

IN THE HIGH COURT OF SINDH AT KARACHI

Before :

Mr. Justice Aftab Ahmed Gorar.

C.P. No.D-1696 of 2016

Dr. Asim Hussain

Vs.

Federation of Pakistan and others

C.P. No.D-7597 of 2015

Dr. Asim Hussain & another

Vs.

National Accountability Bureau

Dates of hearing: 06.03.2017, 13.03.2017 & 20.03.2017

Petitioners: Through M/s. Sardar Latif Khan Khosa, Aamir Raza Naqvi, Qadir Khan Mandokhail, Muhammad Masood Khan, Afaq Ahmed Khan and Muhammad Ishaq Khan, Advocates

Respondents: Through Mr. Muhammad Altaf Khan ADPP NAB and Mr. Ashfaq Rafique Janjua, Assistant Attorney General for Pakistan

AFTAB AHMED GORAR, J.— The above petitions were heard by the Divisional Bench of this Court composed of my learned brothers Mr Syed Muhammad Farooq Shah and Mr. Mohammad Karim Khan Agha JJ. By their orders being divided in opinion as to the decision of the petitions, matter was placed before the Honourable Chief Justice, who ordered that the matter may be heard by me as a Referee Judge.

My learned brother Syed Muhammad Farooq Shah J. after hearing the learned counsel for the parties and examining the material available on record reached at a conclusion that there is no compelling reason for me to enlarge the petitioner on bail at this stage when the petitioner is facing serious charges; his case does not fall within the ambits of the provisions of Section 497(i) Cr.P.C. Consequently, bail was declined; whereas other learned brother Mohammad Karim Khan Agha, J. granted bail to the petitioner on medical grounds subject to furnishing solvent surety in the sum of Rs.25 lacs in respect of each reference and P.R. bond in the like amount in each reference subject to the satisfaction of the Nazir of this Court and depositing his original passport with the Nazir of this Court. The Ministry of Interior was directed not to issue the petitioner with any fresh or duplicate passports until the further orders of this Court and to place the name of the petitioner on the ECL.

The facts in brief appear to be that the petitioner was taken into custody (preventive detention) by the Pakistan Rangers Sindh on 27.08.2016 under S.11 (EEEE) of the Anti-Terrorism Act, 1997 and he remained on remand for 90 days. Thereafter, he was handed over by the Rangers to the NAB by the Administrative Judge of the Accountability Courts as NAB had opened an inquiry against the petitioner in connection with corruption and corrupt practices under the NAO. After a further period of 45 days on remand in NAB custody the petitioner was sent to Jail.

Learned counsel for the petitioner submitted that applicant is suffering from many severe diseases. Learned counsel for the petitioner

further contended that the learned trial Court constituted nine medical boards and their reports are available on record. He further argued that no any proper treatment is available in Jinnah Postgraduate Medical Centre (JPMC) and treatment of the diseases of the petitioner is possible different hospital at Karachi but the petitioner is admitted in Jinnah Postgraduate Medical Centre (JPMC), which is hazardous to his life. He has placed on record opinion of Dr. Prof Alyscia M. Cheema, Head of the Department, Department of Ophthalmology, JPMC, Karachi, which shows that :-

"Dr. Asim Hussain, known diabetic and hypertensive aged 56 years presented to me on 15.03.2017 with complaints of seeing a floater in his left eye. On examination visual acuity best corrected 6/6 right eye 6/9 left eye. Near vision in both eyes with correction of +2.25D. On examination anterior segment showed mild lenticular changes.

Right eye fundus showed lattice degeneration inferior peripheral retina. The left fundus revealed a hemorrhagic floater in front of the optic disc. Peripheral retina did not show any hole or tear. Intraocular pressure was 12mmhg in both eyes. OCT macula and fundus photographs were taken. Left OCT macula showed complete posterior vitreous detachment at the posterior pole.

Impression, Left acute posterior vitreous detachment with hemorrhage into the vitreous. Plan, the follow up examination in three days to see the progression and further examination of peripheral retina. Further treatment, Argon laser photocoagulation if needed.

Learned counsel for the petitioner further contended that co-accused Shoaib Warsi and others have already been granted bail by the Divisional Bench of this court in C.P. No.D-1199 and 214 of 2016 and the case of the present petitioner is on better footings than the case of co-accused, who have been granted bail by the Divisional Bench of this Court. He further contended that the present petitioner was enlarged on bail on medical ground in other cases viz. Cr. Bail Application No.993, 1076, 1120 and 1144 of 2016 by the Divisional Bench of this Court and such order was not challenged by the prosecution before the Apex Court. He has relied upon

PLD 2003 Karachi 526, 1997 SCMR 320, 1978 SCMR 191, PLD 1996 Lahore 410, PLD 1995 SCMR 58, 2000 SCMR 107, PLD 2005 SC 364 and PLD 1995 SC 423.

On the other hand learned Special Prosecutor NAB submitted that the petitioner is not entitled for grant of bail on the medical ground as the proper treatment is being provided to the petitioner at Jinnah Postgraduate Medical Centre (JPMC) at his own choice. He further contended that the matter may be referred to the Hon'ble Chief Justice for constituting "Full Bench" for deciding the matter. He has relied upon the cases reported in 1997 SCMR 1275, 1980 SCMR 305, PLD 2005 SC 364 and PLD 1995 SC 423.

Mr. Ashfaq Rafiq Janjua, Assistant Attorney General for Pakistan adopted the arguments advanced by the Special Prosecutor NAB and opposed the grant of bail.

I have heard learned counsel for the parties and carefully perused the material available on record as well as case laws with their assistance.

Ten Medical reports of the petitioner of Medical Boards have already been reproduced by my learned brother Mr. Mohammed Karim Khan Agha J, which are again reproduced hereunder for the sake of convenient:-

"Medical Boards/Reports and other medical material in connection with the ailments/sickness of the petitioner.

Ist Medical Board/Report held on 19-01-2016 which first lead to the admission of the petitioner in JPMC largely on account of mental health issues.

MINUTES OF THE MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJUMAL HUSSAIN

The Medical Board of the accused Dr. Asim Hussain S/o Tajumal Hussain, aged 63 years, was constituted by the Executive Director, JPMC, Karachi vide letter No.F-2-12/2016-GENL-K/347102/JPMC dated 19th January, 2016 which met on the same day i.e. 19th January, 2016 at 11:00 a.m.

2. The following members were in the quorum of the Medical Board -

- i. Dr. Syed Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman
- ii. Dr. Tariq Mehmood, Prof. of Radiology, JPMC
- iii. Dr. Muhammad Iqbal Afridi, Prof. of Psychiatry, JPMC, Member/Secretary
- iv. Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC, Member
- v. Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC, Member

3. The members of the Medical Board asked various questions related to their specialties and also examined the accused Dr. Asim Hussain. The mental state of the accused was also carried out by reevaluation (Blood Biochemistry and Radiology examination)

Recommendation.

The final decision of the Medical Board was that accused Dr. Asim Hussain should be admitted to JPMC, Karachi, immediately. The psychotherapy will be carried out by Prof. Syed Haroon Ahmed (bold added)

2nd Medical Board/Report on 01.02.2016

MINUTES OF THE SECOND MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJUMAL HUSSAIN on 01.02.2016 (observed that psychotherapy be continued for mental health issues, suggested neurosurgery on lower back and a second opinion on the recommendation and other tests to be carried out)

The second Medical Board of the accused Dr. Asim Hussain S/o Tajumal Hussain, aged 63 years, was constituted by the Executive Director, JPMC, Karachi vide letter No F 2-12/2016-GENL-K/35815/JPMC dated 29th January, 2016. The Medical Board was held on 1st February, 2016 at 9:00 a.m. in the Committee Room, Administration Block, JPMC, Karachi.

The following members were in the quorum of the Medical Board

- i. Dr. Syed Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman
- ii. Dr. Tariq Mehmood, Prof. of Radiology, JPMC
- iii. Dr. Muhammad Iqbal Afridi, Prof. of Psychiatry, JPMC, Member/Secretary
- iv. Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC, Member
- v. Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC, Member

Patient was examined in Room No 1, Federal Government Officers' Ward JPMC and reviewed the current medical status

Dr. Tariq Mahmood. He briefed the Chairman about the Radiological investigation and finding of the patient he advised the following investigations:-

- 1. MRI (Brain) Dynamic with contrast.
- 2. C T Scan Lumber some region.
- 3. PSA level

Dr. S. Raza Hussain Rizvi, He reported the neurological finding of the patient suggested acute disease problem (L5/S1) and suggested surgery. He further suggested the following investigations for second opinion from some senior Spinal Neurosurgeon and Orthopedic Surgeons. He also suggested to the following investigations:

MR (Myclogram)
C.T Lumber spine with 3D reformat

Prof. Haroon Ahmed and Dr. Muhammad Iqbal Afridi, Agreed to continue psychotherapy.

Dr. Rukhsana Abdul Sattar, She reported about the progress of the patient. She found that the sugar level and B.P. is well under control.

The Board further advised to seek second opinion regarding neurosurgical problem of the patient from the below mentioned senior doctors (public & private health institution). The Board agreed on the name of following senior Consultants for second opinion:

1. Prof. Athar Inam, Aga Khan University Hospital Karachi
2. Prof. Junaid Asimraf, Dow University of Health Sciences, Karachi
3. Prof. Yunus Soomro, Orthopedic Surgeon (Retd) Civil Hospital Karachi (bold added)

3rd Medical Board/Report held on 27th February, 2016.

Subject - MINUTES OF THE THIRD MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN, FCO (FACEM) PESHAWAR (which observed that psychotherapy be continued for mental health issues, observed that second opinion be recommended on neurosurgeon, on lower back was not awaited and requested the Court to arrange this).

The third Medical Board of the accused Dr. Asim Hussain FCO (FACEM) was constituted by the Executive Director JPMC Karachi and held on 27th February, 2016 at 11.00 a.m. in the office of Incharge, F.G.O. ward Karachi. The following attended the meeting of Medical Board:

- Dr. Syed Haroon Ahmed, Prof. of Emergent Psychiatry, JPMC Chairman
- Dr. Tariq Mehmood, Prof. of Radiology, JPMC
- Dr. Muhammad Iqbal Afridi, Prof. of Psychiatry, JPMC, Member/Secretary
- Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC Member
- Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC Member.

Patient was examined in Room No. 1, F.G.O. Ward. The Board reviewed the Psychological status of Dr. Asim Hussain. Dr. Haroon has had 12 sessions and the patient was marginally improving. However few recent events have caused some set backs including his wife's recurrence of Cancer for which she had down to London for review and possible chemotherapy.

The psychotherapy will continue.

In the last board meeting his complaint of low back pain (L5-S1) PIV was not improved and surgical treatment was advised. However the patient suggested for Second opinion which is pending, for which the Board recommended three consultants Neurosurgeons & Orthopedic surgeons.

Prof. Athar Inam, Aga Khan University Hospital Karachi
Prof. Junaid Ashraf, Dow University of Health Sciences, Karachi
Prof. Younus Soomro, Orthopaedic Surgeon (Rtd) Civil Hospital Karachi

The board requests the Honourable Court to kindly direct them to examine and give their opinion (bold added)

4th Medical Board/Report held on 16.03.2016.

Subject - MINUTES OF THE 4TH MEDICAL BOARD OF ACCUSED DR ASIM HUSSAIN S/O TAJAMUL HUSSAIN
(pointed out various ailments in his leg and back and set out treatment which if not effective left the option of surgery).

The 4th Medical Board of the accused Dr. Asim Hussain S/o Tajamul Hussain, constituted by the Executive Director JPMC, Karachi vide letter No F2-12/2016-GENL-K/38219/JPMC dated 15th March, 2016 was held on 16th March, 2016 at 11:00 a.m. in the office of Incharge, F.G.O ward JPMC, Karachi. The following consultants attended the meeting of Medical Board

Prof. Athar Inam, Aga Khan University Hospital Karachi (He attended)
Prof. Junaid Ashraf, Dow University of Health Sciences, Karachi
Prof. Younus Soomro, (Rtd) Civil Hospital Karachi / Anjuman Hospital

The opinion of the Board as follows

Patient Dr. Asim Hussain is 63 years of age. He complains of back pain and left leg pain for the last 6 months with numbness on walking.

On the examination he has restriction of straight leg raising, more on the left side, with reduced left ankle jerk. His CT Scan of Lumber Spine suggests reduction in L5/S1 space with degenerative changes. MRI demonstrates left side L-5/S-1 disc / osteophyte complex.

He needs conservative treatment in the first instance with a hard bed and a firm mattress. He needs good physiotherapy. Short Wave Diathermy, Ultrasound therapy, TENS and back strengthening exercises for 8 to 10 weeks. He should also be on adequate analgesia, the choice of which is left with the primary team.

He has partial improvement his medical treatment should continue. If there is no improvement he be offered surgery for the herniated disc.

In the opinion of the Board the management of the primary Neuro Surgery is looking after him is appropriate. We concur the opinion of the primary team (bold added)

5th Medical Board/Report held on 05.04.2016.

Subject - MINUTES OF THE 5TH MEDICAL BOARD OF ACCUSED DR ASIM HUSSAIN S/O TAJAMUL HUSSAIN
(with regard to back problem continued physiotherapy for 8 to 10 weeks was advised after which another medical Board should be called)

The 5th Medical Board of the accused Dr. Asim Hussain S/o Tajamul Hussain, constituted by the Executive Director JPMC, Karachi vide letter No F2-12/2016-GENL-K/38219/JPMC dated 1st April, 2016 was held on 05th April 2016 at 11:00 A.m. in the office of Incharge, F.G.O ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board

- Dr. Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman
- Dr. Farqim Mahmood, Prof. of Radiology, JPMC Member
- Dr. M. Iqbal Afandi, Prof. of Psychiatry, JPMC Member
- Dr. Ruza K. Rizvi, Prof. of Neurosurgery, JPMC Member
- Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC Member
- Dr. Athar Inam, Aga Khan University Hospital Karachi Member
- Dr. Junaid Ashtaf, Dow University of Health Sciences, Karachi Member
- Dr. Younus Soomro, (Rtd) C.H. Karachi/Anklesaria Hospital Member

The opinion of the Board as follows:

As per order of the Court chairman Medical Board Professor Dr. Haroon appeared in the court along with all papers. The honourable court did not call him for submission of the report. The interim report prepared by Dr. Haroon was thus handed over to patient which was duly received by the patient for onward submission to the court. If the central prison authorities need to have that report, they can request the honourable court or directly from the patient Dr. Asim Hussain.

Regarding the backache problem of the patient, on 16th March, 2016 the Board advised medical treatment and physiotherapy for 8 to 10 weeks and will review the patient at end of this period.

The meeting of the medical board should be called by the Executive Director, JPMC in consultation with the chairman of the medical board, Prof. S. Haroon Ahmed (bold added).

It later came to light that JPMC did not have the necessary equipment for the required physiotherapy as illustrated below and it appears from the record that this was instead carried out at Aga Khan University Hospital.

NO.F-2-12/2016-GENL-K/39167/JPMC
 GOVERNMENT OF SINDH
 JINNAH POSTGRADUATE MEDICAL COLLEGE
 KARACHI 75510

The Senior Superintendent
Central Prison,
Karachi

Dated the 7/4/2016

Subject:- Physiotherapy of accused Dr. Asim Hussain S/o Tajamul Hussain

With reference to this office letter NO.F-2-12/2016-GENL-K/38656/JPMC, dated 6th April, 2016 and recommendation of Medical Board for physiotherapy of accused Dr. Asim Hussain

Further to refer on the Office letter NO.F-2-12/2016-GENL-K/38656/JPMC dated 25th March, 2016 and to report that equipment & machinery for recommended physiotherapy is not available at JPMC, Karachi.

