

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Petition No.2129 of 2020

*(Against the order dated 02.06.2020 passed by the
Islamabad High Court Islamabad in W.P.
No.1052/2020)*

Khawaja Anwer Majid

...Petitioner(s)

Versus

***National Accountability Bureau through Chairman NAB &
another***

....Respondent(s)

For the Petitioner(s):

Mr. Muneer A. Malik, Sr.ASC
Mr. M. Kassim Mirjat, AOR
Mr. Salahuddin, ASC

For the NAB:

Mr. Hasan Akbar,
Addl. Prosecutor General NAB
Mr. Imran-ul-Haq,
Deputy Prosecutor General NAB
Mr. M. Qasim, Assistant Director, NAB

Date of hearing:

02.09.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Khawaja Anver Majid, petitioner herein, a business tycoon, is prominent amongst the array of accused, hauled up by the National Accountability Bureau in a massive money laundering scam, executed through 29 fake accounts, detected vide a Suspicious Transaction Report, resulting into registration of a First Information Report with F.I.A. State Bank Circle Karachi on 6.7.2018. Given the magnitude of scam and colossal amounts siphoned off thereunder, this Court took cognizance thereof and directed a probe through a Joint Investigation Team, pursuant whereunto, the heist was taken up by the NAB with a long list of accused that included a former President and his sister as well to face indictment before an Accountability Court at Islamabad.

2. The petitioner, a septuagenarian bracing the periphery from an hospital bed, sought bail primarily on the ground of his cardiac conditions that required replacement of aortic valve for which he was already admitted

in the National Institute of Cardio Vascular Diseases at Karachi; he relied upon report dated 3.8.2019, relevant portion whereof is reproduced, here under:

“....Mr. Anwar Majeed was admitted in NICVD on 10th October, 2018 when he was brought in emergency by Jail Authorities with Chest Pain, episode of Giddiness and shortness of breath.

He has underlying of Severe Aortic Valve Stenosis and Coronary Artery Diseases and was in unstable condition that needed stabilization. He was initially admitted in CCU for stabilization and further management. During his course of treatment, on 26th June 2019 at night he was taken away and his condition deteriorated, he was brought back in an hour to NICVD and kept in CCU (please find attached incident report).

Presently Mr. Anwar Majeed is in private ward. He has been advised surgical Aortic Valve Replacement along with CABG by the treating Cardiologist and Cardiac Surgeon. He has shown us the medical advice of his UK based Cardiologist who suggested him the same procedure. This very high risk procedure can only be done at highly specialize centers such as NICVD or Aga Khan University Hospital at Karachi. This kind of facility is not available anywhere else in Pakistan. Given his age (77 years) and due to the high risk involved he can only undergo surgery once his health allows.”

However, the request was declined by a learned Division Bench of Islamabad High Court vide order dated 10.10.2019, unsuccessfully assailed in this Court as his Civil Petition No.4425 of 2019 was dismissed as withdrawn on 11.3.2020 with the following order:

“Learned counsel for the petitioner does not press this petition in order to move an application on any available fresh ground. Allowed. Dismissed as withdrawn.”

Petitioner again approached the Islamabad High Court for his release on bail, once again declined on 20.5.2020 and in the above backdrop, the petitioner has again approached this Court for his release on bail with permission to go abroad to undertake cardiac surgery, as according to the learned counsel, not only his cardiac condition alarmingly deteriorated, domestically there was no adequate arrangement for the required surgical procedures without incurring substantial risk to patient's life; this was argued as fresh ground in circumstances in support whereof reports dated 14th July, 2020 and 25th July, 2020, of National Institute of Cardio

Vascular Diseases have been placed before the Court. Learned counsel has emphatically stressed upon the following portions of the above reports:

“.....Mr. Anwer Majid admitted since October 2018, his condition has progressively deteriorated during his hospital course nowadays. He frequently feels SOB and chest pain at rest and requires Oxygen support and shifting to Coronary Care Unit for stabilization. For his loss of appetite and nausea he also requires frequent IV nutritional supplementation. He has also developed diabetes and his renal functions are deteriorating. He was seen by Infectious Diseases specialist and found high risk for Covid-19 infection. Gastroenterologist, nephrologists are on board for his medical problems, his diabetes to become aggressive and that alone is a high-risk factor in the TAVI procedure. It must be noted that his health is deteriorating with age particularly in last few months and risk of anesthesia is increasing with every passing day. However, even to undergo TAVI, he should regain strength and get back in a stable medical condition in order to have fighting chance.

Mr. Anwer Majid was further reviewed by Prof. Nadeem Hassan Rizvi, Professor of Interventional Cardiology and Proctor of TAVI at NICVD and was found prohibitive for TAVI procedure in Pakistan because of his multiple co-morbidities, risk of renal failure and low volume of procedures in all Pakistani Centre that are performing TAVI. He also recommend for procedure to be performed at high volume Tertiary Care Center with abundant experience in TAVI on patient of this age with all available tertiary care facilities in UK by patient's primary physician. In order to undergo this procedure, he should regain strength and get back in stable medical condition in a conducive and stress free environment.

Keeping all the above facts and factors in view and based purely on medical and ethical grounds we recommend that Mr. Anwer Majid is at prohibitive risk for TAVI procedure in Pakistan. It is preferable that this procedure should take place in advanced high volume center abroad with abundant experience in performing TAVI on the patient of his age, that would also allow simultaneous treatment of his multiple co-morbidities especially in case of complication during or post procedure.”

