

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mian Saqib Nisar, HCJ
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Gulzar Ahmed
Mr. Justice Mushir Alam
Mr. Justice Mazhar Alam Khan Miankhel

**Civil Appeals No. 1340, 1341 and 1342 of 2018 and Civil
Miscellaneous Application No. 9985 of 2018 in Civil Appeal No.
1340 of 2018**

(Against the judgments dated 19.09.2018 passed by the Islamabad High Court, Islamabad in Writ Petitions No. 2839, 2841 and 2842 of 2018)

*Chairman, National Accountability Bureau, Islamabad
through Prosecutor-General Accountability, Islamabad
(in all cases)*

...Appellant
versus

*Mian Muhammad Nawaz Sharif (in C.A. 1340 of 2018)
Maryam Nawaz Sharif (in C.A. 1341 of 2018)
Capt. (Retd) Muhammad Safdar (in C.A. 1342 of 2018)*
...Respondents

For the appellant:

Mr. Muhammad Akram Qureshi,
Special Prosecutor, National
Accountability Bureau
with Mr. Jahanzeb Khan Bharwana,
Additional Prosecutor-General,
National Accountability Bureau
(in all cases)

For the respondents:

Khawaja Haris Ahmad, Sr. ASC
Mr. Mehr Khan Malik, AOR
(in C.A. 1340 of 2018)
Mr. Muhammad Amjad Pervaiz, ASC
Syed Rafaqat Hussain Shah, AOR
(in C.A. 1341 of 2018)
N.R. (in C.A. 1342 of 2018)

For the Applicant:

Nomo. (in C.M.A. No. 9985 of 2018 in
C.A. 1340 of 2018)

Date of hearing:

14.01.2019

JUDGMENT

Asif Saeed Khan Khosa, J.:

Civil Miscellaneous Application No. 9985 of 2018 in Civil Appeal No. 1340 of 2018

The reason mentioned in the application seeking adjournment has not been found by us to be valid or sufficient for the purpose nor is the same supported by any material.

2. Through this miscellaneous application the applicant has prayed for his impleading as a party to the main appeal but we have not felt satisfied with his *locus standi* or interest in the matter. This miscellaneous application is, therefore, dismissed.

Civil Appeals No. 1340, 1341 and 1342 of 2018

3. Through these appeals by leave of this Court granted on 12.11.2018 the appellant/Chairman, National Accountability Bureau has sought setting aside of the impugned judgments passed by a learned Division Bench of the Islamabad High Court, Islamabad in Writ Petitions No. 2839, 2841 and 2842 of 2018 whereby respondents No. 1 in the present appeals were admitted to bail upon suspension of their sentences in their respective criminal appeals filed against their convictions and sentences recorded by the Accountability Court-I, Islamabad on 19.09.2018 in Reference No. 20 of 2017.

4. We have heard the learned counsel for the parties and have gone through the record of the case with their assistance.

5. After hearing the learned counsel for the parties and going through the relevant record with their assistance we have noticed

- i) Instead of adhering to the guidelines issued and recommendations made by this Court in the case of *Muhammad Shakeel v. The State and others* (PLD 2014 SC 458) regarding shorter format of orders to be passed in matters of bail the High Court had written a judgment spanning over 41 pages while deciding the matter of bail of respondents No. 1 upon suspension of their sentences.
- ii) It is settled law that while deciding an application for bail or suspension of sentence during the pendency of an appeal merits of the case are not adverted to or commented upon in any detail whereas in the impugned judgments passed by it the High Court had not only undertaken a detailed assessment of the merits of the case but had also recorded some categorical conclusions regarding the same.
- iii) The *raison d'être* for suspension of sentence during the pendency of an appeal is that due to the peculiarities of his case the convict may not be kept in custody till his appeal is fixed for hearing but in these cases the writ petitions filed by respondents No. 1 had been taken up for hearing and decision at a time when the main appeals were also fixed for hearing.
- iv) With reference to many a precedent case a Larger Bench of this Court has clarified in the case of *Tallat Ishaq v. National Accountability Bureau, etc.* (Civil Petition No. 632 of 2019 decided on 01.10.2018) that in cases under the National Accountability Ordinance, 1999 bail may be granted through exercise of Constitutional jurisdiction of a High Court only in extraordinary circumstances and in cases of extreme hardship but in the present cases no such extraordinary circumstance or hardship had been referred to by the High Court in the impugned judgments passed by it.
- v) In cases pertaining to the offence under section 9(a)(v) of the National Accountability Ordinance, 1999 this Court has identified different ingredients of the said offence in the cases of *Syed Qasim Shah v. The State* (2009 SCMR 790), *Muhammad Hashim Babar v. The State and another* (2010 SCMR 1697), *Khalid Aziz v. The*

to be proved by which party and some of the above mentioned precedent cases had been referred to by the High Court in the impugned judgments passed by it. It had not been appreciated by the High Court that in all those precedent cases the accused persons had accepted ownership or possession of the properties in issue whereas in the present cases respondents No. 1 had maintained that the relevant properties did not belong to them nor were they in possession of the same. The High Court had failed to consider whether the above mentioned precedent cases were relevant to the cases in hand or not and whether in the present cases the principle of forfeiture of the defence would apply if the accused persons denied ownership or possession of the relevant properties but in the circumstances of the case such ownership or possession was established.

vi) While adverting to some deficiencies in the evidence *vis-à-vis* the ingredients of the offence under section 9(a)(v) of the National Accountability Ordinance, 1999 the High Court had failed to consider that conclusions in that regard were premature at the stage of bail or suspension of sentence because by virtue of the provisions of section 428, Cr.P.C. additional evidence could be adduced or procured during the pendency of the appeals.

6. Despite the above mentioned deficiencies found by us in the impugned judgments passed by the High Court we are cognizant of the legal position that considerations for grant of bail and those for its cancellation are entirely different. No allegation has been leveled before us regarding any misuse or abuse of the concession of bail by respondents No. 1 to these appeals. One of the said respondents is already in jail after having been convicted and sentenced in connection with another criminal case, another of the said respondents is a woman and the law envisages concession for her in the matter of bail and the sentence of imprisonment passed by the trial court against yet another of the said respondents was quite short. In these peculiar circumstances we have not felt persuaded to interfere with the jurisdiction and discretion exercised by the High Court in the matter of the said respondents'

bail upon suspension of their sentences during the pendency of their appeals. These appeals are, therefore, dismissed.