

NAB - No Bail on hardship grounds

533

CERTIFICATE OF THE COURT IN RECORD NO. ---

C.P. No. 914/20 s/w others

Sultan Qamar Siddiqi vs. NAB & others

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Dates of hearing: 20-04-20

Decided on 22-04-20

(a) Judgment approved for reporting.

Yes
No

[Signature]

CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/over-rules/ reverses/ explains a previous decision.

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

In custody

IN THE HIGH COURT OF SINDH AT KARACHI

(Constitutional Jurisdiction)

Constitution Petition No. 914 of 2020

Sultan Qamar Siddiqi son of
Late Qamarul Hasan Siddiqi,
Muslims, adult,
R/o B-28, Block-12, Gulistan-e-Johar,
Karachi presently confined in
Landhi Prison,
Karachi.....

10.2.2020
[Signature]
.....PETITIONER

VERSUS

1. National Accountability Bureau,
Constituted under the NAB Ordinance, 1999,
through its

a) Chairman, having office at
PRCS Building, 197/5, Dr. Daudpota Road,
Karachi Cantt.

b) Director General, having office at
PRCS Building, 197/5, Dr. Daudpota Road,
Karachi Cantt. Karachi.....

.....RESPONDENTS

CONSTITUTION PETITION UNDER ARTICLE
199 OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973 (BAIL ON
HARDSHIP)

The Petitioner above named respectfully begs to submit as under: -

1. That the Petitioner is a law abiding citizen, belongs to a respectable family, enjoying spotless reputation amongst his family members and general public locally and globally.
2. That late father of the Petitioner retired from a Govt. service in BS-21. He was Secretary, Sindh Board of Technical Education. The Petitioner is well reputed dealer involving business of selling of high class guns. In this regard he also participated in Idea 2012 Pakistan Exhibition and held his Stall over there.
3. That for the sake of present controversy, it would be appropriate to mention here that Petitioner had filed C.P. No.D-1657/2017 before this

In custody

IN THE HIGH COURT OF SINDH AT KARACHI
(Constitutional Jurisdiction)

Constitution Petition No. 915 of 2020

Presented on 10-02-2020

Sultan Qamar Siddiqi son of
Late Qamarul Hasan Siddiqi,
Muslims, adult,
R/o B-28, Block-12, Gulistan-e-Johar,
Karachi presently confined in
Landhi Prison,
Karachi.....

PETITIONER

VERSUS

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Constituted under the NAB Ordinance, 1999,
through its
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Karachi Cantt.
 - b) Director General, having office at
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A copy of the Card is annexed herewith as Annex _____

That for the sake of present controversy, it would be appropriate to mention here that Petitioner had filed C.P. No.D-1657/2017 before this

IN THE HIGH COURT OF SINDH AT KARACHI

(Constitutional Jurisdiction)

C.P.NO.D- 2148 OF 2019

2/2/2019

Riaz Ahmed

S/o Latif Ahmed Khan
Muslim, adult resident
House No.E-1/5,
Malir Extension Colony,
Khokhrapar
Karachi East-----Petitioner

VERSUS

1. The Federation of Pakistan
through Chairman
National Accountability Bureau (NAB)
Having office at G-5/2 Atta Turk Avenue
Islamabad
2. The Director General
National Accountability Bureau (NAB)
Having Office at
197/5, Dr. Daudpota Road
Karachi Cantt.
3. The Investigation officer IW-III
Of inquiry/investigation
Case No.242147 KHI
197/5, Dr. Daudpota Road
Karachi Cantt-----Respondents

PETITION UNDER ARTICLE 199 THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN 1973, READ WITH
SECTION 497 CR.P.C

Petitioner above named respectfully submits as
under:

NAB - Bail on hardship grounds
rejected

537

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

C.P. No.D-2148 of 2019.

Petitioner: Riaz Ahmed S/o. Latif Ahmed Khan through
Mr. Noor Muhammad Dayo, Advocate.

Complainant/State: NAB through Mr. R.D. Kalhoro, Special
Prosecutor NAB.

C.P. No.D-914 of 2020

C.P. No.D-915 of 2020

Petitioner: Sultan Qamar Siddiqi S/o. Late Qamarul
Hasan Siddiqi through Mr. Khawaja Shams-ul-
Islam, Advocate.

Complainant/State: NAB through Mr. R.D. Kalhoro, Special
Prosecutor NAB.

Date of hearing: 20.04.2020.

Date of announcement: 22.04.2020.

JUDGMENT

Mohammad Karim Khan Agha, J.- Petitioners Riaz Ahmed S/o. Latif Ahmed Khan and Sultan Qamar Siddiqi S/o. Qamarul Hasan Siddiqi have preferred these petitions for bail after arrest on hardship grounds.

