

*Form No: HCJD/C-121.*

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No. 2267 of 2017

Imran Mohsin

*Vs*

NAB, etc.

PETITIONER BY : M/S Adnan Shuja Butt and Sohail  
Warriach, Advocates.

RESPONDENTS BY : Mr Adnan Tahir Prosecutor, NAB.  
M. Ghufraan, A.D. /I.O. NAB.

DATE OF HEARINGS : **25-10-2017**

**ATHAR MINALLAH, J:-** Through this petition, the petitioner seeks his bail on the ground of hardship caused due to delay in conclusion of trial.

2. The facts, in brief, are that pursuant to complaint received by the National Accountability Bureau (hereinafter referred to as the "**Bureau**"), inquiry under the National Accountability Ordinance, 1999 (hereinafter referred to as the "**Ordinance of 1999**") was authorized which was later converted to investigation on 18-01-2016. The Bureau filed Reference No.12/2016 before the learned Accountability Court

while the petitioner was arrested on 14-07-2015. The latter had earlier sought his post arrest bail through W.P. No. 2988/2015, which was dismissed by this Court vide order, dated 14-01-2016. Perusal of the memo of petition shows that the ground of delay in conclusion of trial had not been raised. The petition filed by the petitioner before the august Supreme Court was also dismissed vide order, dated 17-06-2016. The petitioner is seeking his bail on the sole ground of delay in conclusion of trial.

3. The learned counsel for the petitioner has contended that; the latter was arrested on 14-07-2015 and the delay in conclusion of trial is causing extreme hardship; the petitioner has been incarcerated for more than 27 months and the trial is not expected to conclude in the near future; the trial at this stage is suspended because no judicial officer has been posted as yet after the retirement of the previous judicial officer on 08-09-2017; the delay in conclusion of trial has not been occasioned by an act or omission of the latter nor any other person acting on his behalf; the principles contained in section 497 of the Criminal Procedure Code (hereinafter referred to as "**Cr.P.C**") are attracted while considering bail on the ground of delay in conclusion of trial; since the date of framing of charge, a single adjournment was sought on 02-01-2017.

4. The learned Prosecutor, NAB has appeared alongwith M. Ghufraan, AD/I.O and has argued that; the petition is not

maintainable; a learned Division Bench of this Court had earlier dismissed the petition seeking bail vide order, dated 14-01-2016; the august Supreme Court had upheld the said order and had dismissed C.P.L.A No.272/2016 vide order, dated 17-06-2016; the petitioner has failed to disclose a fresh ground; the provisions of section 497 Cr.P.C are not attracted and, therefore, the petitioner cannot seek bail on statutory ground.

05. The learned counsel for the petitioner and the learned Prosecutor, NAB have been heard and record perused with their able assistance.

06. Admittedly, this is the second petition filed by the petitioner seeking bail. However, the petitioner is seeking bail on the sole ground of delay in conclusion of trial. The petitioner has been incarcerated for more than twenty seven months. The learned Prosecutor, NAB despite his able assistance could not point out any act or omission on part of the petitioner or his counsel except an adjournment sought on 02-01-2017, which may be attributed as a cause of delay in conclusion of the trial. It is, therefore, an admitted position that only one hearing i.e. on 02-01-2017, was adjourned on the request of the learned counsel for the petitioner.

07. A Division Bench of this Court vide judgment, dated 27-02-2017, passed in W.P. No. 2605/2016, titled "Saif Ullah vs. The State, etc" after examining the precedent law has summarized the principles relating to grant of bail to persons accused under the Ordinance of 1999 and the same are as follows:-

(i) A High Court is vested with the jurisdiction to grant bail under Article 199 of the Constitution, independent of any statutory source of jurisdiction such as section 497 of the Cr.P.C.

(ii) The provisions of section 497 of the Cr.P.C, including the 3<sup>rd</sup> proviso thereto, are not attracted in proceedings under the Ordinance of 1999. The right to claim bail on the statutory ground of delay is, therefore, not available to an accused incarcerated in proceedings under the Ordinance of 1999.

