

(176)

**IN THE HIGH COURT OF SINDH AT KARACHI**

Before: Mr. Justice Naimatullah Phulpoto  
Mr. Justice Mohammed Karim Khan Agha

CONSTITUTION PETITION No.D-3863 OF 2016

Syed Salahuddin s/o Nizamuddin

Vs.

Federation of Pakistan & another

Date of hearing:	01-11-2016
Date of Order	14-11-2016
Petitioner	Through Mr. Salahuddin Ahmed Advocate for petitioner.
Respondents:	Through Mr. Noor Muhammad Dayo, Special Prosecutor, NAB a/w Irfan Ali I.O. NAB and Mr. Ashfaq Rafiq Janjua, Standing Counsel.

**ORDER**

**Mohammed Karim Khan Agha, J:-** Through this petition, the petitioner seeks post arrest bail in National Accountability Bureau (NAB) Reference No.05 of 2015 State vs. Syed Salahuddin dated 24-02-2015, which is pending before Accountability Court No 1, at Karachi, who is alleged by the NAB to be involved in corruption and corrupt practices punishable under section 9(a) of National Accountability Ordinance, 1999 (NAO).

2. It is alleged in the Reference against the petitioner that whilst he was posted as Operation Manager/Custodian, National Bank of Pakistan (NBP) Shaheed-e-Millat Road Branch he had manipulated a fake inter branch entry of Rs.78.4 million in the following manner. On 2.5.2013 an entry was generated in Prize Bond Register showing purchase of prize bonds with denomination of Rs.25000/- amounting to Rs.98.400 million rupees and was shown in cash payment book. All those entries were recorded by Head Cashier namely Tariq Saleem Khan who retired on 10.05.2013. Then the petitioner originated NBP General Entry of Rs.78.4 million against NBP Main Branch Karachi and credited the same amount to Prize Bond GL Head by Rs. 78.4 million and reflected the shipment to NBP Main Branch Karachi, but in fact

the said shipment of prize bonds was never made to the NBP Main Branch Karachi and the whole amount was misappropriated. The petitioner supervised such entry in the capacity of Operation Manager/Joint Custodian.

3. It is further alleged that on 06.05.2013 the petitioner showed a fake posted cheque bearing amount of Rs.78.4 million to Head Cashier Tarique Saleem and stated that a party had arrived to purchase prize bonds of Rs.25,000/- denomination, hence he (Tarique Saleem) without verifying the cheque gave 3136 prize bonds each valuing Rs.25,000/- to the petitioner, who then repeatedly made fake entries in breakup amount as was reflected in I.B.R. report. All credit vouchers prepared for NBP Main Branch were signed by petitioner and original TVRS were missing. The duplicate vouchers with single signatures of petitioner were prepared long after the commission of offence without any countersign by other Bank officials. By misusing his authority and through fraud the petitioner caused loss to the government exchequer to the tune of Rs.78.4 million, hence the aforesaid reference was filed against him by NAB under the NAO.

4. Learned counsel for the petitioner at the outset submitted that he has applied for post arrest bail only on the grounds of statutory delay and/ or hardship.

5. Learned counsel submitted that the petitioner had been arrested on 27-11-2014 and had now been in jail for almost 2 years but the trial had not yet been completed. He submitted, by reference to the diary sheets, that only 3 adjournments had been sought by the petitioner whilst the prosecution had requested more than 12 adjournments and the Court had been lying vacant since August. Thus, even if the adjournments sought by him were taken into account, he would still have spent approximately 21 months in jail which entitled him to bail on the grounds of statutory delay and/ or hardship especially since it was the obligation of the Accountability Court to complete the trial within 30 days under S.16(a) NAO.