It is therefore requested that advise to get proper physiotherapy of accused Dr. Asim Hussain S/o Tajamul Hussain from somewhere else where good facilities are available.

6th Medical Board/Report held on 30th May 2016

Subject:- MINUTES OF 6TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN. It was found that there was no improvement in backache with physiotherapy.

was suggested for disc effusion and disc replacement surgery, further opinion from spinal surgeon on this issue by specialists and continued Psychotherapy)

The 6th Medical Board of the accused Dr. Asim Hussain S/o Tajamul Hussain, constituted by the Executive Director JPMC, Karachi vide letter No.F.2-12/2016-GENL-K/43036/JPMC dated 27th May, 2016 was held on 30th May, 2016 at 9:30 A.M. in the office of Incharge, F.G.O. ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

- Dr. Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman.
- Dr. Tariq Mehmood, Prof. of Radiology, JPMC. Member
- Dr. M. Iqbal Afridi, Prof. of Psychiatry, JPMC. Member
- Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC, Member.
- Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC, Member.
- Dr. Athar Inam, Prof. Aga Khan University Hospital, Karachi Member
- Dr. Junaid Ashraf, Dow University of Health Sciences, Karachi Member
- Dr. Younus Soomro, (Rtd) C.H.K/Ankieseria Hospital. Member

The opinion of the Board as follows:

In today's meeting it was found that there is no improvement in backache with physiotherapy. He was suggested for disc effusion and disc replacement surgery. It is advised to repeat MRI Lumber Sacral Spine, X-Ray Lumber Sacral A/P. Further opinion from Spinal Surgeon Dr. Imtiaz Hashmi, may be taken in this regard. Dr. Jooma, Dr. Tariq and Dr. Raza Rizvi will examine the patient with Dr. Hashmi and give us consolidated opinion. Dr. Imtiaz Hashmi has seen the patient.

Psychotherapy continued and he is improving satisfactorily however his sleep is still disturbed (the fear of rangers picking-up). He was trained for relaxation exercises which he was doing but for the last one week due to his fever and backache he could not continue. He is advised to resume as per instruction. (Dr. Haroon will be away on holiday for 3 weeks from the 4th June) (bold added).

The recommended second opinion (as recommended in the 3rd and 6th Mdical Boards/Reports) dated 6th June, 2016.

Subject:- MINUTES OF NEURO SPINAL SURGEON MEETING OF DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.

A meeting of Neuro Spinal Surgeon was held on 6th June, 2016 at 08:30 a.m. in the office of the Incharge P.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

- Prof. Rasheed Jooma, Jeuro Surgeon, AKUH, Karachi
- Prof. Imtiaz Hashmi, Consultant Spinal Surgeon AKUH, Karachi.
- Prof. Raza K. Rizvi, Professor of Neurosurgery, JPMC.
- Prof. Junaid Ashraf, Dow University & Health Science, Karachi.

The UTP is a 62 years old male with a history of low back pain which has been exacerbated in the recent past. There is a component of sciatica in his presenting complaints but the predominant symptom is low back pain which is limiting his mobility. He has significant past medical history for diabetes and hypertension. He has raised serum prolactin levels. No radicular deficits are evident but there is significant limitation of lumber spine movement. His lumber spine radiographs show degenerative changes at L5 S1 with loss of disc height. On MRI there is circumferential bulging of the annulus of L5 S1 consistent with an incompetent disc. There is thinning of the end plate and subchondrial

degeneration compatible with Modic changes. The other lumbar discs are unremarkable with their normal signal and appearance on MRI. He is presently undergoing multimodality physiotherapy along with analgesics but he has yet to respond to this treatment. The evidence suggests that patient has mono segmental accelerated degeneration of the lower lumbar spine. **Currently the best surgical treatment for such pathology is disc replacement that would allow preservation of the motion segment, and this course is advised by the board.** In view of the intractability of the pain and motion limitation, he is advised surgical lumbar disc replacement at a centre where it is regularly performed.

In the interim the board advises continuation of appropriate physiotherapy as decided by the managing medical team. (bold added).

Letter from Prof. S. Raza Khairat Rizvi to Executive Director JPMC dated 16.07.2016.

Prof. S. Raza Khairat Rizvi
M.B.B.S. (Neurosurgeon)
Professor & Head of Dept. Neurosurgery

July, 16, 2016

The Executive Director
Jinnah Postgraduate Medical Centre,
Karachi.

SUBJECT:- MEDICAL REPORT OF DR. ASIM HUSSAIN S/O
TAJAMUL HUSSAIN.

Respected Sir,

The UTP is a 62 years old male on the subject above and to say that the medical board has concluded that the UTP has a significant degenerative condition of the lumbar spine and this has not responded to conservative treatment. In view of continuing symptoms and signs of nerve root compression the Board has recommended surgery of the spine.

The procedure recommended by the board lumbar arthroplasty with implantation of artificial disc is not available in this centre. (bold added).

Yours sincerely,

Sd/-

Prof. S. Raza Khairat Rizvi
Head of Department &
Professor of Neurosurgery
Jinnah Postgraduate Medical Centre,
Karachi.

7th Medical Board/Report held on 02.08.2016.

Subject:- MINUTES OF 7TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.
(advised surgical lumbar disc replacement at a centre where it is regularly performed, observed that physiotherapy at A.K.U. Hospital is not helpful and the only option (if surgery not possible) is to start hydrotherapy wherever available.

ON the order of Accountability court 7th Medical Board of Dr. Asim Hussain S/o Tajamul Hussain constituted by the Executive Director JPMC, Karachi vide

letter No.F.2-12/2016-GENL-K/1e100/JPMC dated 29th July, 2016 was held on 02nd August, 2016 at 10:30 A.M. in the office of Incharge, F.G.O. ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

- Dr. Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman.
- Dr. Tariq Mehmood, Prof. of Radiology, JPMC Member
- Dr. M. Iqbal Afridi, Prof. of Psychiatry, JPMC Member
- Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC, Member.
- Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC, Member.
- Dr. Junaid Ashraf, Dow University of Health Sciences, Karachi Member
- Dr. Younus Soomro, (Rtd) C.H. Karachi/Ankleseria Hospital. Member
- Pro. Rasheed Jooma, A.K.U. Hospital, Karachi. Member.
- Prof. Intiaz Hashmi, ORTHO Spinal, A.K.U. Hospital, Karachi Member

The Medical board examined Dr. Asim Hussain, his current complaints were insomnia occasional panic attack (which are less now) and fluctuating B-P. He also complained of rashes on the back. The pain in the lower back persists and there is limitation of movement.

His mental status has improved but fear of certain situations and Raugers uniform persists. He can only sleep early morning in spite of sleeping pills. Therapy is currently directed towards FEAR.

The Neuro surgeons and Orthopedic surgeon reviewed their report of earlier meeting of 6th June, 2016 "in view of the intractability of the pain and motion limitation, he is advised surgical lumbar disc replacement at a centre where it is regularly performed".

- Pro. Rasheed Jooma, A.K.U. Hospital, Karachi.
- Prof. Intiaz Hashmi, ORTHO Spinal, A.K.U. Hospital, Karachi.
- Prof. Raza K. Rizvi, Prof. of Neurosurgery, JPMC.
- Prof. Junaid Ashraf, Dow University of Health Sciences, Karachi.

The surgeons were of the opinion that, the current physiotherapy at A.K.U. Hospital is not helpful as per report of Mr. Atta Muhammad Physiotherapist A.K.U. (15th July, 2016). The only option (if surgery not possible) is to start hydrotherapy wherever available.

Dr. Asim also complained of rashes in his back, Professor Zamaz who was available and consulted. She has advised histamine treatment and constant room temperature with A/C.

In conclusion the board was of the opinion that:

1. The therapy for certain emotional issues (Panic, Depression, and Fear) should continue for which he should remain in hospital.
2. The Surgeon after examination did not have anything new to add except Hydrotherapy (wherever it is available), in addition to physiotherapy during hospitalization.
3. Dr. Zamaz has given her advice which includes temperature controlled environment with A/C.
4. Dr. Haroon Ahmed, made adjustments in his medication as his tremors are much better. (bold added).

8th Medical Board/Report held on 22.10.2016.

Subject:- MINUTES OF 8TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.
NAB REF. OF 13/2016. (Observed that Physiotherapy is not producing significant benefit. He continues to have severe symptoms of low back pain

with acute spasm and limitation of mobility. The board re-iterates its advice for hydrotherapy pending the definitive disc replacement surgery.

The 8th Medical Board of the accused Dr. Asim Hussain S/o Tajamul Hussain, constituted by the Executive Director JPMC, Karachi vide letter No.F.2-12/2016-GENL-K/6061/JPMC dated 21st October, 2016 was held on 22nd October 2016 at 12:00 noon in the office of Incharge, F.G.O. ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

Dr. Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman.
 Dr. Tariq Mehmood, Prof. of Radiology, JPMC: Member
 Dr. M. Iqbal Afidi, Prof. of Psychiatry, JPMC: Member
 Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC, Member.
 Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC, Member.
 Dr. Junaid Ashraf, Dow University of Health Sciences, Karachi Member
 Dr. Younus Soomro, (Rtd) C.H.K/Ankleseria Hospital. Member
 Pro. Rasheed Jooma, A.K.U. Hospital, Karachi.
 Prof. Intiaz Hashmi, ORTHO Spinal, A.K.U. Hospital, Karachi.

UTP Dr. Asim Hussain, was examined by the medical board. He remains admitted to hospital for intractable low back pain from accelerated degeneration of his lumbar spine at the L5, S1 level. Physiotherapy is not producing significant benefit. He continues to have severe symptoms of low back pain with acute spasm and limitation of mobility. He has been advised to restrict weight bearing at present and JPMC administration is requested to provide him a wheelchair.

The board re-iterates its advice for hydrotherapy pending the definitive disc replacement surgery. (held and italics added).

9th Medical Board/Report held on 28.10.2016.

As was noted in the Rauf Siddiqui case (Supra) as reproduced earlier in this order which may be referred to as the 9th Report:

18. The report of MRI of Brain issued by the Department of Radiology, JPMC dated 28.10.2016 is also available on the record with the report of Consultant Neurologist and Professor of Medicine JPMC issued on 31.10.2016 which reads as under:-

"This is to certify that, Dr. Asim Hussain had sudden rise in his blood pressure and developed weakness of left half of the body on 28th October, 2016. He was assessed by the board physician and was referred to Neurologist for further management, MRI Brain was done and the report is consistent with multiple ischemic infarcts of variable size and duration. He is advised bed rest for 4 weeks on the basis of his clinical status."

This report seems to indicate that the petitioner suffered what is commonly known as a Transient Ischemic Attack ("TIA") and we even as layman are aware that such such episodes which cause TIA's can lead to paralysis of certain parts of the body in some cases and can contribute towards vascular and other forms of dementia. Such an episode in our view needs to be considered along with the petitioners other long standing mental health issues.

That it was after consideration of the above mentioned reports that the petitioner was granted bail on medical grounds by this Court only about two months ago in the case of Rauf Siddiqui (Supra)

10th Medical Board/Report held on 22.12.2016.

We set out below what can be referred to as the 10th Medical report which came after the petitioner was granted bail on medical grounds in the case of Rauf Siddiqui (Supra) and seems to indicate that the petitioner also has serious coronary issues which need to be attended to on an urgent basis.

NATIONAL INSTITUTE OF CARDIOVASCULAR DISEASES
RAFIQUI (H.J.) SHAHEED ROAD, KARACHI-75510, PAKISTAN
PHONE: 9201271-10 Lines

DATED: DECEMBER 22, 2016

TO WHOM IT MAY CONCERN

This is to certify that Dr. Asim Hussain, who is admitted in NICVD Special Ward Room No.211 on 19.12.2016. He was transferred from Jinnah Hospital with complain of chest pain with palpitation and light headedness. His initial ECG showed PVC's with T wave changes in lateral leads. He underwent 24 hours HOlter monitoring which showed 2656 PVC's (110 per hour). There were also episode of Sino Atrial Exit Block Type-II. His PVC's almost likely arising from Right Ventricular outflow tract and he may need Radio frequency ablation in near future. This procedure is highly technical and needs skill lab with experience which is not available locally. If he becomes symptomatic from Sinus node Exit Block he may need a permanent pacemaker. **There very high burden of PVC's some time can be lethal and fatal and needs urgent attention.** (bold and italics added).

Sd/-
(PROF. SYED ZAHID JAMAL)
PROFESSOR OF CARDIOLOGY
Diplomate American Board of
Medicine & Cardiology
Fellowship Cardiac Electrophysiology
(Harvard University)
(MEMBER)

Sd/-
(PROF. SYED NADEEM H. RIZVI)
PROF. OF INTERVENTIONAL
CARDIOLOGY & DIRECTOR
CATH LAB
(MEMBER)

Sd/-
(PROFESSOR NADEEM QAMAR)
Diplomate American of Internal Medicine
Executive Director &
Professor of Cardiology
(CHAIRMAN)

We would also point out at this stage that we have only produced the medical reports of the medical boards but generally these reports are supported by a plethora of other medical opinions/advises/reports on the record which support the above reports a few of which (3 in number).

The 8th Medical Board of the accused Dr. Asim Hussain S/o Tajamul Hussain, constituted by the Executive Director JPMC, Karachi vide letter No.F.2-12/2016-GENL-K/6061/JPMC dated 21st October, 2016 was held on 22nd October 2016 at 12:00 noon in the office of Incharge, F.G.O. ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

Dr. Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC	Chairman.
Dr. Tariq Mehmood, Prof. of Radiology, JPMC	Member
Dr. M. Iqbal Afridi, Prof. of Psychiatry, JPMC.	Member
Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC,	Member.
Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC,	Member.
Dr. Junaid Ashraf, Dow University of Health Sciences, Karachi	Member
Dr. Younus Soomro, (Rtd) C.H.K/Ankleseria Hospital.	Member

Pro. Rasheed Jooma, A.K.U. Hospital, Karachi.
Prof. Intiaz Hashmi, ORTHO Spinal, A.K.U. Hospital, Karachi.

UTP Dr. Asim Hussain, was examined by the medical board. He remains admitted to hospital for intractable low back pain from accelerated degeneration of his lumber spine at the L5, S1 level. Physiotherapy is not producing significant benefit. He continues to have severe symptoms of low back pain with acute spasm and limitation of mobility. He has been advised to restrict weight bearing at present and JPMC administration is requested to provide him a wheelchair.

The board re-iterates its advice for hydrotherapy pending the definitive disc replacement surgery. (hold and italics added).

A perusal of medical record of the petitioner reflects that the petitioner Dr. Asim Hussain is suffering from severe ailment/sickness and proper treatment of those ailments/sickness is not available at one hospital and those can be treated properly at different hospitals of Karachi. Furthermore the Hon'able Apex Court in number of cases inclined to grant bail to the accused on medical grounds. In the case of Peer Mukaram-ul-Haq versus the National Accountability Bureau (NAB) through Chairman reported in 2006 SCMR 1225 wherein it was observed that:-

"7. It is also to be kept in view that this Court being at the apex has constitutional duty to impart complete justice and therefore, it cannot be inhibited by any restraint or restriction and has abiding duty to consider all the pros and cons of the matter and to take an overall view of the case while dispensing justice. It may not be out of place to mention here that pursuant to the provisions as contained in section 497(1), Cr.P.C. "a sick or infirm person may be released on bail even where there are reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment. It is now well-settled that where a statute itself lays down certain principles for doing some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the Court". Maqsood y. Ali Muhammad 1972 SCMR 657. It is well-entrenched legal proposition that powers conferred upon section 426, Cr.P.C. are not controlled by the provisions of sections 496 and 497, Cr.P.C. but the principles enunciated therein can be taken into consideration while granting or refusing bail. If any authority is required reference can be made to Bashir Ahmad v. Zulfiqar PLD 1992 SC 463".