(iii) The liberty of an individual has been guaranteed by the Constitution and speedy trial is an inalienable right even if the provisions of section 497 Cr.P.C are not attracted.

(iv) An accused cannot be deprived of liberty for an indefinite period without trial.

(v) If the trial has commenced then instead of releasing the accused on bail, and as long as the delay is not unreasonable or shocking, direction for the expeditious disposal of the case can be given.

(vi) If the trial has not been concluded in the manner and within the time prescribed under section 16 of the Ordinance of 1999 then an accused may be entitled to be released on bail depending on the facts and circumstances in each case due to which delay has been caused.

(vii) While exercising powers under Article 199 of the Constitution in cases wherein bail has been sought in proceedings under the Ordinance of 1999, the broader principles of section 497 Cr.P.C. can be pressed in hardship cases to provide relief to an accused person who has been incarcerated for a period which appears in the facts and circumstances of a particular case as unreasonable. As a corollary, the broad

principles of the 3<sup>rd</sup> proviso to section 497 Cr.P.C. and the exceptions provided therein may be taken into consideration.

(viii) The inordinate delay in conclusion of the trial of a detained person cannot be ignored, provided it was not caused by an act or omission on the part of the latter.

(ix) If a petition seeking bail, wherein one of the grounds taken was delay, then a subsequent petition on said ground would not be entertained and the principles and law laid down in the case of Nazir Ahmed and another versus the State and others supra, will be attracted.

(x) The High Court may refuse to exercise the extraordinary discretionary jurisdiction under Article 199 of the Constitution on the basis of the conduct of the petitioner or the exceptions mentioned in the 3<sup>rd</sup> proviso to section 497 Cr.P.C e.g. the petitioner having remained a fugitive from law without a plausible explanation or having admitted the allegations by making an offer of voluntary return.

08. In the light of the above, though the 3<sup>rd</sup> proviso to section 497 Cr.P.C is not attracted in case of proceedings under the Ordinance of 1999, but an unreasonable delay in conclusion of trial could be treated as a valid ground and cause of hardship for the purposes of granting bail. Moreover, while exercising powers under Article 199 of the Constitution in cases wherein bail has been sought in proceedings under the Ordinance of 1999, the broader principles of section 497 Cr.P.C. can be pressed in hardship cases to provide relief to an accused person who has been incarcerated for an unreasonable period due to delay in conclusion of trial. The broad principles of the 3<sup>rd</sup> proviso of section 497 Cr.P.C and the exceptions mentioned therein would be taken into consideration. In the instant case the trial has been suspended because a judicial officer has not been posted to preside over the learned Accountability Court. As already noted above, a request for adjournment was made only once i.e. on 02-01-2017. No other act or omission of the petitioner or his counsel has led to delay in conclusion of trial. It would also be beneficial to examine the principles of the 3<sup>rd</sup> proviso of section 497 of Cr.P.C.

09. The 3<sup>rd</sup> Proviso to Section 497(1) of the Cr.P.C. was inserted through amendment made vide Act VIII of 2011 and enforced w.e.f. 18-04-2011. The said Proviso provides that a

person accused of an offence punishable with death, is as of right entitled to be released on bail, if he has been detained for such an offence for a continuous period exceeding two years while in case of other offences if the accused has been incarcerated for a continuous period exceeding one year. However, this is subject to certain conditions; firstly, the Court has to form an opinion that the delay in the trial of the accused has not been occasioned by the accused, or due to omission attributed to the person acting on his behalf; secondly, he is not a previously convicted offender for an offence punishable with death or imprisonment for life ; thirdly, he is not in the opinion of the Court, a hardened, desperate or dangerous criminal and, lastly, he is not accused of an act of terrorism punishable with death or imprisonment for life.

