

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Cr. Rev.Appln:No.D-04 of 2025

PRESENT

Mr. Justice Arshad Hussain Khan.

Mr. Justice Syed Fiaz ul Hassan Shah.

Applicant : Muhammad Ashraf son of Ali Akbar Mezani
through Mr. Muhammad Jamil Ahmed,
Advocate.

Respondent : The State through Mr. Moazzam Ali,
Special Prosecutor NAB.

Date of Hearing: 10.04.2025.

Date of Order: 10.04.2025.

ORDER

Dr. Syed Fiaz ul Hassan Shah, J: Through captioned Revision, the applicant has impugned the Order dated 26.02.2025 passed by the Accountability Court-II at Hyderabad.

1. We have noticed that respondent/prosecution-NAB has filed a Reference No.4 of 2022 nominated 84 accused including the applicant and the allegation against the Applicant (Muhammad Ashraf in CrI Rev No.D-04/2025) as set forth at Paragraph-13 as well as Paragraph-16 of the said reference with individual liability of Rs.662,334,760/=.
2. We have further noticed that the case framed shows that the said Applicant is simply low grade bank employee in MCB at Dadu and the amount of crime proceed have been taken away by the private respondents as per Respondent's NAB reference.
3. Initially, the Applicant has filed applications under Sections 498/499 Cr.P.C before the Accountability Court-II at Hyderabad (hereinafter referred as trial Court) for reduction of surety

amount which has been settled by the trial Court in its Bail granting Order dated 01.02.2025 and according to that Order, the post-arrest bail was granted to the Applicant in NAB Reference No.02 of 2023 while fixing the surety amount in a sum of rupees equivalent to the amount of liability amount alleged by the Respondent-NAB (sic) the amount of such surety has not been given in the bail granting Order and implicitly referred to the liability whatever fixed by the prosecution which is against the judicial norms.

4. The allegations against the Applicant as leveled by the NAB Prosecution are that he was clearing/teller officer of MCB Bank, Dadu and he has authorized of 953 cheques which amount to the tune of Rs.662,334,760/- transacted as a daily routine of banking transaction. So far the position surfaced out, it is a fact that irrespective of the factum that such amount is crime proceeds or otherwise, the Applicant is not the beneficiary of said amount nor the Respondent NAB has recovered any amount from this low grade bank official. The only possibility could be that the Applicant has mixed up with the co-accused or culprits as abettor or facilitator for some kickbacks.
5. The concept of Bail has been highlighted by the Hon'ble Supreme Court in a case of ***Muhammad Taimur vs Chairman, National Accountability Bureau NAB Headquarters, Islamabad and others (2023 SCMR 1093)***. The relevant portion of the said case law is reproduced hereunder:

“3. It is settled law that bail cannot be withheld as a punishment. Moreover, the conviction and incarceration of a person who is ultimately found guilty upon conclusion of trial can repair the wrong caused by erroneously extending the relief of interim bail but, no satisfactory reparation can be offered to a person who has been wrongly accused for unjustified incarceration

at any stage of the case, if in the end a verdict of acquittal is handed down¹. It is equally settled law that when the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any A rider or condition that would render the concession of bail granted by the court as ineffective or redundant². Bail is one of the most important elements of the scheme of criminal law and its consideration is premised on the principle that an accused is presumed to be innocent until proven guilty. The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family. When a court is satisfied that a case for grant of bail has been made out then refusal to exercise discretion in favour of releasing the accused, subject to conditions described under section 499 of the Criminal Procedure Code, 1898 ("Cr.P.C.") would not be in conformity with the right to liberty and the fundamental rights guaranteed under the Constitution. The conditions described under section 499 are ordinarily sufficient to guarantee the presence of an accused before a court during the trial proceedings. Nonetheless, the court may refuse grant of bail or make it subject to conditions in order to regulate the conduct or movement of an accused. A court, for example, may be satisfied that, if released on bail, the accused would abscond or that there exists a likelihood of tampering with the evidence or influencing the witnesses. In such eventualities the court must exercise its discretion with care and caution, by balancing the scales of justice and equity. Even if bail is to be granted subject to conditions then they must not be unreasonable, disproportionate or C excessive. The foundational principles of criminal law are the presumption of innocence of an accused and that bail must not be unjustifiably withheld because it then operates as a punishment before being convicted upon conclusion of the trial. The unnecessary and unjustified incarceration of an under trial prisoner simultaneously becomes a burden on the taxpayers and the already overcrowded prisons."

6. Furthermore, the concept of surety amount in the equivalent amount of the liability in the criminal case has emerged in the case of ***Shamraiz Khan vs the State (2000 SCMR 157)*** and followed in ***Syed Muzaffar Ali and another vs the Chairman NAB and others (2016 P.Cr.L.J 1183)***. In the said case, the National Accountability Bureau has given expressively consent for furnishing surety of equivalent amount. However, in such

cases the crime proceeds had agreed to return unconditionally. In the said cases prosecuted by the NAB under the National Accountability Ordinance 1999, the legislature has framed a policy by inserting section 25 of the said ordinance and if, bail granting Order of Court is subject to demand or order and depend upon equivalent surety amount securing liability amount in every NAB case, it would seriously opposed the judicial doctrine and settled principles; for instant: Judicial norms of bails, or every case has its own peculiar facts and circumstances and it would virtually rendered Section 25-B of the National Accountability Ordinance 1999 redundant which is indeed the concept of plea bargaining. This concept of plea Bargaining has purposely given by the legislatures to the Respondent-NAB and it would become obsolete and would also verge the rule of criminal jurisprudence generally accepted that the liabilities would be decided after the recording of evidence. It is settled law that a person presumed innocent until proven guilty of a charge. Reliance can be placed on “***The State and others v. Abdul Khaliq and others***”, (PLD 2011 SC 554) and ***Muhammad Shafi v. Muhammad Raza and another*** (2008 SCMR 329).

7. Conversely, the judicial proprietary demands that no uncertainty exists in the judicial orders for instance if, the applicant before us after recording of evidence acquitted by the Court, he would get the money back and in case of conviction after lengthy trial he would engage the NAB into a plea bargaining process once he has taken into custody, therefore, in our humble opinion the conditional bail order subject to the furnishing of surety equivalent to the liability amount in every NAB case is improper

and inappropriate in the light of principles for bail settled by Hon'ble Supreme Court in case *Muhammad Taimur (supra)*.

8. It is settled law that every case depends upon each peculiar circumstances and facts of the case and the material available with the Court. The Hon'ble Supreme Court has not approved such conditions and uniformed directions and had declared ultra vires in its judgments more than one. For reference the cases of, ***“Javed Iqbal vs the State” (2023 SCMR 401), “Tallat Ishaq vs National Accountability Bureau (NAB) through Chairman and others” (PLD 2019 SC 112), “Maqbool Ahmed Mahessar and others vs National Accountability Bureau (NAB) through Chairman and others”, (2021 SCMR 1166) relying on “Hidayatullah Khan’s” reported in (PLD 1949 Lahore-1)*** can be referred.
9. We have scanned the bail granting order, which reveals that bail even otherwise has been granted on the medical grounds due to serious health condition of the Applicant.
10. In view of above, the impugned Order dated 26.02.2025 is hereby set-aside and the amount of surety is reduced in the sum of Rupees ten million and PR bond in the like amount to the satisfaction of trial Court. This Revision Application stands disposed of accordingly.

JUDGE

JUDGE