

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

CASE NO. : W.P. NO.1986-2019

Mian Muhammad Nawaz Sharif

Vs.

The State through Chairman, National Accountability Bureau, Islamabad etc.

Petitioner by : Kh. Haris Ahmad, Senior ASC  
 Barrister Munawar Iqbal Duggal, Advocate  
 Mr. Ali Shah Gillani, Advocate  
 Mr. Ghulam Subhani, Advocate  
 Mr. Sher Afghan Asadi, Advocate  
 Mr. Zubair Khalid, Advocate  
 Mr. Ibrahim Haroon, Advocate

Respondents by : Mr. Jahanzeb Khan Bharwana, Additional Prosecutor General, NAB  
 Sardar Muzaffar Ahmad Abbasi, Deputy Prosecutor General, NAB  
 Mr. Asghar Awan, Special Prosecutor, NAB  
 Mr. Irfan Ahmad Boola, Special Prosecutor, NAB

Date of decision : 20.06.2019

**AAMER FAROOQ J.** Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks suspension of sentence awarded vide judgment dated 24.12.2018 in NAB Reference No.19-2018 by the Judge, Accountability Court-II, Islamabad and his release on bail, on medical grounds. Earlier, the petitioner had filed a petition under Article 199 ibid (W.P. No.352-2019) before this Court, which was dismissed vide judgment dated 25.02.2019. The petitioner challenged above judgment of this Court through CPLA No.639-2019, which was converted into appeal and was allowed; consequently, he was admitted to bail for six weeks upon suspension of sentence, subject to furnishing bail bonds in the sum of Rs.50,00,000/-. During currency of referred six weeks, petitioner filed a Review Petition (Review Petition No.279-2019) before Hon'ble Supreme Court of Pakistan seeking review of order dated 26.03.2019. The referred petition was dismissed by the august Apex Court vide order dated 03.05.2019.

2. Learned counsel for the petitioner, *inter alia*, contended that after the decision in the earlier writ petition, when the petitioner was released on bail pursuant to the orders of Hon'ble Supreme Court of Pakistan, he underwent fresh tests and pursuant thereto, new ailments were diagnosed, which were not known earlier; that the ailments now diagnosed are severe in intensity and detrimental to the life of petitioner. It was further contended that nature of indisposition is such that it cannot be treated in Pakistan and can only be treated abroad. Learned counsel for the petitioner took the Court through various reports of the doctors in respect of medical tests conducted on the petitioner. He specifically highlighted interim report dated 28.03.2019 by a Team of Doctors of Sharif Medical City, Jati Umra, Lahore; subsequent report was compiled on 02.04.2019 after conducting some further tests. Learned counsel, then, made the Court walk through final report issued by the Team of Doctors of Sharif Medical City/Sharif Trust dated 09.04.2019. He also read opinions of various doctors from all over world regarding ailments of petitioner and possibility of treatment. Learned counsel, in support of his contention, placed reliance on cases reported as 'Mian Manzoor Ahmad Watto Vs. The State' (2000 SCMR 107), 'Zakhim Khan Masood Vs. The State' (1998 SCMR 1065), 'The State Vs. Haji Kabeer Khan' (PLD 2005 Supreme Court 364), 'Malik Muhammad Yousafullah Khan Vs. The State and Another' (PLD 1995 Supreme Court 58), 'Dr. Asim Hussain and Another Vs. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and others' (2018 YLR 154), 'Dr. Asim Hussain Vs. Federation of Pakistan through Secretary Interior and 3-others' (PLD 2017 Sindh 665), 'Dr. Asim Hussain Vs. Federation of Pakistan through Secretary Interior and others through Chairman, NAB and another' (CP Nos.2166, 2167, 2168, 2445 and 2446 of 2017), 'Federation of Pakistan through Secretary M/O Interior Vs. General (R) Pervez

Musharraf and others’ (PLD 2016 Supreme Court 570), ‘Haji Mir Aftab Vs. The State’ (1979 SCMR 320) & ‘Amjad Hassan Gurchani Vs. Sajjad Haider Khan and Another’ (2004 SCMR 12).

