

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE SHAMSUDDIN ABBASI
MR. JUSTICE AMJAD ALI SAHITO

Const. Petition No.D- 4048 of 2021 {Karachi}
Const. Petition No.D- 1030 of 2021 {Sukkur}

Petitioner Syed Khursheed Ahmed Shah son of Syed
Zulfiqar Ali Shah through M/s Makhdoom
Ali Khan & Mehfooz Ahmed Awan, Advocates

Respondents The State & 3 others through Mr.Obaidullah
Abro, Special Prosecutor NAB a/w I.O.

Dates of hearing 05.07.2021 and 12.07.2021

Date of order **27.07.2021**

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ORDER

Shamsuddin Abbasi, J:- By means of this second constitutional petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, Syed Khursheed Ahmed Shah, petitioner, seeks post-arrest bail in Reference No.17 of 2019 {Re: The State v Syed Khursheed Ahmed Shah & 17 others}, pending adjudication before relevant Accountability Court, at Sukkur. Earlier the plea of the petitioner for bail after arrest was declined by this Court on merits vide order dated 22.04.2020 and I.O was challenged by him before Apex court where he has not pressed his bail plea and same was disposed of in terms of order dated 04.06.2021 and thereafter this petition has been filed by him on fresh grounds mainly pressing the ground of hardship and delay in the trial.

2. Precise accusation against Syed Khursheed Ahmed Shah, petitioner, as set-forth in the reference is that he remained Councilor in Sukkur Municipal Corporation from 1979 to 1988 and then elected as Member of Provincial Assembly {Sindh} in different terms from 1988 to 1994 having portfolio of different Ministries and subsequent thereto elected as Member of National Assembly in different terms from 1994 till date having portfolio of different Ministries as well as

Leader of Opposition. During the period from 2005, 2008 to 2019 he and his dependents/benamidars, who are nominated as accused No.7 to 12 in the reference, earned Rs.67,488,907/- from their known source of income viz salary and business, but the properties that were purchased by him in his name and in the names of his heirs and benamidars during such period were beyond their income and without any justification. The petitioner, who is nominated as accused No.1, as well as accused No.7 to 12 during the said period accumulated assets to the tune of Rs.715,743,751/- through ill-gotten money and failed to justify earning of such income. The petitioner also opened five bank accounts in his name and in the names of his dependents through which huge amounts were credited illegally. He was facilitated by accused No.2 to 6 and 13 to 18 as abettors and associates of accused No.7 to 12, who knowingly and purposely rendered their help in the entire scam and involved themselves in disguising the true nature of transactions and launching proceeds of crime in payment of sale and purchase of 12 x immovable properties. They also got themselves involved in illegal and unlawful acts and facilitated petitioner {accused No.1} and accused No.7 to 12 in accumulation of assets beyond their known source of income, thus have committed offence of corruption and corrupt practices as defined under Section 9{a}{v}{xii} punishable under Section 10 of National Accountability Ordinance, 1999 {NAO, 1999} and schedule thereto read with Section {iii} and {iv} of Anti-Money Laundering Act, 2010.

3. The learned counsel appearing on behalf of the petitioner has pressed this petition mainly on the ground of hardship and statutory delay in trial contending that the petitioner is languishing in jail since his arrest on 18.09.2019 till date, but in spite of mandate of Section 16-A of NAO, 1999 his trial has not been concluded yet. It is next submitted that according to the settled proposition of law every accused is innocent until proven guilty, therefore, he cannot be saddled with criminal liability until the allegations leveled against him are proved through a test of evidence at trial, which is not likely to come to an end in near future. It is also submitted that the fundamental rights of the petitioner as envisaged in Constitution are being infringed due to his illegal and unlawful detention in prison

more particularly when delay in trial is not attributed to him. In support of this contention, he has submitted that out of 60 dates of hearing, only one adjournment was sought on behalf of petitioner when his counsel was busy before Hon'ble High Court. At this juncture, learned counsel has pointed out that the petitioner is in continuous custody since last about one year and ten months. The inquiry was initiated on 07.05.2019, which was upgraded into investigation and petitioner was arrested on 18.09.2019. The NAB failed to file a final reference despite providing ample opportunities and finally the learned trial Court treated the interim reference that was filed on 19.12.2019 as final reference vide order dated 04.08.2020. He further pointed out that the charge was framed on 30.11.2020, yet only three witnesses have been examined, out of 44, whereas witness No.4 and 5 are still in witness box for the purpose of cross-examination. The learned counsel drew our attention to the statement made by the Prosecutor NAB before Hon'ble Supreme Court while arguing the matter that supplementary reference would be filed within two weeks, yet no supplementary reference has been filed. He further added that if supplementary reference is filed then charge would have to be amended causing further indefinite period of time keeping in view the lethargic conduct of the prosecution. The learned counsel has emphasized that the petitioner is an old age person and it is a settled proposition of law that speedy trial is the right of every accused and petitioner cannot be detained in jail for indefinite period at the whims and wishes of the prosecution. Lastly submitted that keeping in view the above facts and circumstances the petitioner has been able to make out a case of hardship, which entitles him for bail.

