

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

C.P. No.D-323 of 2018.

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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For orders on office objection.  
For Katcha peshi.  
For orders on MA-6220/18.

Present:  
Mr. Justice Muhammad Junaid Ghaffar.  
Mr. Justice Amjad Ali Sahito.

Date of hearing: 12.6. 2018.

M/s. Mohsin Shahwani and Ayaz Hussain Chandio, Advocates  
for the petitioner.  
Mr. Jangu Khan, Special Prosecutor NAB.  
Mr. Muhammad Lutufullah Arain, D.A.G.

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**AMJAD ALI SAHITO, J-** Through instant petition, the petitioner  
namely Shoukat Hussain Jokhio seeks post arrest bail in Reference No.19 of  
2016 re: State v. Muhammad Sulleman Mallah & others filed by the NAB  
authorities before the Accountability Court No.VI, Hyderabad.

2.      Precisely the allegation against the petitioner is that he was posted as  
a Deputy Commissioner Sujawal from April, 2014 to May, 2014 and from  
June, 2014 to July, 2014 though having no charge of Administrator Town  
Committee, Sujawal for the period of April,2014 to May, 2014, he misused  
his authority and payments were made to the fake contractors, thereby,  
abetted accused contractors in embezzlement of government funds. It is  
further alleged that while he was controlling authority for Town Committee  
Sujawal for the period from June, 2014 to July, 2014 he signed cheques in  
capacity of Administrator Town Committee, Sujawal and he failed to ensure  
fair utilization of government funds for the development and welfare at local  
level and acted in connivance with Town Committee Sujawal officers i.e.  
co-accused Abul Qasim, Javeed Ali Baloch, Naeem Akhtar Shoro and Shah

Hussain Shaikh respectively contractors/private persons i.e. accused No.18, 20 and 27 to 29 (Syed Ali Abbas, Syed Wasi Abbas, Rafique Ahmed Memon, Quwat Ali Shah, Nazakat Ali Sabro and Mehboob Ali Shah respectively to withdraw and embezzle government funds, without getting any work executed on the site.

3. After completing the investigation, Investigating Officer filed reference against the petitioner and co-accused which is pending before the Accountability Court No.VI Hyderabad.

4. Learned counsel for the petitioner contended that the petitioner is innocent and has falsely been implicated in this case due to political victimization; that there are general and vague allegations against the petitioner without assigning any specific role against him in the reference; that petitioner was posted as Deputy Commissioner, Sujawal and neither he was approving nor sanctioning authority to grant funds pertaining to local councils, Town Committees, District Councils and Municipal Committees, but he only counter signed certain cheques in good faith for smooth function of the Town Committee after verifying the signatures of Accountant and Town Officers; that the alleged offence of embezzlement of public funds of Town Committee, Sujawal pertains to year 2012, while the reference has been filed in May, 2016 after a lapse of four years without any plausible explanation or justification for such a prolonged and unexplainable delay, which makes it a case of further inquiry; that three PWs have been examined by the trial Court, in which, they have not implicated the present petitioner; that petitioner was granted interim pre-arrest bail by this Court vide order dated 26.5.2016 in CP No.D-1078/16, but later on, the same was recalled vide order dated 20.12.2017 due to absence of the petitioner, as he was arrested in another reference at Islamabad; that co-accused Naeem Akhtar Shoro was granted bail by this Court in CP No.D-1494/2016 vide

order dated 14.3.2016 and so also co-accused Abdul Qasim Shaikh alias Abul Qasim granted post arrest bail by this Court vide order dated 24.8.2017 in CP No.D-3621 of 2016, therefore, on the rule of consistency and on better footing, the petitioner is also entitled for concession of bail. He, therefore, prayed for grant of bail.

5. Learned Special Prosecutor NAB as well as learned D.A.G. opposed the grant of bail on the ground that the petitioner has misused his authority and made illegal payments to the fake contractors without having charge of Administrator of Town Committee, Sujawal, however, while controverted they admitted that co-accused Abdul Qasim Shaikh alias Abul Qasim, who have already been granted post-arrest bail, had been assigned more or less similar role.

6. Heard arguments and perused the record.

7. Record reflects that the petitioner was posted as a Deputy Commissioner Sujawal and due to non-payment of salary/pension to the employees of Municipal Committees, Town Committee, Town Municipal Administration (defunct) and Union Council etc in Sindh as such the Deputy Commissioner was made responsible for distribution of salaries to the staff and they were directed to operate the accounts. The local Government Act provided that the Provincial Director, Local Fund Audit of Government shall pre-audit all the payment from the local funds of the council, therefore, the role of the petitioner is yet to be seen when trial of the reference will be concluded and only tentative assessment is to be made and deeper appreciation is not warranted/permissible at bail stage. The petitioner was arrested on 25.10.2017 and the trial court has examined only 03 witnesses out of 20-witensses shown in the reference at the relevant column and the petitioner is continuously in jail and there is no likelihood of conclusion of the trial in near future. The maximum punishment provided per law is

14-years whereas lesser punishment is only 03-years and it is the discretion of the trial court to decide the quantum of punishment and sentences as per circumstances of the case. The delay in conclusion of trial is not on the part of the petitioner. In this context reliance is place on un-reported case of Muhammad Anwar Brohi V. Chairman NAB, Islamabad in Civil Petition No.11 of 2016 wherein Honourable Supreme Court has held that :

“We are not inclined to examine the merits of the case as the petitioner’s plea for grant of bail on merits has already been rejected by this court on 19.3.2015. However, we have noted that trial has not proceeded much since then. Uptill now only five out of 63-prosecution witnesses have been examined and 58-witnesses still remain to be examined. One the co-accused who was absconding has now been arrested, all this may cause further delay in the conclusion of the trial. Furthermore, no part of the delay that has already been caused in the trial was attributed to the petitioner. The petitioner was arrested on 04.5.2014 and is in custody for the past 22-months. In these circumstances, as case for grant of bail on the ground of delay in the conclusion of the trial is made out”

8. In our view, the case of petitioner is identical and on better footing to that of co-accused Abdul Qasim Shaikh alias Abul Qasim who has been granted post arrest bail by this court vide order dated 24.8.2017. Object of the criminal trial is to make the accused face the trial and not punish an under trial prisoner for the offence alleged against him and accused is entitled to expeditious excess to justice which included a right to fair and expeditious trial without any unreasonable delay and bail cannot be withheld as punishment on accusation of non-bailable offence against an accused. Furthermore, the petitioner is a government servant and there is no likelihood of absconding and the entire case of prosecution revolves around the documentary evidence which is already in their possession, therefore, following the rule of consistency and taking the guide lines from the above cited case law, the bail was granted to the petitioner by us vide order dated 12.6.2018 in the following terms and these are the reasons for the same.

“For the reasons to be recorded later on, the petitioner Shoukat Hussain Jokhio is admitted to post arrest bail in reference No.19 of 2016 subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five lac) and PR Bond in the like amount to the satisfaction of trial court. The petitioner, however, shall also deposit his passport before the trial court. Further, the trial court if necessity arises, may issue direction to the concerned Ministry for placing the name of petitioner in ECL.”

JUDGE.

Dated: 13.06.2018.

JUDGE.