

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE SARDAR TARIQ MASOOD

Dr. Asim Case
SC

CIVIL PETITION NOS. 2166, 2167, 2168, 2445 AND 2446 OF 2017
(Against the orders dated 05.06.2017 & 22.03.2017 passed by the High Court of Sindh, Karachi in CP. D-2229/17, CMA. 11484/17 in CP. D7597/15, CMA. 11486/17 in CP. D-1696/16, CP. D-7597/15 & CP. D-1696/16)

Dr. Asim Hussain. (in CPs.2166 to 2168/17)
NAB through its Chairman, Islamabad. (in CPs.2445 & 2446/17)
.... Petitioners

VERSUS

Federation of Pak. thr. Secretary Interior and others. (in CP.2166/17)
NAB through its Chairman and another. (in CP.2167/17)

Federation of Pak. thr. Secretary M/o Petroleum & Natural Resources, etc. (in CP. 2168/17)
Dr. Asim Hussain and others. (in CPs.2445 & 2446/17)
.... Respondents

In CPs.2166-2168/17

For the Petitioner : Sardar M. Latif Khan Khosa, Sr. ASC
Ch. Akhtar Ali, AOR (**absent**)

For Respondents No.1 : Mr. Sajid Ilyas Bhatti, DAG.

For Respondent No.3 : Mr. Nasir Mehmood Mughal,
Special Prosecutor, NAB.

In CPs.2445 & 2446/17

For the Petitioner : Mr. Nasir Mehmood Mughal,
Special Prosecutor, NAB.

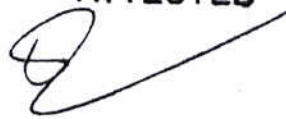
For Respondent No.1 : Sardar M. Latif Khan Khosa, Sr. ASC.

Date of Hearing : 29.08.2017.

JUDGMENT

Dost Muhammad Khan, J:- This single judgment shall decide Civil Petitions No. 2166, 2167, 2168, 2445 and 2446 of 2017. Civil Petitions No. 2166, 2167 and 2168 of 2017 have been filed by Dr. Asim

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Court Associate
Supreme Court of Pakistan
Islamabad

Hussain against the impugned judgment dated 05.06.2017 of the High Court of Sindh at Karachi, whereby, his request for removal of his name from the Exit Control List (ECL) and release of passport retained by the High Court was declined, whereas, Civil Petition No. 2445 and 2446 of 2017 have been filed by the Chairman, National Accountability Bureau, Islamabad against the impugned judgment dated 22.03.2017 of the High Court of Sindh at Karachi for cancellation of bail granted to Dr. Asim Hussain-petitioner in two NAB References bearing Nos. 13 and 19 of 2016.

2. This case was heard at considerable length. Dr. Asim Hussain-petitioner (in Civil Petition Nos. 2166, 2167 and 2168 of 2017) has been granted bail in the above mentioned references by the High Court purely on health ground after holding that the disease/diseases, the petitioner was suffering from, were neither treatable in jail nor it was manageable and may be dangerous to health and life, however at the time of granting bail he was directed to deposit his passport with the *Nazir* of the High Court and it was also directed that his name shall also be put on ECL by the Ministry/authority concerned.

3. Certainly, some subsequent developments took place where many Medical Boards consisting eminent medical experts on the subject of Neurosurgery, diabetes, cardiac physicians were amongst the members. These Boards were constituted mainly from the Jinnah Postgraduate Medical Centre, Karachi, Agha Khan University Hospital, Karachi, Dow University Hospital, Karachi and Liaqat National Hospital & Medical College, Karachi and finally it was declared that the petitioner in all probabilities required disc-replacement which specialty/specialization is not available within Pakistan conveniently.

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4. The learned Special Prosecutor, appearing for NAB contended that the petitioner is highly influential person and being a Chairman of the Board of Trustees of Zia-ud-Din Hospital, Karachi and previously the Chairman of the Pakistan Medical and Dental Council, he influenced all the high ranking medical professionals which included professors of high standing and secured favourable opinion, however, when we asked him whether the NAB has questioned the genuineness of these opinions so delivered by many medical experts, in the High Court of Sindh or before this Court, he could not explain the omission the NAB has made in this regard and once the NAB authorities, or for that matter, the Government of Pakistan were aggrieved by the findings of several medical boards, then they should have challenged the same well in time in view of the principle laid down by this Court in the case of Malik Muhammad Yousafullah Khan vs. The State and another (PLD 1995 SC 58) this Court on high presumption and assumptions cannot substitute its own opinion for that of medical experts in the relevant field. If at all the NAB suspecting the foul play or considering the reports not genuine, then they should have made application to the Court to constitute another medical board somewhere else out of Karachi to ascertain the true nature of ailment of the petitioner. Confronted with above facts, the learned counsel representing the NAB vehemently argued that once the High Court directed the deposit of the passport of the petitioner it was not open for the High Court to reconsider the reversal of the order earlier made including placing the name of the petitioner on ECL. Therefore, the impugned order is legally correct.

