

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE MIAN SAQIB NISAR

MR. JUSTICE FAISAL ARAB

MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NO. 3451 OF 2015

(On appeal from the judgment and order of the Lahore High Court, Lahore, dated 22.09.2015 passed in W. P. No. 23025 of 2015)

Chairman NAB through PGA NAB Islamabad Petitioner

Versus

Muhammad Khalid Respondent

For the Petitioner: Mr. Nasir Mehmood Mughal,
Special Prosecutor, NAB with
Mr. Tariq Aziz, AOR

Respondent: N. R.

Date of Hearing: 11.01.2016

JUDGMENT

TARIQ PARVEZ, J.- The petitioner, Chairman NAB seeks indulgence of this Court for setting aside order of the learned Division Bench of the Lahore High, Lahore dated 22.09.2015 passed in Writ Petition No. 23025 of 2015 whereby respondent Muhammad Khalid was allowed bail on furnishing bail bonds in the sum of Rs.200,000/- with two sureties in the like amount.

2. The reason as to why Muhammad Khalid approached the Hon'ble Lahore High Court was that a Reference by the NAB Authorities was filed against number of accused including the petitioner with the

allegations that a piece of land measuring 1787 kanals 14 marlas situated in Village Dhana Singhwala, Lahore, located along Canal Bank near Joher Town belongs to the Government of Pakistan and that one Abdul Rasheed Farooqi who had General Power of Attorney on behalf of the land owners entered into a compromise to sell such land to the National Industrial Cooperative Finance Corporation Limited (hereinafter referred to as "NICFC") for a total consideration of Rs.64.14 million and the total price was paid to Zulifqar Hussain and others. Later a controversy and dispute regarding the share in profit on the sale of the said land developed and finally when the matter came up for adjudication before this Court and the deeds executed in favour of NICFC were cancelled holding that Zulifqar Hussain and others were not owners of the said land. However in Reference it is alleged that after cancellation of the sale deed by the Supreme Court all the accused in furtherance of their common intention had misappropriated an amount of Rs.77.71 million out of funds of NICFC. It is alleged that the price of the land should have been paid back and deposited in the fund of NICFC, one Shahid Mehmood who is son of Ch. Abdul Majeed requested NICFC that he being co sharer to the extent of 25% of land mentioned above, was not interested in the land and be paid a cash of Rs.12.09 million. The request was accepted by Ch. Tajammal Hussain and Ch. Abdul Majeed who paid the said amount to Shahid Mehmood but Shahid Mehmood deposited the amount in the Loan Account No.113 which was in the name of Muhammad Khalid (a cousin of Shahid Mehmood) and that it was adjusted to clear the loan liabilities which were outstanding against Muhammad Khalid as such he is one of the beneficiary of the fraud and misappropriation being committed by him and his co accused against whom Reference was filed.

3. Some co accused of the respondent were sent up for trial before the learned Judge of the Accountability Court but on trial and vide judgment dated 16.03.2005 some of the accused were convicted and sentenced to different periods while some were already released on entering into plea bargain. Some of the convicts preferred appeal before the Lahore High Court and vide judgment dated 28.04.2015 were acquitted.

4. The learned counsel for the petitioner contends that respondent Muhammad Khalid being a close relative of Shahid Mehmood co accused had opened a loan account bearing No.113 which he has not disowned and an amount of Rs.12.09 which was deposited in the said loan account was adjusted towards loan taken by him from the financial companies, thus, he has become a beneficiary of the misappropriation money. He next submits that the respondent has been allowed bail mainly on the ground that since some of his co accused namely, Ch. Abdul Majeed and Shahid Mehmood had been acquitted he was extended the benefit of doubt by granting bail. His last submission that the respondent remained absconder for approximately 14 years which fact was though taken into consideration by the learned High Court but not considered as incriminating circumstance which would have made the respondent disentitled to the concession of bail.

5. We are cognizant of the fact that before us is a matter where the petitioner seeks leave of this Court but against an order granting bail to the respondent.

6. It has been ruled by this Court with a considered view that considerations for grant of bail and its cancellation are different. Once a Court of competent jurisdiction by exercising its powers which are discretionary in nature has issued a favourable order in respect of a person

accused in an offence, this Court is always slow to interfere unless it finds that the order granting bail was against the record, perverse or unreasonable.

7. In the present case not only that alleged main beneficiary have been acquitted by the learned Division Bench of the High Court vide judgment dated 28.04.2015 but the allegation against the present respondent that the amount was transferred in his account by Shahid Mehmood his cousin since has been acquitted the role of the respondent whether he is or was a beneficiary of the misappropriation requires recording of independent evidence. The mere fact that co-accused of the respondent have been acquitted may not be sufficient ground for granting him bail but it has created dent at present to the extent which has made the case of the respondent of further inquiry. The main and final argument of the learned counsel for the petitioner that the respondent remained absconder for about 14 years, suffice it to say that abscondance by itself cannot be a substitute of evidence. It is a circumstance which is always taken in a criminal case as corroboration towards the guilt and not as proof of the guilt.

8. Moreover, an accused under the NAB Ordinance if avoid being served with any process issued under the Ordinance or in any manner prevents, avoid or evades the service on himself of such process or conceals himself to screen himself from the proceedings creates an independent crime under Section 31-A of the National Accountability Ordinance, 1999.

9. We have searched for proceedings if any initiated against the accused/respondent in terms of Section 31-A which we failed to find out at the available record.

10. Be as it may the nutshell is that the bail has already been granted to the respondent by the High Court in exercise of constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 with careful exercise of discretion and this Court being slow in interfering in discretionary orders more so when they are interim in nature and not final and when the matter before us has come for cancellation of bail this Court is always very slow to recall the order of grant of bail. We find no good and strong reason in support of this petition and the same is dismissed. Leave declined.

Judge

Judge

Judge

Islamabad
January 11, 2016
Shirazi/*

“NOT APPROVED FOR REPORTING”