

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.4393 /2019

Muhammad Iqbal Malik

Vs

National Accountability Bureau (NAB) and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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07.01.2020 Malik Muhammad Siddique Awan, Advocate for
the petitioner.
Barrister Rizwan Ahmed, Special Prosecutor,
NAB.
Waqas Ahmed, A.D./I.O. NAB.

The Petitioner, Muhammad Iqbal Malik S/o Khuda Yar,
seeks bail after arrest in Reference No.9/2019 pending before
the Accountability Court at Rawalpindi.

2. The petitioner is engaged in the business of executing
contracts by providing services as required under the contract
and in this behalf has executed a large number of contracts for
various Government Departments. On the directions of this
Court in W.P. No.321/2017 vide order dated 31.01.2017
inquiry/investigation was initiated against one Rana Arshad
Mehmood Khan, Ex-Assistant Engineer for assets beyond
means. During the course of inquiry the petitioner was also
investigated for aiding and abetting the said person alongwith
his wife and son. In the Reference filed by the National
Accountability Bureau (NAB) (Reference No.9/.2019) the
petitioner has been arrayed as one of the accused for aiding and

abetting the principle accused namely Rana Arshad Mehmood Khan. In the Reference allegation against the petitioner is that he deposited a sum of approximately Rs.26,000,000/- (twenty six million) in the account of said Rana Arshad Mehmood Khan and his son Zeeshan Mehmood Rana and he could not justify the reason for the same.

3. Learned counsel for the petitioner, *inter alia*, contended that the petitioner seeks his bail on medical ground as he is suffering from cancer of rectum and also has chronic kidney ailment and is on dialysis. He further submitted that the report submitted by the Board of Pakistan Institute of Medical Sciences, Islamabad (PIMS) confirms the medical condition of the petitioner and his continuous incarceration would be detrimental to his health. In support of his contention that petitioner is entitled to bail on medical ground, learned counsel placed reliance on the recent decision of this Court handed down in case titled Asif Ali Zardar v. The State through Chairman, National Accountability Bureau, etc. (W.P. No.4187/2019) as well as Anjum Aqeel Khan v. The State and another (PLD 2012 Islamabad 73), Firdous Paul v. The State (2004 SCMR 15), Malik Muhammad Yousaf Ullah Khan v. The State and another (PLD 1995 SC 58) and Zakhim Khan Masood v. The State (1998 SCMR 1065). It was further contended that even otherwise, on merit there is no case against the petitioner inasmuch as the principle accused is an absconder and a sum of more than Rs.26,000,000/- (twenty six million)

was deposited in the account of Rana Arshad Mehmood Khan and his son on account of the fact that the latter has expertise of developing Poultry Farms and had contracted with the petitioner to establish and develop the same. It was also contended that the said Poultry Farm is reflected in the Wealth Statement of the petitioner and even otherwise the petitioner is a regular tax payer and is regularly paying a significant amount of tax on his income. It was further submitted that even otherwise the allegations levelled in the Reference are vague being without substance.

4. At the very outset, learned Special Prosecutor NAB objected to the maintainability of the instant petition due to the fact that Reference has been filed by NAB before the Accountability Court at Rawalpindi. When confronted, as to why and how the same was done, learned Special Prosecutor NAB placed reliance on Section 16(d) of the National Accountability Ordinance, 1999 (the **Ordinance**) and contended that it is prerogative of Chairman NAB to do the same. On merit, learned Special Prosecutor NAB submitted that the petitioner is already hospitalized and is under treatment; that during the course of investigation it was found that he aided and abetted the principle accused and deposited a sum of more than Rs.26,000,000/- (twenty six million) in the account of principle accused and his son for which no justification was rendered.

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

6. Adverting to the objection raised by learned Special Prosecutor NAB regarding maintainability of the instant petition, it is noted that the principle accused namely Rana Arshad Mehmood Khan was posted as Ex-Assistant Engineer (LG&RD), Islamabad Capital Territory and allegations are levelled against him for making assets beyond means while posted at referred position; investigation of the matter was conducted at Islamabad and even upon arrest of the petitioner his physical remand was obtained from Accountability Court at Islamabad. Even the judicial remand was obtained and is still being obtained from Accountability Court at Islamabad. Undoubtedly, under Section 16(d) of the Ordinance it is within the discretion of Chairman NAB to file a Reference anywhere in Pakistan but the bare reading of said Section shows that it is to be done after keeping in view the facts and circumstances of the case; however, since the said decision by the Chairman is not under challenge in the instant proceedings, hence no observation is required to be made on the same. The fact remains that the investigation was conducted at Islamabad; the Accountability Court, Islamabad granted physical remand and even judicial remand, hence the matter pertains to Islamabad and this Court has jurisdiction in the matter. Merely because the Reference has been filed before the Accountability Court at

Rawalpindi would not divest this Court from its jurisdiction to grant bail and at best this Court alongwith Lahore High Court, Rawalpindi Bench, Rawalpindi shall have concurrent jurisdiction in the matter for the purposes of bail.

7. This Court vide order dated 24.12.2019 ordered the PIMS for constitution of a Medical Board to render opinion regarding the medical condition of the petitioner. Pursuant to the order of this Court report dated 04.01.2020 has been tendered wherein the Medical Board has opined as follows:

“Patient is presently in remission radiologically S/P surgery, radiotherapy & 05 courses of Chemotherapy (Xelox). Patient needs 03 further Chemotherapy cycles. Although this protocol is administered usually at home but considering diarrhea, vomiting & dehydration leading to deranged kidney function, it is advised that he may receive further chemotherapy cycles as indoor case (Admitted case), so that any complication can be dealt with promptly.”

8. The bare perusal of the above report shows that the petitioner is receiving Chemotherapy and still has to undergo 03 further cycles and there are complications *qua* his kidney function and the after effects of the therapy. Similar report has been furnished by Medical Officer, Central Jail Rawalpindi. The documents placed on record also substantiate the Medical Board’s opinion. This Court has no means to contradict or question the opinion of the Medical Board. The Hon’ble Supreme Court of Pakistan in case reported as **Manzoor and 4 others v. The State** (PLD 1972 SC 81) observed that 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.

9. The investigation against the petitioner stands concluded and the Reference has been filed as noted above, hence the petitioner is not required for further investigation and his continuous incarceration would not serve any purpose. If he remains behind the bars facing trial this would amount to severe hardship because of his ailment. In similar circumstance this Court in case titled Asif Ali Zardar v. The State through Chairman, National Accountability Bureau, etc. (W.P. No.4187/2019) vide order dated 11.12.2019 granted bail after arrest. Following the principle of consistency and keeping in view the circumstances, mentioned hereinabove, the petitioner is also entitled to the concession of bail.

10. For what has been stated above, the instant petition is allowed and the petitioner is admitted to bail after arrest subject to furnishing bail bonds in the sum of Rs.10,000,000/- (ten million) with one surety in the like amount to the satisfaction of learned Trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(AAMER FAROOQ)
JUDGE

M.NAVED