ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 555 of 2021.

Khalid Firoz

Versus

Accountability Court No. III, Islamabad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	04.03.2021	Hafiz Arfat Ahmad Ch. and Mr. Tariq Zaman Ch. advocates for the petitioner. Mr. Hassan Shahzad, advocate for the respondent No. 4. Raja Saad Sultan, Assistant Attorney General. Rana Zain Tahir, Special Public Prosecutor, NAB. **C.M. No. 1032 of 2021.** This is an application seeking permission to place additional documents on record. The application is allowed subject to all just and legal exceptions. **C.M. No. 1033 of 2021.** Exemption sought for is allowed subject to all just and legal exceptions. **Main Case.** **Tariq Mehmood Jahangiri, J**:The petitioner has invoked the writ jurisdiction of this Court with the following prayer:- "*It is very respectfully prayed that the instant writ petition may very graciously be accepted and as a consequence thereof:* *(a) The impugned order dated 08-02-2021 passed by the learned Accountability Court-III Islamabad may very kindly be ordered to be set aside; and* *(b) As a result of the above, the application filed by the petitioner before the Accountability Court-III Islamabad seeking exemption from personal appearance may very graciously be ordered to be accepted.* *Any other relief this Hon'ble Court deems fit and appropriate may also be granted.* 02. Brief facts referred in the instant writ petition are that the petitioner is facing trial in the

reference filed by respondent No. 2, *inter alia,* against him (Reference No. 20/2018) and his name is placed on Exit Control List (ECL) on the recommendations of respondent No. 2. The petitioner is suffering from cancer and in order to go abroad for treatment filed a petition before the Hon'ble Sindh High Court seeking permission to travel abroad. In the referred petition the petitioner was allowed to travel abroad subject to furnishing solvent surety in the sum of Rs. 4 million and P.R. bond in the like amount vide order dated 18.12.2020 passed in C.P. No. D-4794 of 2017. The permission granted was from 20.12.2020 to 21.03.2021. It was observed in the said order that the permission granted to travel abroad is subject to exemption granted by the Trial Court from appearance of the petitioner in the trial. On the basis of referred order the petitioner filed an application before Judge Accountability Court-III, Islamabad seeking exemption from personal appearance. The said application was allowed subject to furnishing bank guarantee in the sum of Rs. 2.7 billion.

03. Learned counsel for the petitioner has *inter alia,* contended that the impugned order is without jurisdiction and perverse. In this behalf it was contended that the relevant provision for exemption from personal appearance is Section 540-A Cr.P.C. which has been ignored by the learned Trial Court, hence the order is patently illegal. He has further contended that as the

petitioner / accused is aged about more than 68 years and is unable to furnish the bank guarantee of such a huge amount of Rs. 2.7 billion. In support of his contentions, learned counsel for the petitioner placed reliance on the case titled ***Haji Aurangzeb V. Mushtaq Ahmad and another*** (PLD 2004 Supreme Court 160), ***Hizbullah V. Judicial Magistrate-I, Rohri*** (2015 PCr.LJ 1413), ***Muhammad Latif V. Zaheer Iqbal and another*** (2020 MLD 160), ***Aftab Ahmad V. The State through Assistant Advocate-General Rawalakot*** (2019 P.Cr.LJ 267), ***Khalid Hussain V. Muhammad Lal and 6 others*** (2014 P.Cr.LJ 224), ***Muhammad Nawaz V. The State and another*** (2015 P.Cr.LJ 58), ***Rana Muhammad Siddique V. The State*** (1994 P.Cr.LJ 118), ***Muhammad Riaz V. The State*** (1979 P.Cr.LJ 427), ***Aurangzeb V. Bilal and 5 others*** (2002 PCr.LJ 947), ***Syed Mushtaq Hussain V. The State*** (1986 P.Cr.LJ 2676), ***Haji Aziz ur Rehman V. The State*** (2006 YLR 960) and ***Muhammad Idrees Bugsra V. The State*** (2018 MLD 1950).

04. Learned Special Prosecutor NAB *inter alia* contends that the petitioner is facing reference with respect of willful default as he was Director of the company which owes regulatory debt of Pakistan Telecommunication Authority (PTA) and has further stated that the impugned order has rightly been passed by the learned trial Court.

05. Learned counsel for Pakistan Telecommunication Authority (PTA) has also confirmed the position and has stated that the

matter of recovery of debt is pending before trial Court.

06. Arguments advanced by the learned counsel for the parties have been heard and documents placed on record have been examined with their able assistance.

07. In first round of litigation, order dated 23.12.2020 passed by learned Accountability Court-III, Islamabad was challenged before this Court, whereby the condition to furnish bank guarantees of Rs. 2.7 billion in favour of the state was imposed upon the petitioner. Thereafter, the matter was remanded to the learned Accountability Court-III, Islamabad vide order dated 26.01.2021 with the direction to decide the matter in accordance with law within one week from the receipt of the order. In compliance of said order, learned Accountability Court-III, Islamabad has again passed order dated 08.02.2021, wherein the exemption of the personal appearance has been allowed to the petitioner and permission for traveling abroad has been granted subject to furnishing of bank guarantee of Rs. 2.7 billion in favour of state. The petitioner has filed the petition under section 540-A Cr.P.C before the learned trial court. For the sake of convenience section 540-A Cr.P.C is reproduced herein under;

> *"540-A. Provision for inquiries and trials being held in absence of accused in certain cases:-*
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> *(1) At any stage of an inquiry or trial under this Code, where two or more accused are*

before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that anyone or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) if the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately".

08. The trial Court can only dispense with attendance and can proceed with the trial in absence of the accused but there is no provision mentioned in 540-A Cr.P.C that accused can be allowed to travel abroad and leave the country. Even in the case laws produced by the learned counsel for the petitioner, there is not a single judgment, wherein the accused was allowed to travel abroad under section 540-A Cr.P.C, during the pendency of trial.

09. The alleged willful default committed by the petitioner and his co-accused in reference pending before learned trial Court is Rs. 21.642 billion and the tentative liability lies upon the petitioner / accused is approximately 2.7 billion.

10. The most important fact of the case is that the reference has been filed in the year 2018 but

delay in conclusion of trial is due to the petitioner and co-accused, as miscellaneous applications are being filed by the accused persons, one after the other and the accused party is also getting adjournments in the reference on one pretext or the other. Due to such conduct of the accused, even charge has not been framed till today.

11. As one accused in the case has died with the similar disease while his application to travel abroad was pending before the learned trial court. As far as case of the petitioner / accused is concerned, the reports of Radiologist and consultants of Ziauddin Hospital, Karachi as well as the appointment from the Houston Methodist Hospital, USA and Parkway Cancer Centre, Singapore are enclosed.

12. The petitioner is aged about more than 68 years, permission to travel abroad has been granted by the Hon'ble Sindh High Court subject to exemption granted by the trial Court.

13. Due to peculiar circumstances of the case, the order dated 08.02.2021 passed by the learned Accountability Court-III, Islamabad is modified to the extent that the petitioner shall furnish the bank guarantee of Rs. 50 million in favour of the state before the learned trial Court.

14. In view of foregoing observations / directions, the instant writ petition stands ***disposed of***.

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal