

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : W.P. NO.352-2019

Mian Muhammad Nawaz Sharif

Vs.

The State through Chairman, National Accountability Bureau, Islamabad etc.

Petitioner by : Kh. Haris Ahmad, ASC, Mr. Sher Afghan Asdi, ASC, Mr. Muhammad Zubair Khalid, ASC, Mr. Munawwar Iqbal Duggal, Advocate, Mr. Ghulam Haider Subhani, Advocate, Mr. Ibraheem Haroon, Advocate & Mr. Jahangir Khan Jadoon, Advocate

Respondents by : Mr. Jahanzeb Ahmad Bharwana, Additional Prosecutor General, NAB, Sardar Muzaffar Ahmad Abbasi, Deputy Prosecutor General, NAB, Mr. Muhammad Asghar Awan, Special Prosecutor, NAB, Mr. Irfan Ahmad Boola, Special Prosecutor, NAB

Mr. Sadaqat Ali Jahangir, State Counsel with Dr. Qadeer Alam, AIG (Judicial & Legal), Punjab Prisons representing Home Secretary, AAC, Home.

Date of hearing : 20.02.2019

AAMER FAROOQ J. Mian Muhammad Nawaz Sharif is serving sentence of seven years imprisonment awarded by Judge, Accountability Court-II, Islamabad vide judgment dated 24.12.2018 in NAB Reference No.19-2017. He seeks suspension of the said sentence recorded against him and release on bail. The petitioner seeks suspension of sentence solely on medical grounds. It is pertinent to observe that previously, a petition under Article 199 of the Constitution (W.P. No.32-2019) was filed by the petitioner, seeking suspension of sentence and release on bail on merits of the case, however at his request the referred petition was dismissed as withdrawn.

2. Learned counsel for the petitioner, *inter alia*, contended that petitioner has a severe heart disease as well as chronic kidney disease; he also is hypertensive and diabetic. Learned counsel took the Court through various reports submitted by Medical Boards and Teams of Doctors constituted upon the orders of Home Department, Government of Punjab time and again. On the basis of referred reports, learned counsel contended that recommendations of the doctors are that petitioner needs stress free environment and also should undergo angiography, if his other ailments are

under control. Learned counsel pointed out that the petitioner cannot have best of health conditions, if he remains incarcerated, as twenty four hours monitoring is not available plus medication on time and other facilities also lack homelike environment.

3. Kh. Haris Ahmad, Senior Advocate Supreme Court cited case law on the subject that if the ailment of any prisoner is such that it is detrimental to his life, he is entitled to the concession of bail. In this behalf, reliance was placed on cases reported as 'Pervaiz Akhtar Vs. Muhammad Inayat and 4-others' (1995 SCMR 929), unreported decision dated 05.10.2017 of Hon'ble Lahore High Court, Lahore in case titled 'Syed Saud Aziz Vs. The State and Another' (W.P. No.2569/2017 & 2570-2017), 'Amjad Hussain Gurchani Vs. Sajjad Haider Khan and Another' (2004 SCMR 12), 'The State Vs. Syed Qaim Ali Shah' (1992 SCMR 2192), 'Muhammad Arshad Vs. The State & Another' (1997 SCMR 1275), 'Mian Manzoor Ahmad Watto Vs. The State; (2000 SCMR 107), 'Zakhim Khan Masood Vs. The State' (1998 SCMR 1065), 'Firdous Paul Vs. The State' (2004 SCMR 15), 'Haji Hussain Vs. The State' (2018 YLR 876) & 'Malik Muhammad Yousafullah Khan Vs. The State & Another' (PLD 1995 Supreme Court 58).

4. In response to the query of the Court regarding recent judgments wherein principles have been laid down by the august Apex Court for grant of bail and/or suspension of sentence, learned counsel for the petitioner contended that criteria now is 'extraordinary circumstances and extreme hardship'. In this regard, it was submitted that both are disjunctive and either one situation shall entitle the petitioner to the concession of bail on the basis of medical reports. Learned counsel contended that petitioner is entitled to be released on bail, as his medical condition is such that there are extraordinary circumstances and he is in extreme difficulty, because he is not getting proper care. It was also argued that withdrawal of earlier writ petition (W.P. No.32-2019) does not disentitle the petitioner to be released on bail inasmuch as it is a settled law that if bail petition is withdrawn without arguing, the person is entitled to re-agitate the same. It was further submitted that instant writ petition, which is again a bail petition, is not civil proceedings but rather it partakes the character of proceedings agitated. Reliance was placed on cases reported as 'Hussain Bakhsh Vs. Settlement Commissioner, Rawalpindi and

Others' (PLD 1970 Supreme Court 1) and 'Dr. Sher Dil Batra and Others Vs. Director, Federal Investigation Agency and Others' (1995 P.Cr.LJ 1541).