In another case of Abbas versus the State reported in 2000 SCMR 212, wherein it was observed that :-

"2 Abbas petitioner alongwith others is facing trial in case F.I.R. No. 126 of 1998, dated 13-6-1998, under section 302/109/148/149/427, P.P.C., registered at Police Station Tarkham, District Faisalabad. He applied for bail on medical grounds. A report was called about his state-of health. According to the report of the Medical Board, he is suffering from "Hepatitis-C" (viral infection). But the learned High Court did not consider him entitled to bail, as in the opinion of the Medical Board, though the disease was infectious but it did not spread or infect others by the casual contact".

In another case of Zakhim Khan Masood versus the State reported in 1998 SCMR 1065 it was observed that:-

"---S. 497(1), first proviso---Penal Code (XLV of 1860). S 409/468/471/477-A/109---Prevention of Corruption Act (II of 1947), S.5--Constitution of Pakistan (1973), Art. 185(3)---Bail on medical grounds---Ailment of accused according to medical report was likely to have hazardous effects on his life because stress and strain could aggravate his disease---Accused was undoubtedly sick and needed treatment in conducive conditions free from any kind of pressure---Accused could not have full peace of mind in custody which could surely make his recovery from ailment slow putting seriously his life to danger---Bail was allowed to accused in circumstances"

In another case of Malik Muhammad Yousafullahi Khan versus the State reported in PLD 1995 Supreme Court 58, it was observed that :-

"The bail on medical ground can be granted under section 407, Cr.P.C. Court reaches the conclusion on the basis of medical report that the properly if the ailment with which the accused is suffering is such that it cannot be treated while in custody in jail. The fact that the appellant was not suffering from any particular type of injury would not be a ground either to refuse or grant the bail on medical ground. The correct criteria for grant of bail to an accused in a non-bailable case, on medical ground, would be, that the sickness or ailment with which the accused is suffering should be such that it cannot be properly treated within the premises of jail and that some specialised treatment is needed and his continued detention in Jail is likely to affect his capacity or is hazardous to his life"

In another case of Mian Muhammad Shalibaz Sharif versus the State reported in 1997 MLD 2484 it has been observed that:-

"7 We have given our anxious consideration to the contentions raised by the learned counsel for the parties and after having perused the medical reports certificates, prescriptions etc. and the recommended treatment of the petitioner, are of the view that he is suffering from a pro-lapse disc of serious nature requiring specialised treatment not available in jail. Once again we would like to refer to the reports of the abovementioned Medical Experts i.e. Professor Muhammad Salaam Piracy, Consultant Orthopaedic Surgeon and Dr. Khaleequz-Zaman, Neuro Surgeon of PIMS, Islamabad which categorically show that the condition of the petitioner/patient was likely to deteriorate further if not properly attended to and subjected to essential treatment required as recommended by them and that may even lead to paralysis. Admittedly the facility of the recommended treatment, as stated in the two medical reports I referred to above, is not possible in jail."

In another case of Firdous Paul versus the State reported in 2001 SCMR 15, it has been observed that:-

"---S.497(1), first proviso---Penal Code (XLV of 1860) S.302 - Constitution of Pakistan (1973), Art. 185 (3)---Bail on medical grounds--Accused according to the opinion of two Medical Boards was suffering from severe heart disease and required bypass operation as soon as possible as he was at high risk of dying suddenly---Accused was also suffering from Diabetes with severe diabetic complications and had also developed renal problems--- Condition of accused further deteriorated after his release on interim bail by Supreme Court and according to expert medical opinion he carried moderate risk of acute renal insufficiency if Coronary Artery Bypass Grafting was required---Petition for leave to appeal was converted into appeal and allowed and ad interim bail already granted to accused was confirmed in circumstance."

In another case of Munawar Hussain Manj versus the State reported in 2000 SCMR 1585, it has been observed that :-

"Board of Doctors on examination had found the accused suffering from ischaemic heart disease and asthma and he had also stone in his kidney---Accused, who was prima facie, guilty of the abetment of the commission of the offence was entitled to grant of bail on the ground of statutory delay as well---Petition for leave to appeal was converted into appeal and the accused was admitted to bail in circumstances".

In another case of Feroze Khan versus the State reported in 2012 MLD 1152, it has been observed that:-

"Board of Doctors on examination had found the accused suffering from ischaemic heart disease and asthma and he had also stone in his kidney---Accused, who was prima facie, guilty of the abetment of the commission of the offence was entitled to grant of bail on the ground of statutory delay as well---Petition for leave to appeal was converted into appeal and the accused was admitted to bail in circumstances".

Before concluding the opinion, it is necessary to refer to a legal point that where there is a difference of opinion between two Judges particularly in bail matter, a doubt has been created benefit of which is to be extended to the applicant by granting the bail to the applicant. The concept of Judicial Etiquette propounded by Mahmood, J in Empress v Debi Singh 1886 All WR 275 Mahmood, J. in criminal appeal, as referee Judge pointed out that the deliberate opinion of one Judge in favour of acquittal upon a grave question of the weight of evidence in a case heard by a Bench consisting of only two Judges should ipso facto constitute in most cases a sufficient reason for creating such a serious doubt that the benefit of that doubt should be given to the prisoner

With regard to bail which should not be withheld as punishable the legal plea is weighty with substance; and gets tacit approval by the dictum in *Prig Basim v. State* PLD 1995 SC 34 by apex Court that on account of difference of opinion between the Judges on bail matter wherein it has been observed that -

"10. In the instant case, one learned Judge of the High Court on examination of the F.L.R. statements recorded under section 161 Cr.P.C. and the material collected during investigation was of the opinion that there were not reasonable grounds to believe that the petitioners are guilty of the offences alleged against them, whereas on the same material on record, another learned Judge of the same High Court has come to a totally different conclusion than there are reasonable grounds to believe that the petitioners have committed the alleged crime. We feel that the contrary conclusions arrived at by the two learned Judges of the High Court have made

the existence of reasonable grounds to connect the accused with the crime doubtful, entitling the petitioners to benefit of doubt at this stage. In any case, the contrary views/opinions of the two learned Judges of the High Court about the guilt of the petitioners have made out a case of further inquiry within the meaning of subsection (2) of section 497, Cr.P.C.

It may also be pointed out that in *Muhammad Shakeel v. Sakhi Zaman* 1999 SCMR 32 the leave to appeal has been granted to consider, inter alia, the question whether difference of opinion between the learned Judges of the Division Bench in High Court on the question as to whether there appears reasonable ground for believing that the accused/respondents have been guilty of an offence punishable with rigorous imprisonment for ten years or with life imprisonment is tantamount to 'further inquiry within the contemplation of section 497(2), Cr.P.C.

The point of jurisdiction of Referee Judge has been decided in the case of *Muzammil Niazi versus the State* reported in PLD 2003 Karachi 526

The case laws relied upon by the learned Special Prosecutor NAB are not helpful and the same are distinguishable from the facts and circumstances of the instant case therefore, the same are not applicable.

As per reports of the medical boards the detention of the petitioner would be hazardous to his life but it is advised by the Medical boards that if proper treatment is not provided to the petitioner or he will not be operated he will be paralyzed. The co-accused Shoaib Warsi and others have already been granted bail by the Divisional Bench of this court in C.P. No.D-1199 and 219 of 2016. therefore, rule of consistency is also applicable in the instant petition. It is also an admitted position that the petitioner was enlarged on bail on medical ground in other cases viz. Cr. Bail Application No.993 of 2016, 1120

and 1144 of 2016 by the Divisional Bench of this Court and such order was not challenged by the prosecution before the Apex Court.

In view of the above circumstances and the dicta laid down by the Honourable Supreme Court of Pakistan as well as this Court in the case of Muzammil Niazi versus the State reported in PED-2003 Karachi 526, referred to above, I am agreed with the opinion/decision of my learned brother Mr. Mohammed Karim Khan Agha J.

Karachi:
Dated: 22.03.2017.

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No D-1696 of 2016
Constitutional Petition No D-7597 of 2015

Date	Order with Signature of the Judge
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Date of hearing	18 th January, 2017
Date of order	03 rd February, 2017
For Petitioner (in CPD-1696/2016)	Mr. Anwar Mansoor Khan, Advocate
For Petitioner (in CPD-7597/2016)	Mr. Aamir Raza Naqvi, Advocate
For Respondent	Mr. Muhammad Altaf, Sp. Prosecutor NAB
For Respondent # 9	Mr. Asim Iqbal, Advocate

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SYED MUHAMMAD FAROOQ SHAH J - I have had the honour of reading a very detailed and comprehensive order rendered by my learned brother Mr. Muhammad Karim Khan Agha, J. *Notwithstanding* the diversity of facts and circumstances of instant case amongst others some of important and consistently followed principles can be clearly visualized from the cited law on the question of bail on medical ground. In addition to what has been discussed by my learned brother I may point out that this court to apply the provisions of law and the Constitution on the touchstone of injunctions of Islam as contained in the *Holy Quran* and *Sunnah* of Holy Prophet ﷺ. I consider it lawful and fair to pronounce a different order declining the bail to the petitioner in the instant petitions, sought on sole medical reasons

2. By invoking extraordinary Constitutional Jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, in captioned petition No D-1696 of 2016, the petitioner/accused Dr. Asim has sought pre-arrest bail in NAB Reference No.19 of 2016 and subsequently he was detained in consequence of detention order dated 27.08.2015, issued under section 11-EEEE(1), Anti-Terrorism Act, 1997 for ninety days and on 26.11.2015 his remand was sought in FIR No 197 of 2015, registered under section 201, 202, 216, 216-A, 197/34 PPC read with section 6(7) A, 21(1) 21(5) of Anti-Terrorism Act, 1997; moreover, the petitioner was shown arrested in NAB cases hence petition No.D-7597 of 2015 has been instituted for release of petitioner Dr. Asim in respect of arrest memo dated 23rd November 2015. In subsequent petition, declaration for registration of case and arrest of Dr. Asim under National Accountability Ordinance has also been sought to be declared illegal and unlawful, besides quashment of said proceedings under NAB Ordinance, 1999 has also been sought

3. Without advertng to the merits of the captioned petitions, M/s Anwar Mansoor Khan and Aamir Raza Naqvi, representing the petitioner, advanced their arguments only to the extent of bail after arrest in favors of the petitioner namely Dr.Asim on sole medical ground. Mr. Aamir Raza Naqvi adopted the arguments advanced by Mr. Anwar Mansoor Khan, Advocate and submitted that being a person of reputed class and status Dr. Asim suffered psychiatry problem and the disease is increasing day by day. Mr. Anwar Mansoor Khan, Advocate argued that all necessary relevant documents, relating to bail on medical grounds have been placed on the record, showing that as many as eight Medical Boards were constituted, details of which have been reproduced by my learned brother in verbatim. Succinct history of ailment, advice of treatment, observation of medical boards placed on record reflects that in **first** Medical Board meeting, held on 19.01.2016, it was recommended that Dr. Asim should be admitted in JPMC immediately and his psychotherapy will be carried out by the Professor Syed Haroon Ahmed i.e. Chairman of the said Medical Board. The **second** Medical Board in its meeting held on 01.02.2016 advised to seek second opinion regarding neurosurgical problem of patient/accused, from Professor Athar Inam, AKUH, Karachi, Professor Junaid Ashraf Dow University of Health and Science and Professor Younus Soomro of Civil Hospital Karachi. Thereafter, the meeting of third Medical Board was held on 27.02.2016, whereby the Board requested the trial court to direct the afore-named three consultants neurosurgeon / orthopedic surgeon to examine the accused and give their opinion. In **fourth** Medical Board meeting held on 16.03.2016 the management of the primary neurosurgery team observed that looking after him is appropriate and concurred the opinion of primary team that accused needs conservative treatment in the first instance with a hard bed and the firm mattress. He needs physiotherapy, shortwave diathermy, ultrasound therapy, TENS and back strengthening exercise for 8 to 10 weeks. He should also be on adequate analgesia, the choice of which is left with the primary team. In **fifth** Medical Board meeting constituted on 01.04.2016, held on 06.04.2016, it was observed that trial court did not call for submission of report thus it was received by the patient for onward submission to the court. In **sixth** Medical Board meeting held on 30.05.2016, the opinion recorded by the Board comprising on seven doctors, headed by Professor Syed Haroon Ahmed Emeritus Psychiatry, JPMC being Chairman opined that there is no improvement in backache in physiotherapy and accused was suggested disc effusion and disc replacement surgery and it was advised to repeat MRI lumbar sacral Spine, X-Ray Lumbar Sacral A/P. Further opinion from Spinal Surgeon Dr. Imtiaz Hussain Hashmi may be taken in this regard. Dr. Jooma, Dr. Tariq and Dr. Raza Rizvi will examine the patient with Dr. Hashmi and give their consolidated opinion. Dr. Imtiaz Hashmi has seen the patient. Psychotherapy continued and it was observed that the accused was improving satisfactorily, however his sleep is still disturbed (fear of rangers picking-up). He was trained for relaxation exercises

which he was doing but for the last one week due to his fever and backache he could not continue. He was advised to resume as per instruction. Subsequent meeting of seventh Medical Board held on 02.08.2016, his mental status was considered to be improved but fear of certain situations and Rangers Uniform persists and he can only sleep early morning inspite of sleeping pills and therapy was directed to word "Fear" and therapy of certain emotional issues which includes physiotherapy during hospitalization and provision of temperature control environment with A/C was recommended. In eighth Medical Board meeting held on 22.10.2016, the Board reiterated its advice for hydrotherapy pending the definitive disk replacement surgery. Learned counsel for the petitioner/accused Dr. Asim has also submitted photocopy of medical reports a/w statement, which were taken on record. Learned counsel further submitted that on rejection of bail to be petitioner/accused in ATC case mentioned supra, he was granted bail by this High Court, vide short order dated 01.07.2016 and its reasoning were delivered on dated 11.11.2016, which order has also been placed on record. Per learned counsel, the accused was granted bail by this Court on medical ground in ATC case, therefore, he is entitled for concession of bail in NAB Reference, as well. To support his contentions, he has placed reliance upon the case of *PEER MUKARAM-UL-HAQ V/S NATIONAL ACCOUNTABILITY BUREAU THROUGH CHAIRMAN & OTHERS (2006 SCMR 1225)* relevant page 1229, paragraph No.7.

