

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1064/ 2020
Qazi Muhammad Abubakar
Versus
The NAB, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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29.04.2020	Mr. Muhammad Afzal Janjua, ASC for the petitioner. M/S Rana Zain Tahir, Special Prosecutor and M. Jahanzeb, AD NAB.
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FIAZ AHMAD ANJUM JANDRAN, J. Through this order, we propose to decide the instant writ petition, filed by *Qazi Muhammad Abubakar*, seeking post-arrest bail in NAB Reference No.02/2014.

2. According to the allegations set-forth in the Reference, petitioner along with other persons, being Director/Agents of illegal Modarba Companies of Mufti Ehsan, *the principal accused*, in connivance with each other, had enticed the public-at-large for investment in the name of Modarba; dishonestly and fraudulently collected huge amounts from the public in general against fake Modarbat Namas, Mushkarika Namas and FGI receipts. As per investigation, the financial involvement of the present petitioner is to the tune of Rs.91,000,000/-

3. Learned counsel contends that the petitioner is behind the bars since his arrest i.e. 10.01.2020; that co-accused Muhammad Bilal Afridi, Wajid Ali Khan and

Ibrahim Al Shorain, having identical role, have already been enlarged on bail by the Hon'ble Apex Court and by this Court, therefore, petitioner deserves the same treatment under the principle of consistency; that the petitioner was earlier convicted and sentenced by the learned Accountability Court, Peshawar in Reference No.2 of 2015 and the said conviction was upheld by the Hon'ble Peshawar High Court vide judgment dated 16.01.2020, while the instant reference is outcome of the transaction, against which petitioner had already earned conviction and sentence, therefore, subsequent trial for the same offence would amount to double jeopardy in contravention of Article 13 of the Constitution, besides Section 403 of the Code of Criminal Procedure and that the application for grant of pardon under Section 26 of the National Accountability Bureau Ordinance, 1999 (*"the Ordinance 1999"*) is pending with the NAB, therefore, petitioner is entitled to the concession of post arrest bail.

4. Conversely, the learned Special Prosecutor NAB submits that the petitioner had cooperated with the NAB authorities during the investigation and that his application under Section 26 of *"the Ordinance 1999"* is in process, awaiting decision of the Competent Authority as the meetings of the Regional Board could not be held due to ongoing COVID-19 pandemic.

5. Arguments heard, record perused.

6. Admittedly, co-accused namely Muhammad Bilal Afridi was allowed bail by the Hon'ble Apex Court vide order dated 16.04.2019, passed in CP No.595 of 2019 while

the other co-accused namely Wajid Ali Khan and Ibrahim Al Shorain were granted the same concession by this Court vide order dated 14.12.2017 and 06.3.2018 passed in W.P. No.3686/2017 and W.P. No.552/2018, respectively. The application of the petitioner under Section 26 of "*the Ordinance 1999*" for the grant of pardon is going to be finalized within short span of time, as contended by the learned Special Prosecutor NAB, therefore, in such eventuality particularly when the conclusion of trial in near future is not in a sight, further incarceration of the petitioner would serve no useful purpose. The Hon'ble Sindh High Court in case reported as "*Shahid Umer Vs. Chairman NAB and 2 others*" (2019 P.Cr.L.J. 370) had granted bail to an accused having a similar role as of co-accused who were granted bail on hardship ground.

7. The petitioner is fully cooperative and helpful to the respondent/NAB Authority in respect of case at hand and the same fact has been acknowledged before us by the Investigating Officer, thus incarceration of the petitioner in jail for indefinite period would not serve any beneficial purpose. The application of the petitioner for pardon under Section 26 of "*the Ordinance 1999*" is acknowledged by the respondent/NAB in Para-5 of the report. The learned Special Prosecutor NAB stated that due to global pandemic of corona virus-COVID-19, the Board meetings have been postponed and that application of the petitioner would be decided very soon. This fact, too, leads in favour of the petitioner. As per Section 24 (a) of "*the Ordinance 1999*" the accused is required/essential for an inquiry and

investigation purpose and when said investigation/inquiry is completed, then to keep the petitioner in jail would amount to custody without any lawful purpose particularly when all measures/steps are applied wherein petitioner is under compulsion to remain cooperative and available to the Investigating Officer of the case at any time.

6. It is by now well settled that an accused person cannot be left at the mercy of the prosecution to remain in jail for an indefinite period. The liberty of an individual has been guaranteed by the Constitution and to have a speedy trial is an inalienable right of every accused person. The Hon'ble Apex Court in case of "Himesh Khan Vs. The National Accountability Bureau, (NAB) Lahore and three others (2015 SCMR 1092) held that :-

"12. Pakistan is a welfare State where liberty of individual has been guaranteed by the Constitution beside the fact that speedy trial is inalienable right of every accused person, therefore, even if the provision of Section 497 Cr.P.C. in ordinary course is not applicable, the broader principle of the same can be pressed into service in hardship cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period. This principle may be vigorously pressed into service in cases of this nature if the objects and purposes of mandatory provisions of Section 16 of the National Accountability Ordinance, 1999 is kept in view, which is reproduced below:-

"S. 16 Trial of offences.

[(a)] notwithstanding anything contained in any other law for the time being in force an accused shall be prosecuted for an offence in this Ordinance in the Court and the case shall be heard from day-to-day and shall be disposed within 30 days]"

9. Consequently, the instant writ petition is allowed, petitioner {*Qazi Muhammad Abubakar*} is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.20,000,000/- (Rupees Twenty Million) with one surety in the like amount to the satisfaction of the learned Accountability Court. The petitioner shall appear before the Courts on every date of hearing unless specifically exempted. Additionally, the petitioner shall co-operate with and appear before the Investigating Officer as and when required for the questioning. The Investigating Officer shall retain passport of the petitioner and his name shall remain on the Exit Control List-ECL.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R. Ansari