

**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.428/2020**

Hafiz Mukhtiar Khan

*versus*

National Accountability Bureau through its Chairman

Petitioner by: Raja Khurram Ejaz Thaqr, Advocate.

State by: Dr. Rizwan Ahmad, Special Prosecutor, NAB.

Date of Decision: 07.04.2020.

**MOHSIN AKHTAR KAYANI, J:** Through the instant writ petition, the petitioner has prayed for post arrest bail in pending Reference No.2/2014 filed with respect to charges of cheating the public at large and criminal breach of trust, pending before the Accountability Court No.II, Islamabad.

2. Brief facts referred in this case are that National Accountability Bureau initiated an inquiry pursuant to complaints received from public at large relating to Mudaraba and Musharaka scam against M/s Fayazi Gujranwala Industries (Pvt.) Ltd., a company owned by the petitioner and was managed by Mufti Ehsan-ul-Haq. As per details referred in the reference, the petitioner and Mufti Ehsan-ul-Haq induced public at large to invest in Mudaraba & Musharaka agreements and cheated them, thus committed offence of breach of trust in terms of Section 9 of the NAO, 1999. The instant writ petition is second writ petition filed by the petitioner, whereas earlier post arrest bail petition was dismissed by this Court vide consolidated order dated 11.01.2016, passed in W.P. No.102/2015 (Mufti Ehsan-ul-Haq vs. The State) and W.P. No.1197/2015 (Hafiz Mukhtiar Khan vs. The State).

3. Learned counsel for petitioner contends that Muhammad Bilal Afridi/co-accused was allowed post arrest bail by the apex Court vide order dated 16.04.2019, passed in CPLA No.595/2019, on the principle of rule of consistency,

whereas other co-accused persons namely Nazir Ahmad and Muhammad Idrees were granted post arrest bail by this Court vide order dated 17.10.2016; that eight co-accused persons have already been convicted in this case on the basis of their confession, out of which two accused persons have been sentenced to period ranging from 03 to 05 years, while the principal accused person i.e. Mufti Ehsan-ul-Haq was sentenced to 10 years rigorous imprisonment and as such, the petitioner was arrested on 12.03.2015 and has completed almost 07 years of period including remission and if he has been convicted on the same charges, he will also be considered on the same pattern of sentence as of his co-accused persons; that after dismissal of earlier post arrest bail petition of petitioner vide order dated 11.01.2016, no material progress has been made in the trial, even the status of trial has been noted by the apex Court in the order dated 16.04.2019, whereby 92 out of 1100 prosecution witnesses were examined and despite this observation of the apex Court, no further proceedings were carried out by the learned Trial Court as some of the accused persons were arrested at later stage in this case, therefore, *de novo* trial may be proceeded in this matter; that petitioner is facing extreme hardship due to continuous delay in the trial and all these circumstances establish the ground for grant of post arrest bail; that principal accused namely Mufti Ehsan-ul-Haq while confessing his guilt entered into voluntary return and admitted entire liability of reference, hence, no financial liability could further be attributed to the petitioner and as such, the case of petitioner is of further inquiry on the basis of confessional statement of co-accused, dated 26.09.2018, made before the Accountability Court.

4. Conversely, learned Special Prosecutor, NAB contended that the trial is in progress, although there are large number of witnesses, but the trial will be concluded in near future as the same is in progress and petitioner is directly linked with the offence of cheating public at large in the name of illegal business

of Mudaraba and criminal breach of trust by way of inducement and as such, he is not entitled for concession of post arrest bail as his earlier post arrest bail application was dismissed on merits and no fresh ground has been raised in the instant writ petition.

5. Arguments heard, record perused.

6. Tentative assessment of record reveals that the petitioner is nominated as accused person in Reference No.2/2014 (The State vs. Mufti Ehsan-ul-Haq), which is pending before the Accountability Court No.II, Islamabad and is the outcome of more than 9500 complaints lodged by different complainants regarding an amount of Rs.8.2 Billion against Mufti Ehsan-ul-Haq, CEO of M/s Fayazi Gujranwala Industries (Pvt.) Ltd. and others, who have allegedly induced the public at large for investment in Mudaraba & Musharaka on the pretext of *Halal* profit. The competent authority of NAB authorized the inquiry on 16.04.2013 against the petitioner as well as other co-accused persons on the allegation of corruption and corrupt practices by way of cheating public at large and criminal breach of trust. The principal accused Mufti Ehsan-ul-Haq was arrested and during the course of investigation it revealed that Mudaraba company claimed by Mufti Ehsan-ul-Haq was not registered with SECP. The investigation was authorized on 27.09.2013 and interim reference was filed on 10.02.2014, whereafter supplementary reference was filed after inclusion of other co-accused persons in this case, including the present petitioner.