4. Conversely, Mr. Muhammad Altaf, Special Prosecutor NAB vehemently opposed the grant of bail to the petitioner/accused Dr. Asim on the ground that the accused is being provided excellent treatment in the hospital as per his own choice as he got treatment from prominent hospitals through renowned physicians and surgeons. He further submitted that the application filed on behalf of the accused by the advocate was allowed and the accused was allowed immediate hydrotherapy treatment, which facility is only available in his own Dr. Zia Uddin Hospital, for hydrotherapy twice a week for about six weeks and bring him back to *JPMC*, which fact alone is sufficient to show that the accused is being provided maximum available medial facilities as per his own choice and as per opinion of Medical Board. Learned Special Prosecutor was of the view that there is no reason whatsoever to show that the petitioner / accused Dr. Asim has not been provided proper medical treatment in renowned hospitals by the renowned Senior Doctors of his own choice, therefore, per learned Prosecutor NAB, the petitioner is not entitled for grant of bail on medical ground. To support his contentions, learned Special Prosecutor placed reliance on the cases reported as *MUHAMMAD ARSHAD V/S THE STATE & ANOTHER (1997 SCMR 1275)*, *ZARIN KHAN V/S THE STATE (PLD 1975 SC 607)*, *MUHAMMAD ASLAM BAJWA V/S THE STATE & ANOTHER (PLD 2004 SC 780)* and *THE STATE V/S HAJI KABEER KHAN (PLD 2005 SC 364)*.

5 Mr Asim Iqbal, Advocate representing the SSGC/Respondent No.9 recorded his no objection for grant of bail to the petitioner on the ground that detention for sufficient long period is deteriorating the health condition of petitioner Dr Asim and as per his information the accused has also suffered cardiac problem and his remain in custody shall collapse his nerves system

6 I have considered the worthy arguments advanced by learned counsel for the parties and carefully perused the record with their able assistance.

7 In Reference No. 19/2016, filed before the Administrative Judge, Accountability Court, Sindh at Karachi, available at page-367 of C.P. No. D-1696/2016, the name of the petitioner is at serial No. 1 and he has been shown involved in misuse of authority by providing illegal benefits to Jamshoro Joint Venture Limited (JJVL). Meanwhile, another complaint was also received from SSGCL, wherein, *inter-alia*, it has been alleged that Gas worth Billions of rupees has been illegally and fraudulently delivered to JJVL, hence inquiry followed by investigation was authorized by the competent authority. Special role of accused Dr Asim Hussain, Ex-Minister of Petroleum and Natural Resources, appears at paragraph-12, in the following manner:-

That the accused No 1 Dr. Asim Hussain, being Minister P&NR illegally with mala fide intention and by misusing his authority issued directions in the meeting dated 26 May 2011 for immediate commissioning of KPD Field without installation of LPG extraction plant which culminated into illegal award of KPD gas Field to JJVL at their existing LPG plant established for Badin gas Field This resulted into extension of undue favour / benefit to accused No. 10 CEO of JJVL which caused loss of billions of rupees to the national exchequer The accused No 1, being Minister by misusing his authority illegally and with mala fide intention, directed SSGCL to lay down and complete the 35 KM pipeline from KPD field gate to SSGCL HQ-3 at the cost of Rs 1.5 billion to unduly facilitate the early gas supply to JJVL plant already existing and adjacent to SSGCL HQ-3. Further, he illegally and with mala fide intention made material changes in his own hand writing in the already tailor-made tender notice and bidding documents through accused officials of Ministry/OGDCL in such a manner so as to suite JJVL and to exclude the rest of the political bidders Due to the above mentioned acts loss of billions of rupees was caused to national exchequer resulting into undue and illegal benefits to JJVL "

Record reflects that on completion of usual investigation, Chairman NAB held responsible to the petitioner and other co-accused, misuse of their authority and caused colossal loss to the National Exchequer to the tune of Rs. 17.338 Billions as defined under Section 9(a) and punishable under Section 10 of NAO, 1999 and the matter was referred to the Accountability Court Sindh at Karachi within the meaning of Section 16(c) of the National Accountability Ordinance, 1999.

8. A perusal of record transpires that present case is not a case of a mere procedural irregularity on the part of the accused but is clear case of misuse or improper exercise of authority by him for an illegal gain. Undoubtedly, bail has been sought on medical ground, however, it may be appropriate in the peculiar facts and circumstances to slightly touch the willful and deliberate circumvention of legal intent of misusing of authority, establishing *mensrea* and the criminal intent of accused in view of relevant provisions of NAO, 1999. Of course, at this stage of tentative assessment we restrain ourselves to examine the merits of the case, however, it may be said that misuse of performance of good governance and paramount functions by a Federal Minister or member of legislature in such matter can not be brushed aside. It needs to be iterated that willful, deliberate and conscious knowledge of the accused that a particular act was illegal was necessary to make him criminally culpable for doing mentioned offence.

9. Insofar as high class status of accused as contended by the learned counsel is concerned, it may be advantageous to mention here that under the relevant provisions of the Constitution of Pakistan 1973, that is the preamble, article 2-A and 31, Chapter 3-A of part VII and Part IX of the Constitution, make it incumbent upon the State to create conditions which may enable the Muslims of Pakistan individually and collectively to order their lives in accordance with fundamental principles and basic concept of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah. In such way, the Court has to be extremely vigilant on the issue of implementation of the injunction of Islam because a stern warning has been given to those who cover up the divined commandments; Reference *Ayat 159, Sura Al-Baqra* "Those who conceal anything of the clear touching and true guidance which we have sent down even though we have made them clear in our book, Allah curses such people and so do all the curses."

10. One basic element in the system of Islam is the principle of equality and equity. This value of equality is not to be mistaken for or confused with identicalness. Islam teaches that in sight of Allah! Almighty, all peoples are equal, but they are not necessarily identical. There are differences of ability, potentials, ambitions, wealth and so on. Yet, none of these differences can be themselves establish the status of superiority of one man or race over another due to color of his skin, the amount of wealth he has, and degree of prestige he enjoys have no bearing on the character and personality of the individual as for as Allah is concerned. The only distinction which Allah recognizes is the distinction in 'TAQWA' (piety) and the criteria of goodness and spiritual excellence. In Al-Quran, Allah says (What means) :

"O mankind, indeed we have created you from male and female, and have made you into nations and tribes that you may know one another. Indeed the most honored of you in

the sight of Allah is the most righteous. Indeed Allah is knowing and acquainted (Quran 49:13)

Man's worth in the eyes of men and in the eyes of Allah is determined by the good he does and by his obedience to Allah, the difference of social status is only incidental. The equality is not simply a matter of constitutional right but it is deeply rooted in the structure of Islam, therefore, the concept of chosen peoples such as "privileged" and "condemned" races, expression such as 'social cast' and 'citizen' will all become meaningless and obsolete. It would be advantageous to reproduce hereinbelow the narration of Holy Prophet ﷺ:-

'O mankind your lord is one and your father is one. You all descended from Aadam and Aadam was created from earth. He is most honoured among you in the sight of Allah who is most upright. No Arab is superior to non-arab no colored person to a white person or a white person to a colored person except by "TAQWA'. (Ahmed and Altirmizi)

In another narration, the Holy Prophet ﷺ said:

'a man who does the most good to people is most favoured by Allah" (Al-Tabarrani)

Therefore following the golden principle of Islam we can say that a person who is morally upright is not equal to a crook in terms of morality, but he may be equal otherwise nor is an intelligent person equal to a dull one, but they are equal in other spheres etc

11 The famous anecdote quoted in saying books i.e. Al-'Bukhari' and 'Muslim' is reproduced as under --

A woman by the name of Fatima belonging to the tribe 'Banu Makhzoom" once committed a theft. Her kins folk fearing that her hand would be amputated sent Hazrat Usama ibne Zayd to intercede with the Holy Prophet ﷺ on her behalf. When the Prophet ﷺ heard this preplan intercession, sign of anger appeared on his face and said 'are you trying to sway me as to the limits laid down by the Almighty Allah and asked Hazrat Usama ibne Zayd immediately admitted his mistake and begged the Holy Prophet ﷺ to pray on his behalf for forgiveness. The Prophet ﷺ then delivered a sermon to those assembled there saying

"Communities of old came to grief and destruction because of the disparity and leniency shown to those in high positions when they committed such an offence. On the contrary, any offender of humble origin or lowly status in society had harsh punishment meted out to him. By God, if my own daughter Fatima were to steal, I would have her hands cut off."

12 Suffice it to say that in Islam, Constitution and law as well, deviation from the path of justice is not allowed even when it concern to a poor or rich or one's opponent or enemy and all citizens are to be treated alike indiscriminately, leaving aside their status or high/low-position in the society. The aforementioned

incident illustrates how strictly this ideal was maintained in the early phase of Islam.

13. Insofar as order dated 01.11.2016, passed by another learned bench of this Court in Cr. Bail Application No. 993 of 2016 ie. Crime No.197/2015 registered under section 201/202/216/216A/409/34 PPC read with Section 6(7)A-21(I)-21(J) of ATA, 1997 with Police Station North Nazimabad, Karachi is concerned, from eight Judicial Precedents reproduced in it, six rulings do not reflect that the bail was extended to the accused on medical ground excepting the case law mentioned at serial No. 7 & 8 i.e. **2000 SCMR 107 and 1998 SCMR 1065**. In the case of *Mian Manzoor Ahmed Wato* reported as **2000 SCMR 107**, the correct criteria for grant of bail in non-bailable cases on medical ground was held to be that the sickness or ailment for which the accused is suffering as such it cannot be properly treated within jail premises. For the sake of convenience relevant paragraph is reproduced as under:

"The correct criteria for grant of bail to an accused in a non-bailable case, on medical ground, in our view, would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail and that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life." (Placitum A, Page # 111)

14. In the case of **Muhammad Arshad vs. The State and another (1997 SCMR 1275)**, it was held by a larger bench, comprising on three Hon'ble Judges that strong reasons must exist to believe that despite advanced medical technology and availability of medicines, treatment and care of accused was not possible in Jail Hospital. Penultimate paragraph-6 of the said judgment is reproduced hereinbelow:-

"Medical certificate produced by petitioner indicates that petitioner was suffering from moderate hypertension, high blood pressure complaining normal chest discomfort without any signs of ischaemic heart disease, and sinus tachycardic. The treatment which has been suggested by the Board comprises of three types of tablets and a cream for local application. Evidently, law vests discretion in the Court for ascertaining justification of granting bail to a sick accused; which requires to be exercised judiciously. Facts of each case have to be assessed on its own merits. The trial Court exercising discretion has to be satisfied about gravity of sickness reflected from medical certificate and possible consequences coupled with nature of treatment necessary for curing the disease. We have no doubt in our mind that every ailment does not attract invocation of discretion contained in proviso to section 497(I) Cr.P.C. There must exist strong reasons to believe that despite advanced medical technology and availability of medicines, treatment and care of petitioner was not possible regarding being had to nature of illness. Thus, advertent to facts of present case, it may be seen, that petitioner is suffering from common disease which can be

conveniently treated in jail hospital and does not appear to be life threatening. Trial Court misconstruing legal position, had seriously erred in allowing bail to petitioner whereas the Lahore High Court by assigning sound reasons corrected the wrong and rightly directed cancellation of bail granted in favour of petitioner. The impugned order is in consonance with basic requirements and spirit of law, therefore, does not warrant interference. For the above reasons, petition had no merit. Accordingly, interim order, dated 27th March, 1997 passed by this Court is recalled, and leave refused".

15. In the case of **Zarin Khan vs. The State** reported as **1980 SCMR 305**, the need of the petitioner was proper treatment irrespective of fact whether he is inside or outside the jail. In **Muhammad Aslam Bajwa vs. The State and another (PLD 2004 SC 780)**, facts were that the medical report showed that the accused was recommended hospitalization for his treatment, which according to accused, was available to him during the present time and he was hospitalized; beside the disease did not appear to be life threatening, hence grant of bail on medical ground was dismissed in the circumstances. Relevant paragraphs 9 & 10 of the said pronouncement are reproduced as under:-

"9. In view of the report of Medical Board, the condition of petitioner is stable, Special Medical Board with consensus had only recommended the hospitalization of petitioner for his treatment, which according to the learned Counsel for the petitioner, is available to him till this time and he is hospitalized. Grant of bail under first proviso to Section 497(1) Cr.P.C is discretionary in nature. Every ailment does not attract invocation of discretion contained in the proviso. There must exist strong reasons to believe that despite the availability of modern medical technology, life saving drugs, advance medical treatment and care, accused still requires treatment which is not generally available.

10. Accordingly, we are of the considered opinion that the petitioner has failed to bring his case within the ambit of first proviso of section 497 Cr.P.C. entitling him for the concession of bail. Even otherwise nature of ailment shown in the opinion of Medical Board, petitioner is suffering from common and old disease, which does not appear to be life threatening. In similar circumstances, this Court in the case of Muhammad Arshad v. The State and another (1997 SCMR 1275) has maintained order of cancellation of bail passed by learned High Court, which was granted by trial court on medical ground".

16. In view of above peculiar circumstances, I very humbly bow to follow the principles as laid down in the cases of **Muhammad Arshad** (1997 SCMR 1275) and **Mian Manzoor Ahmed Wato** (2000 SCMR 107), authored by my lord Mr. Saeed-uz-Zaman Siddiqui, Chief Justice, as well as the latest pronouncement i.e. **MUHAMMAD ASLAM BAJWA**(PLD 2004 SC 780), squarely applicable and fully attracting in the circumstances of the instant case. In light of the aforementioned rulings, the principles as laid down by Hon'ble Supreme Court of Pakistan in

earlier pronouncement of the benches comprising on two Hon'ble Judges are not attracting to the peculiar facts and circumstances of the captioned NAB cases.

7. Applying the principle deducible from the above mentioned precedent cases to the case in hand, I may tentatively assess that prosecution indeed succeeded in establishing a case of dismissal of bail under relevant provision of Cr.P.C. 1999 and within the ambits of section 497(i) Cr.P.C. Moreso, the petitioner being a senior doctor has been accommodated with excellent treatment and hospitalization on recommendation of Medical Board

18. Crux of aforesaid discussion is that strong reasons do not exist to believe that despite providing advance medical technology treatment and availability of medicines the accused who is being hospitalized in a hospital of his own choice, can avail a better treatment on bail, moreover, there is nothing available on record that the required treatment of the diseases disclosed by the aforementioned Medical Boards is not available in the city or in the country as once on request of counsel, the accused is being treated in his own hospital, that is *Ziauddin Hospital*. The learned prosecutor has rightly pointed out that the accused is being provided with excellent medical treatment. A perusal of record reveals that offence committed by the accused person is a crime against the society as a whole, in connection with the public offices and he is not involved in an ordinary criminal matter. Case of petitioner/accused therefore, fell within the exception as *prima facie* there is material on record to connect him with the commission of offence, more particularly, it is not the case of petitioner that he is not getting proper treatment during his detention and that abovementioned classic treatment in *JPMC* cannot be considered to release him on bail as admittedly it has been pointed out hereinabove that petitioner had been/is receiving proper treatment from reputed senior doctors in renowned hospitals of the country. In this behalf, it can conveniently be said that the accused is suffering from ailment who is already in hospital where he is getting treatment according to his own choice therefore there is no compelling reason for me to enlarge the petitioner on bail at this stage when the petitioner is facing serious charges, his case does not fall within the ambits of the provisions of Section 497(i) Cr.P.C. Consequently, bail is declined. Needless to mention here that the trial court is expected to expedite the trial and decide NAB references at an earliest, preferably within four months by recording the depositions of all material witnesses on day to day basis under intimation to this court. Office is directed to transmit a copy of this order to the Accountability court for compliance

Bail plea is dismissed in the manner indicated above

Dated, 03rd Feb. 2017.

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Syed Muhammad Farooq Shah.
Mr. Justice Mohammed Karim Khan Agha.

