

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

W.P.No.4547/2018  
Ghulam Sarwar Sindhu

**Versus**

The Chairman, National Accountability Bureau and another

<b>Date of Hearing:</b>	11.04.2019
<b>Petitioner by:</b>	M/s Sardar Muhammad Latif Khan Khosa, Sardar Shahbaz Ali Khan Khosa, Syed Iqbal Hussain Shah Gillani, Syed Mehmood Hussain Gillani, Rai Mudassir Iqbal, Habibullah Zia Khan, Syeda Nazgul Shah and Sozain Khattak, Advocates.
<b>Respondents by:</b>	Barrister Rizwan Ahmed, learned Special Prosecutor, N.A.B. with Malik Muhammad Uzair Rehman, I.O. Syed Masood Hussain, Advocate for the respondent/CDA in W.P.No.4411/2018

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Ghulam Sarwar Sindhu, seeks the grant of post-arrest bail.

2. The petitioner was arrested on 08.11.2018. Since 14.11.2018, the petitioner has remained in judicial custody. No reference against the petitioner has been filed as yet. We are told that the Executive Board of National Accountability Bureau (“N.A.B.”) has approved the reference against the petitioner and others.

3. Learned counsel for the petitioner submitted that the petitioner was a serving BS-19 officer in the Capital Development Authority (“C.D.A.”), when he was arrested; that in the year 2011, the Federal Investigation Agency (“F.I.A.”) had closed an inquiry against the petitioner; that the matter regarding the diplomatic enclave shuttle service was also inquired into by the N.A.B.; that vide letter dated 15.02.2013, the N.A.B. closed the inquiry against the petitioner and other officials of the C.D.A. regarding the award of the contract for the diplomatic enclave shuttle service; that the petitioner was absolved of all the charges levelled against him in a departmental inquiry; that it was solely on the

basis of the observations made by this Court in the judgment dated 19.05.2015, passed in writ petition No.537/2011, the N.A.B. has reinitiated an inquiry against the petitioner; that vide order dated 12.09.2017, passed in writ petition No.3065/2017, interim relief regarding a *denovo* departmental inquiry has been granted to the petitioner by this Court; and that the allegation against the petitioner is that while he was serving as Director, Urban Planning, C.D.A., he had moved summary dated 22.11.2007 proposing therein that one Muhammad Hussain be permitted to develop a site for visa seekers on BOT basis without a tender bidding process, and has accordingly committed the offence of misuse of authority for personal gain.

4. Learned counsel for the petitioner further submitted that in the year 2004, the S.S.P., Diplomatic Security Police, had expressed to the C.D.A. the security concerns at the parking side near the Convention Centre; that since the Chairman, C.D.A., had noticed that proper facilities were lacking at the visa seekers facilitation place, it was decided that safe and secure shuttle service for the transportation of legal visa seekers to the Diplomatic Enclave should be provided; that it was also decided that a visa seekers facilitation centre be established at the site along the 3<sup>rd</sup> Avenue; that after Muhammad Hussain had made a representation to the Chairman, C.D.A., the C.D.A. Board decided to relocate the facilities to a safer and an accessible location; that the C.D.A. Board, in its meeting dated 11.03.2008, decided to develop these facilities on BOT basis and to invite applications for the said purpose from interested parties; that consequently, advertisement dated 19.03.2008 was published in the newspapers in response to which, seven applications were received, out of which only five were within time; that a scrutiny committee carried out an evaluation of the bids and submitted its report to the C.D.A. Board, which, in its meeting dated 16.04.2008, approved that the planning and development of the facilitation centre on BOT basis be awarded to M/s Diplomatic Shuttle and Transport Service ("D.S.T.S."); that under the agreement executed with the C.D.A., all expenditure for the

establishment of the facilitation centre was to be borne by D.S.T.S.; that the contract period was seven years, after which the ownership in all the facilities was to vest in the C.D.A.; that on account of the establishment of the said facility, the C.D.A. was to gain an indirect benefit of Rs.5.7 Million per annum; that D.S.T.S. had to pay annual ground rent at the rate of Rs.2/- per square yard, which came to Rs.44,444/- per annum; that the said facilities were completed in December, 2008, and have been functional since then; that the agreement dated 16.06.2008 executed between the C.D.A. and D.S.T.S. was valid for a period of seven years i.e. up to 16.12.2015; that the final decision to award the contract to D.S.T.S. was taken by the C.D.A. Board and not by the petitioner; and that the petitioner has not committed any offence of corruption or corrupt practices. Learned counsel for the petitioner prayed for the instant petition to be allowed and for the petitioner to be enlarged on bail.

