

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mian Saqib Nisar, HCJ  
Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Sh. Azmat Saeed  
Mr. Justice Faisal Arab  
Mr. Justice Munib Akhtar

**Civil Petition No. 632 of 2018**

(Against the judgment dated 31.01.2018 passed by the High Court of Balochistan, Quetta in Civil Petition No. 1300 of 2017)

***Tallat Ishaq***

*...Petitioner*

***versus***

***National Accountability Bureau through its Chairman, etc.***

*...Respondents*

For the petitioner: Syed Iftikhar Hussain Gillani, Sr.  
ASC

For the respondents: Mr. Haider Ali, Additional  
Prosecutor-General Accountability

Date of hearing: 01.10.2018

**JUDGMENT**

**Asif Saeed Khan Khosa, J.:**

**Criminal Miscellaneous Application No. 2941 of 2018**

This miscellaneous application is allowed and the documents appended therewith are permitted to be brought on the record of the main petition. Disposed of.

**Civil Petition No. 632 of 2018**

2. Through this petition Tallat Ishaq petitioner has sought leave to appeal against the judgment dated 31.01.2018 passed by a learned Division Bench of the High Court of Balochistan, Quetta in Constitution Petition No. 1300 of 2017 whereby post-arrest bail was refused to him in Reference No. 6 of 2017 filed by the National Accountability Bureau, Balochistan, Quetta against him and others under section 18(g) read with section 24(b) of the National Accountability Ordinance, 1999.

3. We have heard the learned counsel for the parties at some length and have gone through the relevant record of the case with their assistance.

4. It has been alleged by the prosecution that in his capacity as an Office Superintendent in the office of the Director Development, Quetta Division the petitioner has acquired assets in his own name and also in the names of his wife and others and such acquisition of assets was beyond the known sources of income of the petitioner. According to the prosecution the petitioner has acquired seventeen immovable properties worth Rs. 9,33,60,982/- and he also possesses six vehicles worth Rs. 1,40,62,500/-. We note that in grounds (I) and (J) taken in the memorandum of the present petition the petitioner has taken contradictory stands inasmuch as on the one hand he has maintained that the relevant properties were purchased by somebody else through payments made by that person through cheques and it is that person who is the owner of those properties but in the same breath the petitioner has also maintained that he had enough means to purchase the relevant properties. The impugned judgment passed by the High Court shows that the High Court had felt satisfied that sufficient material was available on the record of investigation *prima facie* establishing that reasonable grounds existed to believe in the petitioner's involvement in the alleged offence. In that backdrop instead of seriously pressing this petition on the merits of the petitioner's

case the learned counsel for the petitioner has mainly argued that the petitioner was arrested in connection with this case on 01.08.2017 but his trial has not so far been completed which delay entitles the petitioner to be admitted to bail during the pendency of his trial. In this connection the learned counsel for the petitioner has relied upon the provisions of section 16(a) of the National Accountability Ordinance, 1999 according to which the trial of such a case is to be conducted on a day to day basis and has to be disposed of by an Accountability Court within a period of thirty days. Relying upon the judgments handed down by this Court in the cases of Aga Jehanzeb v. National Accountability Bureau and others (2005 SCMR 1666), Muhammad Nadeem Anwar and another v. National Accountability Bureau and others (PLD 2008 SC 645), Anwarul Haq Qureshi v. National Accountability Bureau and another (2008 SCMR 1135) and Asfandiyar Khan Kakar v. Accountability Court, Quetta and another (unreported order passed by this Court on 06.09.2017 in Civil Petition No. 2920 of 2017) he has argued that on account of failure of the trial court to conclude the petitioner's trial within a period of thirty days bail is to be granted to him "automatically" as held by this Court in the above mentioned precedent cases. As against that the learned Additional Prosecutor-General Accountability appearing for the respondents has submitted that it has already been held by this Court in many cases that the provisions of section 16(a) of the National Accountability Ordinance, 1999 are merely directory in nature and non-compliance of the said provisions does not entitle an accused person to claim bail as of right and in support of his submissions he has referred to the cases of Faisal Hussain Butt v. The State and another (2009 SCMR 133), Nisar Ahmed v. The State and others (PLD 2016 SC 11), Khalid Humayun v. The NAB through D.G. Quetta and others (PLD 2017 SC 194) and Chairman NAB, Islamabad v. Bakhat Zameen and another (unreported judgment of this Court passed on 26.08.2016 in Civil Petition No. 1542 of 2016).

5. As this petition has not seriously been pressed by the learned counsel for the petitioner on the merits of the petitioner's case and as some judgments/orders passed by this Court in different cases in the past in respect of the provisions of section 16(a) of the National Accountability Ordinance, 1999 are not being understood in their correct perspective, therefore, we have decided to clarify the true import and scope of the said provisions after considering all the precedent cases available on the subject so far and to render an authoritative pronouncement on the issue.

