

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-872 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO
MR. JUSTICE SHAMSUDDIN ABBASI

1. For orders on office objection
2. For Katcha Peshi.

Date of hearing: 24.04.2018.
Date of order: 24.04.2018

Mr. Riazat Ali Sahar, Advocate for petitioner.
Mr. Jango Khan, Special Prosecutor NAB.
Mr. Lutufullah Arain, D.A.G.

O R D E R

NAIMATULLAH PHULPOTO, J: Petitioner / Appellant Ashfaque Ahmed Shaikh alongwith another was tried by learned Judge, Accountability Court at Hyderabad in Reference No.02/2016 filed by NAB. On the conclusion of the trial, by judgment dated 31.01.2018, Petitioner / Appellant Ashfaque Ahmed Shaikh was convicted and sentenced as under:-

POINT NO.2.

Looking to the facts and circumstances of the case, I am of the humble opinion that the case against accused persons each namely Ashfaque Ahmed Shaikh S/o Gul Hassan Shaikh has been proved beyond reasonable doubt. It has been established that he by misusing his authority has committed offence of Corruption and Corrupt practices which falls within the definition of corruption and corrupt practices of sub section (a) of (vi) of Section 9 of the National Accountability Ordinance, (NAO), 1999 and punishable U/S 10(a) of the Ordinance. Since all bills out of 41 bills have not been produced any manual record as to the bills except that of record obtained from SAP and specimen signatures of accused Ashfaque Ahmed Shaikh being not obtained therefore, there appear mitigating circumstances for the purpose of taking lenient view for the award of lesser sentence. Therefore, accused Ashfaque Ahmed Shaikh is convicted and sentenced U/S 10(a) of National Accountability Ordinance (NAO), 1999 r/w 265-H(ii) Cr.P.C to suffer rigorous imprisonment for five years. He shall pay the fine of Rs.5,080,687/-. In case of default in non-payment of fine, it can be recovered as arrears of Land Revenue from him as provided U/S 33-E of NAO 1999. The conviction and sentence awarded to accused Ashfaque Ahmed Shaikh S/o Gul Hassan Shaikh for the period of five years in Reference Nos.04/2015 & 08/2015 shall run concurrently with

the conviction and sentence awarded to him in the instant case. Accused Sharif Ahmed Malik is acquitted U/S 265-H(i) Cr.P.C. His bail bond stands cancelled and surety discharged.

It is further directed that accused Ashfaqe Ahmed Shaikh shall forthwith cease to hold public offices, if any. Further, he shall not be allowed any financial facilities in the form of any loan or advances from any bank or financial institution (owned or controlled by government) for a period of ten years from the date of conviction. He shall be entitled to benefit under section 382-B Cr.P.C. He is called absent without intimation issue NBWs against him through Investigation Officer, NAB and on his arrest he shall be sent to Special Prison NARA, Hyderabad to serve out the sentence according to law.

Copies of Judgment shall be supplied to the State Bank of Pakistan and the Prosecutor of the Court for information and necessary compliance.”

2. Petitioner / Appellant Ashfaqe Ahmed Shaikh preferred appeal before this Court bearing Criminal Accountability Appeal No.D-20/2018, which was admitted for regular hearing and the same is pending before this Court. During the pendency of said appeal, Mr. Riazat Ali Sahar, Advocate, has filed Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for suspension of the sentence during pendency of the aforesaid appeal. Notice was issued to the Special Prosecutor NAB as well as Mr. Lutufullah Arain, D.A.G.

3. Mr. Riazat Ali Sahar, learned Advocate for petitioner /appellant has mainly contended that the sentence of five years is short sentence and hearing of the appeal shall take some time. He has further contended that the petitioner Ashfaqe Ahmed Shaikh was on bail during trial and after conviction he is in jail since more than two months. In support of his contentions he has relied upon the cases of MAZHAR AHMED vs. THE STATE (2012 SCMR 997) and ABDUL HAMEED vs. MUHAMMAD ABDULLAH (1999 SCMR 2589).

4. Mr. Jango Khan, Special Prosecutor NAB as well as Mr. Lutufullah Arain, D.A.G. opposed prayer for suspension of the sentence.

5. We have carefully heard the learned Counsel for the parties and perused the relevant record. It appears that Petitioner Ashfaque Ahmed Shaikh Appellant in Criminal Accountability Appeal No.D-20/2018 has been convicted by NAB Court vide judgment dated 31.01.2018 and sentenced to 5 years R.I and to pay the fine. Due to huge pendency of cases before this Court, hearing of the appeal shall take some time. Moreover, appeal is fresh one. It is also pointed out that the petitioner was on bail during trial and he is behind bar since two months. This factual position has not been controverted by the learned Special Prosecutor NAB.

6. In the case of ABDUL HAMEED vs. MUHAMMAD ABDULLAH and others (1999 SCMR 2589), the Honourable Supreme Court has held that sentence of 05 years is short one, relevant portion is reproduced as under:-

“4. On the other hand, Mr. S.M. Masud, learned Advocate Supreme Court, for the petitioner, has urged that the learned Additional Sessions Judge without putting to the petitioner the notice as to the enhancement of the sentence and without hearing the arguments, enhanced the imprisonment for three years to five years and the amount of fine from Rs.5,000 to Rs.10,000. Without going to the question, whether any notice was issued for the enhancement by the learned Additional Sessions Judge (as according to the State counsel such a notice was issued). We are inclined to hold that since the sentence was short and as the sentence was enhanced by the learned Additional Sessions Judge from three years to five years, it was fit case in which the Darned Judge in Chambers P` should have exercised the discretion in favour of the convict. We convert the above petition into appeal and admit the petitioner to bail in the sum of Rs.2,00,000 (two lacs) with one surety in the like amount to the satisfaction of the trial Court.”

6. The sentence awarded to the Petitioner / Appellant of 05 years is short one and hearing of the appeal shall take some time. For the above stated reasons while relying upon the above cited judgments, sentence of the Petitioner / Appellant is suspended during hearing of the appeal and he shall be released on bail subject to furnishing solvent surety in the sum of Rs.15,00,000/- (fifteen lacs) and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. Petitioner shall deposit original passport with the Additional Registrar of this Court.

Let the copy of order be sent to the Ministry of Interior, Government of Pakistan, Islamabad by fax.

Petition stands allowed in the above terms.

JUDGE

JUDGE

A.H.