

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D-4044 of 2016

Present:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Muhammad Humayon Khan

Ch. Muhammad Ashraf ----- Petitioner

Versus

Federation of Pakistan & others ----- Respondents

Date of hearing: 04.05.2017.

Date of order: 25.05.2017.

Petitioner: Choudhry Muhammad Ashraf in person.

**Respondents: Through Muhammad Altaf Special
Prosecutor NAB along I.O. NAB.**

O R D E R

Muhammad Junaid Ghaffar, J. Through this Petition, the Petitioner who appears in person seeks post arrest bail in consolidated Reference No.13/2015 arising out of Reference Nos.29, 30 and 39 of 2015 and 37 of 2016.

2. The precise allegation against the Petitioner is to the effect that he was acting as General Secretary of Fiza Social Welfare Organization (**FSWO**) which was involved in misappropriation of funds in Low Cost Housing Scheme under the Benazir Housing Cell (BHC). It has been further alleged that initially an amount of Rs.38.08 Million was released to FSWO for disbursement to the beneficiaries, but instead they started construction. Thereafter the Ex-Chairman directed main accused No.1 to re-advertise, however, malafidely the accused No.1 after becoming Chairman of BHC again resumed the work with FSWO

and again released Rs.86.408 Million, whereas, the houses in question were never constructed or completed.

3. We have head the Petitioner in person as well as Special Prosecutor NAB duly assisted by Investigating Officer and our observations are as under:-

- a) It appears that after publication of the scheme in newspaper on 4.1.2010 three technical proposals were received; but the principal accused Manzar Abbas illegally and unauthorizedly declared FSWO as qualified, notwithstanding the fact that at the relevant time the provisional registration certificate issued to FSWO to work as a Social Welfare Organization stood expired and a proper and valid registration certificate was subsequently issued on 12.7.2010 i.e. after award of contract and disbursement of major chunk of money.
- b) The Petitioner has primarily argued his case on the ground that in addition to merits his case was also of hardship as thousands of documents have been filed by NAB and only three witnesses have been examined who have till date not directly implicated the Petitioner. However, we are not impressed by his arguments that his case is of hardship as perusal of cross examination of all these three witnesses, it appears that the Petitioner has cross examined them at length and their cross-examination is spreading over various pages. In fact he even stated that due to filing of certain further documents he may make a request for recalling the said witnesses. Perusal of the record reflects that case is proceeding on a fast pace and no case for hardship is apparently made out, whereas, delay, if any, is for the reason that petitioner who is pleading his case in person has engaged himself in very lengthy, at times irrelevant and repeated cross examination which is consuming most of the time of the Court. Hence no case for hardship in this regard is made out. Moreover, it cannot be said that an accused is

entitled for bail in each case on account of delay in conclusion of trial merely for the reason that there are numerous witnesses yet to be examined, as it is also of utmost importance to see and examine the case on merits at the same time, as to what extent the accused is involved in the offence on the basis of material before the Court. Reliance in this regard may be placed on the case of ***Azhar Zia Mian v National Accountability Bureau Lahore (2010 PCr.L.J 402)***, wherein it has been held at Para 13 that..... “It is true that expeditious disposal of a criminal case is the right of every accused person, *but, delay, per se, would not entitle every accused for the grant of bail after arrest*. Two factors are very material and relevant, firstly, who is responsible for the delay in the conclusion of the trial. If the delay has been caused or occasioned because of acts/steps of the Prosecution, such as, timely non-submission of challan/reference or non-production of the Prosecution Witnesses, then the accused can justifiably claim bail, but, if he himself is also responsible for the said delay then the situation would be different. *Secondly, the nature and gravity of allegations against the accused is also to be considered*”. In the instant case, the learned trial Court, after explaining each and every adjournment, has categorically stated that the accused is responsible for the delay in disposal of the present reference

- c) The prosecution witnesses in their 161 Cr.P.C statements have fully implicated the Petitioner and such statements in view of the dicta laid down in the case of ***The State / ANF V. Aleem Haider (2015 SCMR 133)*** cannot be ignored out rightly. It may be appreciated that at the bail stage only a tentative assessment is to be made, whereas, the Petitioner has made an attempt to read out the entire evidence so far recorded as if this is a trial Court.
- d) It further appears that enough material has been placed on record which reflects that the Petitioner was instrumental in opening of bank accounts and had even made payments to various contractors as well as withdrawn money in huge amounts, whereas, nothing has been brought on record from the Petitioner’s side to

substantiate that any such payment was made and handed over to the beneficiaries for onward construction by themselves.

- e) It further appears from the record that out of 1497 houses which were required to be constructed in six different Districts, 529 houses were never constructed and it has come on record though report(s) / survey of the area in question, duly signed by authorized representatives of Director Inspection / Admin of BHC, Deputy Director Engg: BHC, PWD and Senior Investigation Officer, NAB, which substantiates the case of NAB authorities that such houses were never completed.
- f) It is also a matter of record that bail Petition bearing C.P. D-900 of 2015 of Accused No.7 *Agha Ghulam Mohiuddin* stands dismissed on merits vide order dated 03.09.2015. In fact similar role has been assigned to the Petitioner as that to Accused No.7, therefor, in view of the said order we do not see any reason to take a different view in respect of the present Petitioner.
- g) It further appears that bail Petition of the main Accused No.1 *Syed Manzar Abbas* was once dismissed by a learned Division Bench of this Court vide order dated 5.10.2015 in C.P.No.D-4253 of 2015 on merits which was then challenged before the Hon'ble Supreme Court and vide order dated 19.1.2016 the same was dismissed as not pressed. Subsequently, the said Petitioner i.e. Accused No. 1 filed Petitions bearing Nos. 3905 and 3906 of 2016 and vide order dated 19.1.2017 the said Petitioners request for grant of bail on *statutory ground* and *hardship* were also dismissed. The present petitioner's case is not on any better footing either on merits or on the ground of hardship and or delay.

4. In view of hereinabove observations, we are of the view that no case for grant of bail is made out by the Petitioner as he has been fully

implicated by the prosecution witnesses, whereas, enough material has been placed on record implicating the Petitioner in the alleged offence, whereas, while dismissing the bail Petition of co-accused Mazhar Abbas the trial Court has been directed to make an effort to complete the trial within six months and such order was made on 19.1.2017 which is yet to expire. Accordingly, instant petition is dismissed; however, if the trial is not completed within six months as directed in the case of co-accused Mazhar Abbas, the Petitioner may seek and approach this Court on hardship ground, if so advised as already directed.

Dated: 25.05.2017

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