7. As per role notified by the NAB authorities in the pending reference, petitioner is Director of M/s Fayazi Gujranwala Industries (Pvt.) Ltd. along with Mufti Ehsan-ul-Haq having 250,000 shares mutually agreed in the capital of company and as such, the company is involved in issuance of Mudarbat-nama in general public and received investment in the name of Mudaraba & Musharaka, therefore, the criminal liability of petitioner could not be overlooked.

8. The petitioner earlier applied for his post arrest bail through W.P. No.1197/2015, which was dismissed through consolidated judgment dated 11.01.2016 passed in W.P. No.102/2015, on merits, however at that time, the trial was not commenced. The record further reflects that nine co-accused persons were convicted in same reference on the basis of their confessional statements in the following manner recorded through two different judgments:

<b>Sr.</b>	<b>Accused Name</b>	<b>Punishment</b>	<b>Judgment Date</b>
a.	Obaid Ullah s/o Muhammad Ibrahim (CNIC 13202-6129659-5)	7 years R.I. with fine of Rs.38 Crore	10.08.2018
b.	Mufti M. Ehsan ul Haq s/o Saif ul Haq (CNIC 37405-7415454-1)	10 years R.I. with fine of Rs.9 Billion	26.09.2018
c.	Muhammad Ibrar ul Haq s/o Saif ul Haq (CNIC 37405-0340107-3)	04 years R.I. with fine of Rs.3 Crore	
d.	Muhammad Osama Abbasi s/o Ghulam Mustafa Abbasi (CNIC 37405-0238769-7)	05 years R.I. with fine of Rs.14 Crore 20 Lac	
e.	Umair Ahmed s/o Mian Meer Taj Ahmed Khan (CNIC 37405-4438256-3)	05 years R.I. with fine of Rs.30 Crore 16 Lac	
f.	Hafiz Muhammad Nawaz s/o Muhammad Hussain (CNIC 38201-4911856-5)	05 years R.I. with fine of Rs.9 Crore	
g.	Abdul Malik s/o Rehman Jan (CNIC 21103-3937845-5)	05 years R.I. with fine of Rs.9 Crore	
h.	Saifullah s/o Amraiz Khan (CNIC 13202-0893373-9)	03 years R.I. with fine of Rs.77 Lac Fifty Thousand	
i.	Muhammad Osama Qureshi s/o Abdul Wadood Qureshi (CNIC 11101-2211163-1)	03 years R.I. with fine of Rs.23 Lac Seventy Thousand	

9. Besides the above referred position, it has been observed from record of learned Trial Court that the confessional statements of all co-accused persons have been recorded by the learned Trial Court in which the co-accused persons have acknowledged the liability and confessed their guilt before the court, whereupon they have been convicted and sentenced. However, the principal accused i.e. Mufti Ehsan-ul-Haq, who has been sentenced to 10 years rigorous imprisonment with fine of Rs.9 Billion, acknowledged the entire liability and categorically stated before the court that he invested the crime proceeds in his other companies/businesses. Similarly, the entire liability of Rs.9 Billion was also

acknowledged by the said convict/co-accused, the said statement was recorded on 12.09.2018, which itself creates a new ground for consideration of post arrest bail of the petitioner.

10. Besides the above referred position, it has been observed from the record that two accused persons i.e. Nazir Ahmad was granted post arrest bail by this Court vide order dated 17.10.2016, passed in W.P. No.3200/2016, whereas Muhammad Idrees/co-accused was granted post arrest bail on 17.06.2019, passed in W.P. No.1810/2019, while Muhammad Bilal Afridi/co-accused was granted post arrest bail vide order dated 16.04.2019, passed in CP No.595/2019, on the following basis:

*"It is contended by the learned counsel for the petitioner that the co-accused in the same Reference with the same role have already been tried, convicted and sentenced for a period between 3 and 5 years. The petitioner has been in jail for more than 4 years. It is added that the total number of witnesses which the prosecution purposes to produce is over 1100 and so far only 92 have been examined. In this view of the matter, the trial is likely to take at least a decade and the petitioner cannot be kept in prison for this period. In the instant circumstances, it is further contended that this is a case of extreme hardship.*