5. We have found on record that even the co-accused of the petitioner was allowed to go out of the country on business trip albeit in view of the Skype or hotline video conference facility, he could manage


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his out of country business through that means but he was allowed to proceed and returned back within the time limit given by the High Court. This would show that the petitioner is treated differently by the NAB and the authorities are bent upon to keep the petitioner in a painful condition as opined by the doctors and that too for no good reason much less legitimate one. We neither understand such a conduct on the part of the NAB nor it appears to be fair one when the case of the petitioner falls on higher pedestal. What is the exact degree of ailment needing surgical intervention was for the surgeon of specialized faculty abroad. Human life has been given full protection by the provisions of the Constitution and even other relevant provisions of law have placed it at very high pedestal. Even otherwise the law needs a living man for conviction in case the prosecution establishes the case against him and not a dead body. In the absence of any material to the contrary we are unable to form an opinion against the consistent view of several medical boards highly placed in the profession to give a different finding and to agree with the one given by the High Court, more-so when the petitioner has shown his willingness through his counsel that he is ready to provide enough security and undertaking to return back after getting treatment from abroad within a period of one month at the most from the date of his departure and also to arrange enough security in cash/defence savings certificate so that the prosecution may not apprehend that the petitioner is making false excuses to go abroad to escape facing the trial.

6. We have attended to the view taken by the High Court, however, we may, without any fear of rebuttal, conclude that a decision on bail matters/applications is an order and does not fall within the provisions of section 369 Cr.P.C. to qualify as judgment because requirements of a judgment are altogether different which is always delivered at the

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conclusion of the judicial proceedings. Thus for all legal intents and purposes, the previous order of the High Court was an interlocutory order and could not be treated as final judgment like the one given under section 369 Cr.P.C. and to that extent the impugned order is suffering from legal error. More-so principle of *estoppel* is alien to criminal law.

7. Accordingly, Civil Petition Nos. 2166, 2167 and 2168 of 2017 are converted into appeals and the same are allowed. The appellant (Dr. Asim Hussain) is permitted to go abroad for treatment and stay abroad for a period of one month from the date of his departure subject to furnishing cash security in the sum of rupees six million or defence savings certificate equal to that amount to the satisfaction of the learned trial Court. Needless to add here, that the appellant has already deposited defence savings certificates of the value of rupees 4.5 millions which shows that it should be sufficient guarantee to ensure the return of the appellant after getting treatment and that he has also executed surety bonds in the Anti- Terrorism Court, granting him permission to go abroad for his treatment and his name be removed from ECL. The impugned order of the High Court of Sindh dated 05.06.2017 is thus set aside in the above terms. All the authorities concerned within the Federal Government including Ministry of Interior, FIA, NAB Immigration etc. are directed to immediately remove the name of the appellant from the ECL, however, the concerned authorities would be at liberty to re-enter his name after his arrival back to the country when he is declared cured by the foreign surgeon. The passport deposited with the *Nazir* of the High Court shall also be returned to the appellant and if it needs renewal the Director General, Passport shall do the same to enable the appellant to go abroad. However, we expect that the undertaking given at the bar would be honoured so that the confidence

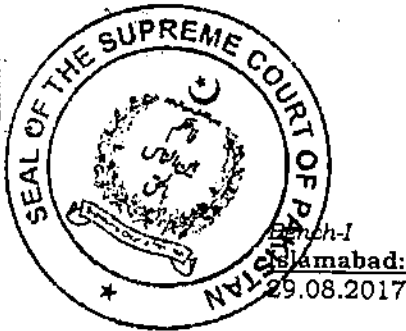
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of the Court is not shattered. Further, during the absence of the appellant while staying abroad, the learned counsel representing the appellant before the trial Court may apply for exemption of the appellant from personal appearance before the trial Court to ensure that the trial remains in progress.

Civil Petition No. 2445 and 2446 of 2017

As the trial of respondent No. 1 (Dr. Asim Hussain) has already commenced and is in progress, therefore, keeping in view the law laid down by this Court in the case of Muhammad Ismail vs. Muhammad Rafique and another (PLD 1989 SC 585) both the petitions for cancellation of bail of respondent No. 1 and others are dismissed. Leave refused.



Sd/- Dost Muhammad Khan, J
Sd/- Qazi Faiz Isa, J
Sd/- Sardar Tariq Masood, J

Certified to be True Copy

Not Approved for Reporting
(M. Tauseef)

S.W.
31-8-17

Court Associate
Supreme Court of Pakistan
Islamabad

GR No:	<u>13056/17</u>	Civil/Criminal
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