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

W.P.No.3967 of 2015
Syed Tariq Hassan Gillani
Versus.
The State through Chairman NAB & another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.04.2016	**Mr. S.A. Mehmood Khan Saddozai, learned ASC & Mrs. Rubina Mehmood Saddozai, Advocate for the petitioner,** **Mr. Arif Karim, learned Prosecutor National Accountability Bureau**

Through the instant writ petition, the petitioner, Syed Tariq Hassan Gillani, seeks post-arrest bail in N.A.B. Reference No.18 of 2007.

2. Learned counsel for the petitioner, in his arguments, confined himself to the medical grounds taken in his petition for post-arrest bail. The National Accountability Bureau ("N.A.B.") contested the petition by filing their parawise comments.

3. The petitioner was arrested on 13.09.2015 at Faisalabad, in execution of the warrant of arrest, signed by Chairman N.A.B. Reference dated 30.03.2007, was filed by the N.A.B. before the Administrative Judge Accountability Courts Rawalpindi/ Islamabad against the petitioner and other co-accused.

4. The allegations against the petitioner are that he along with the other co-accused in the Reference formed a company under the name and style "Gillani Housing Corporation International Private Limited"; that the petitioner was one of the Directors of the said company; that in 2004, the

petitioner and the other co-accused in the Reference launched a housing scheme called "Jadda Town, Phase-II, Islamabad"; that they invited applications from the general public for allotment of plots in the said housing scheme located at Mouza Hummak, Islamabad, and in this process collected Rs.66,60,81,650/- as down payment for different categories of plots; that the land available to the said company was not enough to accommodate all the applicants for the purchase of plots; that the Capital Development Authority ("C.D.A.") had not approved the layout plan for the said housing scheme; that some of the co-accused in the Reference have already entered into a plea bargain / voluntary return; that as per the investigation report, the petitioner, along with other co-accused misappropriated the money so collected from the public at large by transferring huge amounts into their own accounts; that the C.D.A. has not issued any completion certificate regarding the said housing scheme; that the housing scheme has not been completed and the plots have not been handed over to the allottees; and that in this way the petitioner along with other co-accused in the Reference committed corrupt practices.

5. As mentioned above, the petitioner filed a petition under Article 199 of the Constitution seeking post arrest bail. As the petitioner had sought bail on *inter alia* medical grounds, this Court, vide order dated 14.12.2015, called for a report from the Medical Officer, Central Jail Adyala,

Rawalpindi, about the medical condition of the petitioner; the nature of his ailment and; whether or not treatment of same was possible within the jail premises and; if there was any immediate requirement of shifting the petitioner to hospital.

6. As per the medical report dated 22.12.2015 of the Medical Officer, Central Jail, Rawalpindi, the petitioner, (aged 55 years), is a diagnosed patient of blood sugar since the past five years and is on oral anti diabetic drugs. He is said to be suffering from high blood pressure since the past 20 years and has Ischemic Heart Disease since 2005. He has undergone cardiac catheterization in 2006, which revealed that three of his coronary arteries are occluded (triple vessel disease), and in the same year, two coronary artery stenting was carried out. Since 2006, the petitioner is regularly on multiple oral cardiac and anti-diabetic drugs to control the cardiac Ischemia. Additionally, the Cardiologist has advised the petitioner open-heart surgery keeping the seriousness of his vascular heart disease. So far the petitioner has not undergone open-heart surgery. The petitioner has remained in the jail hospital and is frequently complained of chest heaviness, palpitation, sweating and shortness of breath on exertion. His blood pressure is said to remain at the upper level of 160/100 mmHg despite taking anti-hypertensive drug. Clinically, the petitioner is said to have got unstable angina for which he often needs to take tablets to relieve him of chest pains. His ECG is said to have shown Ischemic Changes and is abnormal.