6. Section 9(b) of the National Accountability Ordinance, 1999 ousts the jurisdiction of all Courts to grant bail to any person accused of committing an offence under the said Ordinance and it provides as follows:

"All offences under this Ordinance shall be non-bailable and, notwithstanding anything contained in sections 426, 491, 497, 498 and 561-A or any other provision of the Code, or any other law for the time being in force no Court shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance."

However, in the case of Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607) this Court had clarified that a statutory ouster of jurisdiction of all Courts could not affect the jurisdiction of a High Court to grant bail in such cases under Article 199 of the Constitution. This Court had observed in that case as under:

"197. It was held in the case of Zafar Ali Shah (supra) that the powers of the superior Courts under Article 199 of the Constitution "remain available to their full extent .... Notwithstanding anything contained in any legislative instrument enacted by the Chief Executive." Whereas, section 9(b) of the NAB Ordinance purports to deny to all Courts, including the High Courts, the jurisdiction under sections 426, 491, 497, 498 and 561-A or any other provision of the Code of Criminal Procedure or any other law for the time being in force, to grant bail to any person accused of an offence under the NAB Ordinance. It is well settled that the Superior Courts have the power to grant bail under Article 199 of the Constitution, independent of any statutory source of jurisdiction such as section 497 of the Criminal Procedure Code, section 9(b) of the NAB Ordinance to that extent is ultra vires the Constitution. Accordingly, the same be amended suitably."

After that clarification by this Court it is now settled that in an appropriate case a person accused of an offence under the National Accountability Ordinance, 1999 may approach a High Court for his bail by invoking Article 199 of the Constitution.

7. Section 16(a) of the National Accountability Ordinance, 1999 provides that a trial of an offence under the said Ordinance ought to be concluded within thirty days. The said section reads as follows:

“Notwithstanding anything contained in any other law for the time being in force an accused shall be prosecuted for an offence under this Ordinance in the Court and the case shall be heard from day to day and shall be disposed of within thirty days.”

On the strength of the said statutory requirement regarding conclusion of a trial of an offence under the National Accountability Ordinance, 1999 “within thirty days” the learned counsel for the petitioner has argued that the petitioner was arrested in connection with this case on 01.08.2017 but his trial has not so far been completed which delay entitles the petitioner to be admitted to bail “automatically” till the conclusion of his trial. For advancing this argument the learned counsel for the petitioner has relied upon the cases of Aga Jehanzeb v. National Accountability Bureau and others (2005 SCMR 1666), Muhammad Nadeem Anwar and another v. National Accountability Bureau and others (PLD 2008 SC 645), Anwarul Haq Qureshi v. National Accountability Bureau and another (2008 SCMR 1135) and Asfandiyar Khan Kakar v. Accountability Court, Quetta and another (unreported order passed by this Court on 06.09.2017 in Civil Petition No. 2920 of 2017). In order to examine whether the learned counsel’s understanding of the said precedent cases is correct or not it is necessary to take up the said cases one by one.

8. In the case of Aga Jehanzeb v. N.A.B. and others (2005 SCMR 1666) the petitioner facing a trial before an Accountability

Court was in continuous custody for the last two years, the complete Challan had not yet been submitted in the case and the petitioner's trial was not in sight. The High Court had dismissed a Writ Petition filed by the petitioner seeking bail and a direction had been issued by the High Court to the investigating agency to submit the Challan before the trial court within a fortnight and a direction was also issued by the High Court to the trial court to conclude the trial expeditiously, possibly on day to day basis. When the petitioner approached this Court for his bail the matter was disposed of by this Court in the following terms:

"When questioned that under the NAB Ordinance trial is to conclude within 30 days Mr. M. Ibrahim Satti, Advocate Supreme Court submitted that this time period is not mandatory but directory. For the time being we would refrain from expressing any opinion as to whether the timeframe is mandatory or directory, but would direct that after submission of challan in this case on 7th of May, 2003 if the trial does not commence or conclude within 30 days from the said date, petitioner would automatically become entitled to the grant of bail subject to his furnishing bail bonds in the sum of Rs. five millions with one surety in the like amount to the satisfaction of the trial Court at Lahore."

We find that the learned counsel for the petitioner in the present case is not justified in concluding from the said precedent case that in every case where trial of an offence under the National Accountability Ordinance, 1999 is not concluded within thirty days the accused person becomes entitled to bail "automatically". In the precedent case mentioned above the accused person was behind the bars for the last about two years and instead of allowing bail to him this Court had fixed a target date for commencement or conclusion of his trial and it was ordered that in case of failure of the trial court to meet that target fixed by this Court the accused person would "automatically become entitled to the grant of bail". In the said case, in view of its peculiar facts, the accused person was held to be entitled to bail if the target fixed by this Court was not met and the target fixed by section 16(a) of the National Accountability Ordinance, 1999 was not the determining factor in that case.

