

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

CIVIL PETITIONS NO.3752, 3753 AND 3754 OF 2018

(Against the judgment dated 19.9.2018 of the Islamabad High Court Islamabad passed in WPs Nos.2839 of 2018, 2841 of 2018 and 2842 of 2018)

Chairman NAB through Prosecutor General, Islamabad

...Petitioner(s)
(In all cases)

VERSUS

Mian Muhammad Nawaz Sharif
Maryam Nawaz Sharif
Capt. (Retd.) Muhammad Safdar

In C.P.3752/2018
In C.P.3753/2018
In C.P.3754/2018
...Respondent(s)

For the petitioner(s): Mr. Muhammad Akram Qureshi, Special
Prosecutor, NAB
(In all cases)

Mr. Jahanzeb Khan Bharwana, Addl.P.G. NAB

For the respondent(s): Khawaja Haris Ahmed, Sr. ASC
(In C.P.3752/2018)

Mr. Muhammad Amjad Parvez, ASC
(In C.P.3753/2018)

Not represented
(In C.P.3754/2018)

Date of hearing: 12.11.2018

ORDER

MIAN SAQIB NISAR, CJ.- Leave to appeal is granted in

these petitions to consider, *inter alia*, the following points:-

- i. Whether in a case where there is a statutory ouster of jurisdiction of courts to grant bail pending appeal, the constitutional jurisdiction to grant bail can be invoked on the same principles or grounds as are available under the general law?

- ii. Whether the judgment dated 03.08.2016 in C.P. No.11618/2016 titled as "Mir Shahjahan Khan Khetran Vs. NAB" and Judgment dated 28.11.2014 passed in C.P. No.1305/2014 titled as "Muhammad Arshad Vs. Tassaduq Hussain @ Mittu and other" is *per incuriam* as per the ratio of the cases reported as Haji Ghulam Ali Vs. The State through A.G., N.W.F.P., Peshawar and another (2003 SCMR 597), Abdul Aziz Khan Niazi Vs. The State through Chairman, NAB, Islamabad (PLD 2003 SC 668), Olas Khan and others Vs. Chairman NAB through Chairman and others (PLD 2018 SC 40), Peer Mukaram-ul-Haq Vs. National Accountability Bureau (NAB) through Chairman and others (2006 SCMR 1225)?
- iii. Whether the scope of the constitutional jurisdiction for grant of bail during investigation/trial or release on bail by way of suspension of sentence is much wider than the scope of grant of bail under the general law, or otherwise?
- iv. What are the parameters of tentative assessment of evidence and how can it be differentiated from the deeper appreciation of evidence particularly in cases involving grant of bail by suspending the sentence and release on bail during pendency of the appeal?
- v. Whether the guidelines provided by the Superior Courts regarding ouster of Section 426 of the Code of Criminal Procedure, 1898 (*Cr.P.C.*) are required to be followed for the suspension of sentence in cases of NAB? If so, what are the principles regulating suspension of the sentence under Section 426 Cr.P.C.?
- vi. Whether the principles regulating bail under Sections 497 and 498 Cr.P.C. would also be applicable while considering the matter of suspension of sentence?
- vii. If in a case the convict is entitled to suspension of sentence but the judgment/order suspending the sentence is not happily worded, what would be the effect thereof?

- viii. If a concession of suspension of sentence is once extended by the court of appeal, whether the principles of cancellation of bail would apply for withdrawal of suspension?
- ix. Whether the learned Islamabad High Court has correctly interpreted the provisions of Section 9(b) of the National Accountability Ordinance, 1999 (*Ordinance*)?
- x. Whether the ground of hardship can be considered while suspending the sentence in a NAB case?
- xi. Whether the merits of a case can be discussed and conclusive findings be given, as done by the learned Islamabad High Court in its order dated 19.09.2018, are permissible in its constitutional jurisdiction while dealing with cases of suspension of sentence?
- xii. Whether in a constitutional petition, a miscellaneous application filed under Section 561-A, Cr.P.C. can be filed for adjudication where the Cr.P.C. is not applicable?
- xiii. Whether the learned Islamabad High Court can take up the constitutional petition when the main appeals were already fixed for hearing?
- xiv. Whether a detailed order (*consisting of 41 pages*) is permissible while dealing with the suspension of sentence?
- xv. Whether or not the learned Islamabad High Court has ignored the guidelines laid down by this Court in case reported as **Muhammad Shakeel Vs. The State and others (PLD 2014 SC 458)**?
- xvi. Whether the learned Islamabad High Court has properly interpreted the provisions of Sections 9(a)(v) and 14(c) (*first and second part*) of the Ordinance read with Articles 117, 122 to 129 of the Qanun-i-Shahadat Order, 1984 with regards to burden of proof and presumption?
- xvii. Whether the judgments cited as **Ghani-ur-Rehman Vs. National Accountability Bureau and others (PLD 2011 SC**

1144) and **Khalid Aziz Vs. The State (2011 SCMR 136)** are distinguishable from the facts of the present case?

2. Let this matter be placed before a larger bench to be constituted by the Hon'ble Chief Justice of Pakistan. Re-list on **12.12.2018**.

CHIEF JUSTICE

JUDGE

Islamabad, the
12th November, 2018
M. Azhar Malik/*

JUDGE