C.P. No. D-1696 of 2016
Dr. Asim Hussain

Vs

Federation of Pakistan & others

C.P. No. D-7597 of 2015,
Dr. Asim Hussain & another

Vs

National Accountability Bureau

Date of hearing:	17-01-2017 and 18-01-2017
Date of Order	03-02-2017
Petitioners	Through Anwar Mansoor Khan & Ameer Raza Naqvi, advocates for petitioner.
Respondents NAB	Through Mr. Muhammad Altaf, Special Prosecutor NAB. Mr. Ashfaq Rafiq Janjua, Standing Counsel.

ORDER

Mohammed Karim Khan Agha, J. By this composite order we propose to dispose of the above two petitions which have been filed by the petitioner for bail on medical grounds in respect of two separate references which have been filed against him and others by the National Accountability Bureau (NAB) on charges of corruption under the National Accountability Ordinance 1999 (NAO).

2. The brief facts of the case are that the petitioner was taken into custody (preventive detention) by the Pakistan Rangers Sindh on 27-08-2015 under S.11 (EEEE) of the Anti-Terrorism Act 1997 (ATA) where he remained on remand for 90 days and where according to his counsel he was subjected to torture; thereafter he was handed over by the Rangers to the NAB by the Administrative Judge of the Accountability Courts as NAB had opened an inquiry against the petitioner in connection with corruption and corrupt practices under the NAO. After a further period of 45 days on

remand in NAB custody the petitioner was sent to jail. The petitioner is currently standing trial before an ATC Court for offenses under the ATA and the Accountability Courts in respect of 2 separate references which NAB have filed against him and others with respect to alleged acts of corruption falling under the NAO.

3. Learned Counsel for the petitioner in (CP 7597 of 2015) submitted that the petitioner has been in custody for around 17 months and is pleading this petition purely on medical grounds whilst reserving his right to plead his case on merits if his petition for bail on medical grounds is declined by this Court.

4. Learned counsel for the petitioner took the Court through the recommendations of 8 medical boards which according to him showed that the medical condition of the petitioner was becoming progressively worse during the time of his confinement and it had now reached the stage that the ailments of the petitioner were hazardous to his life and as such he was entitled to be enlarged on bail on medical grounds. In support of his contention he placed particular reliance on an order of a Divisional Bench of this Court dated 11-11-2016 in Cr. Bail Application 1144/2016 in the case of **Rauf Siddiqui and others** whereby this Court had granted the petitioner bail on medical grounds based on the 8 identical medical reports which had also been placed before this Court.

5. He also placed reliance on the cases of **Mian Manzoor Watto V State** (2000 SCMR 107) **Zakhim Khan Masood V The State** (1998 SCMR 1065) and **Peer Mukaram-ul-Haq V NAB** (2006 SCMR 1225).

6. Thus, learned counsel for the petitioner submitted that since his ailments were hazardous to his life and a Divisional Bench of this Court had already reached this conclusion the petitioner should be enlarged on bail on medical grounds. Learned Counsel for the petitioner in CP D 1696 of 2016 adopted the arguments of learned counsel for the petitioner in CP D 7597 of 2015.

7. Learned Counsel for Respondent No. 9 (Sui Southern Gas Company) submitted that if based on the relevant medical reports and the relevant law the court was of the view that the petitioner was entitled to be enlarged on bail on medical grounds then he had

551

no objection to the same but otherwise he should not be enlarged on bail on medical grounds.

8. On the other hand learned special prosecutor for the NAB vehemently opposed the grant of bail to the petitioner on medical grounds. He submitted that although the petitioner's medical condition first started on account of the need for dental treatment and thereafter other ailments arose according to him all these ailments could be adequately treated in hospital and were not life threatening. He submitted that the petitioner had already been admitted in hospital (JPMC) for his ailments and that on each and every occasion the recommendations of the medical boards had been complied with and that the petitioner was getting the best available medical treatment for his ailments in the best hospitals and as such he had not met the criteria for the grant of medical bail and as such his petition should be dismissed.

9. In support of his contentions he placed reliance on the cases of **Muhammad Arshad v. The State and another** (1997 SCMR 1275), **Zarin Khan v. The State** (PLD 1975 SC 607), **Muhammad Aslam Bajwa v. The State and another** (PLD 2004 SC 780), **The State v. Haji Kabeer Khan** (PLD 2005 SC 364) and **Agha Ghulam Mohinuddin v. National Accountability Bureau** (CP No.D-900 of 2015 by a Division bench of this Court unreported dated 03-09-2015).

10. We have considered the submissions raised by learned counsel for the parties, perused the record, and in particular the medical reports, and the case law cited by them at the bar.

11. At this point before turning to decide the issue of whether or not the petitioner is entitled to bail on medical grounds we would like to make it clear that we have not considered the gravity of the offense with which the petitioner is charged as it has been held that even in murder cases if the applicable test for the grant of bail on medical grounds is made out the petitioner/accused may be entitled for the grant of bail.

12. In our view the paramount consideration for the grant of bail on medical grounds is not the gravity of the offense but the extent of the sickness and infirmity of the petitioner and his well being which cannot be sacrificed on the alter of such considerations.

552

Thus we have confined ourselves to deciding whether the petitioner has made out a case to be granted bail on medical grounds based on the medical evidence/material before us and the applicable legal test for the grant of bail on medical grounds.

The relevant law and legal test for the grant of bail on medical grounds

13. In our view we first need to consider the order of a Divisional Bench of this Court dated 11-11-2016 in Cr. Bail Application 1144/2016 in the case of **Rauf Siddiqui and others** whereby this Court had granted the petitioner bail on medical grounds on the basis of virtually the same medical record which is before us.

14. In this case the medical condition of the petitioner was fully considered by this court in the following terms from Para 17 to 19 of the aforesaid order which paragraphs are set out below for ease of reference:

"17. On 29.10.2016 counsel for the applicant Dr. Asim Hussain filed a statement along with some medical reports. The Deputy Director JPMC constituted 09 Members Board including a Chairman on 21.10.2016 with the agenda "Current medical report and treatment." This medical board was constituted under the directions of Accountability Court No.IV Sindh, Karachi in Reference No.13/2016. The medical board opined as under:-

"UTP Dr. Asim Hussain, was examined by the medical board. He remains admitted to hospital for intractable low back pain from accelerated degeneration of his lumbar spine at the L5, S1 level. Physiotherapy is not producing significant benefit. He continues to have severe symptoms of low back pain with acute spasm and limitation of mobility. He has been advised to restrict weight bearing at present and JPMC administration is requested to provide him a wheelchair. The board re-iterates its advice for hydrotherapy pending the definitive disc replacement surgery."

18. The report of MRI of Brain issued by the Department of Radiology, JPMC dated 28.10.2016 is also available on the record with the report of Consultant Neurologist and Professor of Medicine JPMC issued on 31.10.2016 which reads as under:-

"This is to certify that, Dr. Asim Hussain, had sudden rise in his blood pressure and developed weakness of left half of the body on 28th October, 2016. He was

553

assessed by the board physician and was referred to Neurologist for further management. MRI Brain was done and the report is consistent with multiple ischemic infarcts of variable size and duration. He is advised bed rest for 4 weeks on the basis of his clinical status."

19. In support of medical reports the learned counsel for the applicant Dr. Asim Hussain made much emphasis that not only he is entitled to be enlarged on bail as the matter requires further inquiry but due to his critical physical condition he is also entitled to be enlarged on bail on medical grounds as his treatment is not possible under custody. (So far as Special Public Prosecutor is concerned, he also conceded to his no objection for the grant of bail on medical ground to Dr. Asim Hussain). It was further averred that his health is deteriorating day by day and his life is in danger. The apex court in the case of **Mian Manzoor Ahmed Watto** (supra), laid down that correct criteria for grant of bail on medical ground would be that the sickness or ailment is such that cannot be properly treated in jail and that some specialized treatment is needed and continued detention in jail is likely to affect accused's capacity or is hazardous to his life. While in the case of **Zakhim Khan Masood** (supra), the apex court held that ailment of accused according to medical report is likely to have hazardous effects on his life because stress and strain could aggravate his disease. Accused is undoubtedly sick and needed treatment in conducive conditions free from any kind of pressure and he could not have full peace of mind in custody which could surely make his recovery from ailment slow putting seriously his life to danger."

15. Based on the above paragraphs the petitioner was granted bail on medical grounds. In large part and as a general rule, in our view, we are bound by this order passed by a Divisional Bench of this Court to grant the petitioner bail on medical grounds especially as this order was not challenged before the Supreme Court and has now reached finality. We have however deliberately used the words, "In large part and as a general rule" above as there is a slight distinction in the above case and the instant case. That distinction is that in **Rauf Siddiqui's case** (Supra) the grant of medical bail was not opposed by the special public prosecutor and appears only to have been mildly opposed by counsel for the complainant who did not even cite any authority in support of his contentions whereas in this case the concerned agency which is a different agency (NAB) has **vehemently opposed** the grant of bail on medical grounds based on the relevant law (whilst citing numerous authorities) and the medical reports which have been submitted by the petitioner.

16. In these circumstances while keeping in view the order in **Rauf Siddiqui's case** (Supra) without reviewing that order we consider it appropriate to consider the relevant law, the case of the petitioner, the submissions of NAB together with the law cited by them and the petitioners current medical condition based on the latest medical reports in order to promote fairness and transparency and so that a decision can be reached entirely on merits based on the single ground of bail on medical grounds as opposed to the number of other grounds relied on in **Rauf Siddiqui's case** (Supra)

17. This court in the unreported case of **Kifayatullah V Federation of Pakistan and others** (C.P. No.D-6758 of 2015) dated 24-05-2016 in which one of us was a member (Mohammed Karim Khan Agha J) had considered in detail the relevant law to be applied in cases of bail on medical grounds. For ease of reference that discussion from para's 12 to 20, which we believe to be the correct law on this issue is set out below for ease of reference:

"12. The statutory basis for the grant of bail on medical grounds can be found in the first proviso to S.497 Cr.PC which 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 that the Court may direct that any person under the age of sixteen years or any woman **or any sick or infirm person accused of such an offence be released on bail.**" (bold added)

13. The question which therefore emerges is how have the Courts interpreted the above proviso to section 497 (1) Cr.PC and what is the test for determining whether a person is entitled to bail on medical grounds on account of him being sick or infirm bearing in mind that there are likely to be different stages and levels of sickness and infirmity.

14. In our view the test for determining whether or not a person could be released on bail on medical grounds or not was initially laid down as long ago as 1995 by the Hon'ble Supreme Court in the case of

555

Mohammed Yousafullah Khan V State (PLD 1995 SC 58) where it was held at P.65 as under:

"From the above discussed position it is clear to us that the bail on medical ground can be granted under section 497, Cr.P.C. if the Court reaches the conclusion on the basis of medical report that the ailment with which the accused is suffering is such that it cannot be properly treated while in custody in Jail. The fact that the appellant is not suffering from any particular type of injury (as observed by the learned Judge that there was no fracture of bone in that case), would not be a ground either to refuse or grant the bail on medical ground. **The correct criteria for grant of bail to an accused in a non-bailable case, on medical ground, in our view, would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail and that some specialized treatment is needed and his continued detention in Jail is likely to affect his capacity or is hazardous to his life**". (bold added)

15. The test would therefore appear, in non bailable cases such as the instant case, to have the following limbs as set out below all of which in turn the court would need to be satisfied of, based on the medical reports, before the Court before bail on medical grounds can be granted under the first proviso to S.497 (1) Cr.PC

- (a) the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail **and**
- (b) that some specialized treatment is needed **and**
- (c) his continued detention in jail is likely to affect his capacity **or** is hazardous to his life

16. This test was followed in the case of **Mian Manzoor Ahmed Watto V State** (2000 SCMR 107), and the **State V Haji Kabeer Khan** (PLD 2005 SC 364) where at P.371 in **Haji Kabeer's case** (Supra) it was observed as under:

"In addition to it we may observe that when it has been established as a matter of fact that the respondent has been getting proper treatment in the hospital or in Jail he would not be entitled for grant of bail as it has been held in the case of **Zarin Khan v. The State** 1980 SCMR 305."

17. Interestingly the Supreme Court in the 2002 case of **Muhammed Saeed Mehdi V State** (2002 SCMR) P.282 held as under at P.289 at Para 9.

"9. Medical ground urged in support of the prayer for bail has also not been controverted by the prosecution.

It was rather conceded that the petitioner requires immediate treatment, hospitalization and close monitoring by Specialists in a well-equipped hospital. The object obviously cannot be achieved by detaining the petitioner in jail indefinitely or to refer him to a hospital for the purpose of treatment for a limited time. Since the petitioner has been found to be entitled to the concession of bail on variety of grounds and the grant of bail cannot be withheld by way of punishment, we hold that petitioner has made out a case for grant of bail."

18. In the later case of **Peer Mukaram Ul Haq V NAB** (2006 SCMR P.1225) it appears at first instance that a three member Bench of the Hon'ble Supreme Court may have slightly watered down the test laid down in Mohammed You'safullah's case (Supra) by emphasizing the need of specialized treatment which could not be provided in jail (as in Saeed Mehdi's case (Supra)) by holding at P.1228 as under:

"We have carefully examined the respective contentions as agitated on behalf of the parties in the light of relevant provisions of law and record of the case. There is no denying the fact that the petitioner has undergone a substantive portion of sentence and the medical certificates are indicative of the ailment which appears to be somewhat serious. In this regard the medical opinion furnished by Dr. Tariq Niazi can be referred who had recommended shifting of petitioner to some care health facility where a team of the diabetologist, neuro-physician and cardiologist are available. The above Specialists are not available in D.H.Q. Hospital, Mianwali. It is also not disputed that during the recent past the petitioner was hospitalized and remained under treatment in the Department of Urology. We have no hesitation in our mind to hold that requisite medical facilities, modern techniques, up to date operation skill and know-how are not available in the D.H.Q. Hospital, Mianwali which aspect of the matter has been ignored by the learned High Court. We are conscious of the fact that the grant of bail and suspension of sentence is discretionary matter but such discretion should have been exercised in accordance with the substantive provision of law and the principle settled by this Court."

At P. 1229, Para 7 "It is also to be kept in view that this Court being at the apex has constitutional duty to impart complete justice and therefore, it cannot be inhibited by any restrain or restriction and has abiding duty to consider all the pros and cons of the matter and to take an overall view of the case while dispensing justice. It may not be out of place to mention here that pursuant to the provisions contained in section 497(1), Cr.P.C. "a sick or infirm person may be released on bail even where there are reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment. It is now well-settled that where a

5581

statute itself lays down certain principles for doing some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the Court." *Maqsood v. Ali Muhammad* 1972 SCMR 657. It is well-entrenched legal proposition that powers conferred upon section 426, Cr.P.C. are not controlled by the provisions of section 496 and 497, Cr.P.C. but the principles enunciated therein can be taken into consideration while granting or refusing bail. If any authority is required reference can be made to *Bashir Ahmad v. Zulfiqar* PLD 1992 SC 463.

Keeping in view the nature of ailment, medical opinion furnished by Dr. Tariq Niazi, non-availability of necessary facilities in D.H.Q. Hospital, Mianwali, expiry of substantive portion of the awarded sentence, we are inclined to convert this petition into appeal which is accepted."