3. Learned counsel for the petitioner was confronted regarding maintainability of instant petition in light of principles propounded by the Hon’ble Supreme Court of Pakistan in case reported as ‘Nazir Ahmad and Another Vs. The State and others’ (PLD 2014 SC 241) inasmuch as instant petition is on the same grounds as was the earlier petition; in response, Kh. Haris Ahmed, Senior Advocate, Supreme Court of Pakistan submitted that since new ailments have been diagnosed therefore there is no bar for filing a fresh petition, in this behalf.

4. Mr. Jahanzeb Bharwana, Additional Prosecutor General, NAB contended that instant petition is not maintainable on account of the fact that all the medical reports, appended with the instant petition, were annexed by the petitioner along with Review Petition before the Hon’ble Supreme Court of Pakistan; that Review Petition was dismissed only after consideration of the reports appended with the instant petition. It was contended that since august Apex Court refused to interfere in light of the fresh medical reports of the petitioner, therefore, this Court cannot take a decision on the basis of same documents. It was contended that jail report has been filed, wherein it has been categorically submitted that petitioner is being treated properly and is taking his prescribed medication, as such, he does not face the condition, which is detrimental to his life, or he is suffering from hardship. In support of his contentions, learned counsel placed reliance on cases reported as ‘Chairman, National Accountability Bureau, Islamabad through Prosecutor-General Accountability, Islamabad Vs. Mian Muhammad Nawaz Sharif’ (PLD 2019 SC 445), ‘NAB through its Chairman, Islamabad Vs. Murad Ashraf and others’ (PLD 2019 SC 250), ‘Tallat Ishaq Vs. National Accountability Bureau

through its Chairman etc.’ (PLD 2019 SC 112), ‘Sharjeel Inam Memon Vs. National Accountability Bureau’ (2018 SCMR 2023), ‘Haji Hussain Vs. The State’ (2018 YLR 876), ‘Mian Nazir Ahmad Vs. The State etc.’ (2016 SCMR 1536), ‘Nazir Ahmad and Another Vs. The State and others’ (PLD 2014 Supreme Court 241), ‘Muhammad Siddique Vs. The State and Another’ (2014 SCMR 304), ‘Dadio Vs. Sobharo and Another’ (2010 SCMR 576), ‘The State Vs. Haji Kabeer Khan’ (PLD 2005 Supreme Court 364), ‘Malik Muhammad Yousafullah Khan Vs. The State and Another’ (PLD 1995 Supreme Court 58), ‘The State Vs. Syed Qaim Ali Shah’ (1992 SCMR 2192) and ‘The State through Advocate General, NWFP Vs. Zubair and 4-others’ (PLD 1986 SC 173).

5. In rebuttal, Kh. Haris Ahmad, Senior ASC submitted that since the petitioner is facing incarceration hence due to stress, his blood pressure and diabetes is not under control; it is only that if he is released on bail, his referred condition might improve. It was also submitted that reports of the doctors suggest that petitioner can only be treated abroad hence, an order to this effect, needs to be passed. Learned counsel further contended that continued incarceration of the petitioner is a state of hardship for him.

6. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. As noted above, this is a second petition on the subject seeking suspension of sentence in NAB Reference No.19-2018 and release of petitioner on bail, on medical grounds.

8. It is pertinent to observe that petitioner was awarded sentence of seven years’ imprisonment along with fine by the Judge, Accountability Court-II, Islamabad vide the aforementioned judgment.

9. In case reported as ‘Nazir Ahmad and Another Vs. The State and others’ (PLD 2014 Supreme Court 241), the august Apex Court laid down the principles of propriety and practice regarding bails and suspension of sentence. In paras-25 (iii) & (iv), it is observed that in case of dismissal of earlier application of bail on the merits of case, subsequent application for the same relief can be filed and entertained only if it is based on fresh ground i.e. the ground which was not available or in existence at the time of decision of earlier application. For the sake of brevity, the relevant paragraphs are reproduced below: -