9. In the case of Muhammad Nadeem Anwar and another v. National Accountability Bureau and others (PLD 2008 SC 645) the petitioners facing a trial before an Accountability Court had spent about two years and eight months in jail and an earlier direction issued by this Court for conclusion of the trial as early as possible, preferably within a period of ninety days, had not been complied with. In that peculiar backdrop this Court had admitted the petitioners to bail with the following observations:

"6. This Court vide order dated 22-9-2006 had directed learned trial Court to proceed with the trial expeditiously and conclude the proceedings as early as possible, preferably within a period of ninety days. But according to the learned counsel for the petitioners only 9 witnesses out of 58 have been examined. In this view of the matter, we without touching the merits of the case are of the view that the allegations levelled against petitioners would only be determined at the conclusion of trial, which is not yet concluded. The N.A.B. Ordinance was promulgated in order to provide effective measures of detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse and abuse of power of authority, misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto. The object of N.A.B. Ordinance as is evident in its preamble is to provide expeditious trial of the scheduled offences within the shortest possible time.

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8. The object of criminal law is to ensure availability of the accused to face trial and not to punish him for offence allegedly pending final determination by a competent Court of law. It is well settled principle of law that grant of bail cannot be withheld as punishment on accusation of non-bailable offence against an accused. An accused is entitled to expeditious and inexpensive access to justice, which includes a right to fair and speedy trial in a transparent manner without any unreasonable delay. This intention has been reassured in section 16 of the N.A.B. Ordinance laying down criteria for day to day trial and its conclusion within 30 days. But in the instant case such object does not appear likely to be achieved anywhere in the near future and would not constitute a bar for grant of bail to the petitioners. The truth or otherwise of charges levelled against petitioners would only be determined at the conclusion of trial after taking into consideration the evidence adduced by both the parties. It was held by this Court in the case of Aga Jehanzeb v. N.A.B. & others (2005 SCMR 1666) that if trial of case is not concluded within 30 days from date of submission of challan, accused would automatically become entitled to grant of bail.

9. In view of above discussion, we are of the view that petitioners are entitled to the grant of bail pending conclusion of trial. Accordingly, both the petitions are converted into appeals and are allowed."

It appears that while deciding the said case this Court was not properly assisted as far as the background of the case of Aga Jehanzeb v. N.A.B. and others (2005 SCMR 1666) was concerned. It was not pointed out to the Court that in the case of *Agha Jehanzeb*, in view of the unconscionable delay and incarceration of the petitioner in that case for about two years, the direction regarding automatic entitlement to bail was issued with reference to the direction of this Court regarding conclusion of the trial within a specified period of time and not with reference to the period of conclusion of trial mentioned in section 16(a) of the National Accountability Ordinance, 1999. Even in this case of *Muhammad Nadeem Anwar and another* the petitioners had been admitted to bail on account of an inordinate delay in their trial in the backdrop of a failure of the trial court to comply with this Court's direction in respect of conclusion of the trial within a specified period. In this case only the spirit of section 16(a) of the National Accountability Ordinance, 1999 *qua* expeditious conclusion of a trial was mentioned but that provision was not made the basis of admission of the petitioners to bail.

10. The next case relied upon by the learned counsel for the petitioner was that of Anwarul Haq Qureshi v. National Accountability Bureau and another (2008 SCMR 1135) wherein the petitioner was admitted to bail by this Court because he was not a public servant, he had remained behind the bars for about a year and a quarter, no progress had been made in his trial and on account of a violation of the provisions of section 24(d) of the National Accountability Ordinance, 1999 his arrest was illegal. In that background this Court had observed as follows:

"On perusal of above provision of law, it is clear that a person cannot be detained for the purpose of investigation/inquiry for a period exceeding ninety days and for every remand, reasons have to be recorded. Petitioner is in judicial lock up since his arrest i.e. 20-11-2006, whereas, as pointed out by learned Addl. Prosecutor General NAB reference was filed on 4-6-2007 but no progress whatsoever has taken place towards the conclusion of trial. This Court in the case of *Asif Sharif v. Chairman, NAB* 2004 SCMR 1805 granted bail to accused against whom the reference was filed after about two years from date of his arrest. It was also held



in the case *Aga Jehanzeb v. NAB and others* 2005 SCMR 1666 that if trial of case is not concluded within 30 days from date of submission of challan, accused would automatically become entitled to grant of bail. This Court has also held in the case of *Abdul Qadir v. Federation of Pakistan through Secretary Ministry of Interior, Government of Pakistan and others* 2002 SCMR 1478 that conveyance of the grounds and substance on the basis of which the accused is arrested, is the first essential ingredient of section 24(d) of the Ordinance which is mandatory in nature and has to be complied with in letter and spirit as the same is based on constitutionally guaranteed right providing safeguards as to arrest and detention of a person embodied in Article 10 of the Constitution of Pakistan, 1973. Non-compliance of such provisions of the Constitution and the Ordinance would render the arrest and detention illegal."