19. However, bearing in mind that in **Saeed Mehdi's case (Supra) the bail on medical grounds was unopposed and it was conceded** by the prosecution that the petitioner requires immediate treatment, hospitalization and close monitoring by specialists in a well-equipped hospital **and other grounds for bail had also been made out** and the case of **Peer Mukaram (Supra)** concerned bail under S.426 Cr.PC and that he was **also granted bail on account of his having served a substantial portion of his sentence** and as such his medical condition, as in **Saeed Mehdi's case (Supra)**, was not the sole ground for the grant of bail we are of the view that the complete original test as laid down in **Mohammed Yousafullah's case** and as affirmed in **State V Haji Kabeer Khan's case** remains the test to be adopted even if greater emphasis is to be placed on the sickness not being able to be properly treated in the jail premises. In our view what the cases of **Saeed Mehdi (Supra)** and **Peer Mukaram (Supra)** tell us is that each case must be judged against the test for bail on medical grounds on its own particular facts and circumstances and that no single case is likely to be the same

20. In the 2013 case of **Muhammad Ali Athar V Director General NAB Punjab** (2013 PC.R.LJ 58) with respect to bail on medical grounds a Divisional Bench of the Lahore High Court granted bail on medical grounds based on medical reports which provided as under in the following terms at P.60.

"The petitioner admittedly showed signs of fragility and poor health when taken into custody on 1-2-2012. A Medical Board constituted under a direction of this court at Service Hospital, Lahore examined the petitioner on 12-7-2012 and formulated the following report:--

- * He is diagnosed case of HTN + chronic smoker. He developed recent stroke leading to progressive deterioration in memory behavioral disturbance. He also has poor sphincteric control.
- * He is a case of Multi-infarcts dementia that has led to irreversible change to brain. (Clinical as well as investigations).
- * No active management is required right now.
- * However, he needs one attendant whole time for routine activities in jail."

Thereafter another Medical Board comprising senior medical-men, was constituted at Kind Edward Medical University, Lahore, the members whereof medically examined the petitioner on 9-8-2012 in the light of investigation including C.T. Brain, M.R.I. Brain etc. and they after thorough checkup, arrived at the following conclusions:--

"He is a case of Hypertension, chronic heavy smoker and had history of ischemic stroke with left sided weakness about a year ago and since then there is history of progressive memory deterioration, poor sphincter control and behavior disturbance.

The Board is of the opinion that Mr. Muhammad Ali Athar is suffering from Vascular Dementia due to multiple small cerebral infarcts.

The condition is likely to persist and may get worse with time. He needs good control of blood pressure, lipids, use anti platelets and abstain from smoking.

He needs psychiatric opinion for control of hallucinations and behavior disturbance."

The above said reports categorically revealed that the disease, **the petitioner suffers from require constant care** including, periodical tests and treatment, **around the clock attendant**, special diet and availability of quick medical advice etc. **which are not available in jail.** The age of the petitioner, 60 years, as stated by his learned counsel, renders him an elderly man faced with such an ailment which requires advance medical treatment, advice and psycho-therapy. The jail is certainly not a place where such a facility can be extended to the petitioner. (bold added)

18. From the above discussion in **Kifayatullah's case (Supra)** we are clear in our mind that as a matter of law the correct test to be applied to determine whether the petitioner is entitled to be enlarged on bail on medical grounds remains as what was

560

JMPC, Karachi vide letter No.F-2-12/2016-GENL-K/347102/JPMC dated 19th January, 2016 which met on the same day i.e. 19th January, 2016 at 11.00 a.m.

2. The following members were in the quorum of the Medical Board:-

- i. Dr. Syed Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman.
- ii. Dr. Tariq Mehmood, Prof. of Radiology, JPMC Member.
- iii. Dr. Muhammad Iqbal Afridi, Prof. of Psychiatry, JPMC Member/Secretary.
- iv. Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC Member.
- v. Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC Member.

3. The members of the Medical Board asked various questions related to their specialties and also examined the accused Dr. Asim Hussain. The mental state of the accused was also carried out by reevaluation (Blood Biochemistry and Radiology examination).

Recommendation.

The final decision of the Medical Board was that accused Dr. Asim Hussain should be admitted to JPMC, Karachi, immediately. The psychotherapy will be carried out by Prof. Syed Haroon Ahmed. (bold added)

2nd Medical Board/Report on 01-02-2016

MINUTES OF THE **SECOND MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJUMAL HUSSAIN on 01-02-2016** (observed that psychotherapy be continued for mental health issues, suggested neurosurgery on lower back and a second opinion on the recommendation and other tests to be carried out)

The second Medical Board of the accused Dr. Asim Hussain S/o Tajumal Hussain, aged 63 years, was constituted by the Executive Director, JPMC, Karachi vide letter No.F.2-12/2016-GENL-K/35815/JPMC dated 29th January, 2016. The Medical Board was held on 1st February, 2016 at 9.00 a.m. in the Committee Room, Administration Block, JPMC, Karachi.

The following members were in the quorum of the Medical Board:-

- Dr. Syed Haroon Ahmed, Prof. of Emeritus Psychiatry, JPMC Chairman.
- Dr. Tariq Mehmood, Prof. of Radiology, JPMC Member.
- Dr. Muhammad Iqbal Afridi, Prof. of Psychiatry, JPMC Member.
- Dr. Raza K. Rizvi, Prof. of Neurosurgery, JPMC Member.
- Dr. Rukhsana A. Sattar, Prof. of Medicine, JPMC Member.

Patient was examined in Room NO.1, Federal Government Officers Ward, JPMC and reviewed the current medical status.

Dr. Tariq Mahmood. He briefed the Chairman about the Radiological investigation and finding of the patient he advised the following investigations:-

1. MRI (Brain) Dynamic with contrast.
2. C.T. Scan Lumber spine region.
3. PSA level.

561

Dr. S. Raza Hussain Rizvi. He reported the neurological finding of the patient suggested acute disease problem (L5.S1) and suggested surgery. He further suggested the following investigations for second opinion from some senior Spinal Neurosurgeon and Orthopedic Surgeons. He also suggested to the following investigations:-

MRI (Myelogram)
C.T. Lumber spine with 3D reformat.

Prof. Harroon Ahmed and Dr. Muhammad Iqbal Afridi. Agreed to continue Psychotherapy.

Dr. Rukhsana Abdul Sattar. She reported about the progress of the patient. She found that the sugar level and B.P. is well under control.

The Board further advised to seek second opinion regarding neurosurgical problem of the patient from the below mentioned senior doctors (public & private health institution). The Board agreed on the name of following senior Consultants for second opinion.

1. Prof. Athar Inam, Aga Khan University Hospital, Karachi.
2. Prof. Junaid Ashraf, Dow University of Health Sciences, Karachi.
3. Prof. Younus Soomro, Orthopaedic Surgeon (Rtd), Civil Hospital, Karachi. (bold added)

3rd Medical Board/Report held on 27th February, 2016.

Subject:- MINUTES OF THIRD MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN (which observed that psychotherapy be continued for mental health issues, observed that second opinion is recommended on neurosurgery on lower back was still awaited and requested the Court to arrange this)

The third Medical Board of accused Dr. Asim Hussain S/O Tajamul Hussain, constituted by the Executive Director JPMC vide letter No.F-2-12/2016-GENL-K/37815/JPMC dated 26th February, 2016 was held on 27th February, 2016 at 11.00 a.m. in the office of Incharge, F.G.O. ward, JPMC, Karachi. The following attended the meeting of Medical Board.

Dr. Harroon Ahmed, Professor of Emeritus Psychiatry, JPMC. Chairman.
Dr. Tariq Mahmood, Professor of Radiology, JPMC. Member.
Dr. Muhammad Iqbal Afridi, Professor of Psychiatry, JPMC. Member.
Dr. Raza K. Rizvi, Professor of Neurosurgery, JPMC. Member.
Dr. Rukhsana A. Sattar, Professor of Medicine, JPMC. Member.

Patient was examined in Room No.1, F.G.O. ward, JPMC. The Board reviewed the Psychological status of Dr. Asim Hussain. Dr. Harroon has had 12 sessions and the patient was marginally improving. However, few recent events have caused some set backs including his wife's recurrence of Cancer for which she has down to London for review and possible chemotherapy.

The psychotherapy will continue.

In the last board meeting his complaint of low back pain (L5-S1) PID has not improved and surgical treatment was advised. However the patient suggested for Second opinion which is pending, for which the board recommended three consultants Neurosurgeons /Orthopedic surgeon.

Prof. Athar Inam, Aga Khan University Hospital, Karachi.
Prof. Junaid Ashraf, Dow University of Health Sciences, Karachi.
Prof. Younus Soomro, Orthopedic Surgeon (Rtd), Civil Hospital, Karachi.

The board requests the Honorable Court to kindly direct them to examine and give their opinion. (bold added)

4th Medical Board/Report held on 16-03-2016

Subject: MINUTES OF 4TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.
(pointed out various ailments in his leg and back and set out treatment which if not effective left the option of surgery).

The 4th Medical Board of accused Dr. Asim Hussain S/o Tajamul Hussain constituted by the Executive Director, JPMC vide letter No.F-2-12/2016-GENL-K/38219/JPMC dated 15th March, 2016 was held on 16th March, 2016 at 11.00 Am in the office of the Incharge F.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

- . Prof. Athar Inam, Agha Khan University Hospital Karachi (Not attended)
- . Prof. Junaid Ashraf Dow University of Health Sciences Karachi.
- . Prof. Younis Soomro (Rtd) Civil Hospital Karachi/Ankleseria Hospital.

The opinion of the Board as follows:

Patient Dr. Asim Hussain, is 63 years of age. He complains of back pain and left leg pain for the last 6 month with numbness on walking.

On the examination he has restriction of straight leg raising, more on the left side, with reduced left ankle jerk. **His CT Scan of Lumber Spine suggests reduction in L5/S1 space with degenerative changes. MRI demonstrates left side L-5/S-1 disc / osteophyte complex.**

He needs conservative treatment in the first instance with a hard bed and a firm mattress. He needs good physiotherapy, Short Wave Diathermy, Ultrasound therapy, TENS and back strengthening exercises for 8 to 10 weeks. He should also be on adequate analgesia, the choice of which is left with the primary team.

He has partial improvement his medical treatment should continue. If there is no improvement he be offered surgery for the herniated disc.

In the opinion of the Board the management of the primary Neuro Surgery team looking after him is appropriate. We concur the opinion of the primary team. (bold added)

5th Medical Board/Report held on 05-04-2016

Subject:- MINUTES OF 5TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.
(with regard to back problem continued physiotherapy for 8 to 10 weeks was advised after which another medical Board should be called)

The 5th Medical Board of accused Dr. Asim Hussain S/o Tajamul Hussain constituted by the Executive Director, JPMC vide letter No.F-2-12/2016-GENL-K/38943/JPMC dated 1st April, 2016 was held on 05th April, 2016 at 11.00 Am in the office of the Incharge F.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

- Dr. Haroon Ahmed, Professor Emeritus Psychiatry, JPMC. Chairman.
- Dr. Tariq Mehmood, Professor of Radiology, JPMC. Member.
- Dr.M. Iqbal Afridi, Professor of Psychiatry, JPMC. Member.
- Dr.Raza K. Rizvi, Professor of Neurosurgery, JPMC. Member.
- Dr. Rukhsana A. Sattar, Professor of Medicine, JPMC. Member.
- Dr. Athar Inam, Prof. Agha Khan University Hospital, Karachi. Member.
- Dr. Junaid Ashraf, Prof. Dow University of Health Science Kar. Member.
- Dr. Younis Soomro (Rtd), Prof. C.H. Karachi/Ankleseria Hospital. Member.

563

The opinion of the Board is as follows:

As per order of the court chairman Medical Board Professor Dr. Haroon appeared in the court along with all papers. The honourable court did not call him for submission of the report. The interim report prepared by Dr. Haroon, was thus handed over to patient which was duly received by the patient for onward submission to the court. If the central prison authorities need to have that report, they can request the honorable court or directly from the patient Dr. Asim Hussain.

Regarding the backache problem of the patient, on 16th March, 2016 the Board advised medical treatment and physiotherapy for 8 to 10 weeks and will review the patient at end of this period.

The meeting of the medical board should be called by the Executive Director, JPMC in consultation with the chairman of the medical board.
Prof. S. Haroon Ahmed (bold added)

It later came to light that JPMC did not have the necessary equipment for the required physiotherapy as illustrated below and it appears from the record that this was instead carried out at Aga Khan University Hospital.

NO.F-2-12/2016-GENL-K/39167 JPMC.
GOVERNMENT OF SINDH
JINNAH POSTGRADUATE MEDICAL CENTRE.
KARACHI 75510.

Dated the 7/4/2016.

The Senior Superintendent
Central Prison,
Karachi.

Subject:- Physiotherapy of accused Dr. Asim Hussain S/o Tajamul Hussain.

With reference to this office letter NO.F-2/12/2016-GENL-K/39137, dated 6th April, 2016 and recommendation of Medical Board for physiotherapy of accused Dr. Asim Hussain.

Further to refer on the Office letter NO.F-2-12/2016-GENL-K/38656/JPMC, dated 25th March, 2016 **and to report that equipment & machinery for recommended physiotherapy is not available at JPMC Karachi.**

It is therefore requested that advise to get proper physiotherapy of accused Dr. Asim Hussain S/o Tajamul Hussain from somewhere else where good facilities are available.

6th Medical Board/Report held on 30th May 2016

Subject:-MINUTES OF 6TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN (found there was no improvement in backache with physiotherapy. He was suggested for disc effusion and disc replacement surgery, further opinion from spinal surgeon on this issue by specialists and continued Psychotherapy)

The 6th Medical Board of accused Dr. Asim Hussain S/o Tajamul Hussain constituted by the Executive Director, JPMC vide letter No.F-2-12/2016-GENL-K/43036/JPMC dated 27th May, 2016 was held on 30th May, 2016 at 9.30 Am in the office of the Incharge F.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

Dr. Haroon Ahmed, Professor Emeritus Psychiatry, JPMC. Chairman.
Dr. Tariq Mehmood, Professor of Radiology, JPMC. Member.
Dr. M. Iqbal Afridi, Professor of Psychiatry, JPMC.
Member.

564

Dr. Raza K. Rizvi, Professor of Neurosurgery, JPMC.

Member.

Dr. Rukhsana A. Sattar, Professor of Neurosurgery, JPMC. Member.

Dr. Athar Inam, Prof. Agha Khan University Hospital, Karachi.

Member.

Dr. Junaid Ashraf, Prof. Dow University of Health Science Kar.

Member.

Dr. Younis Soomro (Rtd), Prof. CHK/Ankleseria Hospital. Kar.

Member.

The opinion of the Board is as follows:

In today's meeting it was found that there is no improvement in backache with physiotherapy. He was suggested for disc effusion and disc replacement surgery. It is advised to repeat MRI Lumber Sacral Spine, X-Ray Lumber Sacral A/P. Further opinion from Spinal Surgeon Dr. Imtiaz Hashmi, may be taken in this regard. Dr. Jooma, Dr. Tariq and Dr. Raza Rizvi will examine the patient with Dr. Hashmi and give us consolidated opinion. Dr. Imtiaz Hashmi has seen the patient.

Psychotherapy continued and he is improving satisfactorily however his sleep is still disturbed (the fear of rangers Picking-up). He was trained for relaxation exercises which he was doing but for the last one week due to his fever and backache he could not continue. He is advised to resume as per instruction. (Dr. Haroon will be away on holiday for 3 weeks from the 4th June) (bold added)

The recommended second opinion (as recommended in the 3rd and 6th Medical Boards/Reports) dated 6th June 2006.

SUBJECT:- MINUTES OF NEURO SPINAL SURGEON MEETING DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.

