

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Before Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Muhammad Humayon Khan

C.P. No. D-3560 of 2016

PETITIONER : Rasool Bux Soho through Mr. Muhammad Naeem Memon, Advocate

RESPONDENTS : Federation of Pakistan and another through Mr. Riaz Alam Khan, Special Prosecutor NAB

DATE OF HEARING : 10.05.2017

DATE OF ORDER : 10.05.2017

ORDER

Muhammad Humayon Khan, J: By this order, we intend to decide this petition which is filed for grant of bail in NAB Reference No. 42 of 2015 (State Vs. Rafique Memon and 9 others) which is pending before the Accountability Court in Karachi.

2) The petitioner had earlier filed Const. Petition No. 4726 of 2015 in this Court, which was heard alongwith other petitions by the Hon'able Division Bench of Mr. Justice Ahmed Ali M. Shaikh (now My Lord the Chief Justice) and Mr. Justice Muhammad Karim Khan Agha and by common Order dated 12.02.2016 all the six petitions were dismissed on merits and bail was declined to all the petitioners including the petitioner in the instant petition by a detailed well-reasoned Order.

3) One of the petitioner namely Malik Shahid Ahmed (Const. Petition No. D-5988 of 2015) filed Civil Petition No. 402 of 2016 against the above-referred Order dated 12.02.2016 before the Hon'able Supreme Court of Pakistan, which was dismissed by Order dated 31.03.2016 on merits. Similarly, the petitioner in the above petition and another petitioner namely Rafique Ahmed (Const. Petition No.D-4647 of 2015) also filed Civil Petitions Nos.184-K and 242-K of 2016 against the above-referred Order dated 12.02.2016 before the Hon'able Supreme Court of Pakistan, which were also dismissed by two separate Orders dated 27.04.2016 on merits.

4) Within the period of three months, the petitioner again filed the instant petition for grand of bail on the same grounds.

5) In view of the directions of the Apex Court in the case of Nazir Ahmed and another Vs. The State and others reported in **PLD 2014 Supreme Court 241**, Const. Petitions Nos. D-4849 and D-5536 of 2016 of other co-accused in the same reference were placed before My Lord Chief Justice on 27.01.2017, whereupon, his Lordship has been pleased to order that the said petitions may be fixed before the Bench according to roster. Since the said bench is not available in roster, office has also fixed this petition according to roster before this bench.

6) We have heard the learned counsel for the petitioner as well as learned Special Prosecutor NAB and also gone through the material available on the record.

7) The learned counsel for the petitioner has repeated the same grounds in his arguments which were argued in earlier petition and were rejected by the Hon'able Division Bench in a well-reasoned Order dated 12.02.2016 and the same was maintained by the Hon'able Supreme Court of Pakistan by Orders dated 31.03.2016 and 27.04.2016 in two petitions. However, no fresh ground was either pleaded or argued by the learned counsel for the petitioner. Lastly, the learned counsel strongly contended that since the Trial Court has not complied with the directions given by this Court in Order dated 12.02.2016, the petitioner is entitled for grant of bail on this ground however he has not been able to convince us on the point that the second bail application lies on the same ground on which the first bail application was rejected and the ground of non-compliance of directions of this Court in earlier order is a valid ground for grant of bail application. As against this, recently, in the case of Nisar Ahmed Vs. The State and others reported in **PLD 2016 Supreme Court 11**, it has been held that:-

“We have scanned the material placed on record and are unable to subscribe to such submissions of the learned ASC. Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of Section 497 Cr. P.C. nor filing of direct complaint will have any bearing as regards earlier bail refusing orders, which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case.

This being the position, leave is refused and this petition is dismissed.”

8) On the other hand, the learned Special Prosecutor NAB strongly opposed the bail application and contended that after rejection of earlier bail application, fresh bail application cannot be filed on the same grounds. He further stated that two petitions namely C.P. No. D-4849 and D-5536 of 2016 arising out of the same reference were already dismissed by us vide Order dated 28.04.2017 and Order dated 31.03.2016 passed by the Hon'able Supreme Court in Civil Petition No. 402/2016 in the case of Malik Shahid Ahmed Vs. Federation of Pakistan and others. In support of his arguments, he relied upon the case of Amir Masih Vs. The State and another **(2013 SCMR 1524)**.