5. On the other hand, learned Special Prosecutor, N.A.B., submitted that on 29.10.2018, the Chairman, N.A.B., authorized an investigation against the C.D.A. officials and others for the commission of the offence of corruption in providing 4.50 *acres* of land at a prime location in the Diplomatic Enclave for the development of facilities for visa seekers; that the said contract was awarded without a fair and transparent process; that initially, the contract was awarded to D.S.T.S. on BOT basis at the rate of Rs.100/- per square yards per annum, but subsequently, due to an objection raised by the contractor, the said rate was reduced to Rs.2/- per square yard per annum on annual ground rent basis; that the petitioner had been instrumental in the award of the contract to D.S.T.S.; that the petitioner had moved summary dated 22.11.2007 proposing therein that for the contract in question to be awarded to Muhammad Hussain, Managing Director of D.S.T.S.; that the petitioner, in the said summary dated 22.11.2007, had made a misrepresentation to the effect that Muhammad Hussain had already been operating the said facility for the past ten years; that on 18.12.2007, Muhammad Hussain was granted permission to develop and operate the visa

seekers facility for a period of five years at the rate of Rs.100/- per square yard per annum without any competitive tender bidding process; that subsequently, the petitioner in connivance with Muhammad Hussain, proposed that only an annual ground rent of Rs.2/- per square yard per annum may be charged from Muhammad Hussain; that Muhammad Hussain was handed over possession of the site on 12.02.2008 i.e. prior to an advertisement or the decision of the C.D.A. Board; that the petitioner was instrumental in drafting an advertisement which contained conditions that suited Muhammad Hussain; that the said advertisement was published on 19.03.2008; that the TORs for the said project were lacking in essential particulars; that the petitioner was also responsible for making post-bid changes in order to extend benefits to Muhammad Hussain; that the so called tender bidding process suffered from several illegalities; that the award of the contract to D.S.T.S., which is owned by Muhammad Hussain, has caused a loss to the national exchequer; that if the petitioner is enlarged on bail, he is likely to tamper with the record; and that the petitioner misused his official authority to extend undue benefit to Muhammad Hussain and has thereby committed an offence under Section 9(a)(vi)(xii) of the National Accountability Ordinance, 1999, read with Serial No.5 of the Schedule thereto. Learned Special Prosecutor, N.A.B., prayed for the writ petition to be dismissed.

6. We have heard the contentions of the learned counsel for the petitioner as well as the learned Prosecutor, N.A.B., and have perused the record with their able assistance.

7. Due to security concerns, free access of the public to the Diplomatic Enclave in Islamabad was restricted. For people applying for visas, and wanting to visit Embassies/High Commissions in the Diplomatic Enclave, a bus shuttle service was arranged. Facilities were temporarily established at the parking site developed by the C.D.A. near the Convention Centre, Islamabad. On 19.04.2002, an agreement was executed between the Diplomatic Protection Police, Islamabad (through the Deputy Superintendent Police, Mr. M.A. Farooqi) and D.S.T.S., through its

Managing Director, Muhammad Hussain, whereunder the latter was to provide transport/shuttle service for visa seekers with effect from 17.04.2002. There is nothing on the record to suggest that the said agreement was executed after a competitive tender bidding process. On 16.10.2004, another agreement was executed between the said parties which provided *inter-alia* that D.S.T.S. shall “*provide exclusive Shuttle Service for Visa Seekers*” from 16.10.2004 to 15.10.2009. It may be mentioned that vide letter dated 16.08.2003, the Directorate of Municipal Administration, C.D.A., granted Muhammad Farraque Butt a license for running a car parking stand near Convention Centre for visa seekers and diplomatic shuttle transport service for a period of one year i.e. from 16.08.2003 to 15.08.2004. On 24.12.2004, the Directorate of Municipal Administration, C.D.A., a license to use the car parking site at the Convention Centre was granted to Ahmed Malik for a period of two years i.e. from 06.12.2004 to 05.12.2006. On 31.05.2005, the Directorate of Municipal Administration, C.D.A. had granted a license to Muhammad Hussain (the owner of D.S.T.S.) to use the car parking site at Convention Centre, G-5, Islamabad, for a period of two years (i.e. from 22.08.2005 to 21.08.2007) on the terms and conditions contained in the said license. In the said letter, it is stated that an offer had been made to Muhammad Hussain on account of being a “*successful bidder*”. There is nothing on the record to suggest that any bidding process was carried out before the said license was granted to Muhammad Hussain.