4. Conversely, the learned Special Prosecutor NAB and investigating officer while opposing the grant of bail to the petitioner have submitted that the petitioner cannot claim bail as a right on statutory ground as the provisions of Section 497, Cr.P.C. are not applicable for the purpose of grant of bail to an accused facing charges under NAO, 1999 except in hardship cases. It is next submitted that the NAB intend to file supplementary reference, which is pending for approval of Chairman NAB. It is next submitted that the petition for post-arrest bail of petitioner

has already been dismissed by this Court on merits and the present petition has been filed without furnishing any fresh ground. It is also submitted that the case pertains to accumulation of assets beyond known source of income through corruption and corrupt practices and sufficient documentary proof coupled with ocular evidence in shape of statements of witnesses under Section 161, Cr.P.C. is available on record, which substantiated the allegations leveled against the petitioner in the reference. Lastly submitted that the charge has already been framed and the case is ripe for evidence and there is every possibility of the trial being concluded in near future as such the petitioner does not deserve concession of bail on the ground of hardship for the reason that government has declared NIVCD as Sub-jail.

5. Heard and perused the record minutely.

6. Admittedly, the plea of post-arrest bail of petitioner has already been turned down by this Court on merits vide order dated 22.04.2020 observing as follows:-

“30. The frequent deposit of cash in the accounts of accused No.1 Syed Khursheed Ahmed Shah and his family members shows that he was allegedly involved in the act of corruption and corrupt practices, which in fact was the major source of his accumulation of assets. The perusal of record further reveals that during the investigation on analysts of bank accounts in the name of accused No.1 Syed Khursheed Ahmed Shah and his benamidars was obtained from banking expert and cash flow chart was prepared by taking into account the income and expenses of the petitioner and his family members.

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32 We have also examined the evidence on record with the assistance of learned counsel for the parties and have come to the conclusion that the existing assets of the accused No.1 Syed Khursheed Ahmed Shah were investigated by the NAB Authorities and tabulated as required in the case of Muhammad Hashim Babar {supra}, which prima facie makes out a case of seemingly accumulation of assets beyond the known source of income with the specification of the role on the part of accused No.1

Syed Khursheed Ahmed Shah connecting him with the offence as charged. Furthermore, all the prosecution witnesses in their 161, Cr.P.C. statements have implicated the accused No.1 and supported the version of the Investigating Officer. Learned counsel for the accused No.1 Syed Khursheed Ahmed Shah has failed to disclose any extraordinary circumstances or extreme hardship for grant of bail to him.

33.No malafide or ill will has been pointed-out against the Investigating officer or NAB authorities. We are of the view that the evidence and the material on the record, prima facie, connect the accused No.1 Syed Khursheed Ahmed Shah with the alleged offence. We are not convinced with the grounds taken by the learned counsel for the accused No.1 for the grant of bail.

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*37. For what has been discussed herein above, we are of the views that the learned counsel for the petitioners Syed Khursheed Ahmed Shah as well Syed Farukh Ahmed Shah have failed to make out any case for grant of the post or pre-arrest bail. Consequently, the **Constitutional Petition Nos.44/2020 and 105 of 2020 stand dismissed**. The interim pre-arrest bail earlier granted to petitioner **Syed Farukh Ahmed Shah** dated 20.09.2019 is hereby recalled.*

7. Impugning the order of this Court, the petitioner preferred Civil Petition No.287-K of 2020 before Hon’ble Supreme Court of Pakistan, which was dismissed as not pressed on 04.06.2021 in the following terms:-

“ Mr. Makhdoom Ali Khan, learned Sr. ASC for the petitioner, proceed with the matter yesterday and the matter was adjourned for today. Today he, after obtaining instructions, does not press the instant petition, however, states that the petitioner will prefer fresh petition before the learned Bench of the High Court on fresh grounds as become available to him under the law, including the grounds of hardship-, delay and/or other grounds.