6. Learned counsel also pointed out that this is his second application for bail on statutory grounds of delay and his first bail application on statutory grounds was not pressed by him, inspite

of his reservations, on account of a direction given by this Court through Order dated 05-04-2016 to the Accountability Court to complete the trial within 2 months. This direction however, as he had anticipated, had not been complied with and even 6 months had passed since the passing of the direction and yet the trial had not been completed. He submitted that it would not be appropriate to deal with this matter by this Court issuing further directions to the Accountability Court since the earlier directions had not been complied with and the Court is lying vacant.

7. Thus, for all the above reasons, he submitted that the petitioner is entitled to be released on post arrest bail on account of statutory delay and/ or hardship.

8. Learned counsel in support of his contentions placed reliance on **Muhammad Saeed Mehdi vs. The State and 2 others** (2002 SCMR 282), **Aga Jehanzeb vs. NAB & others** (2005 SCMR 1666), **Muhammad Jameel Rahi vs. D.G. NAB & others** (2012 SCMR 552), **Himesh Khan vs. National Accountability Bureau (NAB) Lahore & others** (2015 SCMR 1092), **Rafiq Haji Usman vs. Chairman, NAB & others** (2015 SCMR 1575), **Muhammad Nadeem Anwar & another vs. NAB & others** (PLD 2008 SC 645) and a recent unreported order dated 03-10-2016 passed in the case of **Atta Abbas Zaidi vs. Chairman NAB & others** by a Division Bench of this Court in CP No.D-1865 of 2016.

9. On the other hand, learned ADPGA for the NAB vehemently opposed the grant of post arrest bail on statutory grounds of delay. According to him under the NAO the ground for statutory delay is not applicable in NAB cases and even otherwise the petitioner had not made out a case for hardship. He also submitted that as per diary sheets the petitioner was responsible for far more than 3 adjournments and in fact the petitioner had sought at least 11 adjournments and had been instrumental in seeking to delay the completion of the trial.

10. We have considered the submissions of learned counsel for the parties, carefully gone through the record and the relevant law as well as the case law cited at the bar.

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(179)

11. By way of background to this petition, the petitioner initially applied to this Court for post arrest bail on merits which petition was dismissed by order dated 16-05-2015. Thereafter, as mentioned above, the petitioner moved a second post arrest bail application before this Court on the grounds of statutory delay which he withdrew subject to this Court directing the Accountability Court to decide the reference within two months. On the failure of the Accountability Court to comply with the aforesaid directions of this Court he has moved this third post arrest bail application before this Court again on the grounds of statutory delay and/or hardship.

12. At the outset as recently decided by a Division Bench of this Court in the case of **Atta Abbas Zaidi vs. Chairman NAB & others** (unreported) (CP No.D-1865 of 2016) in which one of us (Mohammed Karim Khan Agha J) was a member dated 03-10-2016 we are clear in our mind that statutory bail on the grounds of delay does not apply to NAB cases and that, in terms of delay, only the ground of hardship is open to the petitioner in rare cases.

13. In terms of what amounts to "hardship" Paragraphs 16 and 17 of the above referred **Atta Abbas Zaidi case** (Supra) are of significance and are reproduced below for ease of reference:

16. Generally speaking the superior judiciary has tended to classify hardship cases as being those where **there has been a "shocking" or "inordinate" or "repulsive and unconscionable" delay in completing the trial**, which often runs into a delay of a number of years and where there seems little chance of the trial being completed in the near future, as opposed to a lesser degree of delay. For example, in cases such as **Hamesh Khan V NAB** (2015 SCMR 1092 almost 5 years delay), **The State V. Syed Qaim Ali Shah** (1992 SCMR 2192), **Riasat Ali V. Ghulam Muhammad and the State** (PLD 1968 SC 353), **Gul Hasan Penhyar V The State** (1997 SCMR 390 around 6 years delay) **Muhammad Azim V The State** (2009 P Cr. L J 1314, Kar. Around 6 years delay), **Hashim V The State** (2009 YLR 1777, Kar.) around 6 years delay), **Shah Nawaz V The State** (2010 YLR 3182, Kar.) around 3 years delay) **Anwar Ali V The State** (2002 P Cr. L J 186, Kar.) around 2 years to even frame the charge) (bold added)

