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

Present **Mr. Justice Irfan Saadat Khan**  
**Mr. Justice Mohammad Karim Khan Agha**

C.P No.2876/2015

Noor Muhammad

V

National Accountability Bureau

Date of hearing.	18-08-2016
Date of order.	24-08-2016
Petitioner:	Through Mr. M.A. Kazi, advocate
Respondents:	Through Noor Muhammad Dayo, ADPG, NAB.

**ORDER**

**MOHAMMAD KARIM KHAN AGHA, J:-** By this order, we propose to dispose of the petition of Noor Muhammad (the petitioner) for grant of post-arrest bail arising from National Accountability Bureau (NAB) Reference 12/2015 State v. Noor Muhammad and five others which was filed before the Administrative Judge Accountability Courts Karachi on 31-03-2015 by the NAB.

2. As per NAB Reference No.12/2015 State V Noor Muhammad and five others which was filed before the Administrative Judge of Accountability Courts Karachi on 31-03-2015 the main allegation against the petitioner is that he in connivance and collusion with other co-accused (revenue officials and a bank official) fraudulently obtained sales tax refund of RS 49.27 million based on false and fake invoices for his benefit and caused loss to the government exchequer. In so doing the petitioner according to NAB had committed the offense of corruption under S.9 (a) of the National Accountability Ordinance 1999(NAO).

3. Learned Counsel for the petitioner pressed his petition on the sole ground that the petitioner was entitled to bail on account of statutory delay under S.497 Cr.PC since he had been in custody

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for more than one year and the trial had not yet been completed due to no fault of his own. He pointed to the diary sheets of the Accountability Court in support of his contention and in addition relied on the cases of **Shabbir Ismail & another v. NAB** (Civil Petition No.881/2016 dated 20-4-2016), **Mohammad Aqeel Munawar Abro v. NAB** (C.P.No.D-7850/2015 dated 31-3-2016), **Khan Mohammad Marvi v. NAB** (C.P.No.7295/2015 dated 19-5-2016) and **Nisar Ahmed Ansari v. NAB** (C.P.No.D-3161/2016 dated 20-10-2015)

4. On the other hand learned ADPGA strongly objected to the grant of bail on statutory grounds. He submitted that the diary sheets showed that the trial had been considerably delayed and this was in large part on account of delays caused by the petitioner and in fact he had been instrumental in causing delay to the trial as such he did not qualify for the grant of statutory bail under S.497 Cr.PC as although more than one year had elapsed since the petitioner was taken into custody the trial had been delayed on account of the petitioner. In support of his contentions he relied on the following case law; **Faisal Hussain Butt v. The State & another** (2009 SCMR 133), **Azhar Zia Mian v. NAB Lahore & another** (2010 P.Cr.L.J. 402 Lahore), and **Shahid Hassan Awan v. The State through Chairman NAB, Islamabad & another** (2008 YLR 1081 Lahore),

5. We have perused the record, considered the submissions of learned counsel and the relevant law along with the authorities cited by them.

6. Since the petition revolves around the applicability of S.497 Cr.PC the same is set out below for ease of reference:

“497. When bail may be taken in case of non-bailable offence. (1) 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 appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.

Provided 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.

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released.

**Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by any act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail.**

(a) **who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or (bold added);**

(b) who, being accused of any offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded;

**Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life."**

7. As per order sheets Noor Mohammed was produced before the Accountability Court on 15-05-2015 (prior to that he had been absconding).

8. Since it is now 16-08-2016 the petitioner has been in custody for approx 1 year and 3 months and thus he would prima facie qualify for the grant of statutory bail. The next question since his trial has not yet concluded is whether the delay in concluding the trial has been caused by the petitioner **or any other person acting on his behalf** (bold added)

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9. We have carefully reviewed the dairy sheets from 15-05-2015 to 17-08-2016 (approx one year and 3 months) which form a part of the record.

10. The diary sheets reveal that between 02-12-2015 and 26-01-2016 delay was caused by the petitioner in seeking to appoint new counsel and applying for adjournments which amounted to 55 days. The matter could also not proceed entirely on 28-05-2016 on account of the absence of the petitioner's counsel and hence the matter was adjourned for cross examination on his part. On the next date no delay was caused on the part of the petitioner's counsel. Thus, this delay therefore on account of the absence of the petitioner's counsel lasted 14 days. On 02-07-2016 the matter was adjourned on the request of all defense counsels until 23-07-2016. Since the petitioner's counsel was one of the requesting defense counsels this further delay of 21 days is also attributable to the petitioner. Thus in total the delay attributable to the petitioner is 90 days i.e. about 3 months. Thus, once this period is deleted from the one year and 3 months worth of diary sheets it appears that after considering the delay the petitioner has almost completed one year in custody in which the delay in the trial was not attributable to him.

11. From the diary sheets it is evident that it was the petitioner's counsel, for whatever may be the reasons, who had requested adjournments on a number of occasions, which delay in our view could not be attributed to the prosecution or the trial court. It is also observed that initially the petitioner was an absconder who was arrested on 14-05-2015 (about 6 weeks after the filing of the reference) and brought before the Court pursuant to non bailable warrants dated 18-04-2015 which also contributed to the delay in starting the trial. The long delay in completing the trial on at least 4 separate occasions was caused by the petitioner's counsel seeking adjournments. The loss of three months of the trial on account of the petitioner's adjournments cannot be lightly ignored. Furthermore, the petitioner is the main accused and beneficiary of an amount of money which caused a huge loss to the State exchequer.

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12. Under these circumstances, in exercise of our discretion in the writ jurisdiction, we are not inclined to grant the petitioner statutory bail at this stage under S.497 Cr.PC and thus dismiss this petition. We however direct the learned Accountability Court Judge to complete the trial of the reference within 3 months of the date of this order keeping in view the requirements of S.16 (a) NAO. In the event that the trial is not completed within this 3 month period the petitioner may, if so advised, approach this Court again for the grant of statutory bail under S.497 Cr.PC.

13. We direct the office to immediately send a copy of this order to the concerned accountability court hearing the reference which is the subject matter of this petition for compliance.

Dated: 24-08-2016