

IN THE HIGH COURT OF SINDH AT SUKKUR

Present:

Fahim Ahmed Siddiqui and
Yousuf Ali Sayeed, JJ

Constitutional Petition No. D-1289 OF 2020

Petitioner : Syed Junaid Qadir Shah,
through Mohsin Shahwani,
Advocate.

Respondents : National Accountability Bureau
Nos. 2 and 3 and Director General, NAB
Sukkur, through Special
Prosecutor.

Date of hearing : 02.02.2021

JUDGMENT

YOUSUF ALI SAYEED, J. - The Petitioner had elicited anticipatory bail before arrest from this Court in exercise of jurisdiction under Article 199 of the Constitution in relation to Reference Number 17 of 2019 (the “**Reference**”) submitted by the Director General of the National Accountability Bureau (“**NAB**”) under Section 16(c) of the National Accountability Ordinance, 1999 (the “**NAO**”), as is pending before the Accountability Court No. III, Sindh, at Sukkur (the “**Trial Court**”).

2. In all, a total of 18 persons have been arrayed in terms of the Reference, with the central figure, being the Accused No.1, namely one Syed Khursheed Ahmed Shah (the “**Principal Accused**”), a well-known politician.

3. The pith and substance of the allegation against the Principal Accused is that of having accumulated assets beyond his means through corruption and corrupt practices, abetted and facilitated by the co-accused, including the Petitioner, who is his real nephew, and the crux of the allegation against whom is that he lacked the means to have acquired 88 Acres 25 ½ ghuntas land at Deh Khahi Jagir, Taluka Rohri Sukkur shown as having been purchased by him in the year 2005 (the “**Property Acquisition**”), and that the same had in fact been purchased by the Principal Accused reflecting the Petitioner as his benamidar.

4. Learned counsel for the Petitioner argued that the Petitioner was a qualified professional of independent means who had been and remained gainfully employed In the Middle East, earning amounts sufficient for acquisition of the aforementioned land in his own right. He submitted that the Petitioner was not a *benamidar* of the Principal Accused and contended that the Property Acquisition was the product of a bona fide transaction whereby the Petitioner has acquired the entire interest in the land in question. He submitted further that an earlier investigation against the Principal Accused encompassing the very land had been closed on the volition of the Chairman, NAB, in exercise of power under Section 9(c) of the NAO, as upheld by a learned Division Bench of this Court in the case reported as Syed Khursheed Ahmed Shah v National Accountability Bureau (NAB) & others SBLR 2014 Sindh 821. It was argued that the allegations against the Petitioner was bereft of substance and unsubstantiated by any material collected through investigation and that the Petitioner had been falsely implicated so as to exert additional pressure on the Principal Accused for the purpose of political victimization. It was submitted that as the Reference had already been filed, the arrest of the Petitioner was even otherwise unnecessary for any further investigative purpose.

5. It was also pointed out that other than the Principal Accused, the majority of other co-accused in the Reference had already been granted bail by a learned Division Bench of this Court vide a Judgment rendered on 22.04.2020, whereby a number of connected Petitions had been disposed of, with the lead Petition being C.P. No. D-44 of 2020, titled as Syed Khursheed Ahmed Shah v. Chairman National Accountability Bureau, through its Chairman and others. It was emphasized that one of the connected Petitions, bearing C.P. No. D-104 of 2020, had been that of the brother of the present Petitioner, namely Syed Awais Qadir Shah, with pre-arrest bail being confirmed in his case albeit the allegations against him being analogous to those levelled in respect of the Petitioner. It was submitted that under the Rule of Consistency, the ad-interim bail granted to the Petitioner ought to similarly be confirmed.

6. The the factum of pre-arrest bail having already been granted to similarly placed co-accused persons is irrefutably a matter of record. Indeed, the learned special prosecutor appearing on behalf of NAB could not deny this to be the case, but contended that the Petitioner was nonetheless disentitled to bail as he had remained absent from the proceedings before the Trial Court, having only then come forward upon action being taken towards blocking of his National Identity Card, hence was to be regarded as an absconder. He contended further that as the Petitioner was employed abroad, it was conceivable that he could jump bail so as to seek refuge in a foreign jurisdiction, which would impede the progress of the trial.

7. Having considered the matter, we are of the view that since the similarly placed co-accused have already been granted bail in respect of the Reference, judicial propriety demands that the same benefit be extended to the Petitioner as per the Rule of Consistency, especially since the Petitioner has surrendered voluntarily, and a plausible explanation for the delay in that regard has been provided in the form of his absence from Pakistan as an incidence of his employment abroad, coupled with his having to then seek Protective/Transitory Bail by means of a Constitutional Petition filed through his father in the wake of the Warrants issued in the matter by the Trial Court, whereafter he has been regularly attending the trial. Moreover, even if the tag of absconsion were applicable, the same would not of itself serve as a basis for denial of bail to the Petitioner in circumstances where there is nothing overt to demonstrate culpability and his guilt is yet to be determined at trial.

8. As such, it is for those reasons that we had made a short Order upon culmination of the hearing, confirming the ad-interim bail granted to the Petitioner on the same terms as earlier imposed, with the Petition being disposed of accordingly.

JUDGE

JUDGE

Karachi
Dated _____