

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4187 of 2019

Asif Ali Zardari

Vs

The State

through Chairman, National Accountability Bureau, etc.

DATE OF HEARING: 11-12-2019.

PETITIONER BY: Mr Farooq H. Naek, Sr. ASC.
Ch. Riaz Ahmed, ASC.
Barrister Shiraz Shaukat Rajpar, AHC.
Barrister Usman W. Shaikh, AHC.
Mr Aqeel Akhter Raja, AHC.
Mr Nayyar Bokhari, Sr. ASC.
Mr Shafqat Abbasi, ASC.
Mr Raja Shakeel Abbasi, AHC.
Mr Zia ul Hassan, AHC.
Mr Bahadur Khan, AHC.

RESPONDENTS BY: Mr Jahanzaib Bharwana, ADPG, NAB.
Sardar Muzaffar A. Khan, DPG, NAB.
Barrister Rizwan Ahmed, Spl. Prosecutor NAB.
Mr Jalal Hussain, Spl. Prosecutor NAB.

ATHAR MINALLAH, CJ.- Through this petition,
the petitioner namely, Asif Ali Zardari son of Hakim Ali
Zardari, has invoked the jurisdiction of this Court under

Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"] seeking his post arrest bail solely on medical grounds in Reference no. 13/2019.

2. The facts, in brief, are that the National Accountability Bureau [hereinafter referred to as the "**Bureau**"] initiated proceedings wherein the petitioner was one of the accused. The competent authority issued his warrant of arrest and he was arrested on 10-06-2019. He remained on physical remand for sixty eight days. The learned Accountability Court, Islamabad vide order, dated 16-08-2019 remanded the petitioner to judicial custody. During his incarceration the health of the petitioner deteriorated and, therefore, he was admitted for medical treatment in the Pakistan Institute of Medical Sciences [hereinafter referred to as the "**Hospital**"]. Since 22-10-2019, the petitioner has been receiving medical treatment at the Hospital. The petitioner, therefore, filed the instant petition seeking his post arrest bail solely on medical grounds.

3. Pursuant to direction given vide order, dated 04-12-2019, the Hospital constituted a Medical Board. The Medical Board after thoroughly examining the petitioner has submitted report, dated 09-12-2019, and the relevant portions of the same are reproduced as under:

"With his heart condition and evidence of silent ischemia, he is at risk of Acute Myocardial Infarction which may lead to a sudden cardiac death.

The diseases and ailments from which the patient is suffering cannot be treated in the premises of jail as he requires specialized multidisciplinary consultants, therapist and investigations on a daily basis as per requirement.

His continuous detention in the jail can be hazardous to his life both in terms of multiple co-morbid and permanent impairment."

4. With the able assistance of Mr Jahanzaib Bharwana, Additional Deputy Prosecutor General of the Bureau, we have carefully gone through the medical report submitted by the Medical Board.

5. The learned Additional Deputy Prosecutor General of the Bureau was asked whether he opposes grant of bail on medical grounds keeping in view the opinion of the Medical Board which has explicitly mentioned in its report, dated 09-12-2019, that treatment cannot be provided in the prison and continuous detention could be fatal. He has stated that the principles for grant of bail are settled.

6. It is noted that the petitioner is one of the accused in Reference No. 13/2019, pending before the learned Accountability Court, Islamabad. He has not been convicted and, therefore, he is to be treated as innocent unless proven guilty. The opinion of the Medical Board is unambiguous. Further incarceration of the petitioner would not serve any useful purpose. Moreover, his constitutionally guaranteed right to life is not impaired or suspended merely because proceedings under the National Accountability Bureau Ordinance, 1999 are pending before a learned Accountability Court.

7. Keeping in view the unambiguous opinion of the Medical Board, refusal to grant the petitioner bail on medical grounds would definitely be in violation of his fundamental right guaranteed under Article 9 of the Constitution. Even otherwise, it would be in public interest to grant bail in favour of the petitioner because his medical treatment during his incarceration is an expense on the public exchequer. Releasing him on bail will enable him to receive medical treatment of his choice and at his own expense.

8. It has been aptly observed by the august Supreme Court in the case of '*Manzoor and 4 others versus The State*' [PLD 1972 SC 81] as follows.-

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

9. For the above reasons, we **allow** this petition and grant the concession of bail on medical grounds to the petitioner subject to furnishing surety bonds in the sum of Rs.10,000,000/ (rupees ten million) with one surety in the like amount to the satisfaction of the learned Accountability Court.

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

(AAMER FAROOQ)
JUDGE

(CHIEF JUSTICE)