8. Directorate of Municipal Administration, C.D.A.’s letter dated 07.10.2004 shows that the Chairman, C.D.A., had instructed that basic facilities should be provided immediately at the site where the shuttle service was operating from. It was also noted that basic amenities like sitting shed, departure shed, coupon counters, cafeteria, wash rooms for male female, etc. were lacking at the site.

9. Since security concerns had been voiced regarding the operation of the said bus shuttle service from the parking site near the Convention Centre, the Diplomatic Security Police, vide

letter dated 08.09.2004, requested the C.D.A for improvement in the arrangements for the shuttle service. The developers of Constitution 1, vide letter dated 05.06.2007, had also requested for the relocation of the facility from the parking site of the Convention Centre. After consultations between the C.D.A. and the Diplomatic Security Police, it was agreed that the facilities for the visa seekers would be relocated to a site along the 3<sup>rd</sup> Avenue. Vide letter dated 18.07.2007, the Urban Planning Directorate of the C.D.A. approved the alternative site for the facilities along the 3<sup>rd</sup> Avenue in the South East corner of Diplomatic Enclave.

10. On 20.09.2007, a summary was moved before the C.D.A. Board by the Director, Urban Planning, C.D.A. (i.e. the petitioner) proposing that D.S.T.S. be permitted to develop the facilities at the new location as per the approved design keeping in view its ten years experience and input. Permission was also sought for D.S.T.S. to operate the bus service for fifteen years and the license fee of Rs.1 Million per year be charged from D.S.T.S. The said summary also contained an alternative proposal that bids be invited through press for the development of visa seekers facilities on BOT basis.

11. On 22.11.2007, the Director, Urban Planning, C.D.A. (i.e. the petitioner) moved another summary before the C.D.A. Board. Perusal of this summary shows that a site measuring 4.50 *acres* along the 3<sup>rd</sup> Avenue had been approved by the C.D.A. for the development of facilities for visa seekers. It also shows that D.S.T.S. had made a representation to the Chairman, C.D.A. on 16.11.2007 on the said matter. Apparently, the Chairman, C.D.A. had desired that *“on account of expenditure incurred by the present licensee, he would be allowed to operate the site for five years”*. In the said summary, it was proposed that if D.S.T.S.’s performance is satisfactory, its contract period would be extended for another two years. The salient features on which the facility was to be developed were also set out in the said summary.

12. The said summary dated 22.11.2007 was considered by the C.D.A. Board and decided to approve the licensing of 4.50 *acres* of land at the said site to D.S.T.S. for five years on BOT basis and also charge rent at the rate of Rs.100/- per square yard on annual basis.

13. It appears that D.S.T.S. did not agree to the payment of rent at the rate of Rs.100/- per square yard on annual basis. The matter was again considered by the C.D.A. Board, which in its decision dated 11.03.2008, decided to advertise for the construction of facilities to be provided for visa seekers in Islamabad.

14. On 19.03.2008, an advertisement was published by the C.D.A. inviting parties having a minimum of five years experience in "*the relevant field*" to apply by 05.04.2008 for the planning and development of visa seekers facilities on BOT basis. The interested parties were required to submit security clearance from the Superintendent Police of Diplomatic Security Police for the operation of the visa seekers facilities along with their applications. It was expressly mentioned in the said advertisement that the terms of reference could be obtained from the office of the Director, Urban Planning, C.D.A.

15. The terms of reference although mentions the area measuring 4.50 *acres* reserved by the C.D.A. for the planning and development of the facilities for visa seekers, but there is no requirement for the applicants to submit financial bids. It also requires the site to be developed within six months of the date of the handing over of the site and the details of the facilities which the applicant is required to develop at its own cost.

16. As per the petitioner's letter dated 04.04.2008, the Chairman, C.D.A., had constituted a committee to scrutinize and shortlist the applications received in response to the said advertisement. The petitioner, being Director, Urban Planning, was also the member of the said committee. Seven parties, including D.S.T.S. had submitted their applications. The scrutiny committee disqualified all the applicants other than D.S.T.S. Most of the applicants were disqualified on the ground that they had

not submitted the required documents along with their applications. The application of M/s Sadaat Enterprises (Pvt.) Ltd. was rejected on the sole ground that its police clearance certificate had been issued by S.S.P., I.C.T., whereas the clearance certificate was required from the S.S.P., Diplomatic Security Police for the operation of the shuttle service in the diplomatic area.

