

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

Civil Petitions No.1628 to 1636 of 2020.

(Against the order dated 22.04.2020 of the High Court of Sindh, Sukkur Bench, passed in Constitutional Petitions No.D-1850, D-111, D-113, D-103, D-110, D-107, D-106, D-104 & D-108 of 2020 respectively)

Chairman, NAB through PG, NAB *(in all cases)*

.....Petitioner

Versus

Nisar Ahmed Pathan & others *(in CP No.1636/20)*

Rahim Bux & others *(in CP No.1629/20)*

Abdul Razak Bahrani *(in CP No.1630/20)*

Muhammad Akram Khan *(in CP No.1631/20)*

Bibi Gul Naz *(in CP No.1632/20)*

Bibi Talat *(in CP No.1633/20)*

Syed Zareekh Khursheed Shah *(in CP No.1634/20)*

Syed Awais Qadir Shah *(in CP No.1635/20)*

Syed Khalid Hussain Shah *(in CP No.1636/20)*

.....Respondents

For the petitioners: Mr. Sattar Awan, Spl. Prosecutor NAB.
(in all cases) Mr. M. Sharif Janjua, AOR.

For the respondents: Syed Qalb-e-Hassan, ASC
a/w Ch. Akhtar Ali, AOR *(in CP-1628-1929/20)*

Raja Amir Abbas, ASC. *(in CP-1630/20)*
a/w Abdul Razak Bahrani, in person.

Mr. Mukesh Kumar G Karara, ASC.
a/w Mr. Kassim Mirjat, AOR.
a/w Mr. Akram Khan
a/w Syed Zareekh Shah
a/w Syed Khalid Hussain Shah.
(in CP-1631, 1634 & 1636/20)

Mr. Amer Raza Naqvi, ASC. *(CP-1632-1633/20)*

Mr. Muneer A. Malik, ASC *(video-link Karachi)*
a/w Syed Awais Qadir Shah. *(CP-1635/20)*

Date of hearing: 22.02.2022

ORDER

Syed Mansoor Ali Shah, J. – By this order, we shall decide all the above-captioned petitions as they arise out of the same order of the High Court of Sindh.

2. The Chairman, National Accountability Bureau ("NAB"), through these petitions, seeks leave to appeal against the order dated 22.04.2020 passed by the High Court of Sindh on the constitutional petitions filed by the respondents under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"), whereby the post and pre arrest bails have been granted to them in NAB Reference No.17 of 2019 pending trial in the Accountability Court, Sukkur for the alleged offence of corruption and corrupt practices, as defined in Section 9 and punishable under Section 10 of the National Accountability Ordinance 1999 ("NAB Ordinance").

3. Briefly stated, the allegation against some of the respondents is that they have abetted the co-accused, Syed Khursheed Ahmad Shah, a former public office holder, ("main accused") in the commission of the alleged offence of corruption and corrupt practices, being his *benamidars* and ostensibly owning certain properties, while some respondents are alleged to have offered illegal gratification/kickbacks to the main accused. The High Court has granted them bail mainly on the ground that the material available on record is not sufficient to connect them with the commission of the alleged offence and the case against them is one of further inquiry.

4. We have considered the arguments of the learned counsel for the parties, read the case-law cited and perused the record of the case.

5. The petitioner has invoked the appellate jurisdiction of this Court for the cancellation of bail granted by the High Court to the respondents. The scope of the interference to be made by this Court in its appellate jurisdiction, in such like matters, is well settled and hardly needs reiteration. This Court usually interferes on two grounds: (i) when the impugned order is perverse on the face of it, or (ii) when the impugned order has been made in clear disregard of some principle of the law of bail.¹ A perverse order is the one that has been passed against the weight of the material on the record or by ignoring such material or without giving reasons;² such order is also termed as arbitrary, whimsical and capricious. While it is one of the elementary principles of the law of bail that courts are not to indulge in the exercise of a deeper appreciation of material available on record at the bail stage and are only to determine tentatively, by looking at such material, whether or not there exist any "reasonable grounds" for believing that the accused person is guilty of the alleged offence.³

¹ Zaro v. State 1974 SCMR 11.