It appears that in that case also the peculiar background of the case of *Aga Jehanzeb* was not pointed out to this Court and bail was granted to the petitioner primarily on the basis of long delay and illegality of his arrest rather than on the basis of the provisions of section 16(a) of the National Accountability Ordinance, 1999.

11. The last of the precedent cases relied upon by the learned counsel for the petitioner was that of *Asfandiyar Khan Kakar v. Accountability Court, Quetta and another* (unreported order passed by this Court on 06.09.2017 in Civil Petition No. 2920 of 2017). In the order passed by this Court in that case the merits of the petitioner's case were discussed in the earlier part of the order and the case was found to be a fit case for admission of the petitioner to bail on the merits. It was then observed in that order as under:

"8. We are shocked to see that investigation commenced years back and at the conclusion Reference was filed in the trial court but NAB has failed to produce its witnesses and conclude the trial albeit the mandatory provision i.e. Section 16 of the NAB Ordinance stipulates the outer limit for conclusion of the trial as thirty days but we have yet to lay hands on a single case throughout Pakistan right from the date of inception of the NAB that in any such case trial was completed within the statutory period. This lethargic and indifferent rather negligent attitude on its behalf is highly deplorable and is deprecated.

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10. In view of the facts and circumstances discussed above when the case of the petitioner is one of further probe and because co-accused whose case was on worst pedestals have been granted bail how the petitioner can be detained and that too for indefinite period because till date only one witness has been

produced by the NAB and there is a long list/calendar of witnesses in the case. Accordingly, this petition is converted into appeal and the same is allowed. The petitioner is granted bail subject to furnishing his bail bond in the sum of Rs. 50,00,000/- (Rupees Five Million only) with two sureties in the like amount to the satisfaction of the trial court concerned."

In the said case bail was allowed to the petitioner by this Court essentially on the merits of his case and the shocking delay in conclusion of his trial and the "mandatory" nature of the provisions of section 16 of the National Accountability Ordinance, 1999 had been referred to as additional factors for the relief of bail. It was not elaborated by this Court in the said order as to why the provisions of section 16 of the National Accountability Ordinance, 1999 were being referred to as "mandatory".

12. It is quite clear from the examination of the precedent cases relied upon and referred to by the learned counsel for the petitioner that "automatic" entitlement to bail upon expiry of thirty days after submission of the Challan in the trial court was ordered by this Court in the case of *Aga Jehanzeb (supra)* only in the context of failure to comply with an earlier direction of this Court regarding conclusion of the trial within the period specified by this Court and without reference to section 16(a) of the National Accountability Ordinance, 1999 but in some of the later cases the matter of automatic entitlement to bail upon expiry of thirty days after submission of the Challan was lifted out of context and erroneously attributed to the case of *Aga Jehanzeb*. We may, therefore, observe with deep reverence that the said later cases do not qualify as good precedents on the issue before us.

13. Adverting now to the precedent cases referred to by the learned Additional Prosecutor-General Accountability appearing for the respondents we note that in the case of *Faisal Hussain Butt v. The State and another* (2009 SCMR 133) the petitioner had remained in jail for over one year in connection with a Reference filed by the National Accountability Bureau but on account of his trial likely to commence within the next few days his petition for

bail was dismissed by a High Court and the order passed by the High Court in that regard was upheld by this Court with the following observations:

"3. We have heard the arguments of learned counsel for the parties and perused the available record. As mentioned above, the allegation against the petitioner is that he along with his co-accused misappropriated huge amount (Rs. 298.000 million) from Allied Bank Limited where he was serving as Incharge C.D. Department. The main ground for bail is delay in trial. Admittedly his co-accused (Tasneem Akhtar, Faisal Hussain Butt, Saghir Iqbal Goraya and Tahir Awais) with similar allegation are in judicial lock-up and facing trial. Learned Senior Prosecutor-General, NAB/respondent No.2 submits that petitioner and aforementioned co-accused opened accounts of various persons and prepared forged record and obtained about rupees twelve crores through on line process from different Branches of the country without depositing any amount. Further submits that case is fixed on 17-11-2008 for trial. In these circumstances, we do not find it a fit case for grant of bail to the petitioner. The impugned judgment is just and proper. Learned counsel for the petitioner has not been able to point out any illegality or infirmity in the impugned judgment so as to warrant interference by this Court. As such this petition has no force which is accordingly dismissed and leave refused. However, learned trial Court is directed to decide the case within five months under intimation to the Deputy Registrar of this Court at Lahore Branch Registry. It is made clear that if case is not decided within aforesaid period, the petitioner may file fresh writ petition for bail before learned High Court."