2. This court recalled the pre arrest bail of petitioners Sultan Qamar Siddiqi and Riaz Ahmed vide order dated 13.04.2018 where after both the petitioners were taken into custody. Thereafter it appeared that petitioner Sultan Qamar Siddiqi approached the Supreme court for post arrest bail however vide order dated 12.09.2018 the Supreme court allowed the petitioner to withdraw his petition so he could approach this court for post arrest bail if he so desired. The petitioner approached this court for post arrest bail which was dismissed by this court vide order dated

01.03.2019. As such this is petitioner Sultan Qamar Siddiqi's second petition for post arrest bail before this court. On the other hand this is the first petition for post arrest bail filed before this court by petitioner Riaz Ahmed.

3. Petitioner Sultan Qamar Siddique is Ex.Vice-Chairman Fisherman Cooperative Society (FCS). Reference no.12/2007 has been filed against him for accumulating property through illegal means. Relevant facts are that on a press clipping in daily newspaper "Express" dated 21.06.2017, an inquiry into affairs of FCS was undertaken by NAB in which, among others, it was found that petitioner was initially nominated as a Director in FCS by Secretary Cooperative Department, Government of Sindh on 10.01.2014. Subsequently he was elevated to the post of Vice-Chairman and finally worked there as acting Chairman till 17.06.2015. During that period he received Rs.40,000/- per month as his salary/Honorarium. But an unusual and continuous cash inflow in his bank accounts was detected and an amount of Rs.47.6 million disproportionate to his known sources of income was found deposited in a joint account maintained by him with his wife. Besides, the petitioner was found maintaining a living standard not commensurate with his legal earnings. Based on such facts reference No.12/2017 has been filed against him.

4. Whereas in reference No.02/2018, allegations against this petitioner are that he in the capacity of acting Chairman FCS appointed illegally his brother in law Asad Zaman in BS-17, his father-in-law Mazhar-ul-Islam as Assistant Manager Market and his childhood friend Abdul Mannan S/o. Sharif-ul-Muzafar as his Personal Assistant. These persons never submitted any educational or experience documents to FCS and were only appointed because of their close relationship with the petitioner. Further, he and co-accused Dr. Nisar Ahmed Morai awarded contracts of millions of rupees to non-existent fake companies. There is no record that these fake companies had applied for the same or participated in any bidding process or even ever carried out any construction work in FCS. These contracts were awarded without any advertisement in any newspaper by the petitioner and co-accused Dr. Nisar Ahmed Morai in connivance with each other in violation of relevant rules and regulations. It was also found

that bidding documents of the said companies were fake, forged and fabricated. Further accused Dr. Nisar Ahmed Morai and in his absence petitioner made payments in the form of open cheques ostensibly to such fake companies, which were actually encashed by co-accused Imran Asghar on their behalf being their front man.

5. With regard to petitioner Riaz Ahmed in essence his role in the scam was as assistant manager/manager marketing of trash fish where he was involved in the embezzlement of millions of rupees which lead to a colossal loss to the FCS.

6. Both the petitioners have approached this court for post arrest bail on the fresh ground of hardship.

7. Learned counsel for petitioner Sultan Qamar Siddique has contended that the petitioner in the assets beyond known sources of income reference was taken into custody on 30.04.2018 and has nearly served 2 years in jail; that no delay in the trial has been caused on either his part or counsel acting on his behalf; only 2 out of the 8 witnesses have been examined and that the trial cannot be concluded in the foreseeable future and as such he is entitled to bail on hardship grounds. In support of his contentions he has placed reliance on **Shahid Umar v. Chairman NAB and 2 others** (2019 P. Cr.LJ 370), **Atta Abbas Zaidi v. Chairman, National Accountability Bureau (NAB) and 2 others** (PLD 2017 Sindh 120), **Syed Manzar Abbas v. National Accountability Bureau, through Director General** (2019 MLD 581), **Ch. Muhammad Ashraf, Advocate High Court v. Federation of Pakistan through Chairman, NAB Islamabad**, an unreported Judgment of Hon'ble Supreme Court in C.P. No.D-5574, 7099 and 7123 of 2018 and D-988 of 2019 **Gulzar Ali and others v. The State dated 16.03.2019**, an unreported Judgment of this Court in C.P. No.D-2911/2018, D-6251/2017 and D-4028/2016 **Abu Bakar Dawood and others v. Federation of Pakistan and others dated 02.06.2018** and another unreported Judgment of this Court in C.P. No.D-4526, 4745, 4674 and D-4603/2018, **Sarang Latif and others v. Chairman NAB dated 28.10.2019**.

