

NAB Bail hardship - allowed

CERTIFICATE OF THE COURT IN RECORD NO. ---

Const. Petition No. D-6899 of 2019  
a/w Const. Petition No. D-317 of 2020

SINDH HIGH COURTComposition of Bench.

Single/D.B. ✓

HONORABLE MR JUSTICE KARIM KHAN AGHA

HONORABLE MR. JUSTICE MUHAMMAD SALEEM JESSAR

Dates of hearing: 25-02-2020

Decided on (i) 10-03-2020

(a) Judgment approved for reporting.

 Yes ✓  
No


CERTIFICATE

Certified that the judgment \*/Order is based upon or enunciates a principle of law \*/decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

\*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.--L (iii) 1459--5,000--6-93--T.S.S.

**IN CUSTODY**

**IN THE HIGH COURT OF SINDH AT KARACHI**  
(Constitutional Jurisdiction)

Constitution Petition No. D - 6099 of 2019

**MUSHTAQ A QAISAR,**  
Son of Muhammad Shafi,  
Muslim, Adult,  
Presently confined at the  
Central Prison, Karachi

..... Petitioner

**V E R S U S**

1. **THE STATE**  
Through Chairman,  
National Accountability Bureau,  
Ataturk Avenue, G-5/2,  
**Islamabad.**

2. **THE DIRECTOR GENERAL,**  
Accountability Bureau, Sindh,  
PRCS Building 197/5,  
Dr. Daudpota Road, Karachi  
Cantonment

..... Respondents

**NAB REFERENCE NO.22 OF**  
**2017 PENDING BEFORE THE**  
**NAB COURT NO.I, KARACHI**

**CONSTITUTION PETITION UNDER**  
**ARTICLE 199 OF THE ISLAMIC REPUBLIC**  
**OF PAKISTAN, 1973**

The Petitioner most respectfully submits as under:-

**F A C T S**

1. That the Petitioner is aged about 60 a law abiding citizen, having unblemished record of his entire career. The Petitioner has remained as Deputy Manager (Distribution in NFML Headquarter Lahore).

b

# IN THE HIGH COURT OF SINDH AT KARACHI

317  
Constitution Petition No. / 2010

Shaukatullah  
S/o. Gullu Khan,  
Muslim, adult,  
Originally R/o Dera Ismail Khan,  
presently at Karachi.....Petitioner

VERSUS

The State / Federation  
through Chairman N.A.B.,  
N.A.B. Headquarter Islamabad & through  
Director General N.A.B. PRCS Building,  
197/5, Dr. Daudpota Road Karachi.....Respondents.

## PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.

It is respectfully submitted on behalf of the Petitioner as under: -

1. That name of the Petitioner has been added in relation to N.A.B. Reference No. 22 / 2017 Re: State Vs. Imamuddin Marwat and others, pending trial before N.A.B. Court No.II, Karachi is filing the instant petition in person and inter-alia petitioner claims to be an educated, qualified and respectable person so also hails from a highly respectable family.

2. That in nutshell Reference No. 22 / 2017 was filed pursuant to completion of investigation conducted by Mr. Muhammad Yunus Khan, Deputy Director / SIO (IW-1), which is basis of complaint vide Letter No.NABK2015081804493/1-1 /CO-C / NAB (K) / 2017 /2002 dated 16<sup>th</sup> May,

NAB Bail : Hardship - allowed

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Muhammad Saleem Jessar.

**Const. Petition No.D-6899 of 2019.**

Petitioner: Mushtaq A. Qaisar S/o. Muhammad Shafi  
through Mr. Shahnawaz Ayoub Dahri,  
Advocate.

Respondents: Chairman NAB through M/s. Akram Javed  
and R.D. Kalhor, Special Prosecutors NAB  
along with Mr. Bilal Khan I.O.

**Const. Petition No.D-317 of 2020.**

Petitioner: Shaukatullah S/o. Gullu Khan through Mr.  
Muhammad Azeem, Advocate.

Respondents: Chairman NAB through M/s. Akram Javed  
and R.D. Kalhor, Special Prosecutors NAB  
along with Mr. Bilal Khan I.O.

Date of hearing: 25.02.2020.

Date of announcement: 10.03.2020.

### ORDER

**Mohammad Karim Khan Agha, J.-** Petitioners Mushtaq A. Qaisar S/o. Muhammad Shafi and Shaukatullah S/o. Gullu Khan have moved these petitions for post arrest bail on hardship grounds. They were both booked in NAB Reference No.22 of 2017 for acts of corruption and corrupt practices in essence relating to misappropriation and embezzlement of urea worth millions of rupees which caused a massive loss to the exchequer and illegally benefitted others which reference is proceeding before the accountability courts in Karachi.

2. Learned counsel for both the petitioner's have contended that they have been in custody for 2 years and 4 months and two years and 7 months respectively and that their trial is no where in sight of conclusion and as such they should be granted bail on hardship grounds. In support

2

of their contentions they have placed reliance on the case of **Tallat Ishaq v. National Accountability Bureau** (PLD 2019 Supreme Court 112), **Sharjeel Inam Memon v. National Accountability Bureau** (SBLR 2019 Sindh 1499), **Shahid Umar v. Chairman NAB and 2 others** (2019 P. Cr.I.J 370), **Syed Manzar Abbas v. National Accountability Bureau, through Director General** (2019 MLD 581) and an unreported Judgment decided by Islamabad High Court in W.P. No.4166/2019, **Muhammad Bilal Sheikh v. National Accountability Bureau through its Chairman, Islamabad and another.**

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

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

5. Both the petitioners have been in custody for 2 years and 4 months and two years and 7 months respectively. The latest progress report from the trial court reveals that no delay has been caused by either of the petitioners or counsel acting on their behalf. The progress report also reveals that on the arrest of one of the absconding accused the charge was recently reframed and evidence is now being lead afresh. So far only two out of the proposed 72 prosecution witnesses(PW's) have given evidence which leaves 70 more PW's to give evidence. This in our view will take at least one year and probably a lot longer especially as we have been informed that the concerned accountability court has been vacant for over 5 months and as such little, if any, evidence is being recorded in that reference which has resulted in the trial virtually grinding to a halt due to no fault on the part of the accused. Rather the delay in filing the vacant posts falls squarely on the shoulders of the Federal Government who instead of ensuring the right to an expeditious trial under Article 10 (A) of the Constitution and per the preamble to the National Accountability Ordinance 1999 (NAO) and S.16 (a) NAO for reasons best known to itself seems to be unreasonably delaying the appointment of accountability

court judges. It is well known that bail cannot be withheld as a punishment and certainly the two petitioners cannot be blamed for the lack of progress in the trial simply because the State is failing to comply with its obligation to speedily prosecute them.

6. 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 petitioners have each spent in the region of two and a half years in jail and no delay has been caused on either their or their lawyers account, that 70 PW's remain to be examined, cross examined and potentially re examined, S.342 Statements need to be recorded and potentially defense evidence lead and the court has remained vacant for over 5 months and there is no chance of the trial being completed within the foreseeable future we consider that both the petitioners whilst exercising our discretion under Article 199 of the Constitution have made out a case for the grant of bail on hardship grounds.

7. Thus, for the reasons discussed above petitioners Mushtaq A. Qaisar and Shaukatullah are both granted post arrest bail on hardship grounds subject to them each furnishing a solvent surety in the amount of Rs. one million (ten lacs) each and PR in the like amount to the satisfaction of the Nazir of this court.

8. The above petitions stand disposed of in the above terms.