

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh, CJ
Mr. Justice Mohammed Karim Khan Agha, J

C.P. No.D-2462/2018

Iqbal Ahmed Bablani

Vs.

Federation of Pakistan & others

Date of hearing:	30-04-2018.
Date of Order	11-05-2018
Petitioner:	Through Mr. A.R Sayed, Advocate.
Respondents:	Through Mr. Muhammed Altaf, Special Prosecutor NAB.

ORDER

Mohammed Karim Khan Agha, J. By this order we propose to dispose of the above petition whereby the petitioner (Iqbal Ahmed Bablani) has applied for post arrest bail in National Accountability Bureau (NAB) **Reference No.1 of 2016 The State Verses Iqbal Bablani and others** where he along with 5 other co-accused have been accused of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO). Earlier by order of this Court dated 23-05-2016 the ad interim pre arrest bail of the petitioner was recalled and his petition for post arrest bail was dismissed by this court on merits on 29-09-2016. He has again through the above petition approached this court for post arrest bail but this time on the grounds of hardship.

2. As per reference the petitioner at the time of the alleged scam was Secretary Transport and Mass Transit Department Government of Sindh. In essence by misusing his authority and also taking bribes/kickbacks the petitioner in connivance with the other co-accused caused a massive loss to the National Exchequer as well as benefiting himself through processing, approving and making illegal advance payments in respect of the purchase of heavy vehicles, IT equipment and mini buses and Mazda trucks and as such the NAB filed the aforesaid reference against him and the other co-accused.

3. The petitioner has sought post arrest bail solely on the grounds of hardship. Learned counsel for the petitioner submitted that the petitioner was arrested on 23-05-2016 and has been in jail for nearly two years; that the delay on the part of the conclusion of the trial is through no fault of his own; that the trial is not within sight of conclusion and as such he is entitled to be released on bail on hardship grounds. In support of his contentions he has placed reliance on the court dairy sheets from 09-05-2016 until 21-04-2018.

4. On the other hand learned counsel for NAB has submitted that the petitioner is not entitled to post arrest bail on hardship grounds as the delay in conclusion of the trial has mainly been caused by the petitioner and as such his application for post arrest bail on hardship grounds should be dismissed. He has also placed reliance on the court dairy sheets from 09-05-2016 until 21-04-2018.

5. We have heard learned counsel for the parties and gone through the court dairy sheets from 09-05-2016 until 21-04-2018 with their able assistance.

6. In recent times the Hon'ble Supreme Court and this court has taken the view that in NAB cases where post arrest bail is sought on hardship grounds amongst other grounds essentially three main grounds are to be considered and each applicable to the petitioner's case. Namely (a) how long the petitioner has been in jail, (b) whether the delay in concluding the trial has been on account of the petitioner or someone acting on his behalf and (c) how long is the trial likely to take to conclude.

7. Based on these guidelines it appears that the petitioner has spent almost two years in custody and as such he would qualify for bail on the grounds of hardship based on (a) above. However a review of the order sheets reveal that **on at least 32 occasions** the trial has not proceeded due to the fault of the petitioner or his counsel (this does not include cases where the P.O was on leave, when the PW was not present and lawyers strikes etc). It seems that learned defense counsel is rarely available to proceed with the matter and as such the case is adjourned time and again. **From a review of the order sheets we have no doubt in our minds that the petitioner or someone acting on his behalf has been**

instrumental in delaying the completion of the trial. As such we are of the view that the petitioner should not be able to benefit by being granted bail on hardship grounds on account of the delay being caused on his part.

8. Turning to the third aspect namely how long is the trial likely to take to conclude we note that initially there were 5 other co-accused in the reference but we have been informed by the NAB that all the other co-accused have admitted their guilt and entered into plea bargains with the NAB and as such the petitioner is now the sole accused in the reference. Thus, in our view, since there remain 15 witnesses (some of whom NAB has informed us will be given up) and now only one accused with only one cross examination from the petitioners side we are of the view that this trial can be concluded within 3 months of the date of this order provided that the petitioners counsel is present and proceeds with this matter on each and every date of hearing.

9. For the above reasons the petitioners petition for post arrest bail on hardship grounds is hereby dismissed. However we direct the trial court to proceed with this matter on a day to day basis and complete the trial of the petitioner within 3 months of the date of this order. The office shall immediately transmit a copy of this order to the concerned accountability court for compliance. If the trial is not completed within this time period the petitioner, if so advised, will be at liberty to move a fresh application for bail before this court.