A meeting of Neuro Spinal Surgeon was held on 6th June, 2016 at 08:30 Am in the office of the Incharge P.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

Prof. Rasheed Jooma, Neuro Surgeon, AKUH, Karachi.

Prof. Imtiaz Hashmi, Consultant Spinal Surgeon AKUH Karachi.

Prof. Raza K. Rizvi, Professor of Neurosurgery, JPMC.

Prof. Junaid Ashraf, Dow University & Health Science Karachi.

The UTP is a 62 years old male with a history of low back pain which has been exacerbated in the recent past. There is a component of sciatica in his presenting complaints but the predominant symptom is low back pain which is limiting his mobility. He has significant past medical history for diabetes and hypertension. He has raised serum prolactin levels. No radicular deficits are evident but there is significant limitation of lumber spine movement. His lumber spine radiographs show degenerative changes at L5 S1 with loss of disc height. On MRI there is circumferential bulging of the annulus of L5 S1 consistent with an incompetent disc. There is thinning of the end plate and subchondral degeneration compatible with Modic changes. The other lumber discs are unremarkable with their normal signal and appearance on MRI. He is presently undergoing multimodality physiotherapy along with analgesics but he has yet to respond to this treatment. The evidence suggests that patient has mono segmental accelerated degeneration of the lower lumber spine. **Currently the best surgical treatment for such pathology is disc replacement that would allow preservation of the motion segment, and this course is advised by the board.** In view of the intractability of the pain and **motion limitation**, he is advised surgical lumber disc replacement at a centre where it is regularly performed.

In the interim the board advises continuation of appropriate physiotherapy as decided by the managing medical team. (bold added)

Letter from Prof.S.Raza Khairat Rizvi to Executive Director JPMC dated 16-07-2016

565

Prof. S. Raza Khairat Rizvi
M.B.B.S. (Neurosurgeon)
Professor & Head of Dept. Neurosurgery

July, 16, 2016.

The Executive Director
Jinnah Postgraduate Medical Centre,
Karachi.

SUBJECT:- MEDICAL REPORT OF DR. ASIM HUSSAIN S/O TAJMUL
HUSSAIN.

Respected Sir,

The UTP is a 62 years old male on the subject above and to say that the medical board has concluded that the UTP has a significant degenerative condition of the lumbar spine and this has **not responded** to conservative treatment. **In view of continuing symptoms and signs of nerve root compression the Board has recommended surgery of the spine.**

The procedure recommended by the board lumbar arthroplasty with implantation of artificial disc is not available in this centre. (bold added)

Yours sincerely,

Sd/-

Prof. S. Raza Khairat Rizvi
Head of Department &
Professor of Neurosurgery
Jinnah Postgraduate Medical Centre
Karachi.

7th Medical Board/Report held on 02-08-2016

Subject:- MINUTES OF 7TH MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.
(advised surgical lumbar disc replacement at a centre where it is regularly performed, observed that physiotherapy at A.K.U. Hospital is not helpful and the only option (if surgery not possible) is to start hydrotherapy wherever available)

On the order of Accountability court 7th Medical Board of Dr. Asim Hussain S/o Tajamul Hussain constituted by the Executive Director, JPMC vide letter No.F-2-12/2016-GENL-K/1100/JPMC dated 29th July, 2016 was held on 02nd August, 2016 at 10.30 Am in the office of the Incharge F.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

Dr. Haroon Ahmed, Professor Emeritus Psychiatry, JPMC. Chairman.
Dr. Tariq Mehmood, Professor of Radiology, JPMC. Member.
Dr. M. Iqbal Afridi, Professor of Psychiatry, JPMC.
Member.
Dr. Raza K. Rizvi, Professor of Neurosurgery, JPMC.
Member.
Dr. Rukhsana A. Sattar, Professor of Medicine, JPMC.
Member.
Prof. Junaid Ashraf, Dow University of Health Science Kar. Member.
Prof. Younus Soomro (Rtd), CH Karachi/Ankleseria Hospital.
Member.
Prof. Rasheed Jooma, A.K.U.Hospital, Karachi
Member.
Prof. Intiaz Hashmi, ORTHO Spinal, A.K.U.Hospital Karachi.
Member

The medical board examined Dr. Asim Hussain, his current complaints were insomnia occasional panic attack (which are less now) and fluctuating B-P. He also complained of rashes on the back. **The pain in the lower back persists and there is limitation of movement.**

566

His mental status has improved but fear of certain situations and Rangers uniform persists. He can only sleep early morning in spite of sleeping pills. Therapy is currently directed towards FEAR.

The Neuro surgeons and Orthopedic surgeon reviewed their report of earlier meeting of 6th June, 2016 "in view of the intractability of the pain and motion limitation, he is advised surgical lumbar disc replacement at a centre where it is regularly performed".
Prof. Rasheed Jooma, Neuro Surgeon, AKUH, Karachi.
Prof. Imtiaz Hashmi, Consultant Spinal Surgeon, AKUH, Karachi.
Prof. Raza K. Rizvi, Prof. of Neurosurgery, JPMC.
Prof. Junaid Ashraf, Dow University & Health Science Karachi.

The surgeons were of the opinion that, the current physiotherapy at A.K.U. Hospital is not helpful as per report of Mr. Atta Muhammad, Physiotherapist A.K.U. (15th July, 2016). The only option (if surgery not possible) is to start hydrotherapy wherever available.

Dr. Asim also complained of rashes in his back, Professor Zamaz who was available and consulted. She has advised histamine treatment and constant room temperature with A/C.

In conclusion the board was of the opinion that:

1. The therapy for certain emotional issues (Panic, Depression, and Fear) should continue for which he should remain in hospital.
2. The surgeon after examination did not have anything new to add except **Hydrotherapy** (wherever it is available), **in addition to physiotherapy during hospitalization.**
3. Dr. Zamaz has given her advice which includes temperature controlled environment with A/C.
4. Dr. Haroon Ahmed, made adjustments in his medication as his tremors are much better. (bold added)

8th Medical Board/Report on 22-10-2016

Subject:- MINUTES OF 8th MEDICAL BOARD OF ACCUSED DR. ASIM HUSSAIN S/O TAJAMUL HUSSAIN.
NAB REF. OF 13/2016. (Observed that **Physiotherapy is not producing significant benefit. He continues to have severe symptoms of low back pain with acute spasm and limitation of mobility. The board reiterates its advice for hydrotherapy pending the definitive disc replacement surgery**)

The 8th Medical Board of accused Dr. Asim Hussain S/o Tajamul Hussain constituted by the Executive Director, JPMC vide letter No.F-2-12/2016-GENL-K/6061/JPMC dated 21st October, 2016 was held on 22nd October 2016 at 12.00 noon in the office of the Incharge F.G.O. Ward, JPMC, Karachi. The following consultants attended the meeting of Medical Board.

Dr. Haroon Ahmed, Professor Emeritus, Psychiatry, JPMC. Chairman.
Dr. Tariq Mehmood, Professor of Radiology, JPMC. Member.
Dr. M. Iqbal Afridi, Professor of Psychiatry, JPMC.
Member.
Dr. Raza K. Rizvi, Professor of Neurosurgery, JPMC.
Member.
Dr. Rukhsana A. Sattar, Professor of Medicine, JPMC.
Member.
Prof. Junaid Ashraf, Dow University of Health Science Kar. Member.
Prof. Younus Soomro (Rtd), CHK/Ankleseria Hospital. Kar. Member.
Prof. Rasheed Jooma. Agha Khan University Hospital, Karachi.
Member.
Prof. Imtiaz Hashmi, Neuro Spinal, A.K.U. Hospital Karachi.
Member.

UTP Dr. Asim Hussain, was examined by the medical board. He remains admitted to hospital for intractable low back pain from accelerated degeneration of his lumbar spine at the L5, S1 level. Physiotherapy is not producing significant benefit. He continues to

56

have severe symptoms of low back pain with acute spasm and limitation of mobility. He has been advised to restrict weight bearing at present and JPMC administration is requested to provide him a wheelchair.

The board re-iterates its advice for hydrotherapy pending the definitive disc replacement surgery. (bold and italics added)

9th Medical Report dated 28-10-2016

As was noted in the Rauf Siddiqui case (Supra) as reproduced earlier in this order which may be referred to as the 9th Report:

18. The report of MRI of Brain issued by the Department of Radiology, JPMC dated 28.10.2016 is also available on the record with the report of Consultant Neurologist and Professor of Medicine JPMC issued on 31.10.2016 which reads as under:-

"This is to certify that, Dr. Asim Hussain, had sudden rise in his blood pressure and developed weakness of left half of the body on 28th October, 2016. He was assessed by the board physician and was referred to Neurologist for further management. MRI Brain was done and the report is consistent with multiple ischemic infarcts of variable size and duration. He is advised bed rest for 4 weeks on the basis of his clinical status."

This report seems to indicate that the petitioner suffered what is commonly known as a Transient Ischaemic Attack ("TIA") and we even as layman are aware that such episodes which cause TIA's can lead to paralysis of certain parts of the body in some cases and can contribute towards vascular and other forms of dementia. Such an episode in our view needs to be considered along with the petitioners other long standing mental health issues

That it was after consideration of the above mentioned reports that the petitioner was granted bail on medical grounds by this court only about two months ago in the case of Rauf Siddiqui (Supra)

10th Medical Report dated 22.12.2016

We set out below what can be referred to as the 10th medical report which came after the petitioner was granted bail on medical grounds in the case of Rauf Siddiqui (Supra) and seems to indicate that the petitioner also has serious coronary issues which need to be attended to on an urgent basis.

568

NATIONAL INSTITUTE OF CARDIOVASCULAR DISEASES
RAFIQUI (H.J) SHAHEED ROAD, KARACHI-75510, PAKISTAN
PHONE: 9201271-10 Lines

DATED: DECEMBER 22, 2016.

TO WHOM IT MAY CONCERN

This is to certify that Dr. Asim Hussain, **who is admitted in NICVD Special Ward Room No.211 on 19.12.2016.** He was transferred from Jinnah Hospital with complain of chest pain with palpitation and light headedness. His initial ECG showed PVC's with T wave changes in lateral leads. He underwent 24 hours Holter monitoring which showed 2656 PVC's (110 per hour). There were also episode of Sino Atrial Exit Block Type-II. **His PVC's almost likely arising from Right Ventricular outflow tract and he may need Radio frequency ablation in near future. This procedure is highly technical and needs skill lab with experience which is not available locally. If he becomes symptomatic from Sinus node Exit Block he may need a permanent pacemaker.**

There very high burden of PVC's some time can be lethal and fatal and needs urgent attention. (bold and italics added)

Sd/- (PROF. SYED ZAHID JAMAL) PROFESSOR OF CARDIOLOGY Diplomate American Boards of Medicine & Cardiology. Fellowship Cardiac Electrophysiology (Harvard University) (MEMBER)	Sd/- (PROF. SYED NADEEM H. RIZVI) PROF. OF INTERVENTIONAL CARDIOLOGY & DIRECTOR CATH LAB (MEMBER)
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Sd/-
(PROFESSOR NADEEM QAMAR)
Diplomate American of Internal Medicine
Executive Director &
Professor of Cardiology
(CHAIRMAN)

We would also point out at this stage that we have only produced the medical reports of the medical boards but generally these reports are supported by a plethora of other medical opinions/advice/ reports on the record which support the above reports a few of which (3 in number) we set out below for ease of reference:

1. Letter dated 05.09.2016 concerning heavy sedative medication which effects the capacity of the petitioner in the mornings.

FEDERAL GOVERNMENT OFFICER'S WARD
JINNAH POSTGRADUATE MEDICAL CENTRE dated 05-09-2016
KARACHI

TO WHOM IT MAY CONCERN

This is to certify that, Dr. Asim Hussain, is under treatment for **Psychiatric illness and is on heavy sedative medication**, hence it is difficult for him to get up early in the

569

morning. His routine may accordingly be adjusted, kindly.
(bold added)

(DR. NOSHEEN RAUG)
INCHARGE
F.G.O. WARD JPMC
KARACHI

2. Case Summary of the petitioner's illness/sickness/incapacity dated 05.9.2016.

FEDERAL GOVERNMENT OFFICER'S WARD
JINNAH POSTGRADUATE MEDICAL CENTRE dated 05-09-2016
KARACHI

Case Summary

This is for your kind information that, the UTP Dr. Asim Hussain S/O Tajamul Hussain is a 63 years old male patient who was admitted to JPMC under the care of Prof. Haroon Ahmed on 20th of January 2016 on instruction of the Court as he was recommended hospitalization on the advice of Prof. Haroon Ahmed. **He has multiple co-morbidities** hence a board was constituted comprising of:

- Dr. Haroon Ahmed, Professor Emeritus Psychiatry, JPMC, Chairman
- Dr. Tariq Mehmood, Professor of Radiology, JPMC Member
- Dr. Muhammad Iqbal Afridi, Professor of Psychiatry, JPMC Member
- Dr. Raza K. Rizvi, Professor of Neurosurgery, JPMC Member
- Dr. Rukhsana A. Sattar, Professor of Medicine, JPMC Member

At the time of admission, his co-morbidities include Diabetes mellitus, Hypertension, Tremors, Insomnia, low back pain and irregular heartbeat, he also had a history of recent admission (September-2015) to NICVD with acute renal failure and dynamic ECG changes from where he was taken away against medical advice or further management, this list of medical problems include

1. **Psychiatric Problem.** He is suffering from PTSD (Post Traumatic Stress Disorder), recent memory loss, acute flash backs, avoidance associated with inability to concentrate, hyper vigilance, startled response and sleep disturbance he was advised Psychotherapy which is still going on. And was put on Medication which related Cipralext 20mg once daily three time a day, Zolpidem at bed time. His anxiousness increases when he thinks of his old mother and wife who is a cancer patient under treatment in London.
2. **Hypertension**-During episode of panic attack and acute stress his blood pressure shoots up but is otherwise controlled on medication namely exter 10-160 and CalanSR 240mg.
3. **Diabetes mellitus** Last HB Ale was 6.1% which is higher than normal, daily sugar are usually controlled but aggravated by stress and insomnia. He is on Glucophage 500mg for his Diabetes Mellitus.
4. **Skin Urticaria.** Patient is suffering from a skin condition called cholinergic urticaria which is due to acute cholinergic

- response aggravated by heat and stress, he is recommended constant air-conditioned environment with proper air circulation.
5. **Skin Lesion**- he also has a pigmented lesion on his forehead which is increasing in size, it looks like lentigo Maligna. Given family history **he requires an urgent external biopsy to rule out malignant melanoma (Skin)**
 6. **Dementia**- he suffers from stress and anxiety induced symptoms of insomnia and memory disturbance. The MRI dated 11th January 2016 shows scattered ischemic brain disease of the small vessels in the brain which is probably giving rise to dementia he is suffering from.
 7. **Ventricular Tachycardia** (irregular hearbeats) the patient has missed beats and has multiple episodes of SVT (Supraventricular Tachycardia). **He has been examined by a cardiologist who has recommended electro-Physiological studies.** Currently he is on Calan SR to control the tachycardia.
 8. **Possible Pituitary Tumor** - the first MRI conducted in January showed a shifting of the Pituitary stalk. A prolactin level was ordered which was higher than normal level. Consequently MRI with contrast was done. **It did not reveal tumor but prolactin levels are high and need investigation to rule out Pituitary adenoma.**
 9. **Dental Problem** - he suffers from multiple dental problems and has numerous implants and is under treatment of Dr. Al-Tamash.
 10. **Herniated Disc**- He suffers from lower back pain and sensory loss on his medial side of the left foot due to the compression of L-5 S-1 nerve root by the herniated disc. He also has diminished left ankle jerk response-MRI and CT show the distortion of L-5 S-1 joint with nerve root compressing thecal sac. He is currently being treated with physiotherapy, hydrotherapy, and with analgesics and a lumbar corset. **As his symptoms persist despite the above treatment he is advised arthroplasty of the L-5 S-1 Joint. Since he is a high risk patient due to multiple co-morbidities the surgery has to be done at well reputed center which specializes in this surgery and is regularly performed so that adequate post op care can be given.**(bold added)

The patient during the course of the treatment has undergone 7 medical boards and one spinal medical board and also has been seen by individual doctors including cardiologist, skin specialist and neurologist. All these facts are documented and attached as annexures.