*“25. Before parting with this judgment we would like to, for the benefit of all concerned, restate the principles of propriety and practice enunciated by this Court thus far regarding filing, entertaining and deciding applications for bail, cancellation of bail or suspension of sentence and release on bail during the pendency of an appeal in criminal cases and would expect all the courts below to scrupulously and meticulously adhere to and follow the same. The said principles, as enunciated in the precedent cases referred to above and some others, are as follows:*

*(iii) Dismissal of an application for bail after attending to the merits of the case amounts to rejection of all the grounds available or in existence till the time of such dismissal whether such grounds were actually taken or urged or not and whether such grounds were expressly dealt with in the order of dismissal or not.*

*(iv) In case of dismissal of an earlier application for bail on the merits of the case a subsequent application for the same relief can be filed and entertained only if it is based upon a fresh ground i.e. a ground which was not available or in existence at the time of decision of the earlier application.”*

10. It is the case of petitioner that ailments, which have been diagnosed now, were not known earlier, hence instant petition is maintainable. Admittedly, the earlier petition filed by the petitioner was on medical grounds and the instant petition is also on the same basis, however, since it has been specifically pleaded that ailments, on the basis of which, earlier petition was filed, are different from ones now pointed out, hence it would be appropriate to examine briefly the state of medical health of the petitioner and the reports in order to gauge the maintainability of instant petition.

11. The Team of Doctors of Sharif Medical Trust/Sharif Medical City, Jati Umra, Lahore submitted its final report on 09.04.2019. At page-3 of the same, reference was made to *Lymphadenopathy*, which learned counsel for the petitioner pointed, was not known earlier. Likewise, *Calcified Osteal Plaque Disease along right renal artery*, was also not diagnosed earlier along with *small old ischaemic cortical infarct in the right middle frontal lobe noted*, which was conducted during MRI & MRA Head & Neck.

12. It is pertinent to observe that final report summarizes the ailments and their nature, but as such, does not prescribe any plausible treatment of the same. Even the fact that these ailments can be treated abroad only has not been mentioned. On page-5 of final report, medication has been suggested and recommendation has been made with respect to heart condition suggesting that treatment should be made where advanced facilities are available, however, it has not been suggested that same are not available in Pakistan. The above report, which is comprehensive in nature, covers all diseases of the petitioner, some of which, were not earlier mentioned by the Team of Doctors.

13. Earlier, the petitioner filed a Review Petition seeking extension in bail earlier granted by the august Apex Court vide order dated 26.03.2019, but the same was dismissed. In the said petition, the petitioner had appended all the reports of Sharif Medical City as well as foreign doctors. The said documents were placed before the Hon'ble Supreme Court of Pakistan through Civil Miscellaneous Application No.3861-2019. Despite examination of said documents, the august Apex Court decided not to review its earlier order or grant the bail.

14. Even-otherwise, as noted above, final report of Sharif Medical City and the recommendations of foreign doctors are vague inasmuch as same do not suggest that treatment of petitioner is not possible in Pakistan. Moreover, the

reports/opinions are of private doctors, the veracity of which, cannot be determined. No request was made on behalf of petitioner for constitution of Medical Board.

15. The jail report furnished by the Superintendent, Kot Lakhpat Jail, Lahore, to the contrary, points out that condition of the petitioner is stable and he is being provided his medication regularly and there are no symptoms of any risk to his health or life.

16. Right to life is undoubtedly is a fundamental right of any person, however, any person facing incarceration due to sentence recorded against him by a court, has to undergo the same. On the balancing scale, when two factors are put on either side, naturally the right to life weighs heavy, however, if the prisoner is being provided adequate medical treatment, then release on bail is not a ground available to him.

17. As noted by this Court in its earlier decision in W.P. No.352-2019 that the petitioner is receiving best possible health care. Moreover, a reference was also made to the Pakistan Prison Rules, 1978, whereby Jail Superintendent can refer the matter to the Medical Board, if in his opinion, the prisoner needs any medical treatment. The petitioner never made any request to this Court or the Superintendent Jail for referring the matter to the Medical Board.

18. There is no cavil with the principles laid down in case law relied upon by learned counsel for the petitioner but the same are not attracted in the facts of circumstances of the case.

19. For the above reasons, we find the instant petition to be without merit hence same is dismissed.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

W.P. No.1986-2019

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