In the said case bail was refused to the petitioner despite the provisions of section 16(a) of the National Accountability Ordinance, 1999 and the period fixed therein for conducting and concluding a trial.

14. The next case referred to by the learned Additional Prosecutor-General Accountability was the case of Nisar Ahmed v. The State and others (PLD 2016 SC 11). The said case was not a case under the National Accountability Ordinance, 1999 but was a case of murder and murderous assault, etc. wherein the accused person had remained behind the bars for a period of about two years and eight months and repeated directions issued by the High Court regarding expeditious disposition of the trial could not be complied with by the trial court. This Court declined bail to the accused person by observing as under:

"Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C., nor filing of direct complaint will have any bearing as regards earlier bail refusing orders, which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for bail afresh, which is lacking in the present case."

The said case followed a principle already laid down by this Court in some earlier cases that non-compliance of a direction issued by a High Court, or even by this Court, regarding conclusion of a trial within a specified period of time does not *ipso facto* or "automatically" entitle an accused person to be admitted to bail in a criminal case.

15. The next case in the line was the case of Khalid Humayun v. The NAB through D.G. Quetta and others (PLD 2017 SC 194) wherein the accused person seeking bail had remained in custody for a period of about nine months and still no Reference had been filed against him by the National Accountability Bureau before an Accountability Court. The allegations levelled in that case pertained to embezzlement of Rs. 658,550,424/- which amount was recovered in cash from physical possession of an accused person. This Court refused bail to the accused person with the following observations:

"5. This petition is in essence a bail application therefore it will not be appropriate to undertake a detailed examination of the facts, particularly when the reference under the NAB Ordinance has still not been filed. However, there is sufficient *prima facie* material on the record to suggest that the petitioner had exercised his authority to enrich himself and a number of persons have also implicated him as the principal beneficiary of the defalcated amounts, but we do not want to make any further observation in this regard as it may prejudice the case of either party."

In view of the *prima facie* strength of the prosecution's case against the said accused person the length of his custody or the delay in filing a Reference against him were not found by this Court to be worth any consideration.

16. The last precedent case relied upon by the learned Additional Prosecutor-General Accountability was the case of Chairman NAB, Islamabad v. Bakhat Zameen and another (unreported judgment of this Court passed on 26.08.2016 in Civil Petition No. 1542 of 2016). In that case an accused person facing a trial under the National Accountability Ordinance, 1999 was admitted to bail by a High Court on the grounds that he had already spent about 13 months in jail, during that period the prosecution had produced 14 witnesses out of 31 witnesses to be produced by it, only 6 adjournments had been obtained by the accused person during the trial and, thus, he was entitled to be admitted to bail on the ground of statutory delay. This Court had cancelled that accused person's bail and it was observed by this Court as under:

"4. Before reverting to the facts of the case as regards delay or otherwise in the proceedings of the trial before the Accountability Court and the merits of the findings of the learned Division Bench recorded in the impugned order, we would like to make it clear that the provisions of section 497, Cr.P.C. are not as such applicable for the purpose of grant of bail to an accused facing charge/trial under the Ordinance of 1999. However, in appropriate cases, the question of delay in the conclusion of trial, depending upon the facts and circumstances of each case on its own merit, has been considered by the superior Courts on the yardstick of hardship vis-à-vis scheme of Articles 4 and 15 of the Constitution. Thus, *ipso facto*, application of principles for grant of bail embedded in section 497, Cr.P.C., including the provision of statutory delay, is devoid of any legal force.

5. Reverting to the facts of the present case, we have noticed that the observations of the learned Division Bench that respondent No. 1 has been attributed only six adjournments during the ten months period of trial before the Accountability Court, is result of patent misreading of record, ----- . It will not be out of context to mention here that even otherwise the practice of making mathematical calculations, for ascertaining the actual period of delay attributable to the prosecution or the accused for the purpose of computing the period of statutory delay has not been approved by this Court, as even delay on few dates of hearing at the instance of an accused can be fatal for this purpose, irrespective of the actual time wasted on that account. More particularly in the cases where accused is being tried under the Ordinance of 1999, which is a special law and specifically bars grant of bail to an accused person by virtue of sections 3 and 9(b), which respectively read as under:-

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6. The above discussion clearly goes to show that grant of bail to respondent No. 1 through impugned order of the learned Division Bench of the Peshawar High Court, Peshawar is result of misreading of record of the proceedings before the NAB Court as

well as erroneous understanding of relevant provisions of law in this regard. Thus, mere fact that in case an accused has remained in custody for a period of 13 months will not be sufficient to hold that it is a case of hardship within the parameters as defined by this Court in this regard in its various earlier pronouncements. For further guidance in this regard, reference can be made to the cases of Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607) and Himesh Khan v. The National Accountability Bureau, Lahore (2015 SCMR 1092)."