17. In April, 2008, the petitioner, as Director, Urban Planning, C.D.A., moved a summary before the C.D.A. Board recommending that D.S.T.S. be allowed to develop the visa seekers facilities on BOT basis on the terms and conditions mentioned therein. The C.D.A. Board, on 16.04.2008, decided to allow D.S.T.S. to develop the area for visa seekers facilities on BOT basis on the terms and conditions proposed in the said summary. On 16.06.2008, the concession agreement on BOT basis was executed between the C.D.A. and D.S.T.S. This agreement had been vetted by the Legal Advisors of the C.D.A. on 28.05.2008.

18. The matter regarding the award of the said contract by the C.D.A. to D.S.T.S. had been inquired into by the F.I.A. as well as N.A.B., but both the said agencies/departments had closed the inquiries. The petitioner was also absolved of all the charges levelled against him in the departmental inquiry.

19. The said contract between the C.D.A. and D.S.T.S. was challenged in writ petition No.537/2011 before this Court. Vide judgment dated 19.05.2015, the said writ petition was allowed, and the said contract, was set-aside. This Court also directed the Chairman, C.D.A., to immediately take possession of the site and initiate disciplinary proceedings against all officials of the C.D.A., who had contributed in the award of the contract to D.S.T.S. Directions were also given for the recovery of the amount due and payable by D.S.T.S. More importantly, a copy of the said judgment was directed to be forwarded to the Chairman, N.A.B., for his perusal and action in accordance with the law. It is worth mentioning that I.C.A.No.313-W/2015 was dismissed by the



learned Division Bench of this Court, vide judgment dated 15.03.2016.

20. After going through the voluminous record and hearing the contentions of the contesting parties, we have formed a *prima-facie* view that the petitioner was not solely responsible for the award of the said contract to D.S.T.S. The final decision in the matter was made by the C.D.A. Board. The petitioner is only one of the twelve persons against whom a reference is intended to be filed. It remains to be determined during the trial as to whether the petitioner has gained any benefit due to any misuse of his authority or has conferred any benefit on D.S.T.S. The expenditure incurred by D.S.T.S. in establishing the facilities, which are now owned by the C.D.A., and the profits earned by D.S.T.S. from the operation of the facility is also to be ascertained during the trial.

21. Investigation in this matter was authorized by the Chairman, N.A.B., vide letter dated 29.10.2018. As mentioned above, the petitioner was arrested on 08.11.2018 and has been in judicial custody ever since 14.11.2018.

22. We are told by the learned Special Prosecutor, N.A.B., that a reference is intended to be filed against twelve accused persons. Out of whom, presently only three are in incarceration. Although we were informed that in the Executive Board meeting of the N.A.B., the filing of the reference has been approved, however, till date, no reference has been filed. We were also told by the learned Special Prosecutor, N.A.B., after consulting the Investigation Officer that during four months of the petitioner's incarceration in judicial custody, the Investigation Officer felt the need to interview him just once. We were also informed that the investigation has been completed and the relevant record is in the N.A.B.'s custody.

23. On the directions of this Court, the learned Special Prosecutor, N.A.B., brought on record an undated inquiry report of the Inspector/Investigation Officer (Mirza Muhammad Shafique) recommending the closure of the inquiry against the officials of the C.D.A. and others in the matter of the award of the

contract for the diplomatic enclave shuttle service. In paragraph 9 of the said inquiry report, it has explicitly been mentioned that no loss was caused to the national exchequer, and that the entire process had been completed after fulfilling all the codal formalities. It was also mentioned that the building and the facilitation centre is the property of the C.D.A. as per the terms of the agreement. We were also told that no action, whatsoever, has been taken against the previous Investigation Officer for recommending the closure of the inquiry or against other officers of the N.A.B. for deciding to close the inquiry. The Executive Board of the N.A.B., in its meeting dated 09.10.2012, had closed the inquiry regarding the award of the said contract. This is an essential feature of the case causing us to hold that the instant case is one of an exceptional circumstance warranting the grant of post-arrest bail to the petitioner.

24. Since the petitioner has remained incarcerated since 08.11.2018 i.e. for a period over five months, and since the reference has not even been filed as yet, the instant petition is allowed subject to furnishing of bail bonds for an amount of Rs.10,000,000/- (Rupees one crore) with two sureties in the like amount to the satisfaction of the learned Administrative Judge, Accountability Court, Islamabad. Furthermore, it is directed that the petitioner shall surrender his passport to the said Court and his name be placed on the Exit Control List.

(AAMER FAROOQ)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2019

(JUDGE)

(JUDGE)

**APPROVED FOR REPORTING**

Qamar Khan\*