

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial, HCJ
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Minallah

CIVIL PETITION NO.278 OF 2023

(Against the judgment dated 11.01.2023 of the Peshawar High Court, Peshawar passed in Writ Petition No.2964-P of 2022)

Muhammad Taimur ...Petitioner(s)

Versus

Chairman, National Accountability Bureau
NAB Headquarters, Islamabad & others ...Respondent(s)

For the petitioner(s): Barrister Syed Mudasser Ameer, ASC

For NAB: Raja Rizwan Ibrahim Satti, Special Prosecutor

Date of hearing: 17.04.2023

ORDER

Athar Minallah, J.- The National Accountability Bureau ("Bureau") had initiated an inquiry in exercise of powers conferred under the National Accountability Ordinance, 1999 ("**Ordinance of 1999**"). The inquiry was regarding the alleged involvement of an unregistered entity, M/s Pslashuk ("**Company**"). It was alleged that the owners/management of the Company were operating and managing an online business which was in the nature of a ponzi scheme, attracting the offence of cheating the public at large. Muhammad Taimur ("**petitioner**") was arrested on 02.06.2021 during the inquiry proceedings. He had initially sought bail on merits, which was declined by the High Court vide order dated 05.10.2021. After some time the petitioner filed a petition before the Judge, Accountability Court, seeking bail on the ground of delay in the conclusion of the trial, which was refused, and

consequently the petition was dismissed. The High Court, however, allowed the constitutional petition and extended the concession of bail, subject to furnishing bail bonds with two sureties. In addition, the High Court made the release of the petitioner subject to surrendering his passport and the Cryptocurrency code to the Investigating Officer of the Bureau. His name was also ordered to be placed on the exit control list.

2. The learned counsel for the petitioner has argued that the condition of surrendering the Cryptocurrency code is unreasonable and amounts to denying the petitioner the right to avail the concession of bail granted by the High Court. On the other hand the learned Special Prosecutor of the Bureau has contended that the condition has been imposed in order to ensure that the petitioner does not tamper with the evidence, in this case the Cryptocurrency. The Investigating Officer present in the Court has explained that the cellular phone which was in the use of the petitioner and contains the details of the Cryptocurrency was seized and it is in the custody of the Bureau. He has further stated that there is likelihood of tampering with the Cryptocurrency after the petitioner has been released. He has stressed that in the circumstances it is crucial to prevent the petitioner from having access to the Cryptocurrency so that its integrity remains protected. The learned counsel for the petitioner has taken the stance that the latter has no concern with the Cryptocurrency and, therefore, surrendering its code is an unreasonable condition which would merely deny him the concession of bail granted by the High Court on the ground of delay in conclusion of the trial.

3. It is settled law that bail cannot be withheld as a punishment. Moreover, the conviction and incarceration of a person who is ultimately found guilty upon conclusion of trial can repair the wrong caused by erroneously extending the relief of interim bail but, no satisfactory reparation can be offered to a person who has been wrongly accused for unjustified incarceration at any stage of the case, if in the end a verdict of acquittal is handed down¹. It is equally settled law that when the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant². Bail is one of the most important elements of the scheme of criminal law and its consideration is premised on the principle that an accused is presumed to be innocent until proven guilty. The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family. When a court is satisfied that a case for grant of bail has been made out then refusal to exercise discretion in favour of releasing the accused, subject to conditions described under section 499 of the Criminal Procedure Code, 1898 ("**Cr.P.C.**") would not be in conformity with the right to liberty and the fundamental rights guaranteed under the Constitution. The conditions described under section 499 are ordinarily sufficient to guarantee the presence of an accused before a court during the trial proceedings. Nonetheless, the court may refuse grant of bail or make it subject

¹ Manzoor and others v. The State (PLD 1972 SC 81)

² Javed Iqbal v. The State (2023 SCMR 401)

to conditions in order to regulate the conduct or movement of an accused. A court, for example, may be satisfied that, if released on bail, the accused would abscond or that there exists a likelihood of tampering with the evidence or influencing the witnesses. In such eventualities the court must exercise its discretion with care and caution, by balancing the scales of justice and equity. Even if bail is to be granted subject to conditions then they must not be unreasonable, disproportionate or excessive. The foundational principles of criminal law are the presumption of innocence of an accused and that bail must not be unjustifiably withheld because it then operates as a punishment before being convicted upon conclusion of the trial. The unnecessary and unjustified incarceration of an under trial prisoner simultaneously becomes a burden on the taxpayers and the already overcrowded prisons.

4. In the case in hand, the High Court was satisfied that a case for grant of bail was made out and the discretion was also exercised accordingly. While granting bail it was made subject to certain conditions. One of the conditions for release was surrendering the Cryptocurrency code. It is the case of the petitioner that he has no concern or nexus with the alleged Cryptocurrency and, therefore, the condition is harsh and excessive and thus amounts to denying to him the concession of bail granted by the High Court. However, the prosecution wants to ensure that the evidence in the form of Cryptocurrency is not tampered with. The factum whether the petitioner has the ability to access the Cryptocurrency could not have been decided at bail stage because it would require deeper appreciation of evidence, which is yet to be recorded during the trial. The condition, therefore, appears to be excessive and unreasonable because it

denies the petitioner the right to liberty granted by the High Court by extending the concession of bail on the ground of delay in the conclusion of the trial. Moreover, there are more than fifteen hundred witnesses on the list of the prosecution who would be entering the witness box. The early conclusion of the trial, therefore, is not foreseeable. On the other hand, the concern of the prosecution is regarding the likelihood of the petitioner's access to the Cryptocurrency. Admittedly, the cellular phone and the sim were seized and they are in the custody of the Bureau. The Investigating Officer has stated that if the sim could be blocked it would serve the purpose because in such an event access of the petitioner to the Cryptocurrency would be denied. It appears to us that, while exercising its discretion, this crucial aspect was not taken into consideration by the High Court. The condition of surrendering the code, therefore, was excessive and disproportionate to the purpose which it sought to be achieved. We are, therefore, of the opinion that it would be appropriate to remand the matter to the High Court to the extent of reconsidering the condition regarding the surrender of the Cryptocurrency code and thereafter exercise its discretion so that the purpose of securing its integrity is achieved while, simultaneously, enabling the petitioner to avail the concession of bail granted on the ground of delay in the conclusion of the trial. We convert this petition into an appeal and dispose it by remanding the matter to the High Court to the extent of reconsidering the condition whereby the petitioner has been directed to surrender the Cryptocurrency code. The High Court may, inter alia, seek assistance of an expert in order to set out reasonable condition(s) to prevent the petitioner from having access to the Cryptocurrency. Since the right of liberty is involved

and the High Court has already exercised its discretion by extending the concession of bail, therefore, we expect that the proceedings will be completed at the earliest, preferably within three weeks from the date of receiving the certified copy of this order.

Chief Justice

Judge

Judge

Islamabad the,

17th April, 2023

NOT APPROVED FOR REPORTING.

(Aamir Sh.)