The said case had gone a long way in clinching the issue that mere delay in conclusion of a trial or longevity of the period of incarceration of an accused person could not by itself entitle an accused person to bail in a case under the National Accountability Ordinance, 1999.

17. Our own research shows that apart from the above mentioned precedent cases cited before us by the learned counsel for the parties there are some other reported cases decided by this Court which also throw some light on the issue under discussion. In the case of Anwar Saifullah Khan v. The State and 3 others (2001 SCMR 1040) bail was allowed to the accused person because *prima facie* he had a good case on merits, he had already been admitted to bail in many other References filed against him by the National Accountability Bureau, he had already spent about a year and a quarter in jail and conclusion of his trial was not in sight.

18. In the case of Muhammad Saeed Mehdi v. The State and 2 others (2002 SCMR 282) the accused person was admitted to bail because *prima facie* he had a good case on the merits, he had spent about a year and a half behind the bars and his trial had not even commenced as yet.

19. The accused person in the case of Ch. Zulfiqar Ali v. The State (PLD 2002 SC 546) was admitted to bail by this Court because section 16(a) of the National Accountability Ordinance, 1999 envisaged conclusion of a trial within a period of thirty days whereas the trial of that case had not concluded in nine months and the accused person had remained in custody for the last about twenty-seven months. The delay in conclusion of the trial having

been found by this Court to be inordinate the accused person was found to be entitled to bail.

20. In the case of Muhammad Jahangir Badar v. The State and others (PLD 2003 SC 525) this Court had referred to and pressed into service an “exceptional principle” quite relevant to the issue at hand and, therefore, it is important to reproduce some parts of the order passed in that case:

“6. It is an admitted fact that after arrest of the petitioner on 21st August, 2001 Reference was submitted on 3rd November, 2001 and thereafter the case was taken up for hearing for more than 40 occasions but only two witnesses have been examined. Summary of the Court proceedings is reproduced below:-

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7. There is no cavil with the proposition that the State machinery has a right to arrest the culprits and put them to trial for the purpose of establishing guilt against them but it has not been bestowed with an authority to play with liberty and life of an accused under detention because no one can be allowed to remain in custody for an indefinite period without trial as it is a fundamental right of an accused that his case should be concluded as early as could be possible particularly in those cases where law has prescribed a period for the completion of the trial. As in the instant case under section 16(a) of the Ordinance the Court is bound to dispose of the case within 30 days. It may be noted that inordinate delay in the prosecution case if not explained, can be considered a ground for bailing out an accused person depending on the nature and circumstances on account of which delay has been caused as has been held in the case of Riasat Ali v. Ghulam Muhammad and State (PLD 1968 SC 353). Relevant para. therefrom is reproduced hereinbelow:--

“Inordinate delay in the prosecution of a case, if not explained by the prosecution amounting to an abuse of the process of law, can be considered as a ground for bailing out an accused person even in a murder case depending on the nature of the delay and the circumstances that have caused it. The prosecution is expected to proceed with its case with all dispatch eliminating every avoidable delay in order to bring it to a close and thus to determine the fate of an accused person which hangs in the balance as long as the proceedings do not terminate one way or the other. The prosecution can be permitted to enlist the will of the Court on its side directly or indirectly prolonging the worries and harassment of an accused person which are inevitably caused by his protracted detention without trial. Leisurely steps taken in filing the challan, tardy and halting production of evidence or seeking of unnecessary adjournments, except those necessitated by force of circumstances must be strongly deprecated. But delay in the prosecution of a case or the procrastination of the

proceedings in a trial furnishing as a ground for bail have to be weighed and judged in each case on its own merits."

The above view consistently is being followed by this Court. Reference if need be, can be made to judgments reported (i) Nazir Hussain v. Ziaul Haq and others (1983 SCMR 72), (ii) Ashiq Hussain and 3 others v. The State (1989 SCMR 1580), (iii) Anwar Saifullah Khan v. The State and 3 others (2001 SCMR 1040), (iv) Ch. Zulfiqar Ali v. The State (PLD 2002 SC 546). Relevant para. from the last mentioned judgment is reproduced hereinbelow:--

"9. Under section 16(a) of the Ordinance, all persons accused of a scheduled offence are exclusively triable by the Courts established under the Ordinance and the cases have to be heard from day to day and disposed of within 30 days but in the instant case trial has not been concluded in 9 months whereas the petitioner is in custody for the last about 27 months. Although delay in disposal of the case was attributed by both the parties to each other but the order sheet of the trial Court shows that both the parties have been taking adjournments, therefore, both the parties were responsible for delay in disposal of the case. Notwithstanding the merits of the case, the inordinate delay in disposal of the trial is a good ground recognized by the Court in various judgments holding the same to be abuse of process of the Court and treating it as sufficient ground for grant of bail."