10. Besides the above statutory ingredients, the principles and law enunciated by the courts through interpreting the said statutory provisions are summarized as follows:-

- (i) *The accused under the 3<sup>d</sup> Proviso of Section 497(1) Cr.P.C. is entitled to bail as a matter of right, if the statutory period mentioned in either clause a or b has expired and the trial has not been concluded.*
- (ii) *The right of bail in case of statutory delay is clearly provided in the law, as the word "shall" cannot be read as "may".*



- (iii) *Such right can be defeated only if the state or the complainant is able to show that the delay in the trial is attributable to the accused, and once it is shown, then such a right is forfeited.*
- (iv) *The right under the 3<sup>d</sup> Proviso cannot be denied under the discretionary power of the Court to grant bail and, therefore, the right is not left to the discretion of the Court but it is controlled by the 3<sup>d</sup> Proviso read with the 4<sup>th</sup> Proviso.*
- (v) *It is not the intention of the law to calculate the amount of the delay caused by the defence; rather, it is necessary to see whether the progress and conclusion of the trial has, in any manner, been delayed by an act or omission on the part of the accused.*
- (vi) *While ascertaining the delay, the cumulative effect in disposal of the case is to be considered, and it will not be merely mathematical calculation of excluding such dates for which adjournment was obtained by the accused or counsel.*
- (vii) *When witnesses are in attendance and the matter is ripe for recording evidence, but the defence does not proceed, and the effective hearing is postponed by the*

*accused or his counsel, it is an important factor for consideration.*

- (viii) Bail under the 3<sup>d</sup> Proviso can be refused on the ground that delay in the conclusion of the trial had been caused on account of any act or omission of the accused or any person acting on his behalf.*
- (ix) Where, for any reason, the accused or his authorized agent, which necessarily included the counsel engaged for defence, caused delay, the protection under the 3<sup>d</sup> Proviso cannot be invoked.*
- (x) The right of the accused for bail on statutory grounds cannot be defeated for any other reason except on the ground as provided in the 3<sup>d</sup> and 4<sup>th</sup> schedule.*
- (xi) The object of the right to bail on statutory grounds subject to the conditions mentioned in the 3<sup>d</sup> Proviso is to ensure that criminal trials are not unnecessarily delayed.*
- (xii) When the statement of one of the witnesses has yet to be recorded, it cannot be said that the trial has been concluded.*

11. For the above principles, reliance is placed on *Nazir Hussain...Vs...Zia ul Haq and others* (1983 SCMR 72), *Sher Ali alias Sheri...Vs...The State* (1998 SCMR 190), *Akhtar Abbas...Vs...State* (PLD 1982 S.C. 424), *Moundar and others...Vs...The State*, ( PLD 1990 SC 934), *Abdul Rashid...Vs...The State* (1998 SCMR 897), *Zahid Hussain Shah...Vs...The State* (PLD 1995 S.C. 49). *Muhamamd Siddique...Vs...Muhammad Behram and another* (1998 P.Cr.L.J. 358). The facts and circumstances of the present case require to be analysed in the light of the above principles.

12. In the light of the above principles and law, we are satisfied that a case of hardship is made out on account of delay in conclusion of the trial. The delay is indeed unreasonable, particularly in the context of the legislative intent discerned from the provisions of the Ordinance of 1999. The delay in the instant case has not been occasioned due to an act or omission of the petitioner or his counsel, except for the adjournment sought on 02-01-2017. The trial is also suspended at this stage. Seeking guidance from the principles of the 3<sup>rd</sup> proviso of section 497 Cr.P.C, we feel that in the facts and circumstances of the instant case, a case of hardship in the context of the Ordinance of 1999 is made out so as to extend the concession of bail to the petitioner.

13. For what has been discussed above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.50,000,000/- (Rupees

Fifty Million) with one surety in the like amount to the satisfaction of the learned Accountability Court No.I, Islamabad.

14. Needless to mention that this is tentative assessment, which shall not affect the trial of this case in any manner.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(ATHAR MINALLAH)  
JUDGE

Asad Mughal/\*

Approved for reporting