

A/C Ref: Misure of Concession of Bail which 198 was referred

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.D- 5564 of 2017

Date	Order with signature of Judges
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1. for orders on CMA No.31861/2017.
2. For hearing of main case

09.10.2020

Mr. Rehman Ghous, Advocate for the Petitioner.
Mr. Zahid Hussain Baladi, Special Prosecutor, NAB.

Mohammed Karim Khan Agha J; Petitioner Sikandar Ali Qureshi is on pre-arrest bail granted by this Court in the year 2017. Vide order 21.08.2019 this Court was informed that all prosecution witnesses except the I.O. have been examined and the matter was fixed on 24.08.2019 for evidence of the I.O. In the aforesaid order learned Special Prosecutor, NAB has submitted that the matter was **being adjourned at the request of defence counsel which was not refuted.** After numerous orders on 19.05.2020 it was submitted that the trial was at the verge of completion and the matter was adjourned to 14.07.2020 with the directions to the trial Court to complete the matter without further delay. Yet again on 14.07.2020 this Court was informed that all witnesses except the I.O. remained to be examined despite this being the position over one year ago.

2. This Court vide order dated 17.08.2020 was both perturbed and shocked by the fact that despite as far back as 21.08.2019 which is over year ago **still only** the evidence of the I.O. remained to be recorded which had still not been done. This resulted in this Court passing an order dated 17.08.2020, which is reproduced as under:-

"Special Prosecutor NAB has informed us that only the I.O. Mr. Parkash Lal is yet to be examined who has now been transferred to Multan. It appears that I.O's failure to give evidence is delaying this matter. On the next date of hearing the Accountability Court No.III shall record evidence of the I.O. and complete his cross examination as there are only two accused. Learned counsel for the accused shall not seek any adjournment for their cross-examination and if the I.O. is required to stay the next day in order to complete his cross examination then he is directed to remain in Karachi as his return to Multan will only serve to delay this matter. The trial court shall ensure that the judgment is made in the reference

within two months of the date of this order. A copy of this order shall be sent by fax to D.G. NAB Karachi and D.G. NAB Multan who shall ensure presence of the I.O. on the next date of hearing who shall also remain present on the next date if the cross examination is not completed. The Accountability Court shall hear this matter on day to day basis and no adjournment shall be granted except in exceptional circumstance and request of adjournment by the parties shall be recorded in the diary sheets. Office to place copy of this order in the connected petition. To come up on 10.11.2020."

3. On 06.10.2020 where the trial of the petitioner Sikandar Ali Qureshi was pending before the Accountability Court No.III, Sindh, Karachi this Court received a Reference from the Judge of the concerned Accountability Court which indicated that this matter was deliberately being delayed by Sikandar Ali Qureshi (on pre-arrest bail) and his counsel Mr. Rehman Ghous who were avoiding to proceed with the matter without any justification and cogent reason despite directions of this Court as reproduced above. Reference dated 06.10.2020 is reproduced for ease of reference:

"With profound respect it is humbly submitted that the Reference No.17/2017 was instituted in this Court for its disposal in accordance with law against four accused persons including accused Sikandar Ali Qureshi, who after granted ad-interim bail surrendered before this court to face the trial. It reveals from the record that after framing of the charge, all PWs have been examined by the prosecution except I.O. in this reference. On 22.08.2020, this court was communicated the directions passed in C.P. No.D-5564/2017 and C.P. No.D-1067/2020 to hear the matter on day to day basis and this court was further directed to announce judgment within two months of the date of worthy order dated 17.08.2020, but the matter was already fixed on 03.09.2020 on which date counsel for accused and I.O. NAB were absent and since the I.O. Prakash was posted at Multan and it takes time to inform him through DG concern, therefore, matter was adjourned to 09.09.2020 on which date I.O. was present, but defence counsel sent adjournment application on the ground that he filed transfer application and on grounds of his illness, but there was no stay order in transfer application, so also application was not supported with any document hence examination-in-chief of I.O. was recorded and his cross examination was reserved on the request of both accused persons. On 10.09.2020 Mr. Raj Ali Wahid advocate appeared on behalf of Mr. Rehman Ghous advocate and filed an adjournment application on ground that counsel has filed C.P. and challenged the re-appointment of Presiding Officer

