

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI.**

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.  
Mr. Justice Shamsuddin Abbasi

**C.P.No.D-1601 of 2021**

Shoukat Hussain

**Versus**

Chairman, NAB & others

**C.P.No.D-1623 of 2021**

Haji Wali Muhammad

**Versus**

The State through the Chairman, NAB & others

**C.P.No.D-1553 of 2021**

Sultan Qamar Siddiqui

**Versus**

The State through the Chairman, NAB & others

**C.P.No.D-1903 of 2021**

Nisar Ahmed Morai

**Versus**

The State through the Chairman, NAB & others

**Date of hearing : 13.04.2021, 14.04.2021 & 20.04.2021**

**Date of order : 20.04.2021**

Mr. Khawaja Shamsul Islam, advocate for petitioner  
Mr. Muhammad Jamil, advocate for petitioner  
Mr. Obaid ur Rehman, advocate for petitioner  
Mr. Muhammad Rehman Ghous, advocate for petitioner  
M/s. Riaz Alam and R.D. Kalhoro, Special Prosecutor, NAB

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**ORDER**

**Muhammad Iqbal Kalhoro, J:-** Having been convicted and sentenced in Reference No.02/2018, among others, for 07 years and to pay fine of Rs.10 million, in default, to undergo further imprisonment for 02 years vide a judgment dated 20.02.2021 by learned Accountability Court No.1, Sindh at Karachi, the petitioners have preferred these constitutional petitions (besides Appeals against conviction and sentences) for suspension of sentences.

2. The grounds taken by learned defence counsel for such relief mainly revolve around their unwavering urge on the short sentence awarded to the petitioners plus the fact that they have already undergone some portion thereof. The evidence completely lacking incrimination qua role of each petitioner is their next main argument. Lack of clarity in specifying the role and fixing proportionate responsibility to each petitioner by the trial court is also a salient feature of their contentions. For petitioner Sultan Qamar Siddiqui, an additional ground of his acquittal in a connected reference filed for accumulating assets beyond source of income has also been pressed and it is said that allegation of misuse of authority in awarding alleged fake contracts to bogus companies, sans any impeaching evidence, would be looked at with a view deprived of any penal consequences. Emphasis on his arrest by Military in Safora Chowarangi pogrom case and his ultimate acquittal has also been laid before us to shore up his case for suspension of sentence. His counsel has also read some chosen portions from evidence for identifying contradictions to introduce an element of further enquiry into the guilt of the petitioner. They, in the end, have relied upon the case laws reported in 2016 SCMR 1325, 2013 YLR 325, 2005 SCMR 648, SBLR 2019 Sindh 187, PLD 2003 SC 891 Pg.899, , PLD 2002 SC 572 Pg. 578, 2010 P Cr. LJ 1988 Pg. 1998, 2002 P Cr. LJ 1712, Pg.1751, 2018 PCr. LJ 1380, 2019 MLD 358, PLD 2019 Islamabad 38, PLD 2016 SC 276, PLD 2008 SC 166, 2008 SCMR 1118, PLD and PLD 2001 Peshawar 80 and an un-reported order dated 03.03.2021 passed by this court in C.P. No.D-6820/020.

3. On the other hand, learned Special Prosecutor, NAB has taken exception to what defence has emphasized and has urged that sufficient evidence, which he has choosenly read, against the petitioners has come on record and mere fact that they have spent pre-conviction time in jail would not entitle them to the relief sought for here. He has relied upon case laws reported in 2021 YLR 188, 2019 SCMR 372, 2013 SCMR 1403, 2007 SCMR 246, PLD 2006 SC 483, PLD 2003 Karachi 266 and 2002 SCMR 1211.

4. We have heard the parties and perused the material available on record and gone through the case law cited at bar. Petitioners have been convicted, for 07 years and fine of Rs.10 million for, among others, awarding fake contracts worth Rs.5,54,26,7000/- to bogus companies. In doing so, they are alleged to go round the due procedure and rules and to by-pass a process of tenders, etc. to render it a sign of some credibility. To

vouch for such allegations, evidence of a number of witnesses has been brought by the prosecution in the case. A tentative reading thereof does not create a denomination attracting a scenario of suspicion into its veracity to give away a normal course of hearing the appeals which petitioners have already preferred and are ripe for hearing, and suspend the sentence, that too in exercise of constitutional jurisdiction. No law allows such a resort or permit examination of the evidence deeply at this stage and record findings on merits.

5. Pre-conviction time spent by the petitioners in the jail has already been considered by the trial court and it does not tend to lessen either gravity or quantum of sentence so as to deem it a deciding factor for granting relief of a kind pressed by the petitioners here either. The jail term, petitioners have been condemned to by the trial court, cannot be upset, or otherwise, without reappraisal of the evidence available on record.

6. The case law relied upon by defence has mainly been rendered in the appeals is based on appraisal of evidence and is thus distinguishable. The other set of the case law contemplating suspension of sentence on the ground of a short sentence is not applicable here for the reasons the petitioners' sentence is not short one firstly, secondly the paper book is ready and the appeals are ripe for hearing, and thirdly we have reservation over applicability of this proposition in NAB cases, where the maximum punishment provided is up to 14 years, as a consideration for suspending the sentence. No case for interference at this stage is made out. Accordingly, the petitions are dismissed. However, the office is directed to post appeals of the petitioners in the court for regular hearing after six weeks for which advance intimation shall be issued to the parties concerned.

7. The petitions stand disposed of in above terms along with pending application(s)

JUDGE

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