Sd/- 6/9/16
 (DR. NOSHEEN RAUF)
 INCHARGE
 F.G.O. WARD JPMC
 KARACHI

3 Letter from Royal Brompton Hospital London dated 15.09.2016 concerning potential serious risk to the petitioner on account of his heart condition.

ROYAL BROMPTON HOSPITAL LONDON

15 September 2016

To Whom it May Concern:

572

on the test laid down in **Mohammed Yousafullah's case**
(Supra) as slightly modified:

(a) the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail (greater emphasize) **and**

(b) that some specialized treatment is needed **and**

(c) his continued detention in jail is likely to affect his capacity **or** is hazardous to his life

22. Each of (a) (b) and (c) need to be made out based on the medical evidence in order for the petitioner to be entitled to bail on medical grounds. In our view based on the facts and circumstances of the case both (a) and (b) above have been made out from the medical evidence/opinions /recommendations of the reports of the numerous medical boards which are on record as the petitioner is already in hospital as per directions of the medical board as he cannot be properly treated in jail premises due to his various serious ailments **and** specialized treatment is required as a stop gap arrangement which is hydrotherapy by whirl pool which is not available in jail premises and is only available in Karachi at the Dr.Ziauddin Hospital and no other hospital.

23. The next issue is to consider © i.e. if his continued detention in jail is likely to affect his capacity **or** is hazardous to his life.

24. The word "harzardous" is defined in the 12 Ed. (2011) of the concise Oxford English Dictionary as under:

"risky; dangerous"

25. As per medical reports in our view it is abundantly clear that the use of hydrotherapy is only a stop gap arrangement and that the petitioner is in urgent need of disc replacement surgery (as consistently recommended by recent medical boards/reports (2,4, Second opinion, 7 and 8) and coronary (heart) intervention (as opined in the NICVD Report dated 22-12-2016) which if he fails to receive very soon is extremely likely to be hazardous i.e. risky to his life **and** as such whilst using our discretionary constitutional jurisdiction with a view to doing complete justice we find that © is made out i.e. that the continued detention of the petitioner is likely to be hazardous to his life

573

and we are in full agreement with the findings of our brothers in **Rauf Siddiqui's case** (Supra) on this point especially when we consider that such terms have been used in the above medical reports/opinions referred to:

Back/spinal problem

(a) 2nd Medical Board

Dr. S. Raza Hussain Rizvi. He reported the neurological finding of the patient suggested acute disease problem (L5.S1) and suggested surgery. He further suggested the following investigations for second opinion from some senior Spinal Neurosurgeon and Orthopedic Surgeons.

(b) 3rd Medical Board

In the last board meeting his complaint of low back pain (L5-S1) PID has not improved and surgical treatment was advised. However the patient suggested for Second opinion which is pending, for which the board recommended three consultants Neurosurgeons /Orthopedic surgeon.

(c) 4th Medical Board

On the examination he has restriction of straight leg raising, more on the left side, with reduced left ankle jerk. His CT Scan of Lumber Spine suggests reduction in L5/S1 space with degenerative changes. MRI demonstrates left side L-5/S-1 disc / osteophyte complex.

He needs conservative treatment in the first instance with a hard bed and a firm mattress. He needs good physiotherapy, Short Wave Diathermy, Ultrasound therapy, TENS and back strengthening exercises for 8 to 10 weeks. He should also be on adequate analgesia, the choice of which is left with the primary team.

He has partial improvement his medical treatment should continue. If there is no improvement he be offered surgery for the herniated disc.

(d) 5th Medical Board

In today's meeting it was found that there is no improvement in backache with physiotherapy. He was suggested for disc effusion and disc replacement surgery. It is advised to repeat MRI Lumber Sacral Spine, X-Ray Lumber Sacral A/P. Further opinion from Spinal Surgeon Dr. Imtiaz Hashmi, may be taken in this regard. Dr. Jooma, Dr. Tariq and Dr. Raza Rizvi will examine the patient with Dr. Hashmi and give us consolidated opinion. Dr. Imtiaz Hashmi has seen the patient.

(e) Second opinion recommended by the Board.

Currently the best surgical treatment for such pathology is disc replacement that would allow preservation of the motion segment, and this course is advised by the board. In view of the intractability of the pain and motion limitation, he is advised surgical lumber disc replacement at a centre where it is regularly performed.

(f) 7th Medical Board.

The pain in the lower back persists and there is limitation of movement.

His mental status has improved but fear of certain situations and Rangers uniform persists. He can only sleep early morning in spite of sleeping pills. Therapy is currently directed towards FEAR.

The Neuro surgeons and Orthopedic surgeon reviewed their report of earlier meeting of 6th June, 2016 "in view of the intractability of the

574

pain and motion limitation, he is advised surgical lumbar disc replacement at a centre where it is regularly performed".

The surgeons were of the opinion that, the current physiotherapy at A.K.U. Hospital is not helpful as per report of Mr. Atta Muhammad, Physiotherapist A.K.U. (15th July, 2016). *The only option (if surgery not possible) is to start hydrotherapy wherever available.*

(g) 8th Medical Board

UTP Dr. Asim Hussain, was examined by the medical board. He remains admitted to hospital for intractable low back pain from accelerated degeneration of his lumbar spine at the L5, S1 level. Physiotherapy is not producing significant benefit. He continues to have severe symptoms of low back pain with acute spasm and limitation of mobility. He has been advised to restrict weight bearing at present and JPMC administration is requested to provide him a wheelchair.

The board re-iterates its advice for hydrotherapy pending the definitive disc replacement surgery. (bold and italics added)

(h) Case summary

As his symptoms persist despite the above treatment he is advised arthroplasty of the L-5 S-1 Joint. Since he is a *high risk patient due to multiple co-morbidities* the surgery has to be done at well reputed center which specializes in this surgery and is regularly performed so that adequate post op care can be given.

Brain

(i) 9th Medical Board

18. **The report of MRI of Brain** issued by the Department of Radiology, JPMC dated 28.10.2016 is also available on the record with the report of Consultant Neurologist and Professor of Medicine JPMC issued on 31.10.2016 which reads as under:-

"This is to certify that, Dr. Asim Hussain, had sudden rise in his blood pressure and developed weakness of left half of the body on 28th October, 2016. He was assessed by the board physician and was referred to Neurologist for further management. MRI Brain was done and the report is consistent with multiple ischemic infarcts of variable size and duration. He is advised bed rest for 4 weeks on the basis of his clinical status."

Heart

(j) 10th Medical Board.

His PVC's almost likely arising from Right Ventricular outflow tract and he may need Radio frequency ablation in near future. This procedure is highly technical and needs skill lab with experience which is not available locally. *If he becomes symptomatic from Sinus node Exit Block he may need a permanent pacemaker.*

There very high burden of PVC's some time can be lethal and fatal and needs urgent attention.

(k) Royal Brompton Hospital London opinion.

I strongly recommended him not to dismiss this finding because, if the atrial activity becomes uncoordinated, there is risk of clot formation and systemic embolism. In early stages, paroxysmal arrhythmias can be easily eliminated with electrophysiological procedures such as ablations. I strongly recommended a Consultant Cardiologist at the Royal Brompton Hospital in London with a world reputation in this field called Dr. Sabine Ernst

26. Even otherwise we must be mindful of the fact that © above includes the word "or", thus even if we had been of the view that the sickness and ailments of the petitioner were not hazardous to his life we would still need to consider whether, based on the medical reports and other material before us, his sickness or ailment was likely to effect his capacity.

27. The word "capacity" is defined in the 12th Ed. (2011) of the concise Oxford English Dictionary as under:

"Capacity" (pl Capacities) 1 the maximum amount that something can contain or produce [*as modifier] fully occupying the available space; a capacity crowd, * the total cylinder volume that is swept by the pistons in an internal combustion engine. 2. **the ability or power to do something**; *a person's legal competence; 3. a specified role or position; 4 dated electrical capacitance."

28. Based on the above definition of "capacity" in the context of medical bail our understanding of the words "effect his capacity" are most likely to mean "an ailment/sickness which if not treated both timely and appropriately is likely to effect the ability or power of an accused to do something in the future which he would have been able to do had he received both timely and appropriate treatment" or in short "his future well being from a medical perspective which may lead to a permanent disability which could have been avoided if appropriate and timely treatment had been given". For example, if the accused was not given appropriate or timely treatment for a bullet wound to his leg this may lead to him either having his leg amputated or leaving him lame when an early intervention with the appropriate treatment may have either saved his leg or lead to him being able to walk properly after his release from jail i.e. not being lame, which would not have been the case if he had not been treated appropriately and timely. This in our view would seem to be the intention and spirit behind adding the word "effect his capacity" for which comparisons may be drawn in the case of **Mohammed Yousafullah (Supra)** which concerned a gunshot wound to the arm which required specialized surgery in order to avoid permanent disability.

29. It is apparent from the medical reports that during the confinement of the petitioner he is not getting any better. If any

576

thing his existing ailments are becoming progressively worse and being exasperated by his current confinement even leading to him developing new ailments and that he requires constant medical care. He has already had two serious emergency incidents in recent times concerning his brain (TIA) and heart and is suffering from PTSD which is not likely to significantly improve whilst he remains confined and may well get worse while he remains in confinement. We must also not underestimate the mental health problems which the petitioner is suffering from which could affect his ability to properly instruct his lawyers and thereby conduct his defense which may impinge upon his due process rights under A.10 (A) of the Constitution and may well remain with him or get worse during the remainder of his life.

30. In the instant case it would appear from the medical evidence that has been placed before us that the petitioner has a number of serious medical ailments which need urgent treatment which include amongst others (a) serious mental health issues (including PTSD) which have lead to the petitioner even contemplating suicide due to his oppressive environment (b) the risk of another TIA which may lead to paralysis if left in his current environment (c) a serious coronary ailment which needs urgent surgical intervention failing which he runs the risk of having a pacemaker inserted or much worse and (d) a back/spinal ailment for which he requires urgent surgery which if he does not get soon in a properly equipped facility is likely to adversely effect his future well being in terms of walking/sitting etc.

31. In our considered opinion one, or more than one, if not all of these ailments when taken together, are likely to affect his capacity in that they are likely to have serious adverse lasting consequences in the future on his medical health and condition **unless** he is immediately released from confinement on the ground of medical bail. For example, through a mental break down, further TIA's leading to paralysis, potential heart attack and other coronary related issues are extremely likely to exasperate and finally his urgent need for spinal surgery which if not made available may lead to paralysis or other permanent physical disabilities and as such we also find in our discretionary constitutional jurisdiction where we endeavor to do complete justice that the continued confinement of the petitioner is

577

also extremely likely to effect his capacity and as such he is also entitled to bail on medical grounds on this account as well.

32. As mentioned earlier in reaching this decision we have also been mindful of the decision of this Court in the **Rauf Siddiqui case** (Supra) whereby a different Divisional Bench of this Court has already in the last few months granted the petitioner bail on medical grounds on **lesser** medical material than was before this court (which has reached finality) and the fact that as per the dicta laid down in the case of **Multiline Associates V Ardeshir Cowasjee** (PLD 1995 SC 423) ordinarily such decision would be binding on us. However since in **Rauf Siddiqui's case** (Supra) the grant of medical bail to the petitioner was it appears only mildly opposed by only one of the two opposing parties but was **vehemently opposed in this case** to a certain extent it is distinguishable from this petition so whilst taking guidance and strong persuasion from it we have again examined the case of the petitioner in light of the medical evidence now on record and the relevant law and also the submissions in opposition by NAB and the case law cited by the NAB in support of their contention that medical bail should not be granted to the petitioner and have come to the same conclusion, based on the merits of the case as fully contested, as the order in **Rauf Siddiqui's case (Supra) (which has reached finality) and are in complete agreement with our brother judges in their findings** in terms of the grant of bail on medical grounds to the petitioner based on the latest available medical evidence especially bearing in mind the case of **Zakim Khan Masood** (1998 SCMR 1065) which based on the facts and circumstances of this case its findings in terms of the added stress and tension of the accused remaining in confinement is likely to aggravate his condition especially in terms of mental health, TIA's and heart is particularly relevant. The aforesaid case noted at para 2 that, "the petitioner is undoubtedly sick and as such needs treatment in conducive conditions free from any kind of pressure. In custody it cannot be said that the petitioner will have full peace of mind and his recovery from ailment will surely be slow if he remains in detention". Even in **Watto's case** (Supra) it was observed that an environment (i.e not being in confinement) which did not subject the accused to unaccustomed adverse mental and physical stress which could aggravate his heart disease needed to

5/17

be considered in terms of the hazardous to life requirement. In our view such considerations are equally applicable to this case where the petitioner is suffering from serious multiple ailments including back, heart, brain, PTSD etc.

33. In determining whether to grant bail on medical grounds in this case, apart from considering the relevant law and the medical evidence placed before us, we have also been acutely aware of Articles 4 (2) (a), 9, 10(A) and 14 of the Constitution **(A.9, 10(A) and 14 being fundamental rights)**. The right to life in particular has been expanded in recent times by our courts to adapt to the changing needs of society and certainly in our view allowing someone to remain confined for years on end (especially as most NAB cases which involve multiple accused, as in this case-which has hardly started yet with the charge not even being framed in one case-, usually take an exceedingly long time to decide) whose confinement is hazardous to his life as proper and adequate treatment is not available in jail or which lack of adequate treatment may lead to him being permanently physically or mentally impaired, which will effect his capacity, on his release from jail (more so if he is acquitted of the charge than if he is released after conviction) would in our view be a failure on the part of the courts to intervene in order to protect the well being of the individual as it is constitutionally required to do. This is especially so in bail cases where it is settled law that the refusal of bail should not be a punishment and the object of bail is to ensure that the accused attends his trial which we consider may be ensured by the court passing appropriate orders.

34. Thus, based on the discussion above, the petitioner is hereby granted bail on medical grounds as we have found based on the above discussion that (a) the sickness or ailment with which the petitioner is suffering is such that it cannot be properly treated within the premises of jail (greater emphasize) **and** that some specialized treatment is needed **and** his continued detention in jail is likely to effect his capacity **and** is hazardous to his life in both of the above mentioned references **subject** to him furnishing solvent surety in the sum of RS 25 lacs in respect of each reference and PR bond in the like amount in each reference subject to the satisfaction of the Nazir of this court and depositing his original passport with the Nazir of this court. The Ministry of Interior is

57
directed not to issue the petitioner with any fresh or duplicate passports until the further orders of this court and to place the name of the petitioner on the ECL.

35. A copy of this order shall be immediately sent by fax to the Secretary Ministry of Interior Government of Pakistan for compliance.

Dated: 03-02-2017