

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Accountability Appeal No.12 of 2017

Date	Order with signature of Judge
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1. For hearing of case
2. For hearing of M. A. No 7245/2017

Mr. Arshad H. Lodhi, Advocate, for Appellant.
Mr. Munsif Jan, Special Prosecutor, NAB

19-10-2017

1. Office is directed to prepare the paper book and thereafter fix the main Appeal for hearing.

2. Vide Judgment dated 12.07.2017 passed by the Accountability Court No. III, Sindh at Karachi in Reference No. 22 of 2015, the Appellant, Azhar Zahid, son of Syed Zahid Ali, was sentenced to suffer R.I. for 3 years and pay a of Rs.1,225,000/-, and in case of non-payment of fine to suffer R.I for a further period of 1 year. Through this application, the Appellant seeks suspension of this sentence pending adjudication of his Appeal.

The matter apparently pertains to misappropriation of funds under the guise of compensation payable for rehabilitation of persons displaced by construction of the Lyari Expressway, whereby crossed cheques ostensibly issued in favour of purported affectees were diverted into three different accounts maintained by third parties at different banks.

We have heard learned counsel for the appellant, as well as learned Special Prosecutor NAB.

Learned counsel for the Appellant submitted that the Appellant was not even alleged to be the orchestrator or beneficiary of this scheme, but was wrongly implicated as a facilitating employee at Habib Metropolitan Bank Limited, one of the banks where 49 cheques were wrongly credited to the account of one Fahim Ahmed Zia, a co-accused in the aforesaid Reference, who had availed the option of plea bargain and deposited an amount of Rs.1,225,000/-, representing his 50% liability of the amount of such cheques.

Learned counsel contended that the finding of guilt against the Appellant was questionable and unsupported by evidence. He pointed out that though this Appeal has been admitted to regular hearing on 21.07.2017, the same was not as yet ripe for hearing in as much as the paper-book was still to be prepared, and, even thereafter, final adjudication of the matter would take considerable time due to the backlog of pending cases. He submitted that as the sentence in question was of a short duration (3 years), approximately half of which has already been served, the same may be suspended pending adjudication of the matter and the Appellant released on bail subject to deposit of a like amount of Rs.1,225,000/-.

Learned counsel for placed reliance upon the orders made by learned Division Benches of this Court in the case reported as Inayatullah Ansari and 2 others v. The State PLD 2014 Sindh 95, and in Criminal Accountability Appeals Nos. 6 & 8 of 2017 (Unreported), where the concession of suspension of sentence awarded by an Accountability Court under was extended. Learned counsel further submitted that another co-convict, Salman Akhtar Faridi, has already been released on bail following suspension of his sentence on furnishing security vide order dated 18.08.2017 passed in connected Criminal Accountability Appeal No.11 of 2017.

Learned Special Prosecutor NAB opposed the suspension of sentence of the Appellant.

We are not inclined at this stage to enter upon a discussion on the merits of the case. Suffice it to say that all co-accused have either plea bargained or, as in the case of co-convict, Salman Akhtar Faridi, been released on bail subject to furnishing security following suspension of sentence. Furthermore, as per the Jail Roll, half the sentence awarded to the Appellant has already been served by him, and his conduct during confinement has been satisfactory. Since the Appellant is also ready to furnish security commensurate to the amount of the fine, therefore, considering the quantum of backlog of the cases and that disposal of the main Appeal may thus take time, in light of the judgments of Honourable Supreme Court in the cases reported as Adnan A. Khawaja v. The State 2008 SCMR 1439 (following the dictum laid down in the case of Zulfiqar Ali v. The State 1994 SCMR 548), as well as Anwar-Ul-Haq v. National Accountability Bureau PLD 2009 SC 388, the sentence awarded to the Appellant is hereby suspended and the Appellant is released on bail subject to furnishing security in the sum of Rs.1,225,000/-(Rupees One Million Two Hundred and Twenty Five Thousand) and P.R Bond in the like amount to the satisfaction of the Nazir of this Court.

Listed application is disposed of accordingly.

JUDGE

JUDGE