In the above-noted case bail was granted to Zulfiqar Ali petitioner because he remained in custody for 27 months and the delay in the conclusion of trial was attributed to both the parties. Against the above prevailing consistent view only one exceptional principle can be pressed into service namely that if the trial of the case has commenced then instead of releasing the accused on bail direction should be made for expeditious disposal of the case by adopting certain modalities to ensure that the accused is not detained further for an indefinite period. Reference in this behalf is made to the case of (i) Allah Ditta and others v. The State (1990 SCMR 307) and (ii) Iftikhar Ahmad v. The State (1990 SCMR 607). Under such circumstances we are of the opinion that in the instant case as well such a device is required to be adopted, because prima facie involvement of the petitioner in the case cannot be overruled at this stage without commenting on merits of the case in depth so the prosecution may also get a final opportunity to conclude the case within the time which will be fixed by this Court and at the same time to ensure that the accused is not kept in custody for an indefinite period because the trial of the case has already commenced and statements of two witnesses have been recorded, and a good number of documents have also come on record so far. Therefore following the observations of this Court in the case of Ashok v. The State (1997 SCMR 436) the trial Court is directed to complete the trial within 30 days by holding proceedings of the case on day to day basis and if even then the trial is not concluded then the accused shall be liable to be released on bail by the trial Court subject to surety which has already been specified in the short order."



The "exceptional principle" pressed into service by this Court in that case was that "if the trial of the case has commenced then instead of releasing the accused on bail direction should be made for expeditious disposal of the case by adopting certain modalities to ensure that the accused is not detained further for an indefinite period" and the same "device" was adopted "because prima facie involvement of the petitioner in the case cannot be overruled at this stage without commenting on merits of the case in depth so the prosecution may also get a final opportunity to conclude the case within the time which will be fixed by this Court and at the same time to ensure that the accused is not kept in custody for an indefinite period because the trial of the case has already commenced and statements of two witnesses have been recorded, and a good number of documents have also come on record so far."

21. The accused person in the case of Arif Sharif v. Chairman, NAB (2004 SCMR 1805) was under arrest for over two years and initially no Reference had been filed against him for a long time and when a Reference was actually filed no progress whatsoever had been made towards conclusion of the trial and, thus, in those peculiar circumstances he was admitted to bail by this Court.

22. The accused person in the case of Himesh Khan v. The National Accountability Bureau (NAB), Lahore and others (2015 SCMR 1092) had spent about six years in jail, his trial was nowhere close to its conclusion and the accused person was not primarily responsible for such delay. After taking notice of the provisions of section 16(a) of the National Accountability Ordinance, 1999 this Court had found the delay in conclusion of the trial to be "inordinate" and "shocking" and had, thus, admitted the accused person to bail. It was observed by this Court that "An accused person cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. The inordinate delay in the conclusion of trial of detained prisoners cannot be lightly ignored provided it was not caused due to any act or omission of accused." It was added that "despite of exclusion clause beneficial provision

of section 497, Cr.P.C. can be pressed into service in some genuine and rare cases to provide relief of grant of bail to a highly deserving accused, incarcerated in prison for a longer duration." This Court had gone on to observe that "There is also a long chain of authorities and dicta of this Court where bail has been granted on account of shocking delay in the conclusion of trial in cases falling under the NAB laws."

23. The survey of the precedent cases detailed above and a careful reading of the judgments rendered or orders passed in those cases leads us to conclude as follows:

(a) Section 16(a) of the National Accountability Ordinance, 1999 speaks of prosecution of an accused person in an Accountability Court and hearing of the case by such Court on day to day basis so as to be disposed of within thirty days and it does not speak of the period of custody of the accused person before or during the trial.

(b) Section 16(a) of the National Accountability Ordinance, 1999 does not contemplate or provide for bail for an accused person if the timeframe for the trial mentioned therein is overstepped. In fact section 9(b) of the said Ordinance expressly ousts the jurisdiction of an Accountability Court in the matter of grant of bail to an accused person on any ground whatsoever.

(c) The word "shall" used in section 16(a) of the National Accountability Ordinance, 1999 has been used in the context of conclusion of a trial by an Accountability Court and it is directory in nature and not mandatory because it does not provide for a penalty or a consequence in case of its non-observance or non-compliance. It does not provide that if the stipulated timeframe is not adhered to by an Accountability Court in the matter of conclusion of a trial then the prosecution of the accused person would stand terminated

and he would be deemed to have been acquitted or that the accused person would be entitled to be admitted to bail on such ground.

(d) In an appropriate case through exercise of its jurisdiction under Article 199 of the Constitution a High Court may grant bail to an accused person arrested in connection with an offence under the National Accountability Ordinance, 1999 and section 9(b) of the said Ordinance does not affect the jurisdiction of a High Court conferred upon it by the Constitution. The constitutional jurisdiction of a High Court is, however, an extraordinary jurisdiction meant to be exercised in extraordinary circumstances and not in run of the mill cases or as a matter of course.

