

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-Ul-Karim Memon

1. **CP No. D- 979 of 2020**

Abdul Azeem Khan ----- Petitioner

Versus

The State (NAB) and others ----- Respondents

2. **CP No. D- 983 of 2020**

Kewal Ram ----- Petitioner

Versus

Federation of Pakistan and others ----- Respondents

3. **CP No. D- 993 of 2020**

Kamla ----- Petitioner

Versus

The Federation of Pakistan and others ----- Respondents

4. **CP No. D- 998 of 2020**

Jalil Ahmed Lashari ----- Petitioner

Versus

The Chairman NAB and others ----- Respondents

Date of Hearing & order : 08.10.2020

Mr. Bashir Ahmed Almani, Advocate for petitioner in C.P.
No.D-979 of 2020.

Mr. Ayaz Husain Tunio, Advocate for petitioner in C.P. No.D-983 of 2020.

Mr. Ishrat Ali Lohar alongwith Mr. Zulfiqar Ahmed Korai, Advocates for petitioner in C.P. No.D-993 of 2020.

Mr. Asif Ali Talpur, Advocate for petitioner in C.P. No.D-998 of 2020.

Mr. Jangu Khan, Special Prosecutor NAB.

ORDER

ABDUL MAALIK GADDI, J.- By this common order we intend to decide all captioned constitutional petitions together, as they arise out as a result of one and same reference, involving common question of law and facts as well as the judgments passed by the learned trial Court on same date i.e. 09.09.2020.

2. Through captioned petitions, Petitioners Abdul Azeem Khan, Kewal Ram, Mrs. Kamla and Jalil Ahmed Lashari seek their release on bail by suspending the sentences / operation of the impugned judgment dated 09.09.2020, passed by learned Judge, Accountability Court, Hyderabad in Reference No.13 of 2017, filed by NAB against them, till disposal of the criminal accountability appeals, filed by the petitioners.

3. Brief facts of the case in nut shell, are that on receipt of a complaint against officers and officials of Education Department, Mirpurkhas regarding illegal appointments on various special cadres/posts of Oriental Teachers, an inquiry was authorized by the competent authority vide letter dated 22.01.2016, which was later on converted into investigation vide letter dated 29.07.2016, issued by D.G NAB Karachi and then NAB Reference bearing No.13 of 2017 was filed. The allegation as leveled in the said Reference are that petitioner Jalil Ahmed Lashari (C.P. No.D-998/2020) being Regional Director Schools Education Mirpurkhas constituted a Committee for recruitment of Special Categories of Teachers and appointed himself as Chairman of the said Committee whereas Mrs. Kamla Devi, DEO,

Kewal Ram DO and Prof. (R) Ismail Khaskheli as members. Thereafter, said Committee in March, 2012 got published an advertisement for making appointments of said posts in various daily newspapers and after conducting tests and interviews, 882 applicants being successful and qualified candidates were recommended by the said Committee for their appointments to high ups. Thereafter, offer / appointments letters were issued in favour of the said candidates, who in response thereto have joined their respective assignments. Then all candidates have been receiving their salaries. But in the year 2016, on receiving complaints from various corners regarding illegal methods being adopted by the Recruitment Committee while recommending the candidates, NAB authorities took notice and on verification made in the matter, documents of 206 candidates were found either missing or fake; therefore, NAB authorities took action in the matter and proceeded ahead as mentioned in the preceding para.

4. After filing said Reference, full-dressed trial was conducted in the matter and at last vide impugned judgment dated 09.09.2020, all Petitioners have been convicted and sentenced u/s 10(a) of NAO, 1999 r/w 265-H(ii) Cr.P.C in the manner that Accused / Petitioners namely Jalil Ahmed Lashari, Kewal Ram and Abdul Azeem Khan shall suffer Rigorous Imprisonment for five years each. They are also directed to pay fine of Rs.31,870,181/- each; whereas Accused / Petitioner Mst. Kamla shall suffer Rigorous Imprisonment for three years and to pay fine of Rs.31,870,181/-. In case of default in payment of fine, same shall be recovered as arrears of Land Revenue from them as provided u/s 330E of NAO, 1999. However, benefit of section 382-B Cr.P.C was extended to the Petitioners.

5. All aforementioned Petitioners have also preferred Criminal Appeals bearing Cr. Accountability Appeals Nos. D-57, 58, 61 and 63 of 2020, respectively, in which they have assailed the legality and propriety of the aforementioned impugned judgment.

6. Learned counsel for Petitioners argued the matter almost on same line. They have contended that the Petitioners have been sentenced for 05 years and 03 years, respectively, and to pay fine of

Rs.31,870,181/- each. They have also contended that sentence of 05 years and 03 years, respectively, are short sentence and hearing of appeals preferred by the Petitioners, as mentioned above, will take time due to heavy backlog of cases at this Circuit. They also contended that there are glaring chances of acquittal of Petitioners on merit and the impugned judgment passed by the learned trial Court is a result of misreading and non-reading of evidence; that during the trial all Petitioners were on bail and they have not misused such concession; that during trial of the case petitioner Mrs. Kamla was given pardon to attend the Court on the ground that she was retired and old woman of 66 years of age with feeble health; that the Petitioners are in jail since the date of pronouncement of impugned judgment and they are suffering from various diseases, which are not cureable inside the jail; therefore, they prayed that the sentences awarded to the Petitioners may be suspended during pendency of criminal accountability appeals.

