

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

C.P. No. 6361 of 18

Iqbal A. Bablani vs. Fed. of Pak & Ors.

HIGH COURT OF SINDH

Composition of Bench: S.B./D. B.

Mr. Justice Mohammad Karim Khan Agha,
Mr. Justice Zulfikar Ali Saggi

Date(s) of Hearing: 25-11-18

Decide on: 05-12-2019

(a) Judgment approved for reporting:

Yes

K.A.

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 / overrules / 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.

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-6361 of 2019

Iqbal Ahmed Bablani S/o Sher Muhammad Bablani, Muslim.
Adult, Resident of H-26, Karim Plaza, Gulshan e Iqbal
Block-14 Near Civic Center Karachi
Presently Confined AT
Central Prison, Karachi Petitioner

Versus

1. Federation of Pakistan
Through Secretary Ministry of Law,
Justice and Parliamentary Affairs Government
of Pakistan Islamabad.
2. The Chairman,
National Accountability Bureau (NAB)
G-5/2, A Atta Turk Avenue Islamabad.
3. Director General,
National Accountability Bureau (NAB)
19, Liaquat Barracks Shara-e-Faisal Karachi Respondents

CONSTITUTION PETITION UNDER ARTICLE 199 OF CONSTITUTION OF PAKISTAN 1973, THE CONSTITUTIONAL MATTER OF BAIL UNDER NATIONAL ACCOUNTABILITY BUREAU ORDINANCE 1999

Respectfully Sheweth,

The Petitioner above-named most respectfully submits as under:

1. That the Petitioner is a law-abiding citizen. He remained on the post of Secretary of Transport (BSP-20) Government of Sindh, from August 2010 to 23rd June 2011; and thereafter he got transferred from the said post, vide a notification, dated: 23.06.2011, which was issued by Government of Sindh.

(Copy of notification Dated: 23-06-2011 is annexed herewith and marked as "A")

2. That the Director General National Accountability Bureau, i.e., the Respondent No. 3 filed a reference No. 01 of 2016 under section 18 (g), read with section 24 (b) of the NAB Ordinance, before the Administrative judge, Accountability Courts, Sindh at Karachi, against the Petitioner/ Accused No. 1, and 5 others, which is pending before the Accountability Court II, at Karachi.

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

C.P. No.D-6361/2019

Iqbal Ahmed Bablani

Vs.

Federation of Pakistan & others

Date of hearing: 25.11.2019.

Date of Order 05.12.2019

Petitioner: Through Mr. Shahab Osto Advocate
Respondents: Through Mr. Riaz Alam Special Prosecutor NAB
assisted by IO Qamar Abbas.

ORDER

Mohammed Karim Khan Agha, J. By this order we propose to dispose of this petition whereby the petitioner (Iqbal Ahmed Bablani) has applied for post arrest bail in National Accountability Bureau (NAB) **Reference No.1 of 2016 The State Verses Iqbal Bablani and others** where he along with 5 other co-accused have been accused of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO). Earlier by order of this Court dated 23-05-2016 the ad interim pre arrest bail of the petitioner was recalled and he was taken into custody. Thereafter the petitioner moved a petition for post arrest bail which was dismissed by this court vide order dated 28-09-2016 on merits and directed the trial court to complete the trial against the petitioner within 3 months of the date of that order. As such this is the petitioner's second application for post arrest bail.

2. As per reference the petitioner at the time of the alleged scam was Secretary Transport and Mass Transit Department Government of Sindh. In essence by misusing his authority and also taking bribes/kickbacks the petitioner in connivance with the other co-accused caused a massive loss to the National

Exchequer as well as benefiting himself through processing, approving and making illegal advance payments in respect of the purchase of heavy vehicles, IT equipment and mini buses and Mazda trucks.

3. Learned counsel for the petitioner submitted that the petitioner is seeking post arrest bail on the grounds of hardship and medical grounds. In relation to hardship the petitioner has contended that he has spent almost 3 years and 6 months in jail and that the trial is not in sight of conclusion and that no delay has been caused on either his part or the part of his counsel and thus he is entitled to bail on hardship grounds. He has also contended that the petitioner is suffering from severe psychological issues and that he is entitled to bail on medical grounds. In this respect he has placed reliance on the medical report of Dr. Shehla Professor Department of Psychiatry Dr. Ziauddin Hospital Karachi and as such the petitioner was entitled to post arrest bail on both of the above grounds.