so also he filed Cr. Transfer Application, but there was no stay from Hon'ble High Court however in the interest of justice matter was adjourned to 11.09.2020 for cross examination on behalf of both accused, but on said date accused Sikandar Ali Qureshi and his counsel both were absent and his junior counsel filed an application for condonation of absence as well as to adjourn the matter which were allowed and matter adjourned to 12.09.2020 on which date co-accused Munawwar Sultan completed cross-examination of I.O. on his part, but accused Sikandar Ali Qureshi and his counsel failed to cross examine the I.O, hence matter adjourned to 18.09.2020 on which date Mr. Rehman Ghous advocate present, but refused to proceed with the case and stated that case may be fixed after 4th October, 2020 hence on his choice matter was adjourned to 05.10.2020 on said date I.O. Prakash was again present, but Mr. Rehman Ghous advocate filed an application mentioning the same grounds of filing C.P., transfer application and complaint against the Presiding Officer. In view of the above mentioned conduct of accused Sikandar Ali Qureshi and his counsel Mr. Rehman Ghous who avoids to proceed the matter without any justification and cogent reasons in spite of strict directions of Hon'ble High Court.

It is submitted that the I.O. Prakash is in witness box and came from Multan on date of hearings, but his cross examination on the part of accused Sikandar Ali Qureshi is not commence yet due to above mentioned conduct of accused and his counsel, therefore, the same may kindly placed before Hon'ble Division Bench for kind perusal and further order.

Copy of this reference may be placed before Hon'ble Monitoring Judge, Accountability Courts, Sindh, Karachi."

Sd/-

Judge

Accountability Court No.III, Karachi

4. Having received the aforesaid Reference this bench especially as one of us is the Monitoring Judge of the Accountability Courts (Muhammad Karim Khan Agha, J) deemed it proper to pass the following orders:-

"The attached reference from the learned Accountability Court No.III, Sindh Karachi dated 06.10.2020 under the heading "Reference regarding conduct of accused Sikandar Ali Qureshi in Reference No.17/2017 (State vs. Javed Arshad Khan & Others)" whose conduct prima-facie appears to be in violation of this Court's order dated 17.08.2020 and amounts to misuse of concession of bail is converted into an application to recall the pre-arrest bail earlier granted to accused/petitioner Sikandar Ali Qureshi.

Issue direct intimation notice to the petitioner/accused Sikandar Ali Qureshi, his learned counsel Mr. Rehman Ghous

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and Special Prosecutor NAB as to why the pre-arrest bail granted to the petitioner/accused Sikandar Ali Qureshi should not be recalled. To be fixed before a bench comprising of Mr. Justice Mohammad Karim Khan Agha-J and Mr. Justice Zulfiqar Ali Sangi on 09.10.2020 at 08:30 a.m. at serial No.1. The head bailiff shall ensure compliance of this order and be present at the date and time of hearing along with service reports."

5. Today Mr. Rehman Ghous, learned counsel for the petitioner Sikandar Ali Qureshi has appeared however the petitioner was called absent. Mr. Rehman Ghous, learned counsel for the petitioner Sikandar Ali Qureshi after studying the reference received from the learned trial court was unable to refute any of the allegations made against the petitioner in the reference which was sent by the learned accountability court to the monitoring Judge of accountability courts of this court. His main contention was that since various applications /petitions for the transfer of the case were pending before this court this could be deemed to be an exceptional circumstance justifying an adjournment as set out vide this courts order dated 17.08.2020.