5. Mr. Jahanzeb Ahmad Bharwana, Additional Prosecutor General, NAB along with Sardar Muzaffar Ahmad Abbasi, Deputy Prosecutor General, NAB, *inter alia*, contended that instant petition is not maintainable inasmuch as earlier writ petition, on the same subject, was withdrawn. In this behalf, it was contended that prayer, in both the petitions, is the same i.e. suspension of sentence awarded vide judgment dated 24.12.2018 and release of petitioner on bail; it is only the grounds that differ. It was submitted that proceedings in writ petition are civil in nature hence Code of Civil Procedure, 1908 would attract and present petition is barred under Order XXIII and Order II Rule 2 CPC.

6. Learned counsel for National Accountability Bureau argued that in three recent pronouncements of Hon'ble Supreme Court of Pakistan in cases titled 'Tallat Ishaq Vs. National Accountability Bureau through its Chairman etc.' (Civil Petition No.632-2018), 'NAB through its Chairman, Islamabad Vs. Murad Arshad & Others' (Civil Petition No.1707-2018) and 'Chairman, National Accountability Bureau, Islamabad through Prosecutor General Accountability, Islamabad Vs. Mian Muhammad Nawaz Sharif' (Civil Appeal Nos.1340, 1341 and 1342 of 2018 and Civil Miscellaneous Application No.9985 of 2018 in Civil Appeal No.1340-2018), it has been specifically held that High Court, under Article 199 of the Constitution in NAB cases, does have jurisdiction to grant bail but such jurisdiction is to be exercised sparingly in extraordinary circumstances for the reasons to be recorded; that the referred principle applies not only in bail matters but also in application for suspension of sentence. It was also contended that the petitioner is receiving best possible medical treatment and there is no threat to his life. In this regard, learned Prosecutor General, NAB took the Court through the medical reports tendered, especially the latest report to argue that none of the doctors has opined that incarceration of the petitioner is detrimental to his life. Learned counsel took the Court through various pronouncements to substantiate the referred argument that sole criteria, on the basis of which, bail is sought on medical ground, is that ailment should be such that it is detrimental to the life of prisoner. Reliance was placed on cases reported as 'Sharjeel Inam Memon Vs. National Accountability Bureau' (2018 SCMR

2023), ‘Muhammad Siddique Vs. The State & Another’ (2014 SCMR 304), ‘Mian Nazir Akhtar Vs. The State’ (2016 SCMR 1536), ‘Dadio Vs. Sobharo and Another’ (2010 SCMR 576). It was submitted that there is comprehensive procedure in the Pakistan Prison Rules, 1978, especially Rules 142, 143 & 197 which cater with the treatment of an indisposed prisoner and his release in case of serious ailment. On the touchstone of referred Rules, learned Additional Prosecutor General, NAB submitted that Superintendent Jail, Kot Lakhpat, Lahore has ample power to release the petitioner on bail, if referred conditions are attracted.

7. Learned Sate Counsel, under instructions of representative of Ministry of Interior, Government of Punjab, submitted that due care is being provided to the petitioner and as and when, he complains about his health, he is hospitalized immediately and a Board of Doctors has been constituted in order to provide multi departmental health facilities.

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

9. As noted above, the petitioner seeks his release on bail solely on medical grounds.

10. Before embarking upon discussion on medical condition of the petitioner, it is appropriate to discuss recent principles propounded by the Hon’ble Supreme Court contained in three different cases regarding suspension of sentence and release of a prisoner on bail in NAB matters. In this behalf, in case titled ‘Tallat Ishaq Vs. National Accountability Bureau through its Chairman etc.’ (Civil Petition No.632-2018), the Hon’ble Supreme Court of Pakistan in para-23 of the judgment, propounded the principles. The relevant conclusions, for the purposes of instant petition, are provided in sub-paras (d), (f) & (g), which are as follows: -

“(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 when 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 withheld from him.”*