3. It is submitted that given the complex chronic complications, diagnosed by experts of impeccable repute, prescribed surgery involving intricate cardiac procedures with high degree risk, it would be a most perilous option for the petitioner at the age of 78 to undertake the process in custody and as he is willing to furnish any security to the satisfaction of the Court, it would be expedient to allow him go abroad in order to save

his life, a fundamental right of paramount importance, guaranteed under the Constitution. It is next argued that identically placed co-accused Asif Ali Zardari is already on bail for medical complications far less serious than those confronting the petitioner and as such he is additionally entitled for release on bail under the requirement of principle of consistency. Contrarily, Mr. Imran-ul-Haq, learned Deputy Prosecutor General NAB has faithfully contested the plea with vehemence; according to him, since the petitioner was denied bail by a learned Division Bench of Islamabad High Court, petition needs to be placed before a three members Bench. On merits, he argued that the petitioner being the principal accused has played an instrumental role in a massive financial scam of unprecedented scale, each limb whereof is established through irrefutable documentary evidence; he adds that after dismissal of his previous bail application vide order dated 11.3.2020, present application is not maintainable for want of a fresh ground, as according to him, the findings recorded by the doctors reflect almost the same condition previously noted by them, found insufficient by the Court for petitioner's release on bail; he has complained that the petitioner is contumaciously obstructing the trial as well as investigative process as he effectively frustrated multiple attempts by the NAB officers who reached out him many a time in the hospital with a view to conclude the investigation. The learned Law Officer has pledged all possible cooperation and facilities to the petitioner to undertake surgery in the NICVD or any other facility of his choice in the country.

4. Heard. Record perused.

5. Objection by the learned Law Officer regarding the constitution of the Bench to hear the bail plea is beside the mark. No doubt, under Order XI of the Supreme Court Rules, 1980, *every cause, appeal or matter shall be heard and disposed of by a Bench consisting of not less than three Judges.....* and as the bail was declined by a learned Division Bench, the learned Law Officer consider it a matter to be dealt with a Bench comprising three Judges of this Court, however, he lost sight of proviso to the said Order that reads as under:

"Appeals from judgments/orders of the Service Tribunals or Administrative Courts, and appeals involving grant of bail/cancellation of bail, may be heard and disposed of by a

Bench of two Judges, but the Chief Justice may, in a fit case, refer any cause or appeal as aforesaid to a Larger Bench.”

Therefore, petition being a bail matter, disposal whereof, is held by us as consistent with the Order *ibid*.

Petitioner's unenviable health conditions with a risk apparently looming large, given his advance age i.e. 78, notwithstanding, nonetheless, we do not consider it expedient to entertain his request to undertake journey abroad for medical purposes. He is facing indictment in a criminal case, *prima facie*, supported by evidence, collected by the investigating agency. Therefore, as an accused all that he can claim is “*due process of law*” through a fair trial so as to possibly vindicate his position; it is a right equally extendible to all the accused without distinction of stature, status or station. As a sick and infirm person, as he appears to be, the petitioner is entitled to the concessions that the law provides to all and sundry; these do not include offshore treatments. Equality before law and equal protection thereof are not one sided affairs; these equally empower the State through its prosecuting agencies to effectively prosecute the alleged offenders and for that physical custody/presence of an accused to bring the prosecution to its logical end is a *sine qua non*. *On equiponderance stand the heavens and the earth*, and no less importantly people's faith in the administration of justice by the Courts. With scores of accused awaiting conclusions of their long drawn trials in over-crowded prisons, letting the few privileged to jump the queue in order to swap rigors of incarceration with comforts that few could afford would be a travesty. We would not approve out of turn fixation of cases with interregnums smaller than usual and on the week days barred to ordinary litigants and while upholding the equality we are guided by the Prophetic command “*The Kazeer must not smile in the face of one of the parties, because that will give him a confidence above the other; neither must he give too much encouragement to either, as he would thereby destroy the proper awe and respect due to his office*” (*The Hedaya*, by Charles Hamilton, Page-338). Overseas journey is a wage much higher than a smile simpliciter. For the above reasons, petitioner's request for treatment abroad is declined. However, we have noticed that ever since dismissal of petitioner's previous bail application, his condition has alarmingly deteriorated and it is unanimously held by a good number of cardiac physicians of repute that

he immediately requires surgery for aortic valve transplant, a hugely risk intensive procedure that needs to be undertaken under most conducive environment, therefore, it would be appropriate to permit petitioner to undertake the procedure free from custodial stresses; he has been behind the bars for a period by now exceeding two years; his continuous incarceration coupled with fragile health conditions and proposed surgery squarely makes his case one of hardship and on that ground alone we allow the request for his release on bail for the said purpose; he shall furnish a bank guarantee either personally or through a surety in the sum of Rs.100 million from a scheduled bank with the Registrar of this Court besides surrendering his travelling documents, unless already held by the authorities; his name shall be placed on Exit Control List and he shall not be allowed to depart from the jurisdiction of the Accountability Court. These are not the only conditions of his bail; he shall join investigation as and when required by the NAB and also ensure his representation before the Accountability Court, either personally or through video link, whichever is found convenient under the circumstances. In the event of physical incapacity, his request for dispensation and representation through a counsel shall be considered most thoughtfully. In the event of non-compliance with the directions issued by this Court, the NAB may approach this Court for the recall of concession. Petition is converted into appeal and allowed.

Judge

Judge

Islamabad, the
2nd September, 2020
Not approved for reporting
Azmat/-