

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Shamsuddin Abbasi.

C.P. No.D-2056 of 2020.

Petitioner: Afaquddin Marwat through Mr. Shaukat Hayat, Advocate.

Respondents/State: Chairman NAB and others through Mr. Zahid Hussain Baladi Special Prosecutor NAB assisted by Mr. Bilal Khan, I.O.

C.P. No.D-2070 of 2020.

Petitioner: Inamuddin Marwat through Mr. Shaukat Hayat, Advocate.

Respondents/State: Chairman NAB and others through Mr. Zahid Hussain Baladi Special Prosecutor NAB assisted by Mr. Bilal Khan, I.O.

C.P. No.D-2733 of 2020.

Petitioner: Imamuddin Marwat through M/s. Syed Amjad Ali Shah and Syed Mohammad Ali Shah, Advocates.

Date of hearing: 05.10.2020.

Date of order: 05.10.2020.

J U D G M E N T

Mohammad Karim Khan Agha, J.- Petitioners Imamuddin Marwat S/o. Sahib Din Marwat, Inamuddin Marwat S/o. Imamuddin Marwat and Afaquddin S/o. Imamuddin Marwat who are currently confined in Central Prison, Karachi in NAB Reference No.22 of 2017 have all filed petitions for their release on post arrest bail. All three petitioners were 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.

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2. Learned counsel for the petitioners' have contended that they have been in custody for 1 year and 10 months, 1 year and 8 months and 2 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.

3. On the other hand learned Special prosecutor NAB has opposed the grant of bail to all 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. The petitioners have contended that they have been in custody for 1 year and 10 months, 1 year and 8 months and 2 years and 7 months respectively. No delay in concluding the trial has been caused on the part of the petitioners or counsel acting on their behalf which position has not been refuted by the NAB. The latest progress report from the trial court reveals that on the arrest of one of the absconding accused the charge was reframed and evidence is now being lead afresh. So far only 10 out of the proposed 78 prosecution witnesses(PW's) have given evidence which leaves 68 more PW's to give evidence. This in our view will take at least one year and probably a lot longer. We have also seen an order of this court dated 10.03.20 where similarly placed co-accused in the same reference have been granted post arrest bail on the grounds of hardship and as such in our view the rule of consistency is also applicable to the petitioners. Both this court and the Hon'ble Supreme Court had passed orders for the completion of the trial within a given period which time has long since elapsed. As the trial has so far to go we do not deem it appropriate to issue any further directions stipulating the time in which the trial should be completed as such directions would just be an exercise in futility as the trial is so far away from completion and thus would only amount to needlessly keeping the petitioners behind bars. Despite orders of the Supreme Court to increase the number of accountability courts throughout Pakistan and the apparent agreement to this by the Federal Government so far no concrete steps have been taken on the ground and

as such there is no realistic expectation of the early completion of the trial. The delay in creating more accountability courts which could lead to such cases being decided more quickly falls squarely on the shoulders of the Federal Government which 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 dragging its feet in creating more accountability courts despite its commitment to do so before the Supreme Court. It is well known that bail cannot be withheld as a punishment and certainly the 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 years in jail and no delay has been caused on either their or their lawyers account, that 68 PW's still remain to be examined, cross examined and potentially re examined, S.342 Statements need to be recorded and potentially defense evidence lead and there is no chance of the trial being completed within the foreseeable future and the applicability of the rule of consistency we consider that all 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 Imamuddin Marwat S/o. Sahib Din Marwat, Inamuddin Marwat S/o. Imamuddin Marwat and Afaquddin S/o. Imamuddin Marwat are all 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 and their names being placed on the ECL by the Secretary Ministry of Interior Government of Pakistan. A copy of this order shall be sent to the Secretary Ministry of Interior Government of Sindh for compliance.

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8. These are the reasons for our short order of even date which is set out below for ease of reference:

"For the reasons to be recorded later, Petitioners Imamudin Marwat, Inamuddin Marwat and Afaquddin Marwat all are granted post arrest bail subject to each of them furnishing solvent surety in the amount of Rs.10,00,000/- (Rupees ten lac only) each and P.R. Bond in the like amount to the satisfaction of Nazir of this Court. The names of all the petitioners Imamuddin Marwat, Inamuddin Marwat and Afaquddin Marwat shall be placed on the ECL and they shall ensure their attendance on each and every date of hearing. A copy of this order shall be sent by facsimile to the Secretary, Ministry of Interior, Government of Pakistan for compliance".

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

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