

(1)

PETITION FOR BAIL

AFTER ARREST

1st. Petition for Bail.

IN THE HIGH COURT OF SINDH AT KARACHI
(Extra Ordinary Constitutional jurisdiction)

Constitution. Petition. No. D-3687 of 2018 ~~Filed on~~ 09.5.18

Additional Registrar (Writ)

Muhammad Shakir S/o
Muhammad Shafi, Muslim, adult,
Resident of Flat No. 6, Gulab Mehal,
Jai Ram Street, Pakistan Chowk,
Karachi,
Presently in Judicial Custody and confined at
Central Prison, Karachi,
Through his son Muhammad Bilal Bin Shakir
S/o Muhammad Shakir, Muslim, Adult,
R/o Flat No. 6, Gulab Mehal,
Jai Ram Street, Pakistan Chowk,
Karachi.

..... Petitioner

Versus

National Accountability Bureau (NAB),
having office at PRCS Building 197/5,
Dr. Daudpota Road, Karachi Cantonment,
Karachi.

..... Respondent

CONSTITUTION PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN

For and on behalf of the petitioner, it is most respectfully
submitted as under:-

1. That the petitioner hails from a very noble and law abiding family and as such he is a very upright person. The petitioner joined Karachi Metropolitan Corporation (KMC) as clerk on or about 04.12.1991 and through his hard work and honesty, he raised to the position of Deputy District Officer (DDO) in BS-17 on or about 09.07.2011 in City District Government, Karachi (CDGK) in terms of

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Muhammad Saleem Jessar.

Const. Petition No.D-3687 of 2018.

Petitioner: Muhammad Shakir S/o. Muhammad Shafi
through Mr. Nisar Ahmed Tarar, Advocate.

Respondents: National Accountability Bureau through Mr.
R.D. Kalhor, Special Prosecutors NAB.

Date of hearing: 05.03.2020.

Date of announcement: 17.03.2020.

ORDER

Mohammad Karim Khan Agha, J.- Petitioner Muhammad Shakir S/o. Muhammad Shafi has preferred this petition seeking post arrest bail in NAB Reference No.56 of 2016 which is pending before the accountability courts at Karachi.

2. In essence this is a case of china cutting where by amenity plots have been illegally made into residential plots and have been illegally allotted to fake persons through the connivance of the petitioner and his co-accused who are mostly KDA officials which has caused a huge loss to the exchequer.

3. That the petitioner Muhammad Shakir in his capacity as DDO (Shifting) KDA signed note sheets for illegal transfer of these residential plots on amenity area, despite the fact that initial allotment was based upon fake and managed documents and none of the original allottees had appeared before him. In the same capacity, he also signed transfer letters of these plots. He also signed transfer challans in the capacity of Official Recovery Department KDA, despite the fact that initial challans were fake and no further challans could have been prepared and as such he was charged under S.9 of the NAO with acts of corruption and corrupt practices in the aforesaid reference.

2

4. Learned counsel for the petitioner has approached this court for post arrest bail on hardship grounds only. The petitioner has contended that he was arrested on 14.12.16 and has been in custody for 41 months i.e 3 years and 5 months and that no delay in the trial has been caused either by himself or his counsel and as the completion of the trial is no where in sight he is entitled to post arrest bail on hardship grounds.

5. On the other hand learned Special prosecutor NAB has opposed the grant of bail to the petitioner on hardship grounds as according to him the petitioner does not meet the legal requirements for the grant of bail on hardship grounds. In support of his contentions he has placed reliance on **Tallat Ishaq v. National Accountability Bureau** (PLD 2019 Supreme Court 112)

6. We have heard the parties, carefully reviewed the record and considered the relevant case law including that cited at the bar.

7. The petitioner has been in custody for 3 years and 5 months. The dairy sheets reveal that no delay has been caused by the petitioner or counsel acting on his behalf. So far only 5 PW's out of a total of 22 have been examined which leaves 17 PW's yet to be examined. There are also 15 accused in the reference and as such each PW will be subject to 15 separate cross examinations. This in our view will take at least one year and probably a lot longer. It is well settled that bail cannot be withheld as a punishment and certainly in our view the petitioner cannot be blamed for the lack of progress in the trial.

8. With regard to the case of **Tallat Ishaq** (Supra) which NAB has cited in its objection to granting bail. No doubt **Tallat Ishaq's** case (Supra) has made the grant of bail more stringent on hardship grounds but it has not excluded it and it is allowed in exceptional circumstances at the discretion of the court. In our view for the reasons discussed above where the petitioner has spent so far in the region of 3 years and 5 months in jail and no delay has been caused on his or his lawyers part, that 15 PW's remain to be examined, cross examined and potentially re examined, S.342 statements need to be recorded and potentially defense evidence lead,

each prosecution PW will be subject to 15 different cross examinations there is no chance of the trial being completed within the foreseeable future and as such we consider that the petitioner whilst exercising our discretion under Article 199 of the Constitution has made out a case for the grant of bail on hardship grounds.

9. Thus, for the reasons discussed above petitioner Muhammad Shakir is granted post arrest bail on hardship grounds subject to him furnishing a solvent surety in the amount of Rs. one million (ten lacs) and PR bond in the like amount to the satisfaction of the Nazir of this court.

10. The petition stands disposed of in the above terms.

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