8. Learned counsel for petitioner Sultan Qamar Siddiqi has contended that the petitioner in the Fisherman's Co-operative Society (FSC) case was taken into custody on 18.04.2018 and has served 2 years in jail; that no delay in the trial has been caused on either his part or counsel acting on his behalf; only 6 out of the 32 witnesses have been examined and that the trial cannot be concluded in the foreseeable future especially as no material witness has been examined against him so far and as such he is entitled to bail on hardship grounds. He placed reliance on the case law submitted above in the assets beyond known sources of income reference which has been filed against him by the NAB.

9. Learned counsel for petitioner Riaz Ahmed since his case is on the same footing as petitioner Sultan Qamar Siddiqi vis a vis hardship in the FSC reference has adopted the same arguments as advanced by petitioner Sultan Qamar Siddiqi in the FSC reference as well as his citations and has prayed for post arrest bail on hardship grounds.

10. On the other hand special prosecutor NAB has opposed the grant of all the post arrest bail petitions filed by the petitioners. Firstly he has contended that with regard to petitioner Sultan Qamar Siddiqi hardship is not a fresh ground and as such his petitions are not maintainable. Even otherwise he has contended that the cases of both the petitioners do not fulfill the legal requirements of grounds necessary to enable release on bail based on hardship grounds since delay has been caused by both petitioner in each reference and the delay is neither shocking nor unconscionable and as such all the three bail petitions should be dismissed. In support of his contentions he has placed reliance on **Tallat Ishaq v. National Accountability Bureau** (PLD 2019 Supreme Court 112), **Salah-ud-Din v. The State** (2010 SCMR 1962) and **Muhammad Nawaz v. The State** (2002 SCMR 1381).

11. We have heard the parties, carefully reviewed the record and considered the relevant case law including that cited at the bar.

12. We have gone through the authorities cited by each party and are of the view that only the authority of **Tallat Ishaq** (Supra) is mainly relevant based on the particular facts and circumstances of this case.

Tallat Ishaq's case (supra) was passed by a larger bench of the Supreme Court on 01.10.2018 which considered all the relevant law on hardship grounds in NAB cases and laid down definitive guidelines in this respect.

13. With respect to petitioner Sultan Qamar Siddiqui we find that his ground of hardship is a fresh ground as he has not approached any court for bail on this ground so far. Admittedly both the petitioners have been in custody for about two years. A review of the reports called from the trial court judges however indicate that some delay in completing the trials has been caused on the part of the petitioners as well as NAB.

14. In Tallat Ishaq's case (Supra) at Para 23 (f), (g), (h) and (i) it was held as under:-

"(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay.

(g) Before admitting an accused person to bail on the ground of hardship caused by a shocking, unconscionable or inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him".

(h) Even in cases of delay ordinarily bail is not granted straightway and a direction is issued to the trial court in the first instance to conclude the trial within a period fixed for the purpose by the Court itself... ..

(i)It goes without saying that a direction issued by a superior Court to the trial court to conclude a trial within a

specified period is an administrative direction and non-compliance of such a direction by the trial court for whatever reason may not entitle the accused person to claim bail as of right.(bold added)

15. With regard to the case of **Tallat Ishaq** (Supra) which NAB has cited in its objection to granting bail. No doubt **Tallat Ishaq's** case (Supra) has made the grant of bail more stringent on hardship grounds but it has not excluded it and it is allowed in exceptional circumstances at the **discretion** of the court. It is true that this court (in which one of us was a member Mohammed Karim Khan Agha J) has granted bail on hardship grounds after the passing of **Tallat's Ishaq's** case (Supra) however those cases are distinguishable from the present cases as in those cases the petitioners had spent a considerably longer time in custody and the concerned accountability court in which they were being tried was vacant.

16. In the current cases the petitioners have spent about two years in jail and an accountability judge for the trial court where the references against the petitioners are proceeding has assumed charge and is fulfilling his duties and as such there is no reason why these references cannot be decided in a reasonable period of time if an appropriate direction is given by this court. This is especially true in respect of the assets beyond known sources of income reference against petitioner Sultan Qamar Siddiqui where he is the sole accused and only 6 PW's remain to be examined.

17. Thus based on the particular facts and circumstances of this case where some delay has been caused by the petitioners in concluding their trials, where the petitioners have spent just about two years in custody and the concerned accountability courts are now up and running we do not consider the delay in the petitioners cases **at this point in time** to be shocking or unconscionable and as such all three of the petitioners' petitions for post arrest bail on hardship grounds are dismissed. **However** the trial court is **directed** to examine all **material witnesses** first and to hear each reference on a day to day basis and not allow any adjournment on any flimsy ground and to complete both the trials of the petitioners within 4 months of the date of this order and provide a

weekly progress report to this court through MIT II. If any adjournment is granted the dairy sheets shall set out which accused or which counsel or NAB as the case may be has caused the delay.

18. The office shall immediately send a copy of this order to the concerned accountability court Judge for information and compliance

19. The petitions stands disposed of in the above terms.

Amf