in the trial on his part or on the part of his counsel. That no charge has even been framed as yet and that when the charge is finally framed, there are 19 PWs whose evidence has to be recorded and there are 09 accused in the case. As such even if the charge is framed tomorrow, this reference is unlikely to be decided for at least 02 more years and as such conclusion of the trial is nowhere in sight. Learned counsel for the petitioner has also voluntarily offered to deposit Rs.26,00,000/- before the learned trial court which he contends is his liability which the trial court shall hold on his behalf until final decision of the case.

On the other hand learned Special Prosecutor NAB has contended that the conditions for hardship have not been made out and in this respect he has referred to the case of Tallat Ishaq v. the NAB (PLD 2019 SC 112) and as such the petition for post arrest bail on hardship ground should be dismissed.

We have heard learned counsel for the petitioner as well as learned Special Prosecutor NAB.

No doubt the case of Tallat Ishaq (Supra) makes it more difficult for under trial prisoners to be released on hardship ground, however, in the aforesaid case it does not impose a total bar on the grant of bail on hardship ground in NAB cases which is in fact a discretionary relief which the Court might grant based on the particular facts and circumstances of the case.

In this case admittedly the petitioner has spent almost 02 years in jail and no delay in proceedings in the trial court has been caused on his part or on account of his counsel. In fact so far the charge has not even been framed and no PW to date has given evidence. There are 19 PWs in this case and 09 accused persons which would mean that each of the PWs would be subject to 09 separate cross examinations by 09 separate counsel, one acting for each accused. Under these circumstances, in our view it is not possible to complete the trial for at least 02 more years and as such conclusion of the trial is nowhere in sight.

In order to show his bonafide the petitioner has also voluntarily agreed to deposit an amount of Rs.26-lacs (Twenty Six Lacs) which he claims his liability before the trial Court until conclusion of the trial. With regard to bail it is primarily for the purpose to ensure attendance of the accused before the trial Court and which can never be used as a punishment. It is the duty of the prosecution to prosecute the case expeditiously as these are the precious rights which are guaranteed to the accused under Article 10-A of the Constitution which is not happening in this case. If we look at the case from a practical point of view based on the particular facts and circumstances of this case the trial is unlikely to be completed for at least another 02 years by which time the petitioner would have spent at least 04 or 05 years in Jail

before a decision was rendered in his case which may even lead amount to an acquittal.

Under these circumstances we find that the petitioner has made out his case for the grant of bail on hardship ground hence the petitioner Shahenshah Hussain son of Afzal Hussain is hereby admitted to post arrest bail subject to depositing Rs.26-lacs with the Accountability Court No.III, Karachi and also paying solvent surety in the sum of Rs.5,00,000/_ (Rupees Five Lacs) and PR Bond in the like amount to the satisfaction of the Nazir of this Court. It is observed that the petitioner shall not cause any delay in the trial and shall ensure his attendance on each and every date of hearing failing which the NAB may be at liberty to approach this Court for cancellation of bail granted to the petitioner.

The petition stands disposed of in the above terms.