² Sidra Abbas v. State 2020 SCMR 2089.

³ Farid v. Ghulam Hussan 1968 SCMR 924; Khalid Saigol v. State PLD 1962 SC 495.

6. Needless to mention that in NAB cases, the standard of “reasonable grounds” for making a tentative assessment of the material available on record to decide in constitutional jurisdiction under Article 199 of the Constitution, the question of detaining an accused in prison, or admitting him to bail, during his trial for the alleged offence under the NAB Ordinance is not borrowed from Section 497 CrPC, rather it emanates from the fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention guaranteed by the Constitution under Articles 9, 10, 10-A & 14 and from the operational scheme of the NAB Ordinance.⁴

7. The arguments of the learned counsel for the petitioner, when considered in the light of the above principles, are found deficient to convince the Court for interfering with and setting aside the impugned order. The whole emphasis of the learned counsel was on the point that the opinion of the High Court regarding the insufficiency of the incriminating material to connect the respondents with the commission of alleged offence and the case being one of further inquiry is not plausible in view of the material available on the record of the case. In this regard, the distinction between a less plausible opinion and a perverse opinion must not be lost sight of. When two opinions can reasonably be formed on the basis of the same material, both pass as a *plausible opinion*; while it can be argued that one opinion is more or less plausible than the other, none of them can be termed as a *perverse opinion*. A *perverse opinion* is the one which no prudent person can reasonably form on the basis of the material available on record.

8. Where two opinions can reasonably be formed on the basis of the same material, the courts should prefer and act upon that which favours the accused person and actualizes his fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention. To err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial.⁵

9. In the present case, the High Court has granted the relief of post and pre arrest bails to the respondents, by considering the alleged role attributed to each of them and the material collected during investigation in support thereof. As to the respondents who are alleged to be the *benamidars* of the main accused, the High Court has observed that whether they were

⁴ Iqbal Noori v. NAB PLD 2021 SC 916.

⁵ Zaigham Ashraf v. State 2016 SCMR 18; Tariq Bashir v. State PLD 1995 SC 34.

benamidars of the main accused or had purchased the properties from their own sources would be determined after recording evidence in the trial. We find this observation of the High Court quite reasonable, for there is no sufficient material available on record, at this stage, as to the necessary elements of *benami* transactions. Further, the respondents who are the family members of the main accused are not alleged to have played any role in the offence of corrupt practices allegedly committed by the main accused, nor are they alleged to have knowledge of his such alleged corrupt practices. About the respondents who are alleged to have offered illegal gratification/kickbacks to the main accused, the High Court has observed by making a tentative assessment of their version in the light of the material available on record that the real purpose of making payment of certain amounts by them to the main accused can be determined only after recording evidence in the trial. We find this observation of the High Court, also in accordance with, and not against, the weight of the material available on the record of the case. Lastly, but most importantly, the NAB was not able to show sufficient incriminating material on the record of the case to connect the main accused with the commission of offence of corruption and corrupt practices, and therefore he was granted post arrest bail by this Court vide order dated 21.10.2021 passed in CP No.4387 of 2021 (titled *Syed Khursheed Ahmed Shah v. The State*)⁶. Where the main accused has been granted bail, there remains little justification to decline the same relief to his co-accused who are alleged to have merely abetted him in the commission of the offence, as the case against such co-accused is at a lower rung than that against the main accused.

10. The learned counsel for the petitioner has thus not been able to show that the impugned order is either perverse or against any settled principle of the law of bail, warranting interference by this Court. The petitions for leave to appeal are found meritless; they are therefore dismissed and leave to appeal declined.

Chief Justice

Judge

Islamabad,
22nd February, 2022.
Approved for reporting.
﴿مراجعة﴾

Judge

⁶ Available on the official website of this Court at:
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4387_2021_24012022.pdf