

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**W.P. No.169/2022**

Abdul Jabbar

**Versus**

The State, etc.

Petitioner By : Mr. Taimoor Aslam Khan, Advocate.  
Respondents By : Mr. Irfan Ahmed, Special Prosecutor,  
NAB.  
Shahzad Durrani, Assistant Director/I.O,  
NAB.  
Date of Decision : 03.02.2022.

**AAMER FAROOQ, J. –** This consolidated judgment shall decide the above-mentioned writ petition as well as Writ Petition No.170/2022, as they involve common questions of law and facts.

2. The petitioners (Abdul Jabbar and Muhammad Shabbir) are co-accused in Reference No.4/2019 filed by National Accountability Bureau against them which is pending before learned Accountability Court No. II, Islamabad.

3. The petitioners were arrested on 10.03.2019 pursuant to warrants of arrest issued by the Bureau on 06.03.2019. They were served grounds of arrest on 11.03.2019 and were committed to judicial custody on 28.03.2019. Initial interim Reference was filed against the petitioners on 02.04.2019, in which they were arrayed as accused at Sr. Nos. 5 & 6 of the Reference. They filed petitions under Article 199 of the Constitution seeking bail after arrest on 13.04.2019, which were dismissed by this Court on 29.07.2019. The referred decision was challenged by way of leave to appeal before the Hon'ble Supreme Court of Pakistan through Civil Petitions No.3566 & 3567/2019, which were disposed of on

23.06.2020, with the direction to learned Trial Court to decide the matter expeditiously. Second bail applications were filed (W.P. Nos.2925 & 2926/2020) by the afore-mentioned petitioners on 07.10.2020, which were dismissed vide orders dated 21.12.2020. The referred orders were also challenged by way of leave to appeal through Civil Petitions No.1326 & 1330/2021 and the same was allowed vide order dated 07.07.2021 and the matter was remanded to this Court to render fresh decision on merit and otherwise.

4. During the course of pendency of the matter, the National Accountability Ordinance, 1999 was amended and learned Accountability Court was conferred jurisdiction to entertain the bail applications; due to the referred development, the afore-noted writ petitions were dismissed on 17.11.2021. The petitioners filed applications for release on bail before learned Accountability Court No. II, Islamabad, which were dismissed vide order dated 23.12.2021, hence the instant petitions.

5. Learned counsel for the petitioners, *inter alia*, contended that the instant case is a classic one whereby the petitioners suffer hardship due to delay in conclusion of the trial. In this behalf, it was pointed out that petitioners are in custody for almost three years and conclusion of the trial is not in sight; it was argued that where such is the case, petitioners are entitled to concession of bail. Reliance was placed on case reported as Muhammad Iqbal Khan Noori and another versus National Accountability Bureau (NAB) and others (PLD 2021 SC 916). It was also submitted that the allegations levelled against the petitioners are borne out in the Reference as well as grounds for arrest served on the petitioners. In this behalf, it was contended that the gist of allegations against the petitioners is that being partners in M/s Pink Residency, they acquired 07-Acres land situated in Deh Safooran, Sector 40, Scheme 33, District Malir, Karachi in connivance with officials of the Board of Revenue, Government of Sindh, to have

the land regularized which caused loss to the National Exchequer in the sum of Rs.800 Million. It was submitted that another allegation against the petitioners is that sum of Rs. 67 Million was paid through fraud/benami bank accounts. It was contended that officials of Board of Revenue and other officials who regularized the land in question have not been arrayed as accused persons; that another accused namely Aftab Ahmed Memon was granted bail by this Court on 28.04.2021, in Writ Petition No.898/2021. It was contended that out of 45 prosecution witnesses, only 09 have been recorded.

6. Learned Special Prosecutor, National Accountability Bureau, *inter alia*, contended that petitioners are not entitled to the concession of bail inasmuch as earlier petitions stand dismissed on merit. It was contended that trial is in progress and, if released on bail, the petitioners might hinder the expeditious conclusion of the same. It was also argued that petitioners are beneficiary in regularization of land, hence are directly involved.

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

8. As noted, this is second rather third round of litigation in the bail matter of petitioners. Allegations against them as spelt out in the grounds of arrest are that they purchased land situated in Deh Safooran, Sector 40, Scheme 33, District Malir, Karachi from one Muhammad Saleem Qureshi vide Conveyance Deed No.3228, dated 23.06.2017 and had the same regularized in connivance with officials of the Board of Revenue and also paid consideration of Rs.67 Million from fake bank accounts in the name of M/s A-one International, Ibrahim Linkers and Umair Associates. It is an admitted position that out of 45 prosecution witnesses, only 09 have been recorded and it shall take considerable time for the trial to be concluded despite direction by the Hon'ble Supreme Court of Pakistan. In this view of the matter, petitioners are incarcerated for the last about three years.