In another judgment dated 22.10.2018 in case titled ‘NAB through its Chairman, Islamabad Vs. Murad Arshad & Others’ (Civil Petition No.1707-2018), the Hon’ble Supreme Court held that jurisdiction under Article 199 of the Constitution, has to be exercised with circumspection and caution, as extraordinary jurisdiction is invoked and exercised for want of justice and not to frustrate or defeat the intent of law. It was further observed that jurisdiction under Article 199 *ibid* is not to be exercised as a substitute of sections 426, 491, 497, 198 and 561-A Cr.P.C. converting High Court into wholly Court of ordinary criminal jurisdiction. It was further observed that High Court shall exercise this power sparingly in rare and exceptional circumstances for valid reasons to be recorded in writing. In another case titled ‘Chairman, National Accountability Bureau, Islamabad through Prosecutor General Accountability, Islamabad’ (Civil Appeal Nos.1340, 1341 and 1342 of 2018 and Civil Miscellaneous Application No.9985 of 2018 in Civil Appeal No.1340-2018), while hearing appeal arising out of judgment of this Court, the august Apex Court, observed certain shortcomings in the judgment impugned before it. It was observed that the exceptional jurisdiction of a High Court is only to be exercised in extraordinary circumstances and in cases of extreme hardship.

11. The crux of above judgments of the august Apex Court is that under section 9-B of National Accountability Bureau Ordinance, 1999, provisions of sections 426, 497, 498, & 561-A Cr.P.C. are excluded and no court, including this Court, has the jurisdiction to grant bail under said provisions. Under Article 199 of the Constitution, this Court has the jurisdiction to suspend a sentence or to release a prisoner on bail (whether under trial or convicted), however such jurisdiction is to be exercised sparingly, in extraordinary circumstances and in cases of extreme hardship.

12. The next question for determination is whether the medical condition of the petitioner is such that it could be termed as ‘extraordinary situation and one of the extreme hardship’, on the basis of which, he could be released

on bail. In this behalf, various reports submitted by the Team of Doctors were filed before the Court spelling out the medical condition of petitioner.

13. In so far as the reports on present condition of the petitioner are concerned, they more or less concord. In this regard, the last report has been submitted by a Team of seven Doctors duly signed on 18.02.2019, which concludes as follows:-

“The patient needs cardiac catheterization, for further arrangement, in view of his symptoms of angina. Because of long standing history of comorbidities and complicated cardiac surgical history, a nephrologist and cardiac surgical back up is recommended during the cath.

His diabetes and hypertension have been largely controlled in this admission with minor alternations in doses of drugs which he is already taking.

His chronic kidney disease is stable, however he will be at the mild to moderate risk of contrast induced nephropathy if coronary angiogram is performed. He would need further recommendations by a nephrologist to optimize his renal care to prevent the risk of contrast induced nephropathy”.

Another report of three Doctors of Allama Iqbal Medical College and Jinnah Hospital, Lahore dated 16.02.2019 refers to various ailments of petitioner. Professor Zubair Akram, Professor of Cardiology, Allama Iqbal Medical College, Lahore has opined that the petitioner needs coronary angiography and nephrologist clearance. Professor Abbas Raza, Professor of Medicine, Allama Iqbal Medical College, Lahore, has recommended certain medication and opined that any alteration in current treatment will be suggested in view of continuous monitoring. Lastly, Professor Shafeeq Cheema, Professor of Nephrology, Allama Iqbal Medical College, Lahore has concluded that the petitioner shall be at a mild moderate risk of contrast including nephropathy. Similar opinions exist from other set of doctors of Services Institute of Medical Sciences, Services Hospital, Lahore and Punjab Institute of Cardiology. In this behalf, Special Board of Doctors of Punjab Institute of Cardiology, Lahore was constituted which recommended continuation of previous medical treatment and risk factor medication and to constitute a larger Medical Board to plan further management. Another Board recommended hospitalization of the petitioner in a hospital where all facilities of treatment are available.

14. Before examining present medical condition of the petitioner on the touchstone of principles laid down by the Hon’ble Supreme Court of Pakistan, it is appropriate to discuss relevant case law.