2. *Learned Special Prosecutor, NAB contests the grant of bail in the case however he does not deny the matter on record that the other co-accused with more or less a similar role have been convicted and sentenced to a period between 3 and 5 years as well as the fact that the petitioner has been behind bars for more than 4 years. It is also not denied that over 1000 witnesses are yet to be examined. In the circumstances, we believe that to keep the petitioner in prison till the conclusion of the trial would result best in a conviction which is more than a period already spent by him in jail. This is a case of extreme hardship. Consequently, the petitioner is granted post arrest bail subject to this furnishing surety bond in the sum of Rs.5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of the trial Court. Accordingly this petition is converted into an appeal and allowed."*

11. While considering the above background, this Court is fully convinced that new/fresh grounds are available with the petitioner, who being under trial

prisoner has spent 05 years and a month in jail after his arrest, whereas 92 out of 1100 prosecution witnesses have recorded their statements and the delay in trial is not attributed to the petitioner, who has been produced from jail on each and every date of hearing, even majority of prosecution witnesses have not alleged any criminal act to the petitioner, rather they have alleged criminal act against principal accused Mufti Ehsan-ul-Haq (convicted) and other convicted persons. Similarly, three co-accused persons were granted post arrest bail in similar circumstances by this Court and by the apex Court. In such circumstances, the principle of consistency is applicable in this case on the basis of "status quo of equality" as highlighted in case reported as 2020 SCMR 185 (Muhammad Javed Hanif Khan vs. NAB). Even otherwise, the petitioner is facing hardship without conclusion of trial when the principal accused has already been convicted by the learned Trial Court on the basis of his confession. In present circumstances, the learned Trial Court is not in a position to conclude the trial in near future as 92 out of 1100 prosecution witnesses have so far been recorded in 05 long years, if such practice continues, the trial would possibly consume next 10 years as recorded by apex Court in CP No.595/2019 (Muhammad Bilal Afridi vs. Chairman NAB).

12. We have also gone through the judgment reported as 2015 SCMR 1092 (Hamesh Khan vs. NAB) and observed that accused persons were behind the bars for approximately five years and trial of the accused persons was not concluded in said reference, whereby the apex Court applied the broader principle into service while considering the case as of hardship to provide relief to deserving accused person, who was incarcerated in jail for a shockingly long period. It was also held by the apex Court that *accused person could not be left at the*

*mercy of prosecution to rot in a jail for indefinite period.* We have also gone through the case reported as **PLD 2019 SC 112 (Talat Ishaque vs. NAB)**, wherein it has been held by the apex Court that:

(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.*

(g) *Before admitting an accused person to bail on the ground of hardship caused by a shocking, unconscionable or inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him."*

In the case of *Talat Ishaque supra*, it has also been held that where delay in trial or the period of custody was shocking or unconscionably, the primary consideration would be undue hardship and the *prima facie* merits of case against accused person were also looked into before admitting him to bail on the ground of delay. We have applied the test of the above referred case law and observed that there is no other conclusion except that noticeable delay was attributed to the prosecution, while on merits, the co-accused persons have already been convicted upto 05 years rigorous imprisonment on average, even the principal accused namely Mufti Ehsan-ul-Haq has admitted the entire liability of the case, who was sentenced to 10 years rigorous imprisonment with fine of Rs.9 Billion by the learned Trial Court vide judgment dated 26.09.2018. In this backdrop, the present case is a fit case where bail could be granted more so, when the co-accused persons, including real beneficiary of offence, have already been convicted or granted post arrest bail much earlier in time.

13. Keeping in view the above position, the petitioner has served a major portion of sentence being under trial prisoner and his case is yet to be matured after recording of pro and contra evidence of the witnesses and unless the particular witnesses come on record by claiming that they have paid the amount to the petitioner, the case of the petitioner comes within ambit of further inquiry as well as principle of consistency and statutory delay is also applicable in this case, therefore, the instant writ petition is hereby ALLOWED and the petitioner is admitted to post arrest bail subject to his furnishing of bail bonds to the tune of Rs.2,000,000/- (Rupees Twenty Lac) with one local surety in the like amount to the satisfaction of the learned Trial Court. However, the name of petitioner shall remain on ECL.

(CHIEF JUSTICE)

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 14.04.2020.

CHIEF JUSTICE

JUDGE

Khalid Z.