

NFR.
NAB Bail hardship grounds granted

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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Iqbal Kalhoro

Mr. Justice Mohammad Karim Khan Agha

Const. Petition No.D-4802 of 2019.

Petitioner: Ghulam Hyder S/o. Abdul Hameed through
Mr. Rafiq Kalwar, Advocate.

Respondents: Chairman NAB through Mr. Muhammad
Akram Javed, Special Prosecutor NAB.

Const. Petition No.D-7441 of 2019.

Petitioner: Hamid Zafar s/o. Taufiq Ahmed through Mr.
Ahmed Nawaz, Advocate.

Respondents: Chairman NAB through Mr. Muhammad
Akram Javed, Special Prosecutor NAB

Const. Petition No.D-5255 of 2019.

Petitioner: Muhammad Ibrahim Junejo s/o. Late
Muhammad Junejo through Mr. Noor
Muhammad Dayo, Advocate.

Respondents: Chairman NAB through M/s. Muhammad
Akram Javed and Zahid Hussain Baladi,
Special Prosecutors, NAB alongwith I.O.
Sabih Rafy.

Date of hearing: 19.10.2020 and 02.11.2020.

Date of announcement: 02.11.2020.

JUDGMENT

Mohammad Karim Khan Agha, J.- Petitioners Ghulam Hyder S/o. Abdul Hameed, Hamid Zafar s/o. Taufiq Ahmed and Muhammad Ibrahim Junejo s/o. Late Muhammad Junejo have preferred these Constitution Petitions for post arrest bail in National Accountability Bureau (NAB) Reference No.06 of 2018 which is pending before the Accountability Court No.II at Karachi.

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2. The Brief facts of the case as per reference is that on a source report regarding allegations of the official petitioners inserting a fake and fabricated entry No.72 dated 10.09.1965 in the record of rights VIF VII-B Deh Allah Panahi Taluka Shah Mureed District Malir, Karachi for 165-acres of the government land in the name of one Begum Badshah by the Revenue Officials in connivance with the private persons and subsequent sale of the said land to different people, an enquiry which later on was converted into investigation was authorized. The NAB in the investigation found that Mst. Nafeesa Khatoon through her son Asad Ahmed Khan in connivance with Mushtaq Solangi Ex-Assistant commissioner managed to insert aforesaid fake and fabricated entry in the name of her mother Begum Badshah which formed a basis of several subsequent revenue entries of like nature, the record of which neither was available in re-written record of said Deh prepared in the year 1985-86 nor in the microfilmed revenue record prepared in the year 1995, whereby the said land was sold to private persons for huge consideration. The investigation further revealed that survey Nos.307 to 322 were carved out of the said land fraudulently and never existed in the map of said Deh which was verified on the basis of survey record, land register and Chat Wadh forms on 23.10.1999. It was further revealed that in the whole scam every petitioner played his role by misusing his authority/failure to exercise his authority in order to benefit others which amounted to acts of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO) and as such the National Accountability Bureau (NAB) filed the aforesaid reference against the petitioners.

3. All three petitioners have applied for bail on hardship grounds although petitioner Muhammed Ibrahim had in addition sought bail on medical grounds. Learned counsel for the petitioners placed reliance on **Ch. Zulfiqar Ali V The State** (PLD 2002 SC 546), **Muhammad Jahangir Badar V The State** (PLD 2003 SC 525), **Arif Sharif V Chairman, NAB** (2004 SCMR 1805), **Aga Jehanzeb V N.AB. and others** (2005 SCMR 1666), **Himesh Khan V The National Accountability Bureau (NAB) Lahore & others** (2015 SCMR 1092), **Anjum Jameel Siddiqui V National Accountability Bureau & another** (SBLR 2019 Sindh 1901), **Muhammad Aqeel Munawar Abro V The State** (2016 P Cr.L J 1331), **Imran Mohsin V National Accountability Bureau** (PLD 2018 Islamabad 62), **National Accountability Bureau V Messrs Hdaibya Paper Mills Limited** (PLD

2018 SC 296) and **Sh. Khalid Mehmood V The State** (2006 P Cr. LJ 1115) and one unreported judgment passed in C.P No.D-8393 of 2019 re: **Ghulam Nabi Kheero V The Chairman, NAB & another** dated **21.09.2020**.

4. On the other hand special prosecutor NAB assisted by IO has opposed the grant of bail on hardship grounds as according to him no case of hardship has been made out by any of the petitioners especially as the petitioners have caused delay in the completion of the trial and petitioner Muhammed Ibrahim has not been able to make out a case of bail on medical grounds. In support of their contentions they have placed reliance on **Tallat Ishaq v. National Accountability Bureau** (PLD 2019 Supreme Court 112)

5. We have heard the learned counsel for the parties and perused the documents available on record as well as the case law cited at the bar.

6. It goes without saying that this order will have no bearing on the trial which will be decided by the trial court on merit after assessing all the evidence before it. We have also only made a tentative assessment of the material before us.

7. The petitioners have already spent about 2 years and one month behind bars and it appears that although a slight delay has been caused on the part of the petitioners the majority of the delay has been caused by the NAB; that so far only 11 PW's had been examined and **14 PW's remain** to be examined and thus with a total of 7 accused in the reference each of whom is entitled to separately cross examine each witness it appears that the trial will take at least a year more to complete; that the trial court has failed to comply with directions of this court to complete the trial within a given period of time and in our view giving yet another direction to complete the trial within a given period of time would serve no useful purpose as it appears that the trial in reality cannot be completed within 3 to 6 months even if heard on a day to day basis and as such the continued detention of the petitioners behind bars would serve no useful purpose. 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 at the discretion of the court. In our view for the reasons discussed above where the petitioners have each spent more than two years in jail and no significant delay has been caused on either their or their lawyers account, that 14 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 there is no chance of the trial being completed within the foreseeable future 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. It is also pertinent to mention that the main accused is on bail after NAB did not seek his arrest and that the main beneficiary has been granted bail by the Supreme Court after lodging the amount of loss as surety. At this point in time no loss has been caused to the National Exchequer as the illegally granted land has been taken back by the Government.

8. As such petitioners Ghulam Hyder S/o. Abdul Hameed, Hamid Zafar s/o. Taufiq Ahmed and Muhammad Ibrahim Junejo s/o. Late Muhammad Junejo are all granted post arrest bail subject to each of them furnishing solvent security in the amount of RS10 lacs (ten lacs) and PR bond in the like amount to the satisfaction of the Nazir of this court. **However it is made clear that if any of the petitioners causes any delay in the completion of the trial the accountability court may move a reference to this court for the cancellation of the bail of the petitioner who is causing such delay. A copy of this order shall be sent to the concerned accountability court for information.**

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