Learned Special Prosecutor, National Accountability Bureau, as well as Investigating Officer was confronted as to the confiscation of evidentiary record; they frankly conceded that they have taken in possession the same. It was also inquired whether there is any chance of petitioners absconding during the course of trial, the candid reply was in the negative. While adjudicating the parameters of bail after arrest in matters of arrest out of investigations conducted by the National Accountability Bureau or Reference filed by them, the Hon'ble Supreme Court of Pakistan in case titled Muhammad Iqbal Khan Noori and another versus National Accountability Bureau (NAB) and others (PLD 2021 SC 916) observed as follows:-

"5. Under our democratic constitutional scheme, firmly anchored in the rule of law, the constitutional courts are to jealously protect and safeguard the fundamental rights of a person. The High Court, under Article 199, has the power to judicially review the order passed by the Executive, viz, Chairman NAB or some other authorized officer of the NAB, regarding arrest and detention of a person. Article 4 mandates that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 9 is a cherished fundamental right of a person, which, inter alia, guarantees right to liberty, which may be curtailed "save in accordance with law." The phrase except or save in accordance with law implies that not only should the procedural requirements of the "law" be fully met but also its substantive content i.e., there must be sufficient material/ evidence on the record that can justify the application of such a "law." Therefore, material/evidence must be sufficient enough to persuade the constitutional court to deprive an individual of his fundamental right. The requirement of sufficiency of material is also echoed in the right guaranteed under Article 10, which requires that any person who is arrested shall not be detained in custody without being informed of the grounds for such arrest. The word "grounds" used in Article 10 is not limited to mere allegations but means allegations supported by sufficient material/evidence connecting the person with the offence justifying his arrest and detention. Article 10-A creates a constitutional obligation to conduct a fair trial and ensures due process. The spectrum of fair trial and due process is extensive and over-arching; an arrest and detention of a person without any sufficient incriminating material/ evidence would offend his right to fair trial. Right to dignity under Article 14 is an absolute constitutional

*standard, which is not subject to law. This is because dignity inheres in a human person and is not granted by law or cannot be taken away by law. Human dignity encapsulates the notion that every person has inherent equal worth; no one's life and liberty is more important than any other person's. Arresting and detaining a person without any incriminating material offends his or her right to dignity. This brings us to the most familiar maxim in criminal justice: the presumption of innocence - the principle that a person is presumed innocent until proven guilty by a court of law. This principle is pillared on constitutional right to liberty, fair trial and human dignity. This presumption can only be dislodged if there is sufficient incriminating material against a person as underlined and reinforced by the aforesaid constitutional rights. Over the years reasonableness and proportionality have also come to be recognized as established grounds of judicial review of the executive action. Thus, while exercising jurisdiction under Article 199, the High Court has to examine the order of arrest and detention passed by the Chairman NAB and see if it passes the constitutional muster. The High Court while exercising its jurisdiction under Article 199 of the Constitution for the enforcement of fundamental rights can pass appropriate orders, which include an unconditional release or release on bail, to grant the relief to the aggrieved person. It is for the enforcement of fundamental rights under the Constitution and not the sub-constitutional statutory grounds provided in section 497, Cr.P.C., that this Court has been granting bails to the accused persons in NAB cases in exercise of constitutional jurisdiction under Article 199 read with Article 185(3) of the Constitution, mainly on the grounds of: (i) delay in conclusion of the trial, (ii) life-threatening health condition of the accused, and (iii) non-availability of sufficient incriminating material against the accused.*

6. *The Ordinance requires the Chairman NAB to form an "opinion" if proceedings are to be initiated against any person and the matter referred for inquiry or investigation. After appraising the material and the evidence collected during the inquiry or investigation, the Chairman NAB, if finds that there is "sufficient material" to justify filing of a reference, refer the matter to the Accountability Court for trial. While section 24(a) of the Ordinance provides that the Chairman NAB shall have the power, at any stage of the inquiry or investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested. Section 24(d) mandates that NAB shall, as soon as may be, inform the accused of the "grounds" and "substance" on the basis of which he has been arrested. Section 5(a) defines that "accused" shall, inter alia, include a person in respect of whom there are "reasonable grounds" to believe that he is or has been involved in the commission of any offence triable under*