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4. At this juncture, learned counsel drew our attention to the case of Ahad Khan Cheema vs. National Accountability Bureau through its

Chairman Islam and others {Civil Petition No.2066/2021} disposed of on 10.03.2021, whereby this Court has passed directions for expeditious disposal of the matter within 30 days subject to availability of Bench. Accordingly, in case the petitioner applies for bail on fresh grounds, looking at the facts and circumstances of the case, the learned Bench of the High Court is expected to proceed with the matter expeditiously and decide the same preferably within 30 days but subject to availability of Bench. Learned Special Prosecutor also undertakes that if fresh bail application is moved by the petitioner before the learned High Court, they shall not seek undue adjournments in conclusion of such bail matter. With concurrence of learned counsel as well as the Prosecutor NAB, any order passed earlier in the matter will neither come in the way of the petitioner nor will cause prejudice and the Court will decide the matter afresh in accordance with law. Learned counsel for the petitioner states that the petitioner reverse the right to urge all grounds before the learned High Court as have been urged before this Court, if under the circumstances, so warranted.

5. With concurrence of the learned Prosecutor, the petition is dismissed as not pressed in the terms noted above”.

8. Without prejudice to our earlier order, we are taking into account the grounds raised in this petition including the ground of hardship and delay in the trial mainly pressed and agitated before us.

9. A keen look of the record reveals that an inquiry was initiated on 07.05.2019 on the basis of complaints with regard to accumulation of assets by the petitioner beyond his known source of income, which was upgraded into investigation and led to filing a reference on 19.12.2019 showing the petitioner under arrest on 18.09.2019. He remained under physical remand with NAB Sukkur till 09.11.2019 when he was remanded to judicial custody. After filing the reference the charge was framed on 30.11.2020 after more than 11 months in 30 dates of hearing. In order to determine as to whether the petitioner can be released on bail on the statutory ground, we have perused case diaries, which reveals that charge could not be framed for one reason or the other such as absence of one accused or the other who were on bail; non-production of custody of petitioner; filing of miscellaneous applications from both

sides and initiating proceedings under Sections 512 and 87 & 88 Cr.P.C. against absconding accused Syed Junaid Qadir Shah, the nephew of the petitioner, who remained absconder since filing of the reference till framing of the charge. It will not be out of place to mention here that there are 17 other accused, nominated in the reference, who are alleged to be closed relatives/ benamidars and front men of the petitioner. The record also reflects that on 24.10.2020, 27.10.2020, 03.11.2020, 04.11.2020, 14.12.2020, 21.12.2020 and 18.02.2021 the matter was adjourned due to absence of one accused or the other as well as the adjournments sought on behalf of co-accused. In a case, where adjournments are sought on behalf of accused and they intentionally choose to remain absent on the dates of hearing on one pretext or the other such conduct from accused side can be taken note of and bail can be refused on the ground of statutory delay. Even otherwise provisions of Section 497, Cr.P.C. are not applicable for the purpose of grant of bail to an accused facing charges under NAO, 1999. However, in appropriate cases, the question of delay in the conclusion of trial, depending upon the facts and circumstances of each case on its own merit, has been considered by the superior Courts on the yardstick of hardship viz-a-viz scheme of Articles 4 and 15 of the Constitution. Thus, ipso facto, application of principles for grant of bail embedded in Section 497, Cr.P.C, including the provision of statutory delay, is devoid of any legal force based on the current law and the particular facts and circumstances of this case. We have also taken guidance from the case of *Talat Ishaq v National Accountability Bureau* {P L D 2019 Supreme Court 112}, wherein it was concluded as under:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) *Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused*

person are also looked into before admitting him to bail on the ground of delay.

- (g) *Before admitting an accused person to bail on the ground of hardship caused by a shocking, unconscionable or inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him.*
- (h) *Even in cases of delay ordinarily bail is not granted straightaway and a direction is issued to the trial court in the first instance to conclude the trial within a period fixed for the purpose by the Court itself (as opposed to the time fixed by section 16(a) of the National Accountability Ordinance, 1999 which has already expired). In a case where the Court fixes a time for conclusion of the trial sometimes the Court also observes that in case of non-compliance of the Court's direction the accused person would automatically stand admitted to bail and on other occasions the Court observes that in case of non-compliance of the Court's direction the accused person may approach the High Court again for his bail”.*