15. In case reported as ‘Sharjeel Inam Memon Vs. National Accountability Bureau’ (2018 SCMR 2023), the Hon’ble Supreme Court observed that since none of the doctors has suggested the surgery of Sharjeel Inam Memon (in prison), hence request for release on bail was turned down. In case reported as ‘Mian Nazir Akhtar Vs. The State’ (2016 SCMR 1536), the Hon’ble Supreme Court observed that where cardiologist has not opined that continued incarceration of the prisoner is detrimental to his life, he is not to be released on bail. In case reported as ‘Muhammad Arshad Vs. The State & Another’ (1997 SCMR 1275), the Hon’ble Supreme Court observed that while releasing a prisoner on bail, the facts of each case have to be assessed on its own merits. It was observed that every ailment does not attract invocation of discretion; that despite advance medical technology, availability of medicines, treatment and care of petitioner was not possible regard being had to nature of illness. Similar principles were propounded in cases reported as ‘Malik Muhammad Yousafullah Khan Vs. The State & Another’ (PLD 1995 Supreme Court 58), ‘Haji Hussain Vs. The State’ (2018 YLR 876), ‘The State Vs. Syed Qaim Ali Shah’ (1992 SCMR 2192) & ‘The State Vs. Haji Kabeer Khan’ (PLD 2005 SC 364). In the last case, the Hon’ble Supreme Court observed that accused would not be entitled to the grant of bail, if he is getting proper treatment either in hospital or jail.

16. As noted above, the petitioner has a history of various cardiac complications and is a chronic kidney patient and has high blood pressure and diabetes. According to the learned counsel for the petitioner, initially when W.P. No.32-2019 was filed, the medical condition of the petitioner was not too serious and on 15.01.2019, when his medical condition deteriorated, only then, present writ petition was filed. All the medical reports of the petitioner confirm that he has the above history and is also recommended for medical treatment. In such like cases, medical reports and opinion of doctors is of utmost importance and none of the reports suggest that continued incarceration of the petitioner, in any way, would be detrimental to his life.

17. In case reported as PLD 2005 SC 364 supra, the august Apex Court held that where a prisoner is receiving medical treatment in hospital or in jail, he would not be entitled to the concession of bail; the petitioner has been hospitalized time and again since January, 2019, whenever he made complaints about his indisposition. In fact the reports of Board of Doctors and

various Teams constituted, are indicative of the fact that petitioner is receiving best possible medical treatment available to any individual in Pakistan. The referred fact cannot be regarded as an 'extraordinary situation' and/or case of 'extreme hardship'. Almost, every ailment has potential of being detrimental to one's life but not, if the same is properly treated and taken care of, therefore, being indisposed *per se* cannot form basis to be released on bail.

18. Another aspect of the matter is that the Pakistan Prison Rules, 1978 prescribe procedure for release of prisoners on bail suffering from disease (s). Rule 143 of said Rules reads as under:-

“Rule 143.- (i) The Superintendent will refer the case for release of prisoner suffering from serious illness with the consent of the Officer Incharge of the Prosecution in whose jurisdiction the prisoner's offence was committed, provided that:-

- (a) the disease is likely to prove fatal if the prisoner remains in prison;*
- (b) there is reasonable chance of recovery if the prisoner is released;*
- (c) the prisoner has not done any willful act, since he has been in prison, to produce or aggravate his disease;*
- (d) the Medical Officer and the Medical Superintendent of the District Headquarter Hospital recommended the release and certify that the disease is of the nature prescribed; and*
- (e) the prisoner has not more than six months to remain in prison before the expiry of his sentence”.*

Likewise, Rule 164 of the Rules, reads as under:-

“The Superintendent may recommend a prisoner for premature release who owing to old age, infirmity or illness is permanently incapacitated from the commission of further crime of the nature of that for which he has been convicted. The case shall be submitted to Government through the Inspector General. It shall be accompanied by the recommendations of the Medical Officer. The Inspector General will, in all such cases, obtain the Medical opinion of the Medical Board which will be convened by the Director of Health Services”.

19. The bare perusal of above Rules shows that Superintendent Jail has the authority to release a prisoner suffering from serious illness. The parameters prescribed in the referred Rules are not attracted in the facts and circumstances of present case.

20. Under Rule 197 of the Rules, where it is necessary to remove a convicted prisoner or an under trial prisoner to hospital outside the prison for operative or other special treatment, the same is permissible under certain conditions. In the instant case, the law was duly followed and as mentioned

hereinabove, the petitioner was taken to the hospital as and when, he complained about his health.

21. Finally, we find that objection taken by learned counsel for the respondents regarding maintainability of instant petition, is of no substance. The medical condition of the petitioner deteriorated on or about 15.01.2019 and it is only there-after that instant writ petition was filed. The case law cited by learned counsel for National Accountability Bureau is not attracted in the facts and circumstances of instant case.

22. For the above reasons, we find the instant petition to be without merit and the same is accordingly dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on _____

JUDGE

JUDGE

Approved for reporting

Zawar

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