17. In our view based on **Hamesh Khan's case** (Supra) and **Mir Shan Jehan Khan Khetran's case** (Supra) it would seem that the primary guideline for determining hardship cases appears to be the duration

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in which the accused has been in custody, whether or not any delay in the conclusion of the trial has been caused by the accused and how much longer the trial is likely to take to conclude. **It may be that even if the accused has been in jail for over 2 years if there are very few PW's left to be examined and the trial is in full swing the case might not be regarded as a hardship case.** Likewise if a large amount of the delay was attributable to the conduct of the accused or those acting on his behalf. (bold added)

14. Thus for a hardship case to be permissible under the NAO the delay has to be **"shocking" or "inordinate" or "repulsive and unconscionable" delay in completing the trial** when placed in the context of the trial. We had also in the **Atta Abbas Zaidi case** (Supra) referred to some other factors which may need to be considered in determining the issue of hardship.

15. There is however no hard and fast rule as to when a hardship case has been made out. Each case must be decided on its own particular facts and circumstances.

16. It would seem that in this case even taking into account the delays caused by the petitioner the petitioner has probably spent only about 19 months in jail without completion of his trial. This period on its own cannot in our view amount to a hardship case. Even otherwise in this case only the IO is left to be examined, there is a sole accused i.e. the petitioner (and a large amount of loss has been caused) thus this case can be finished very rapidly by use of a direction by this Court to the Accountability Court to complete the trial expeditiously and within a given time period.

17. We do not agree with learned counsel for the petitioner that since one direction had not been complied with this leaves no scope for another direction from this Court to the Accountability Court to expeditiously decide the reference. This in our view would depend on what effect the original direction had on the Accountability Court hearing the case in terms of expediting its proceedings and whether there were reasonable grounds to believe after taking all the circumstances into account that the trial could be expeditiously completed by the Accountability Court through this Court issuing another direction to the Accountability Court to expedite the proceedings in the case. In our view there is no bar in

issuing further directions to the Accountability Court if doing so is justified in the given circumstances.

18. In this case it seems that considerable progress has been made since the last direction was given. As things currently stand only the IO is left to be examined who according to learned counsel for NAB is ready and available to give evidence once he is called. It is true that the Accountability Court is currently vacant but this issue can again be solved by appropriate directions being given by this Court.

19. We also have to take into account that when a trial is likely to be completed shortly and the amount of loss caused is very high there are greater dangers of the petitioner absconding. Furthermore, the Hon'ble Supreme Court in such circumstances has generally not approved of the granting of bail. In this respect reliance is placed on the case of **Rehmatullah V State** (2011 SCMR 1332) where at P.1333 it was held as under:

**"Heard. The petitioner was granted bail on 21.11.2008, which was cancelled by the learned High Court on 19.3.2009, when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor-General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial court to conclude the trial of the case within specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial court to conclude the trial of the case expeditiously." (bold added)**

20. Thus, since the petitioner has only been in jail for about 19 months (once adjournments by the petitioner are considered), the loss caused is of a high amount, there is only one PW left to record his statement and only one accused (i.e. the petitioner) to cross examine that witness we consider that this petition does not meet the requirements of a hardship case especially as the reference can be decided expeditiously by the Accountability Court through a further direction from this Court to that effect.

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21. Accordingly, this petition for post arrest bail is therefore dismissed, however Administrative Judge of the Accountability Courts Sindh at Karachi is directed to either immediately hear this reference himself or fix it /transfer it immediately to one of the other functioning Accountability Courts in Karachi which shall immediately call the I.O. for recording his evidence and complete the trial within 2 months of receipt of this order positively. The office is directed to immediately supply a copy of this order to the Administrative Judge Accountability Court Karachi for compliance.

Dated: 14-11-2016