6. We completely reject this argument of pending applications/petitions as an exceptional circumstance. The learned counsel during the hearing of these applications before this court, which we have been informed have been going on for quite some time, had every opportunity to seek a stay on the proceedings before the accountability court or at least preclude it from announcing its judgment until his applications/petitions were decided **however he failed to do so**. Had he done so this would have justified his actions. As such he was required by the **orders/directions** of this court and the concerned accountability court to proceed with his cross examination of the IO who had travelled from Multan. **Notably** his other co-accused, who had moved similar applications/petitions in the absence of any stay on the proceedings before the accountability court, did follow the orders of the this court and the accountability court and completed his cross examination of the IO **however** petitioner Sikandar Ali Qureshi and his counsel point blank **refused** to do so without any legal justification or legal order in support of the position which they took and appear to be dictating the dates when the

judge should fix the hearing despite this court **ordering/directing** the accountability court to proceed with the trial on a day to day basis which had even attended to the difficulty of the IO having to come from Multan to Karachi for his examination in chief and cross examination keeping in view that cases under the National Accountability Bureau are to be decided expeditiously. The conduct of the petitioner in short not only violated the orders of this court but also appears to be a delaying tactic to slow down the judgment being handed down by the trial court.

7. We find it extremely troubling and undermining of the independence of the judiciary and the whole criminal justice system that a petitioner who has been extended the extra ordinary concession of pre arrest bail can **refuse** to proceed with his cross examination in the face of direct orders of this court to proceed with this matter on a day to day basis and the order of the trial court to proceed with his cross examination when there is no stay in the field and no stay on proceeding has been applied for preventing the matter from proceeding. **Furthermore**, such conduct of the petitioner Sikandar Ali Qureshi was not an isolated incident but was repeated on three separate occasions as per reference received by the trial court. The perception created by the reference from the trial court judge is that petitioner Sikandar Ali Qureshi is trying to dictate to the judge as to how the trial proceeding should be managed and that dates of his choice are to be given despite the orders of this court to proceed on a day to day basis which is completely unacceptable and cannot be tolerated in any civilized society which respects the rule of law. One can only imagine the oppression which the learned accountability court judge felt whilst hearing this case. Once her reference came before this court this court could not turn a blind eye to the same and was obliged to step in to protect the dignity of the whole institution of the judiciary and preserve the criminal justice system. A judge is a judge whether a magistrate or a supreme court judge and is entitled to be treated with respect, dignity and due deference in accordance with the accepted practices, conventions, canons of conduct and etiquette of the noble legal profession. In Pakistan we have a written constitution and it and the laws of the land must be abided by and

orders of the courts must be complied with as the courts are committed to upholding the rule of law and ensuring the smooth running of the criminal justice system. It is notable that as per the Constitution the independence of the judiciary can be regarded as one of the golden rules/foundations on which the Constitution is based and has even been held by the Hon'ble Supreme Court as part of its basic structure. It is one of the most paramount duties of the courts to uphold the Constitution, laws of the land and ensure that the justice system proceeds seamlessly.

8. **For the reasons mentioned above we find that the petitioner Sikandar Ali Qureshi through his conduct as narrated in the reference filed by the trial court before this court (which allegations and conduct remain unrebutted) has misused/abused the concession of bail granted to him by this court and hereby recall the same with immediate effect and who shall be taken into custody.** The superintendant central prison Karachi shall ensure his attendance before the trial court on each and every date of hearing and provide him with all necessary medical requirements including treatment outside of hospital as set out in our short order.

9. These are the reasons for our short order dated 19-10-2020 which is set out below for ease of reference.

For the reasons to be recorded later on, the pre-arrest bail of Sikandar Ali Qureshi is recalled with immediate effect and the NAB is directed to take him into custody and place him in the Central Prison Karachi. The Superintendent, Central Prison, Karachi is directed to ensure that Mr. Sikandar Ali Qureshi is produced on each and every date of hearing before the Accountability Court No.III, Karachi. The next date is 15th October, 2020 when Mr. Sikandar Ali Qureshi will be produced. It is noted that if Mr. Sikandar Ali Qureshi is suffering from any medical ailment especially kidney ailment for which he requires dialysis, he shall be taken from the Central Prison Karachi on each date in which he requires dialysis and thereafter returned to the Central Prison Karachi".

10. A copy of this order shall be sent by fax to D.G. NAB Karachi, Superintendent Central Prison, Karachi for compliance and learned Judge Accountability Court No.III Karachi for

information who shall continue to comply with order of this court dated 17.08.2020 unless restrained from doing so by a competent court of law.

MAK/PS