*this Ordinance. Section 12(a) states that the Chairman NAB or the Court trying an accused for any offence as specified under the Ordinance, may, at any time, if there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property. The combined reading of all these provisions of the Ordinance leaves no room for doubt that the law authorises proceedings against a person accused of an offence under the Ordinance, and for the freezing of his property, only when there are reasonable grounds for believing that the accused has committed an offence triable under the Ordinance.*

7. *In order to ascertain whether "reasonable grounds" exist or not, the Court should not probe into the merit of the case, but restrict itself to the material placed before it by the prosecution (NAB) to see whether some tangible material/ evidence is available against the accused which may lead to the inference of his guilt. Mere accusation of an offence would not be sufficient to disentitle an accused from being bailed out. There should be "reasonable grounds" as distinguished from mere allegations or suspicion. It is for the prosecution (NAB) to show reasonable grounds to believe that the accused has committed the crime. If the Court is not satisfied that there exist reasonable grounds to believe that the accused is guilty, the Court is to grant bail in enforcement of the aforesaid fundamental rights. Pre-trial arrest and detention of the accused casts a heavy burden on the conscience of the court. If after trial the accused is acquitted there is no recompense or reparation for the loss of his valuable years spent behind bars including its economic, social and psychological impact on the accused, as well as, his family or near ones due to denial of bail. The sufficiency of material/ evidence connecting the accused with the crime must therefore be viewed with utmost care and caution at the bail stage."*

This Court in case titled Taha Raza versus The state and others (W.P. No.1585/2021 and others), observed as follows:-

"18. *It is admitted at all ends that the co-accused placed at higher rung has been released on bail, hence the present petitioners/accused are also entitled for grant of bail on the principle of consistency. Reliance is placed on a case titled as "**Ghulab Khan V. Chairman N.A.B and another**" (2020 SCMR 285). The same principle has been laid down in cases titled as "**Muhammad Daud and another V. The State and another**" (2008 SCMR 173), "**Sheraz V. The State**" (2021 MLD 292) and "**Muhammad Azam V. The State**" (2008 SCMR 249).*

19. It has been held by the Hon'ble Supreme Court of Pakistan in case titled as **"Khawaja Anwer Majid Vs. National Accountability Bureau through Chairman NAB and another"** (PLD 2020 SC 635) that:

*"Condition of the Petitioner, ever since the rejection of the previous bail application, has deteriorated alarmingly. Cardiac physicians have suggested surgery involving intensive procedure. Such procedure needs to be undertaken free from custodial stresses. Concession of bail was extended."*

Reliance is also placed on cases 2017 SCMR 1194, 2002 SCMR 282 and 2016 SCMR 1225.

20. As the entire case depends on documentary evidence, which has been collected by the NAB/Investigating Agency, in this regard guidance be taken from a case titled as **"Saeed Ahmed VS. The State"** (1996 SCMR 1132) that:

*"The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. It has further been held that as there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution". Reliance is also placed upon a case titled as "Muhammad Shabbir V. The State and others" (2020 YLR Note 22).*

21. While allowing the bail after arrest of the accused facing trial in the NAB, Hon'ble Supreme Court of Pakistan in a recent judgment titled as **"DINSHAW HOSHANG ANKLESARIA Vs. NATIONAL ACCOUNTABILITY BUREAU (NAB) THROUGH CHAIRMAN and others"** (2021 SCMR 699) has held that:

*"It has been brought to our notice that the petitioner was taken into custody on 23.04.2019 and since then he is behind the bars. Though Reference has been filed but there are 86 witnesses whose testimony is to be recorded before the Trial Court. Rest of the evidence is in the possession of the prosecution, which is in the documentary form and there is no likelihood of any tampering or manipulation. The petitioner has already suffered 20 months of incarceration without even commencement of trial, which clearly reflects that the conclusion of the same is not in sight in near future. Even otherwise, it has been informed that there are 27 accused in all and the majority of the same including the co-accused are enjoying liberty and free life."*

22. It has been held by the Hon'ble Supreme Court of Pakistan in a judgment reported as **PLD 2019 SC 11 (Talat Ishaq Vs. NAB)** that:

(d) In an appropriate case through exercise of its jurisdiction under Article 199 of the Constitution a High Court may grant bail to an accused person arrested in connection with an offence under the National Accountability Ordinance, 1999 and section 9(b) of the said Ordinance does not affect the jurisdiction of a High Court conferred upon it by the Constitution. The constitutional jurisdiction of a High Court is, however, an extraordinary jurisdiction meant to be exercised in extraordinary circumstances and not in run of the mill cases or as a matter of course.

(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay.

23. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as "**Muhammad Jahangir Badar Vs. The State and others**" (**PLD 2003 SC 525**) that:

"There is no cavil with the proposition that the State machinery has a right- to arrest the culprits and put them to trial, for the purpose of establishing guilt against them but it has not been bestowed with an authority to play with the liberty and life of an accused under detention because no one can be allowed to remain in custody for an indefinite period without trial as it is a fundamental right of an accused that his case should be concluded as early as could be possible particularly in those cases where law has prescribed a period for the completion of the trial. As in the instant case under section 16(a) of the Ordinance the Court is bound to dispose of the case within 30 days. It may be noted that inordinate delay in the prosecution case if not explained, can be considered a ground for bailing out an accused person depending on the nature and circumstances on account of which delay has been caused."

24. In the above case, the august Supreme Court after examining the earlier judgments held as follows:



*"In the above noted case bail was granted to Zulfiqar Ali petitioner because he remained in custody for 27 months and the delay in the conclusion of trial was attributed to both the parties. Against the above prevailing consistent view only one exceptional principle can be pressed into service namely that if the trial of the case has commenced then instead of releasing the accused on bail direction should be made for expeditious disposal of the case by adopting certain modalities to ensure that the accused, is not detained further for an indefinite period. Reference in this behalf is made to the case of (i) Allah Ditta and others v. The State (1990 SCMR 307) and (ii) Iftikhar Ahmad v. The State (1990 SCMR 607)."*

25. *It has been held by the Hon'ble Supreme Court of Pakistan in a reported judgment **2015 SCMR 1092** titled as "**Himesh Khan Vs. The National Accountability Bureau (NAB), Lahore and others**" that:*

*"The Court cannot ignore shocking delay in conclusion of the trial. In such circumstances, the accused cannot be left at the mercy of the prosecution to rot in jail. As the real beneficiaries were granted bail, it makes it a fit case for grant of bail to the Petitioner."*

26. *The Hon'ble Supreme Court of Pakistan has granted bails to the accused facing investigation/trial of NAB in the cases titled as "**Muhammad Saeed Mehdi Vs. The State and 2 others**" (2002 SCMR 282), "**Himesh Khan Vs. The National Accountability Bureau (NAB), Lahore and others**" (2015 SCMR 1092), "**Ghulab Khan Vs. Chairman N.A.B and another**" (2020 SCMR 285), "**Khawaja Salman Rafique and another Vs. National Accountability Bureau through Chairman and others**" (PLD 2020 SC 456), "**Nazir Ahmed Shaikh and others Vs. National Accountability Bureau and others**" (2020 SCMR 297), and "**Muhammad Jawed Hanif Khan and another Vs. National Accountability Bureau Sindh and others**" (2020 SCMR 185).*

27. *In the light of above law enunciated by the august Supreme Court of Pakistan, we are of the opinion that the petitioners are entitled to the relief, particularly in view of the principles and law laid down in the cases of **DINSHAW HOSHANG ANKLESARIA Vs. NATIONAL ACCOUNTABILITY BUREAU (NAB) THROUGH CHAIRMAN and others**" and "**Muhammad Jehangir Badar V. The State and others**" supra. The prosecution has not been able to satisfy us that the inordinate delay in conclusion of trial is not partly attributed to it.*

28. *It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail after arrest 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. Reliance is placed on a case reported as **"Manzoor and 4 others Vs. The State" (PLD 1972 SC 81)"**.*

29. *It has been held in a case titled as **"Zaigham Ashraf v. The State and others" (2016 SCMR 18)** that:*

*"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy or causal manner as that will defeat the ends of justice because if the accused charge, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in jail without just cause and reasonable ground."*

9. The petitioners are the only accused persons who are behind bars in the Reference in question. Investigation against them stands completed and their continued incarceration would not serve any purpose. The evidence is documentary in nature primarily which is in custody of National Accountability Bureau, hence it is unlikely that they will tamper with the same. On merit, officials of the Board of Revenue, who regularized the land, have not been arrayed as accused. There is no proof of payment as such of any money/amount as corruption. Part payment of consideration for obtaining property was made from allegedly fake back accounts, the effect of which is to be seen at the time of trial through evidence i.e. whether the accounts are fake or benami and/or on what basis or circumstances, the payment was made therefrom.

10. In view of the above, the instant petitions are **allowed** and impugned order dated 23.12.2021, whereby the bail applications of the petitioners were dismissed are **set-aside**; consequently, the bail applications of the petitioners are allowed and they are admitted to bail subject to terms and conditions already mentioned in our short order. The above are the reasons of our short order dated 03.02.2022.

**(SARDAR EJAZ ISHAQ KHAN)**  
**JUDGE**

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

M. Shah/\*