7. Learned Special Prosecutor NAB while opposing the prayer made by the Petitioners has contended that prosecution has established its case against the Petitioners and the learned trial Court has rightly convicted them on the basis of evidence and documents on record. He next contended that the appeals filed by the Petitioners against impugned judgment have already been admitted and same are ripe for hearing. Lastly, he prayed for dismissal of instant petitions. In support of his contention, learned Special Prosecutor NAB placed reliance on the cases of **Tallat Ishaq v. National Accountability Bureau and others** (PLD 2019 Supreme Court 112) and an unreported order passed by the Honourable Supreme Court in **Civil Petitions No.815 to 831 of 2018** dated 03.05.2019.

8. Arguments heard and record perused.

9. It is noted that Petitioners have been convicted and sentenced to suffer Rigorous Imprisonment of 05 years and 03 years, respectively, and to pay fine of Rs.31,870,181/- each. We are inclined to suspend the sentence as it is short one and hearing of

the Appeals, filed by the Petitioners, due to heavy backlog will take time.

10. Reference in this context can be made to the case of **Muhammad Irfan and others v. The State through NAB, Karachi** (2019 YLR 1606).

11. Similar view was also taken in the case of **Rahim Bux Soomro v. The state through Director General (NAB)** (2019 MLD 358).

12. In this context we are also fortified by an unreported case law of Honourable Supreme Court of Pakistan whereby order of this Court was challenged by NAB and filed Criminal Petition No.750/2015 (re: Chairman NAB, Islamabad v. Syed Ali Nawaz Shah and others) whereby sentence of 05 years was suspended under section 426, Cr.P.C. In this case, Apex Court has held that the High Court has no power to grant bail under section 497 Cr.P.C. or suspend the sentence under section 426 Cr.P.C under NAB Law but in the light of **Khan Asfandiyar Wali's** case reported in **PLD 2001 Supreme Court 607** this Court has jurisdiction to entertain the application / petition for suspension of sentence under constitutional jurisdiction. The relevant portion of said order is reproduced as under:-

“ A look at para 197 of the judgment rendered in the case of Khan Asfandiyar Wali v. Federation of Pakistan would reveal that the jurisdiction of superior courts cannot be taken away by sub-constitutional legislation. Section 9(b) of the NAB Ordinance, in this view of the matter, was declared ultra vires and directed to be suitably amended. Accordingly, the law was amended and word ‘High Court’ was omitted from Section 9(b) of the NAB Ordinance, 1999. This omission is deliberate and purposeful. After this deletion, it cannot be said that the High Court has no power to grant bail under Section 497 or suspend sentence under Section 426, Cr.P.C.

We, therefore, don't agree with the learned Special Prosecutor NAB that the order suspending the sentence has been passed without jurisdiction. Even if for a while it is assumed that despite amendment, the High Court under Section 426 Cr.P.C. has no jurisdiction, we would not like to interfere therewith, when it could pass such order by treating the CMA as Constitutional Petition. Apart from this where the respondents deposited the amount, they received over and above their entitlement, we don't think suspension of sentence in the

circumstances of the case is unjustified. That too, where the respondents have been awarded sentence upto to 5, 4 and 3 years respectively.”

13. It is noted that the case of the Petitioners based upon the documentary evidence and the evidence of the prosecution witnesses and the observations of the trial Court are still to be re-appreciated and reevaluated. During course of arguments, no allegation has been leveled before us regarding any misuse or abuse of the concession of bail by the Petitioners during entire proceedings / trial of the case. One of the said Petitioners is an old retired woman and the law envisages concession for her in the matter of bail and the sentence of imprisonment passed by the trial Court is quite short. In these peculiar circumstances, we have not felt persuaded not to suspend the sentence. In this context we are fortified by the judgment passed by the Honourable Supreme Court of Pakistan in Civil Appeals No.1340 of 2018 and others (re: **Chairman, National Accountability Bureau, Islamabad through Prosecutor-General Accountability, Islamabad v. Mian Muhammad Nawaz Sharif and others**), whereby the bail granted to accused of that case by the Islamabad High Court upon suspension of their sentences was maintained.

14. In the case of **Abdul Hameed v. Muhammad Abdullah** (1999 SCMR 2589), it was held that sentence of five years is short one. Since the sentence awarded to the Petitioners is short one and possibility of hearing of the appeals, filed by them against the impugned judgment, in wake of huge backlog of cases at this Circuit, in near future is foresighted, therefore, we suspend the sentence(s) awarded to the Petitioners by the learned Judge, Accountability Court, Hyderabad, vide judgment dated 09.09.2020 till final disposal of Criminal Accountability Appeals filed by the Petitioners, as mentioned in preceding para, and order to release the Petitioners on bail subject to furnishing their solvent surety in the sum of Rs.500,000/- (Rupees five hundred thousand only) each and P.R Bond in the like amount as well as depositing their original passports with the Additional Registrar of this Court. Petitioners are

also directed not to leave the country without permission of this Court.

15. All captioned petitions stand allowed in the above terms, alongwith pending application(s).

16. It goes without saying that the observations made in this order or the facts that the captioned petitions have been allowed, shall have no bearing on the outcome of the criminal accountability appeals, which shall be decided on merits based on the evidence and documents on record.

17. Copy of this order be sent over fax to the Ministry of Interior, Government of Pakistan, Islamabad for information.

JUDGE

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