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## IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No.D-7295 of 2015

Khan Muhammad Mari

Vs.

Chairman NAB

Date of hearing:	29.04.2016.
Date of Order	19.05.2016
Petitioner:	Through Mr. S.M. Iqbal, Advocate.
Respondents:	Through Mr. Abdul Karim Lohrani, Sr. Prosecutor NAB Sukkur a/w Ms. Seema Razaque, AD, NAB/IO.

### ORDER

**Mohammed Karim Khan Agha, J.** This petition has been filed for grant of post arrest bail on statutory grounds in Reference No.16 of 2014 The State v. Zubair Ali Almani & others.

2. The allegation against the petitioner as per reference are that the National Bank of Pakistan (NBP) Sukkur Region lodged a complaint with FIA Sukkur dated 24.06.2014. The FIA registered FIR No.51/2014 and filed challan before the Special Court (Offences in Banks), Karachi. The subject case was transferred from Special Court (Offences in Banks) to Accountability Court No.1, under section 16-A(a) of NAO, 1999 which is pending before the Hon'ble Court in Reference No.16 of 2014. A Suspicious Transaction Report (STR) was received from Financial Monitoring Unit (FMU) regarding huge deposits in the bank accounts of Zubair Ali Almani (accused No.1) maintained at HBL Pano Aqil and Freer Road Sukkur. An inquiry was authorized which was converted into investigation vide letter No.242059/1/FCIW/CO-A/NAB Sindh/2014/K-4085 dated 23.10.2014 by the Director General National Accountability Bureau (Sindh).

3. The allegations against the petitioner as narrated in para 17 of the said reference are that the investigation report reveals that Khan Muhammad Mari (accused No.13/petitioner) was working as

Sub-Accountant in District Accounts Office Sukkur and handling government scroll received by various branches of NBP in Sukkur Region along with original instruments for further transfer to AGPR Office Karachi. His official duties involved receipts of Govt. Debit/Credit Daily Scroll along with original instruments/vouchers/CMA Cheques from concerned NBP Branches and then enter them into the records/books then forwarding the same to other concerned sub-accountant for further process. Since the cheques of CMA were valid for 03 months, therefore, the accused No.13/petitioner instead of sending original cheques of CMA Karachi to AGPR provided these original cheques in next month after 1<sup>st</sup> clearing/payment to the accused No.1 of NBP Pano Aqil who further processed them. After twice debiting the amounts from Central Government Account "C-1" of NBP, Pano Aqil Branch, Karachi against every cheque of CMA, the other accused persons (employees of NBP Pano Aqil city branch) again forwarded these CMA cheques along with Bank scroll to accused No.13/petitioner. As a result of which these cheques of CMA, Karachi were again posted in SAP system of Treasury Office Sukkur and the amounts of these cheques were again obtained from the Account No.G-10419 (Assignment CMA - KC) Karachi. The cheques of CMA are mentioned in Para 39(d) of the Investigation Report. As per plea of accused No.1 that accused No.13/the petitioner was given all amount in cash around Rs.163,000,000/-. The bank accounts of the accused No.13/petitioner are as per para 39(g). The accused No.13/petitioner has also owned the properties mentioned in para 39 (h) registered in his own name and his family (son/brother).

4. In the light of above, it has been established from the investigation that the accused No.1 to 16 (including the petitioner) in connivance with each other fraudulently embezzled an amount of Rs. 687.4 million from NBP Pano Aqil Branch and caused loss to the government exchequer. Thus the accused persons have committed the offence of corruption and corrupt practices as envisaged under section 9(a) of the National Accountability Ordinance 1999 (NAO), punishable under section 10 of the said ordinance.

5. Learned counsel for the petitioner submitted that the petitioner is seeking post-arrest bail only on the ground of

statutory delay in the National Accountability Bureau (NAB) Reference No.16/2014 pending adjudication in the Accountability Court Sindh at Sukkur re: The State v. Zubair Ali Almani and others arising out of FIR No.51/2014 registered under section 409, 467, 471, 477-A, 109 PPC r/w section 5(2) PCA-II, 1947 by the FIA at P.S. Crime Circle, FIA Sukkur. The petitioner was arrested by the FIA on 11.11.2014. Initially the challan was submitted before the Special Court (Offences in Banks) Sindh at Karachi and subsequently the case was transferred to the NAB Court under section 16-A(a) of NAO, 1999 and a Supplementary Reference was filed by NAB against the accused (including the petitioner) on 27-03-2015.