4. On the other hand learned Special Prosecutor NAB has submitted that the petitioner's case does not warrant the grant of bail either on hardship or medical grounds and thus he has opposed the grant of post arrest bail.

5. We have heard the learned counsel for the petitioner, special prosecutor NAB perused the record very carefully and considered the relevant law.

6. As per settled law we have only made a tentative assessment of the material placed before us and this order shall not prejudice the case of any party at trial which shall be decided by the trial court based on the evidence before it.

7. At the outset we would observe that the earlier post arrest bail petition moved by the petitioner was based on merits. This second post arrest bail petition however is moved on the basis of hardship and medical grounds and since it raises new grounds it is maintainable.

8. In the case of **Tallat Ishaq V NAB** (PLD SC 2019 112) after a detailed analysis of the law on the grant of bail in NAB cases the Hon'ble Supreme Court set out guidelines as to when bail might be granted on hardship grounds to an accused in a NAB reference. No doubt through the above referred judgment the Hon'ble Supreme Court has made the grant of bail on hardship grounds in NAB cases more stringent however it has not totally eradicated it and each case must

be judged on its own particular facts and circumstances whilst taking guidance from the guidelines laid down in **Tallat Ishaq'a case** (Supra).

9. In **Tallat Ishaq'a case** (Supra) at Para 23 (f) it was noted as under:

*"(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is **shocking, unconscionable or inordinate and not otherwise**. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay."* (bold added)

10. At Para 22 of the judgment it also noted as under:-

*"22. The accused person in the case of Himesh Khan v. The National Accountability Bureau (NAB), Lahore and others (2015 SCMR 1092) had spent about six years in jail, his trial was nowhere close to its conclusion and the accused person was not primarily responsible for such delay. After taking notice of the provisions of section 16(a) of the National Accountability Ordinance, 1999 this Court had found the delay in conclusion of the trial to be **"inordinate" and "shocking"** and had, thus admitted the accused person to bail. It was observed by this Court that **"An accused person cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. The inordinate delay in the conclusion of trial of detained prisoners cannot be lightly ignored provided it was not caused due to any act or omission of accused."** It was added that **"despite of exclusion clause beneficial provision of section 497, Cr.P.C. can be pressed into service in some genuine and rare cases to provide relief of grant of bail to a highly deserving accused, incarcerated in prison for a longer duration."** This Court had gone on to observe that **"There is also a long chain of authorities and dicta of this Court where bail has been granted on account of shocking delay in the conclusion of trial in cases falling under the NAB laws."** (bold added)*

11. In the instant case the petitioner has been in custody for 3 years and 6 months. Generally speaking the delay has not been occasioned by him or counsel acting on his behalf. So far 10 PW's have been examined and there are 11 more PW's to be examined. Roughly speaking in this case it has taken approx 3 months to examine each PW which would mean that the trial would probably be completed in about 2 more years at the earliest keeping in view the need to record the petitioner's S.342 Cr.PC Statement, the evidence of any DW's and arguments of the parties. This would therefore reach a total of almost 5 and $\frac{1}{2}$ years.

years before the trial was concluded without considering remission. This would mean that if the accused was acquitted then he would have been in jail for over 5 years (excluding remission) which is a lengthy period for which he cannot be compensated. Even if the petitioner is convicted the maximum sentence under the NAO is 14 years. In this case the loss caused by the petitioner is approx 43 lacs and as such it seems unlikely that he would be sentenced to more than 10 years at the most. By this time together with remission he would have almost served 7 years of his 10 year sentence.

