

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Accountability Appeal No. D - 46 of 2018

C. P. No. D - 996 of 2018

Cr. Accountability Appeal No. D - 47 of 2018

C. P. No. D - 755 of 2018

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Fahim Ahmed

Siddiqui

Date of hearing: 12.06.2018

Date of order: 21.06.2018

Mr. Abdul Waheed Bhanbhro, Advocate for appellant / petitioner in Cr. Accountability Appeal No. D-46/2018 and C. P. No. D-996/2018.

M/s Ghulam Shabbir Shar and Ashok Kumar K. Jamba, Advocates for appellant / petitioner in Cr. Accountability Appeal No. D-47/2018 and C. P. No. D-775/2018.

Mr. Muhammad Zubair Malik, Special Prosecutor NAB.

Mr. Oshaque Ali Sangi, Assistant Attorney General.

ORDER

SALAHUDDIN PANHWAR, J. - Through captioned petitions, the petitioners seek suspension of impugned judgment dated 05.04.2018, passed by Accountability Court Sukkur, in reference No.16/2014 (Re. The State V/S Zubair Ali Almani and others).

2. Precisely, relevant facts are that National Accountability Bureau (NAB) filed reference with regard to misappropriation of funds in Military Accounts on the basis of suspicious transaction reported by National Bank of Pakistan, wherein it was contended that officials of *Treasury* in connivance with officials of *National Bank of Pakistan* misappropriated Rs.687.4 million.

3. After full-dressed trial, the petitioners along with co-accused persons were convicted and sentenced to suffer ten (10) years and five (05) years respectively.

4. Learned counsel for petitioner Zubair Ali Almani contends that he has served substantive sentence of 03 years 07 months and 01 day and with remission he has completed 05 years 02 months and 22 days. Whereas, he has been sentenced for 10 years and half of the portion he has already completed. Hearing of appeal will take time, therefore, it would be in the interest of justice to release him on bail by suspending the sentence. It is further contended that co-accused persons have been granted bail on serving 01 year's sentence, whereas, their sentence was for 05 years. On that analogy, he has served more than that period the co-accused persons did. As well, it is contended that on similar allegations, two accused persons were exonerated, whereas, one accused Sajjad is acquitted from the charge. Hence, on merits petitioner also deserves post-arrest bail. He relied upon on **2003 S C M R 22, 2012 M L D 1532, 2008 S C M R 1439, 2008 S C M R 165, P L D 2009 (SC) 388 and 2003 Y L R 3240.**

5. Learned counsel for petitioner Khan Muhammad Marri contends that he has served substantive sentence of 02 years 06 months and 24 days and with remission he has completed 03 years and 07 days. Whereas, he has been sentenced for 10 years and almost one third portion he has already completed.

6. Learned Special Prosecutor NAB contended that serious allegations are against the petitioners, hence, they are not entitled to bail. He relied upon **P L D 2018 (SC) 40, 1995 S C M R 1249, P L D 2010 (SC) 1109, 2004 S C M R 12, P L D 2006 (SC) 483, 2007 S C M R 246, P L D 2002 (SC) 845 and 2002 S C M R 1211.**

7. Heard and perused the record.

8. *Prima facie*, instant application(s) have been on *sole* ground of rule of consistency. Legally none could deny the legal position that *rule of consistency* has its applicability for deciding question of release of an accused or a *convict* even. This principle is based on *equity* which the *Court*, being a place of administering justice, cannot deny unless there are exceptional circumstances making case of one different from other. Here, it may well be added that an appeal, *legally*, is continuity of trial where question of *legality* or *otherwise* of an awarded conviction opens for

determination. This has been the reason for letting a provision for suspending sentence and release of a convict has been made available even at appellate stage. The ground of *hardship* is available even at appellate stage if substantive sentence is served and appeal is likely to take more time because law is quite clear that an accused or a *convict* cannot be left at the mercy of prosecution to rot in jail pending determination of his *guilt* or *legality* of an awarded conviction *even*. Reference may well be made to case of Himesh Khan v. NAB Lahore & Ors 2015 SCMR 1092 wherein it was observed as:-

“ 13. An accused person cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. The inordinate delay in the conclusion of trial of detained prisoners cannot be lightly ignored provided it was not caused due to any act or omission of accused.”

Heinousness of an offence becomes irrelevant when bail plea is pressed solely on count of *rule of consistency* but criterion remains only that whether the case of accused or convict, as the case may be, is similar to that of co-accused or co-convict or circumstances, resulted in benefiting co-accused / co-convict are similar or *otherwise*? At this juncture, it would be conducive to refer paragraphs 2 and 7 of order dated 10.05.2018 passed by this Court in C. P. No. D-701/2018, which are that:

“ 2. The petitioners / appellants have served some portion of their sentence as UTP, earned remission and the remaining portion which they have yet to serve comes as under:-

- i) *Petitioner / appellant Abdul Sattar Sangi*
Substantive sentence served
One month, five days
Remission earned
Nil
Remaining portion to be served
Four years, ten months & twenty five days
- ii) *Petitioner / appellant Muzamil Hussain Channa*
Substantive sentence served
Ten months, twenty one days
Remission earned
Two months & twenty one days
Remaining portion to be served
Three years, ten months & nineteen days
- iii) *Petitioner / appellant Abdul Bari Mangi*
Substantive sentence served
Five months, twenty two days
Remission earned
Two months & six days
Remaining portion to be served
Four years, four months & two days

- iv) *Petitioner / appellant Abdul Hafeez Dharejo*
Substantive sentence served
One year, eight months, one day
Remission earned
Three months & twenty one days
Remaining portion to be served
Three years & eight days
- v) *Petitioner / appellant Syed Lal Shah*
Substantive sentence served
One year, nine months & eighteen days
Remission earned
Three months & twenty three days
Remaining portion to be served
Two years, ten months & nineteen days

7. *Admittedly the petitioners / appellants have preferred their appeals which have been admitted for regular hearing. The appellants have remained in jail and have earned remission and remaining portion which they have to serve is below three or four years. There is back log of pendency of numerous appeals and in the wake of huge backlog of cases, hearing of these appeals is far sighted. The sentence of four years is shorter in view of the case referred above. In the identical circumstances, petitioners were admitted to bail in the case relied upon by the counsel for petitioner, treating the sentence of five years as short one, therefore we are of the view that the petitioners / appellants are entitled to suspension and grant of bail during pendency of their appeal referred above."*

Candidly, co-accused persons convicted for five years, have been granted bail by this Court mainly on the plea that they have completed major portion of their sentence, whereas, merits were not considered. *Prima facie*, the present petitioners / convicts have also served *substantive* portions of awarded conviction hence their case is, *undeniably*, similar to that of such released co-accused persons. In such circumstances, denial or with-holding of benefit of *rule of consistency* would not serve the purpose of *Administration of justice*.

9. Under these circumstances, when this Court has already granted bail to the co-accused persons, judicial propriety demands applicability of rule of consistency as both petitioners have served substantive part of sentence and co-accused persons were already granted bail, therefore, in the of law, the petitioners are also entitled for the same relief. Accordingly, they are admitted to bail subject to their furnishing solvent surety in the sum of Rs.5 million each to the satisfaction of Additional Registrar of this Court with same rider that they shall deposit their original passport and Ministry of Interior, Government of Pakistan shall not issue any fresh / duplicate passports to the petitioners without permission of this Court.

Needless to mention that appeal is continuity of trial hence during pendency of appeal, appellants can not take any benefit of suspension order and would not be entitled for posting and release of property, that would be subject to decision of appeal.

JUDGE

JUDGE

Abdul Basit