

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
 Criminal Accountability Appeal No. 16 of 2017 &  
 C.P.No.D-7036 of 2019

Date

Order with signature of Judges

1. For orders on office objection and reply of advocate at flag A
2. For hearing of main case
3. For hearing of M.A. No. 7984/2017

31.03.2021

M/s Shahab Sarki advocate and Zulfiqar Ali Langha advocate for the appellant  
 Mr. R.D. Kalhoro Special Prosecutor for NAB

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In C.P.No.D-7036/2019 filed by the petitioner Abdul Malik in connection with his application bearing M.A.No. 7984/2017, under section 426, Cr.P.C read with section 561-A, Cr.P.C and under Article 199 of the Constitution, it is prayed to suspend the operation of impugned judgment dated 03.08.2017, passed by the learned Accountability Court No.IV, Karachi and further be pleased to enlarge him on bail during pendency of his appeal on the ground that the appellant has served out his substantive sentence and is only confined in jail due to non-payment of fine, as such he may be released on bail.

2. In nutshell, it is the case of the prosecution that as per NAB Reference No.04/2014, appellant and others were alleged to have caused colossal loss to the allottees/ members of the society and had therefore committed acts of corruption and corrupt practices which fell within the purview of section 9 of the National Accountability Ordinance, 1999 (N.A.O.). After full-dressed trial, the appellant was convicted under section 10(a) (N.A.O.) and sentenced to 10 years RI and fine of 15 Million and in default of payment of fine, he was ordered to suffer a further period of 2 years' R.I. Appellant was disqualified from holding public office and receiving any financial facility/ loan from any financial institution for a period of 10 years. Appellant was extended benefit of Section 382-B Cr.P.C.

3. Learned counsel for the appellant submitted that the appellant has served out his substantive sentence and has remained in jail due to non-payment of fine of Rs.15 Million. He further submitted that his appeal against the impugned Judgment was filed before this Court on 12.08.2017, which is still pending adjudication and that there is no delay on the part of the appellant in hearing his appeal hence, the impugned Judgment may be suspended and the appellant

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may be released on bail under section 426, Cr.P.C RW S.561 (A) Cr.PC and Article 199 of the Constitution and he is even prepared to deposit the amount of the fine as surety.

4. On the other hand, learned Special Prosecutor NAB vehemently opposed for suspension of sentence of the appellant on the ground that delay in disposal of the instant appeal cannot be solely blamed on the prosecution and the appellant is equally responsible for such delay and hence does not qualify for relief under section 426, Cr.P.C.

5. We have minutely considered the submissions of the learned counsel for the parties at length and perused the material available on record.

6. In the present case, the appellant was sentenced to suffer 10 years R.I with fine of Rs.15 Million and in default he was ordered to suffer two years R.I more. Jail Roll was called from Superintendent Central Prison, Karachi, which shows that the appellant has served out 10 years, 03 months and 08 days till 30.03.2021, and is confined in jail due to non-payment of fine. In the case reported as **Khan Muhammad Mahar vs. The State (2003 SCMR 22)**, the Honourable Supreme Court suspended the sentence of a convict, who was tried under NAB Ordinance and had already undergone his substantive sentence and was only held in the jail due to non-payment of fine. In the present case too, the appellant has served out his substantive sentence after earning remission and is only confined due to non-payment of fine. Keeping in view the huge pendency of the appeals, hearing of this appeal will take some time especially as it contains the evidence of 50 PW's and 1000's of documents as such if the appellant's sentence is not suspended and he is not released on bail, he would almost certainly have served out his entire substantive sentence plus the two years in lieu of non payment of fine which would completely defeat the purpose of his appeal.

07. Furthermore on a very tentative assessment of the evidence, it appears that the appellant might have a reasonable case on appeal as whilst he was President of the society, which was only a ceremonial position he did not allot any plots or cancel any plots and did not make any personal monetary benefit himself. These observations are only tentative in nature which will have no effect on the appeal which will be decided on merits once it is taken up for hearing by the appellate forum

08. In view of above, we hereby suspend the appellant's sentence pending the final disposal of his appeal and release him on bail subject to furnishing solvent surety of Rs. 15 Million and PR bond in the like amount subject to the satisfaction

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of the Nazir of this Court. In addition appellant is directed to deposit his original passport with the Nazir of this Court and in case, if the appellant does not possess a passport, the Ministry of Interior shall ensure that no fresh or duplicate passport is issued to the appellant. A facsimile copy of this order shall immediately be sent to the Secretary Ministry of Interior Government of Pakistan for information and compliance.

These are the reasons for our short order of even date.