12. In our view keeping in view the time already spent in jail and the time likely to conclude the trial the delay is reaching the level of shocking, unconscionable and inordinate delay which would entitle the petitioner to bail on hardship grounds. We have already issued one direction for the completion of the trial within 3 months over a year ago and this direction has not been met. Since there are 11 PW's still to be examined which process might take up to two years realistically we consider that it would be an exercise in futility to give another direction to conclude the trial within a given period such as 3 or 6 months and would only prolong the misery of the petitioner remaining in jail for that period. Such a direction is also likely to be an exercise in futility as at the moment there are only 2 out of 4 accountability court judges sitting who are already swamped with cases and are under directions to proceed with numerous cases on a day to day basis and have been directed to complete such cases within a given period of time. The petitioner in our view should not be punished by the inability of the State to appoint the number of sanctioned judges in the accountability courts which would enable his case to be heard more expeditiously. It is also well settled by now that bail cannot be withheld as a punishment and from a glance at the record it appears prima facie that the petitioner might have a reasonable case on merits.

13. In our view what also tilts the balance in favor of the petitioner being granted bail on hardship grounds is (a) that the petitioner's share of the loss is only 43 lacs which is a relatively petty amount which hardly falls within the mandate of the NAB which is meant to deal with mega corruption cases dealing with losses running into millions if not billions of rupees and (b) the petitioner is clearly suffering from severe psychiatric issues. His medical report is reproduced in material part as under:-

Dr. Shehla

MBBS, FCPS, M. Sc. (Addictive Behaviour, UK)
 Diploma in integrative counseling (CPPD, U.K.)
 Diploma in clinical supervision (CPPD, U.K.)
 Associate Professor, Dept. of Psychiatry
 Ziauddin Medical University, Karachi.

Consultation

Dr. Ziauddin Medical University,
 Clifton Campus, Karachi.
 Tel: + 92 213 5862937-39
 Timings: Mon 1:00 - 6:00 pm
 Fri 6:00 - 8:00 pm
 Hill Park Hospital 4:30 - 6:30 pm
 0300-2127226

13th Nov' 19To whom it may concernMedical report of Mr. Iqbal Bablani S/o. Sher Mohammad.

This is the psychiatric assessment report of Mr. Iqbal Bablani, who was being sent to my clinic by Jail authorities on 11th November, 2019.

Mr. Bablani is in the jail as a suspect from last 3.5 years.

Since Mr. Bablani is imprisoned, he has been seen as a quiet, recluse and a loner, who tends to get provoked and get anxious easily.

He had suffered from tuberculosis in jail and also the patient of hypertension as well. His medical health is not very good and no proper self-care he is able to provide to himself.

Mr. Bablani was being sent in my clinic by the police authorities for assessment of his mental health currently as an expert opinion. On detail assessment via interview and mental state examination it is being very evident that Mr. Bablani has been through huge stress and trauma during this entire time where he was being held in jail and his bail was being denied. This has caused him immense pressure and had impacts not only on his physical health rather on mental health too.

His daily routine in his stay in jail is spending time in prayers and quietly sitting in the corner, it appears as if he whenever loses hope in life and entire system of judiciary his morbid thoughts start to predominate his thinking process and at times transgress in to suicidal ideations.

One of the concerns is, if he is being kept that helpless, he may lose his hope completely and can attempt suicide. Though he is not currently falls under the diagnosis of depressive disorder, but definitely he is suffering from emotional trauma and it is far more dangerous than depressive disorder given in his circumstances and age factor, as people suffering from emotional trauma are more likely to take up desperate and dangerous decisions of harming oneself. Since he is an introvert and eccentric his chances of making such decision are very bright.

Yours sincerely,

Sd/-
 Prof Dr. Shehla Alvi.

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14. We had called Prof. Dr. Shehla Alvi in court in order to explain her report in more detail and she informed us (a) That it was very difficult to treat Mr. Bablani in jail for his mental health issues and that (b) his continued detention in jail might be hazardous to his health.

15. Although we are not of the view that the petitioner's medical condition would alone entitle him to the grant of bail on medical grounds it is a factor coupled with his primary ground of hardship which has persuaded us to grant him post arrest bail.

16. Thus, we consider based on the particular facts and the circumstances of this case when viewed in a holistic manner that the petitioner is entitled to be granted post arrest bail on hardship grounds. Thus we hereby grant post arrest bail to the petitioner subject to him furnishing solvent surety in the amount of Rs. 100,000 (one lac) and PR bond in the like amount to the satisfaction of the Nazir of the court.

Anf