10. The learned Special Prosecutor NAB while arguing the matter has drawn our attention to the orders dated 29.06.2021 and 08.07.2021, passed in C.P. No.D-614 of 2021 and C.P. No.D-1072 of 2020, filed by Syed Tahir Hussain Shah and Muhammad Ali Shah before Sukkur Bench, impugning the Notification declaring National Institute of Cardio Vascular Diseases {NICVD} Sukkur as Sub-Jail and constitution of Special Medical Board {SMB} as to determine the ailments of the petitioner stating therein that the petitioner is enjoying normal life in NICVD Sukkur and running his all affairs as well as conducting meetings with government officials. In terms of the said orders reports/replies were sought from NICVD Sukkur and on filing the same this Court shown its dissatisfaction towards such reports and held them as fake and maneuvered and made three specific queries from Director General NAB Sukkur, Chief Secretary Sindh and Dr. Nadeem Qamar of NICVD as follows:-

- {i} What disease does the accused suffer from due to which he has been in the NICVD for nearly two years? Let a report also be filed which reflects the stay duration of other patients suffering from similar ailment?

- {ii} Whether any political and/or official government activities are being undertaken by accused from NICVD?
- {iii} When was NICVD declared as a Sub-jail together with a copy of the Notification of the Government of Sindh

However, the said petitions are pending adjudication and the questions, referred herein above, are yet to be decided, therefore, we would consciously refrain ourselves from giving any observations on such queries. It is, however, surprising to note that a person who is enjoying all possible facilities in the hospital since the date of his judicial remand {09.11.2019} has not urged any ground of ill-health for his release on bail, which shows that the petitioner is not suffering from any life threatening disease and he is enjoying normal life in NICVD Sukkur, which has been declared as Sub-jail by the Government perhaps due to his political influence. In the mentioned circumstances, how we can consider the case of the petitioner on the ground of hardship like any other case wherein the accused is rotten in jail and facing real hardship inside prison more particularly when petitioner did not remain inside jail for a single day which question mark over our system that how a person can take undue advantage owing to his political influence.

11. The concept of criminal misconduct which led to corruption has been defined in the case of *Abdul Sattar and another v. The State* {2016 P.Cr.LJ. 396} as follows:-

"High Court observed that 'corruption' in a civilized society is like a disease like cancer, which, if not detected in time, is surely to malign the polity of country leading to disastrous consequences---'Corruption' is now termed as 'Royal thievery, which affects not only an individual', but also the economy, and the same destroys cultural heritage---Crime of 'corruption' is to be considered as one of the serious problems and threats posed to stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and rule of law--- One must keep distinction between an act of receiving money as 'consideration' for doing an illegal or legal act and the act which falls within meaning of corruption qualifying the term 'misappropriation'."

Even otherwise, the apex Court in recent past has imposed special duty upon the Courts to perform their duties actively, diligently to eliminate corruption and corrupt practices. It is high time that standards are set and system put in place to develop a culture of accountability at all level in order to cleanse over system and institutions from the evil of corruption, loot and plunder of national resources by a few irrespective of their status in the system. At this juncture, we are of the considered view that the petitioner has not been able to make out a case for grant of bail on the ground of hardship. As to the delay in the trial is concerned, suffice it to say that from the facts and circumstances of the case, discussed herein above, the delay is attributed to the petitioner and other co-accused, who are closed relatives/benamidars and front men of the petitioner, therefore, on this score also the petitioner is not entitled to the grant of post-arrest bail.

12. The documentary as well as oral evidence in the shape of 161, Cr.P.C. statements of witnesses collected by NAB, and referred by learned Special Prosecutor NAB is sufficient to connect the petitioner, *prima facie*, with alleged offence. No malafide or ulterior motive affecting the outcome of investigation on the part of NAB has been established. NAB has acted against the petitioner only after receiving complaints against him highlighting corruption and corrupt practices and accumulation of assets beyond his known source of income. The resultant reference does not appear to be influenced by personal motive of the investigating officer to consider extending concession of bail to the petitioner even on hardship ground.

13. For the foregoing reasons, we are of the considered view that the petitioner has not been able to make out a case for grant of bail on the ground of hardship and delay in the trial. This petition is, therefore, dismissed. However, taking into account the right of accused for fair and speedy trial we would direct the learned trial Court to expedite the trial without allowing any adjournment on any flimsy ground and complete it as quickly as possible preferable within a period of six months under intimation to this Court through MIT-II. Before parting with this order we may make it clear that the trial Court shall not be influenced by the observations made herein

above and shall decide the case purely on merits and material made available before it without causing prejudice to either side. The office shall immediately communicate a copy of this order to the concerned Accountability Court for information and compliance.

14. The petition, listed herein above, stand disposed of in the foregoing terms.

JUDGE

JUDGE

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