

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Abdul Mobin Lakho.**

C.P. No.D-7103 of 2021
Abdul Latif

Versus

Chairman, NAB & others

For date of hearings : 25.01.2022 & 02.02.2022
Date of order : 02.02.2022

M/s. Farooq H. Naek and Samiullah Soomro advocate for petitioner
Mr. Shahbaz Sahotra, Special Prosecutor, NAB
Ch. Waseem Akhtar, Assistant Attorney General
Qamar Abbas, IO/Deputy Director, NAB

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioner is seeking post arrest bail by means of this petition. On a previous occasion, his attempt for the same relief did not bear fruit and was frustrated vide order dated 13.09.2018. He approached the Honourable Supreme Court for the same relief in Civil Petition No.3658/2018, but it was disposed of with direction to the trial court to decide the case within 60 days vide order dated 15.01.2019. But when it did not happen, petitioner filed a bail application before the trial court, which has been dismissed vide order dated 20.11.2021.

2. It is stated, originally Entry No.28 in VF-VII was recorded in favour of Abdul Karim and Ezzo sons of Shakal Gabol in respect of survey Nos.16, 18, 75 and 82 in Deh Songal on Yaksala lease rights for the year 1937-1938. But by manipulation and fabrication, 36 acres of government land was recorded in favour of Rahi Khan against the same Entry No.28. Subsequently, Entry No.34 in respect of same land was recorded in favour of one Abdul Jabbar with an endorsement that Rahi Khan had sold out land to him through oral statement, who was then shown to have gifted the land to his son Muhammad Ibrahim through a registered gift deed dated 17.01.2003.

3. The allegations against the petitioner are that he recorded both the entries, found fake in the enquiry, first in favour of Rahi Khan, from him to

his son Abdul Jabbar, and then in favour of Muhammad Ibrahim, a co-accused, when he was Mukhtiarkar. Besides, petitioner also allegedly issued NOCs for sale certificate of the said land and made correspondence with relevant officials to show that record was genuine.

4. Learned defence counsel has argued that petitioner is innocent and has been falsely implicated in this case; that petitioner is in jail since 31.03.2018, for about 04 years, and still the trial has not come close to conclusion; only 29 out of 45 witnesses have been examined; that delay is not on part of the petitioner; that witnesses examined so far have not implicated the petitioner as is evident from their cross examination. He has relied upon the case law reported in **2011 MLD 335, 1962 PLD SC 495, 2021 SCMR 2011, 2021 PLD SC 738, 1982 SCMR 153, 2020 YLR 1571, 2017 MLD 836, 2020 MLD 614, 1982 PLD SC 282, 2021 P Cr.LJ 935 & 2019 YLR 1617**

5. Learned Special Prosecutor, NAB, I.O. and learned Assistant Attorney General have opposed bail on the ground that delay in trial is not attributable to the prosecution; that at least on seven occasions petitioner sought adjournment and that the other defence counsel have also sought time on many occasions. His application for same relief earlier has been dismissed by this court on merits; and he even could not succeed to get the relief from the Supreme Court. In order to support their case, they have relied upon the case law reported in **2019 SCMR 372, PLD 2019 SC 112 and an unreported order passed in C.P. No.D-6551/2020 and 1199/2021.**

6. We have heard the parties and perused the material available on record including the case law cited at bar. There are five accused in the Reference, out of whom one has expired, one is absconder, two are on bail and it is only the petitioner, the last one, who is in jail since 21.03.2018, four years about. In this period, he has sought seven adjournment in all, but notably without any resistance from the prosecution. Contention that delay is not attributable to the prosecution therefore is not entirely correct. If the trial has not reached even the advanced stage for the last four years is because prosecution has failed to perform its duty as diligently as required

and made serious efforts to oppose attempts of defence to seek adjournments.

7. It has been laid in the case reported in **2015 SCMR 1093** that adjournments sought by other accused cannot be attributed to the one seeking bail on the ground of hardship and delay. Therefore, the adjournments sought by other accused will not be counted against the petitioner. Even otherwise, mathematical calculation of the dates sought by either party in the trial is not the scheme to determine right of an accused to bail on the ground of delay and hardship. Out of 45 witnesses, only 29 witnesses have been examined so far in the four years and there is nothing to show that in next few months the prosecution is going to conclude the case. In the facts and circumstances, the case for bail on the ground of hardship and delay in the trial has been made out.

8. Accordingly, this petition is allowed and the petitioner is granted bail subject to furnishing a solvent surety in the sum of Rs.500,000/- (Five hundred thousand only) and P.R. bond in the like amount to the satisfaction of the Nazir of this Court. He is directed to cooperate in the proceedings of the trial and the trial court, if finds the petitioner causing any delay in the trial, may file a reference before this court for recalling the concession granted to him by means of this order.

9. Petition stands disposed of in the above terms. The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE
JUDGE

Rafiq/P.A.