

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

C.P. No. D-2147 of 2019.

Date of Hearing: 11.03.2020.
Date of Order: 17.03.2020.

Petitioner: Abdul Ghaffar s/o Noor Muhammad
Through Mr. Ishrat Ali Lohar Advocate.

Respondent: The State through Mr. Jangoo Khan Senior Special
Prosecutor NAB & Mr. Muhammad Humayoon Khan
D.A.G.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.- Petitioner invoked the jurisdiction of this court for grant of post arrest bail. The petitioner was arrested in pursuance of NAB Reference No.04 of 2017, pending before the Accountability Court No.VI Sindh at Hyderabad.

Brief facts are that the petitioner purchased a land measuring 13-32 acres situated in Deh Seri Taluka Qasimabad District Hyderabad from Dr. Farah Illahi wife of Liaquat Ali vide registered sale deed. Over the said property M/s Gold Star Builders and Developers had already announced a Project under the name and style of Indus Town Housing Scheme which was subsequently changed to Memon City Housing Scheme by present petitioner. Petitioner also claimed to have purchased an additional area of 13.32 acres from Mir Imran Ali and Syed Muhammad Ali Shah who has executed a General Power of Attorney in favour of the petitioner. The petitioner then got himself involved in the said business of selling and booking of the plots to interested buyers and an issue of conversion of amenity plots and layout plan was brought to light.

It is pleaded that somewhere in 2012 his health started deteriorating as he developed some heart problems and he handed over the Project to one Muhammad Rafiq Solangi vide Sale Agreement and General Power of Attorney. He came to know about the issue of the inquiry/investigation in respect of Memon City Scheme in January 2018 through a newspaper. He then filed C.P. No.D-240 of 2017, wherein he was admitted to pre-arrest bail. This petition was dismissed and the interim order was recalled on 21.08.2019. The NAB filed a Reference No.04 of 2017, in the Accountability Court wherein the petitioner was

shown to be on bail. The petitioner was however, arrested subsequently and is in judicial custody.

In the present petition the petitioner has claimed bail purely on medical ground and his earlier petition for grant of bail in C.P. No.D-842 of 2017 was dismissed on merit vide order dated 21.08.2019.

The counsel contended that he is a senior citizen of about 76 years and is a chronic heart patient and has undergone heart bypass operation.

Notice of this petition was served upon the respondent and Mr. Jangoo Khan Special Prosecutor NAB has appeared to respond whereas Mr. Muhammad Humayoon Khan appeared as Deputy Attorney General.

It is the case of the petitioner that the Special Medical Board was constituted to ascertain health condition of the petitioner who is presently confined at Special Prison NARA Hyderabad and express opinion about his health condition was desired by the Bench. On 20.11.2019, this Bench directed the Director General Health Hyderabad to constitute a Board and examine the health condition of the petitioner. In pursuance thereof a report was submitted before this court. A meeting of the Special Medical Board was held again on 01.01.2020 and report was resubmitted on 06.01.2020 and amongst the Members of the Board includes Professor of Cardiology LUMHS Jamshoro and other co-opted Member to review the case in the light of the direction of this court. The Board was asked to state whether the detention of the petitioner is detrimental to his health and life.

Let us first examine the order and the report submitted by the Medical Board in pursuance thereof. The substantive order of this Bench is of 2.12.2019 when the Medical Board was asked whether detention of the petitioner is detrimental to his life. Although some formal orders have been passed to obtain the medical report but the above referred order is meaningful. The first report as available is of 06.12.2019 when a Special Medical Board was held on 04.12.2019. The observation of the Medical Board is as under:-

Petitioner Abdul Ghaffar s/o Noor Muhammad is a case of DM + Hypertensive. He is known case of CABG. At present he is in class III Angina & (CCS-III). He is also having vertigo on standing.

After examination & his relevant medical record the members of Special Medical Board are of unanimous opinion that, "Petitioner Abdul Ghaffar s/o Noor Muhammad health condition is not satisfactory".

The same report was resubmitted on 09.12.2019 and 28.12.2019 as well as 30.12.2019. The next report was filed on 06.01.2020 when the Medical

Board was held on 01.01.2020 as referred above. The Medical Board observed as under:-

Petitioner Abdul Ghaffar s/o Noor Muhammad is a case of DM + Hypertensive. He is known case of CABG. At present he is in class III Angina & (CCS-III). He is also having vertigo on standing.

After discussion and reviewing of the case, the Members of Special Medical Board are of unanimous opinion that, "The Health Condition of Petitioner Abdul Ghaffar s/o Noor Muhammad is not satisfactory, mean his detention in Jail is detrimental to his life".

It is significant to note that last line "***mean his detention in Jail is detrimental to his life***" was added despite that there is no substantive change in the diseases associated with the patient/petitioner. This addition is not meaningless. The last report made available on 4th of March 2020, also disclosed the identical health issues and diseases except to the addition of hypertension, Parkinson and diabetes. He was also prescribed medicines in the same report.

It was never ruled out by the Medical Board that his hospitalization for the treatment of the alleged/associated diseases could serve the purpose and rightly so. The situation with the petitioner is that he is allegedly suffering from diseases which are known. None of them is one which could only be cured while being in constant care of family members. It is not even suggested by very able Medical Board constituted many times and was prompt in sending recommendations. Despite several opinion obtained from them, the only suggestion that came out was that the ailments could not be cured in Jail/custody.

We agree that in view of such associated ailments the petitioner need medical treatment and nursing. More importantly the associated diseases of hypertension which apparently the main cause of associated heart diseases he should be away from home stresses and other related tension, routine business issues.

Let us now examine the reported Judgments relied upon by the petitioner's counsel. In the case of ***Malik MUHAMMAD YOUSUFULLAH KHAN v. THE STATE*** reported in PLD 1995 S.C. 58, the ratio of the Judgment was that the Medical Board constituted was of the view that there was no possibility of treatment of the appellant's injury even in specialized centers of Peshawar but also in other areas of the country, and the Board also recommended immediate treatment of the appellant in a foreign country to avoid disability and this is the Judgment which is relied upon by Supreme Court in the case of ***Mian MANZOOR AHMAD WATTO v. THE STATE*** reported in 2000 SCMR 107.

It is nowhere suggested by the Board that specialized treatment is needed which was the main object for consideration in the above two referred cases. The third case relied upon is of **ZAKHIM KHAN MASOOD v. THE STATE** reported in 1998 SCMR 1065. The Medical Board so constituted submitted a report in the aforesaid referred case that the ailment with the petitioner in the referred case was such that it would have caused hazardous effect on his life and that a conducive condition free from all stresses was prescribed. This case is also distinguishable on the basis of recommendations of Medical Board.

Every disease, if not attended properly, would cause negative and hazardous effect to life but it doesn't mean that its medical remedy is bail for the recovery of such diseases. His treatment in a best available hospital under a care of best team of doctors could serve the best option. These stresses and pressures discussed could only be ruled out if a patient remain away from all these stresses and strains and the best possible place for the prescribed health issues is a Hospital where a patient could be treated free from all such stress possibilities.

We therefore, in view of the above facts and circumstances and in view of the recommendations of the Medical Board deemed it appropriate to dismiss the petition and allow the petitioner to avail medical treatment from hospitals and doctors of his choice and at his risk and cost and this should not be delayed under any circumstances.

This petition as such in view of above is dismissed.

JUDGE

JUDGE

A.