

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT**

Writ Petition No.784-P/2021

JUDGMENT

Date of hearing : 10.06.2021

Petitioner : By Sardar Abdur Rauf Khan,
Advocate.

Respondent(s) : By Mr. Muhammad Riaz Mohmand,
ADPG.

QAISER RASHID KHAN, CJ.- Accused-petitioner

Afzal Khaliq seeks his release on bail in a NAB Reference (Reference No.1 of 2015) followed by a Supplementary Reference till the conclusion of trial pending before the learned Accountability Court No. IV, Peshawar as he has been languishing behind the bars since 13.7.2014.

2. The allegations against the accused-petitioner Afzal Khaliq, known as "Double Shah" and his co-accused as per the Reference ibid are that they in league with each other dishonestly and fraudulently lured / cheated public at large (4416 affectees) in the name of 'Mudarat' and also committed the offence of breach of trust and thereby embezzled / misappropriated an amount of Rs.12,596,132,542/-. It is

apparent from the Reference that the NAB Authorities had received complaints from a good number of affectees against the accused-petitioner and his co-accused with the allegations that they had collected a huge amount from them in the garb of a number of fake, fictitious and illegal businesses including businesses under the name and style of A.K. Forex Pvt Ltd & Afzal Khaliq; Member of Pakistan Mercantile Exchange Ltd in order to give them super profit at the rate of 120% per annum or at the rate of 10-15% per month on their respective deposits and thereby, deprived them from their hard earned money.

3. All that the learned counsel for the accused-petitioner vehemently urges is that despite clear cut directions of the august Apex Court way back on 27.09.2017 to conclude the trial within a period of four months, still the needful has not been done. Further contends that the accused-petitioner was arrested on 13.07.2014 whereafter a Reference was filed but to date only 174 witnesses have been examined. Next contends that while the maximum punishment as provided in the NAB Ordinance, 1999 is 14 years, the accused-petitioner has been behind the bars for the last over seven years. He thus seeks bail

to the accused-petitioner on the ground of statutory delay in the conclusion of trial.

4. The learned ADPG on his turn contends that the delay, so occasioned, is not solely attributable to the prosecution but it was also on account of pendency of various bail petitions of the accused-petitioner and his co-accused upto the august Apex Court. Further contends that there are over four thousand affectees in the Reference and statement of each of the affecttee is necessary to be recorded, which will of course take some time. He lastly argues that the trial is underway and as such, the learned trial court be given a short span of time for the conclusion of trial.

5. Arguments heard and the available record perused.

6. As the record suggests, the accused-petitioner was arrested by the CIA officials on 10.7.2014 and thereafter, he was handed over to the NAB Authorities in the NAB Reference on 13.07.2014. After completion of formal investigation by the NAB Authorities, a Reference was filed against the accused-petitioner and his co-accused before the learned Accountability Court on 12.02.2015. Later on, the NAB Authorities received further claims from the other affectees against the accused-

petitioner and his co-accused and accordingly, a Supplementary Reference was filed against them before the learned Accountability Court, Peshawar.

This is in fact the 4th time that the accused-petitioner is before the court seeking bail on the ground of statutory delay in the conclusion of trial. During the course of brief submissions, when the learned ADPG NAB has been questioned as to why despite directions of the august Apex Court way back on 27.9.2017 to conclude the trial within four months followed by similar directions of this court on 10.04.2018 in Writ Petition No.1114-P/2018, still the needful has not been done, he states that 174 PWs have been examined. When again questioned as to how many witnesses are left to be examined, he states that the case of the petitioner is one of cheating the public at large and by that count, all the claimants / affecttees would be examined, whose figure runs into thousands.

7. In a situation, where the accused-petitioner has been in continuous detention since his arrest on 13.7.2014 and facing trial since the Reference was filed against him way back in July, 2014 and over the period of seven years, only 174 PWs

have been examined, out of 513 witnesses mentioned in the calendar of witnesses and it would definitely take few more years by that count, then the early conclusion of the trial is not in sight in the foreseeable future. In that event, the accused-petitioner cannot be kept in jail for an indefinite period. Hence, we hold him entitled to the concession of bail only on the ground of statutory delay in the conclusion of the trial.

8. Accordingly, we admit and allow this petition and direct the release of the accused-petitioner on bail provided he furnishes bail bonds in the sum of **Rupees Ten Million** with two sureties, each in the like amount to the satisfaction of the learned Judge, Accountability Court No.IV, Peshawar, who shall ensure that the sureties are local, reliable and men of means. The accused-petitioner shall also surrender his original CNIC and Passport before the said Accountability Court till the decision of the Reference pending against him. The Ministry of Interior, Government of Pakistan is directed to place his name in the Exit Control List (ECL) forthwith.

Announced.
Dated: 10.06.2021.


CHIEF JUSTICE


JUDGE