9) While confronted the learned Counsel for the Petitioner, who contended that second bail Petition is maintainable in as much as the earlier bail petition which was dismissed vide Order dated 12.2.2016, was a pre-arrest bail Petition and therefore, instant Petition is maintainable. Though there is no cavil to this proposition that there are certain different parameters for consideration and grant of a pre-arrest and post-arrest bail; however, after going through Order dated 12.2.2016 whereby earlier bail petition was dismissed, we are of the view that a detailed and reasoned order has been passed whereby, all aspects and the allegations contained in the Reference were dealt with, whereas, the aforesaid order was a common order in respect of three accused who were on pre-arrest bail and three other accused who were under custody, therefore, this arguments has no basis.

10) In so far as the contention of the learned Counsel for the Petitioner to the effect that notwithstanding the innocence of the Petitioner, the land in question was never transferred in the name of private persons and still remains a Government land, it would suffice to observe that the Hon'ble Supreme Court in Civil Petition No. 402/2016 vide Order dated 31.03.2016 in the case of (Malik Shahid Ahmed V. Federation of Pakistan and others) while deciding the post-arrest bail of co-accused against the aforesaid Order dated 12.2.2016 passed in C.P. No. D-5988/2015 has been pleased to observe at Para 6 as under:-

“As far as the arguments of the learned Counsel regarding the land being subsequently leased out to Live Stock Department by the Government is concerned, we have observed that in the light of the above discussion it is quite clear that the Petitioner, revenue, authority and other accused persons in connivance with each other committed the offence in order to usurp 1307 Acres of Government land.”

11) In our view all other grounds so raised by the learned Counsel for the Petitioner were either available at the time of the first bail Petition or were raised, argued and considered by the learned Division Bench while dismissing the bail Petitions and therefore, no fresh ground is made out for grant of bail.

12) In the case of Amir Masih Vs. The State and another reported in **2013 SCMR 1524**, it has been held that:-

“As far as the case-law cited by the learned counsel for the petitioner in (i) Ali Hassan v. The State (2001 SCMR 1047) and (ii) Muhammad Riaz v. The State (2002 SCMR 184) is concerned, the latest case which has been disposed of on this point is Muhammad Siddique v. The State (Criminal Petition

No. 896-L of 2012) wherein it has been held by this Court that if earlier application is dismissed as withdrawn, the second application can only be filed on any fresh ground and not on the same grounds which were available at the time of the disposal of the earlier application.

Thus the latest view of this Court is to be followed and the learned High Court has rightly dismissed the application which could only be entertained on the fresh grounds, hence, this petition being without merits is, hereby, dismissed and leave is refused.”

13) Again, in the case of Nazir Ahmed and another Vs. The State and others reported in **PLD 2014 Supreme Court 241**, the Apex Court has settled the principles of entertaining and deciding bail applications, one of the principle, which is relevant for the instant petitions, is as follows:-

“In case of dismissal of an earlier application for bail on the merits of the case a **subsequent application for the same relief can be filed and entertained only if it is based upon a fresh ground**, i.e. a ground which was not available or in existence at the time of decision of the earlier application.”

14) Again, in the case of Muhammad Aslam Vs. The State and others reported in **PLD 2015 Supreme Court 41**, it has been held that:-

“It is not disputed that the first petition for bail (Criminal Miscellaneous No. 12657-B of 2013) filed by the appellant for his post-arrest bail in the present criminal case had been dismissed by the Lahore High Court, Lahore as having been withdrawn vide order dated 23-10-2012 after the learned counsel for the appellant had argued the case at some length but had remained unable to persuade the said Court to grant bail to the appellant. **The second petition filed by the appellant (Criminal Miscellaneous No. 5422-B of 2013) seeking the selfsame relief, did not disclose any fresh ground for admission of the appellant to bail and, thus, in view of the law declared by this Court in the case of Nazir Ahmed and another (supra) the said second petition filed**

by the appellant before the Lahore High Court, Lahore was not maintainable.

In this view of the matter we have not been able to take any legitimate exception to the impugned order passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore on 7-6-2013. This appeal is, therefore, dismissed.”

15) In view of the principle laid down by the Apex Court in the above- referred cases, the second bail application shall lie only on a fresh ground namely a ground which did not exist at the time when the first application was made and if the second bail application is made on the same grounds upon which the first bail application was dismissed on merits, the second bail application is neither maintainable in law nor entertain-able by this Court.

16) Apart from this, the ground that since the learned Trial Judge had failed to comply the earlier direction of the High Court to decide the matter expeditiously is unwarranted in law for grant of bail in a subsequent application.

17) For the reasons disclosed hereinabove, this petition is dismissed. However, we direct the learned Judge of the Accountability Court to decide the instant reference on merits within four months and submit report to this Court through MIT-II.

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