6. Learned counsel for the petitioner submitted an earlier petition for post arrest bail on the basis of purely medical grounds was dismissed by this court on 07.04.2015, and that he filed a second petition for post arrest bail on merits which was also dismissed by an order of this Court dated 13.07.2015 an appeal against which was later dismissed by the Hon'ble Supreme Court by order dated 24.08.2015. This is therefore the petitioner's third application for bail however it is in our view maintainable as it is the first bail petition which has been filed by the petitioner on account of statutory delay.

7. Learned counsel contended that the petitioner was arrested on 11.11.2014 and since then he is in continuous custody and completed one year on 11.11.2015, therefore, the petitioner filed instant petition for the purpose of grant of post arrest bail merely on the ground of statutory delay bearing in mind that the trial has not yet been completed. He further argued that there are 52 prosecution witnesses and there is no possibility of conclusion of trial at an early date as envisaged under S.16 (a) NAO and as such, the case of the petitioner falls under section 497(1)-(iii)-(a) Cr.P.C. (Amendment) Act, 2011 and as such he should be enlarged on bail.

8. Learned counsel for the petitioner in support of his submissions placed reliance on the case of **Muhammad Jahangir Badar v. The State & others** (P L D 2003 S.C. 525)

9. Conversely learned Sr. Prosecutor NAB Sukkur vehemently opposed the pleas taken by the learned counsel for the petitioner



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for the grant of bail on the ground of statutory delay as the charge was framed on 11.01.2016 by the trial court and the petitioner has been responsible for a number of the adjournments and as such the petitioner is not entitled for concession of bail on the ground of statutory delay and his petition is liable to be dismissed.

10. We have considered the submissions of learned counsel for the parties, perused the record, considered the relevant law and case law cited by them at the bar.

11. The maximum prison sentence which can be awarded in a NAB reference under S.10 (a) NAO is up to 14 years imprisonment. Statutory bail is permissible under S.497 Cr.PC which based on the circumstances of this case in relevant part provides as under.

"497. When bail may be taken in case of non-bailable offence. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.

Provided....

Provided....

**Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail.**

(a) **who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded;**

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life."

12. As can be seen in this case in order for the petitioner to be entitled to statutory bail he must show that:

(a) he has been detained for a continuous period of one year and that no delay in the trial has been caused by him or any one else acting on his behalf and

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(b) he is not a previously convicted offender for an offence punishable with death or imprisonment for life or in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life."

13. A review of the order sheets of the concerned Accountability Court from 29-11-2014 until 4-11-15 shows that no delay in the proceedings were caused on the part of the petitioner or any one else acting on his behalf.

14. A report regarding progress in the trial of Reference 16/2014 State V Zubair Ali Almani and others dated 30-4-16 received from the learned Accountability Court Judge Sukkur reveals that from the period when the diary sheets end i.e. 14-11-15 until 16-5-16 the petitioner was responsible for only one adjournment on account of his counsel seeking time to go through the case as he had only been recently appointed. Even on that date another counsel for one of the accused also moved an adjournment motion on the same grounds which was allowed.

15. Thus, it would appear from the record that from 29-11-14 until 16-5-16 which encompasses a period of approximately 18 months the petitioner was responsible for only one adjournment. The report also mentions that from a perusal of the record and the proceedings the petitioner whilst in judicial custody in central prison Sukkur was produced before the Accountability Court on each and every day of the Court proceedings. As such prima facie it appears that the petitioner is entitled to statutory bail under the 3<sup>rd</sup> proviso of S.497 Cr.PC since he has been in custody for a continuous period of more than one year and his trial has not been completed due to no fault of his own or any other person acting on his behalf.

16. Furthermore no material has been placed before us to show that the petitioner is a previous convict or to enable us to opine that the petitioner is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

17. In addition it is observed that up to 16-05-2016 only 3 out of the 52 prosecution witnesses cited in the reference have so far

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been examined and thus there is little, if any, chance of the trial being completed in the near future.

18. Thus, based on the facts and circumstances of this case we are of the considered view that the petitioner has successfully made out a case for statutory bail under the 3<sup>rd</sup> proviso to S.497 Cr.PC and accordingly he is granted post arrest bail subject to his submitting solvent surety in the amount of RS 2,000,000 (two million) and PR bond in the like amount to the satisfaction of the Nazir of this Court and depositing his original passport(s) with the Nazir of this Court. However, if the petitioner causes any delay in the trial proceedings the Respondents shall be at liberty to approach this Court for the cancellation of his bail.

19. A copy of this order shall be sent by the office immediately to the Secretary Ministry of Interior who is directed to forthwith place the name of the petitioner on the ECL and ensure that no fresh/duplicate passports are issued to the petitioner.

Dated: 19.05.2016