(e) There is hardly any precedent available where a High Court or this Court had admitted an accused person to bail exclusively on the ground that he had remained in custody for over thirty days or his trial had not concluded within thirty days in terms of section 16(a) of the National Accountability Ordinance, 1999, except a couple of cases wherein the factual background and the *ratio decidendi* of the case of *Aga Jehanzeb (supra)* had not been correctly appreciated on account of lack of proper assistance.

(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not *prima facie* merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay.

(g) Before admitting an accused person to bail on the ground of hardship caused by a shocking, unconscionable or

inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him.

(h) Even in cases of delay ordinarily bail is not granted straightaway and a direction is issued to the trial court in the first instance to conclude the trial within a period fixed for the purpose by the Court itself (as opposed to the time fixed by section 16(a) of the National Accountability Ordinance, 1999 which has already expired). In a case where the Court fixes a time for conclusion of the trial sometimes the Court also observes that in case of non-compliance of the Court's direction the accused person would automatically stand admitted to bail and on other occasions the Court observes that in case of non-compliance of the Court's direction the accused person may approach the High Court again for his bail.

(i) Even in cases where a direction is issued by the High Court or this Court regarding conclusion of a trial within a specified period fixed by the Court for the purpose admission of the accused person to bail upon non-compliance of such direction is not always automatic, be it a case under the National Accountability Ordinance, 1999 or under any other law. In the cases of Ashok v. The State (1997 SCMR 436), Jadeed Gul v. The State (1998 SCMR 1124), Muhammad Aslam v. The State (1999 SCMR 2147) and Aga Jehanzeb v. N.A.B. and others (2005 SCMR 1666) the accused person was admitted to bail or was deemed to have been admitted to bail in such an eventuality but in the case of Nisar Ahmed v. The State and others (PLD 2016 SC 11) this Court had refused to admit the accused person to bail even on such a ground. It goes without saying that a direction issued by a superior Court to the trial court to conclude a trial within a specified period is an administrative direction and non-

compliance of such a direction by the trial court for whatever reason may not entitle the accused person to claim bail as of right.

24. We now proceed to decide the present petition in the light of the principles and practices deduced from the precedent cases detailed above. As already observed in the opening part of this judgment, the learned counsel for the petitioner has not seriously pressed this petition on the merits of the petitioner's case and the High Court had felt satisfied that reasonable grounds did exist for believing in the petitioner's involvement in the alleged offence. The stands taken by the petitioner before this Court regarding the properties in issue are ostensibly mutually contradictory. The medical ground for bail urged through the present petition appears to be a fresh ground on which the petitioner may approach the High Court in the first instance. The case against the petitioner is quite distinguishable from the case against his co-accused who had been admitted to bail by the High Court inasmuch as the petitioner is the principal accused in this case whereas the said co-accused are alleged to be *Benamidars* only. As regards the delay in the petitioner's trial the order-sheet of the trial court has neither been appended with this petition nor the same has been produced before us to show as to why delay has occurred in conclusion of the petitioner's trial and who is responsible for the delay. According to the learned Additional Prosecutor-General Accountability appearing for the respondents statements of quite a few prosecution witnesses have already been recorded by the trial court by now, many of the prosecution witnesses cited in the Calendar of Witnesses shall be given up by the prosecution and the remaining evidence of the prosecution shall be produced before the trial court within the next few months. The High Court has already issued a direction to the trial court to conclude the petitioner's trial within the shortest possible time. For all these reasons no occasion has been found by us for interference in the matter at such a stage. This petition is, therefore, dismissed.

25. Before parting with this judgment we would like to observe that the original intent behind introduction of section 9(b) of the National Accountability Ordinance, 1999 ousting jurisdiction of the courts regarding grant of bail in a case under the said Ordinance already stands neutralized by opening of the door for bail through exercise of constitutional jurisdiction of a High Court and resultantly the entire burden in that regard is being shouldered by the High Courts which is a huge and an unnecessary drain on their precious time. Apart from that the High Courts and this Court have always felt difficulty in adjusting the requirements of “without lawful authority” and “of no legal effect” relevant to a writ of *certiorari* (Article 199(1)(a)(ii) of the Constitution) with the requirements of bail provided in section 497, Cr.P.C. In the changed scenario the legislature may, if so advised, consider amending the National Accountability Ordinance, 1999 appropriately so as to enable an accused person to apply for his bail before the relevant Accountability Court in the first instance. It is also recommended that the unrealistic timeframe for conclusion of a trial specified in section 16(a) of the National Accountability Ordinance, 1999 may also be reconsidered and revisited by the legislature.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad

01.10.2018

Approved for reporting.

Arif