He was advised to have the following three tests:

i) 2D-Echo
ii) Coronary Angiography
iii) CT-Scan Angiography

7. This Court, in its order dated 23.12.2015, recorded that the Medical Officer, Central Jail, Adyala, Rawalpindi, in his report dated 22.12.2015, had pointed out that the Cardiologist had advised three tests to be carried out on the petitioner at PIMS Hospital, Islamabad. The Vice Chancellor, PIMS Hospital, was directed to constitute a medical board to examine the petitioner and report about the nature of his ailment and measures to be taken to cure the same. The medical board so constituted was required to report whether or not the petitioner's ailment is of a kind, which can be taken care of within the jail premises. The jail authorities were directed to produce the petitioner before the medical board as and when required for investigation and examination. The medical board was also required to submit its report to this Court within a period of 10 days.

8. In compliance with the said order of this Court, the petitioner was subjected to the three tests mentioned above at the PIMS Hospital, Islamabad.

9. A Medical Board comprising (i) Dr. Akhtar Ali Bandesha, Associate Professor Cardiology, Member (ii) Dr. Farida Tahir, Associate Professor Gen. Medicine, Member and (iii) Dr. Muhammad Naseer, Forensic Specialist/Principal, Chairman, examined the petitioner on 27.01.2016. He had been

admitted in the PIMS Hospital for elective coronary angiography, which revealed (1) Patient stent in LAD (2) 80% stenosis in mid left CX (3) 95% stenosis in distal RCA. The petitioner was advised by the medical board to undergo angioplasty/stenting in two of his coronary arteries. The coronary was of the view that the petitioner could be managed in a hospital with angioplasty facility.

10. The learned counsel for the petitioner read over the medical reports and pressed for the grant of bail on medical grounds. He submitted that as it had been confirmed by medical experts that the petitioner had been suffering from cardiac ailment and was in need of angioplasty, his continued detention could become life threatening.

11. On the other hand, the learned counsel for the N.A.B. opposed the petition by making his submissions in reiteration of the contents of the Reference and the para-wise comments. He submitted that very serious allegations had been leveled against the petitioner and that he had also remained an absconder. He submitted that there was a likelihood of the petitioner fleeing the country if bail was granted to him.

12. After going through the medical reports regarding the petitioner's medical condition, we are of the view that the cardiac ailment of the petitioner cannot be properly treated if the petitioner is in custody. In view of the findings of the medical board and the medical history of the petitioner, he was suffering from a serious cardiac ailment, which, if not attended to as advised by the medical board, could become life

threatening. The petitioner is clearly a sick person within the meaning of the 1st Proviso of Section 497 Cr.P.C. The contents of the medical reports as mentioned above cannot be lightly brushed aside by this Court in the absence of any contradictory material. The Superior Courts have taken the consistent view that the sick and infirm person may be released on bail even when there are reasonable grounds for believing that he has been guilty of an offence.

13. In the case of Muhammad Saeed Mehdi Vs. The State, reported as 2002 SCMR 282, the petitioner required immediate treatment, hospitalization and close monitoring by medical specialists in a well-equipped hospital, which object could not be achieved by detaining him in jail indefinitely or referring him to a hospital for a limited time. The petitioner, who had been arrested by NAB, was granted bail in the circumstances. In the case of Manzoor Ahmad Watto Vs. The State, reported as 2000 SCMR 107, it has been held that the criteria for the grant of bail to an accused in a non-bailable case on medical grounds would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the jail premises and that specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life. In the case of Firdous Paul Vs. The State, reported as 2004 SCMR 15, the petitioner was granted bail on medical grounds because according to the opinion of the medical board the petitioner was suffering from severe heart

disease and required bypass operation as soon as possible as he was at a high risk of dying suddenly. In the said case the petitioner/accused was also suffering from diabetes with severe diabetic complications and had also developed renal problems. In the case of Abdullah Hamid Mehmood Vs. The State, reported as PLD 2006 Karachi 393, it has been held that medical ground for the grant of bail is only considered when it can be established that the continued detention of the accused in prison would be detrimental to his health meaning thereby that the accused was suffering from a disease which could not be treated or managed by the prison doctor.

14. That the petitioner's co-accused in the said Reference dated 30.03.2007 was granted bail, vide order dated 30.3.2010 by the Division Bench of the Hon'ble Lahore High Court in W.P.No.2799/2009 titled "Syed Muhammad Makhdoom Gillani Vs. The State etc". Paragraph 8 of the said order is reproduced herein below:-

> *"8. Following the same dictum of the august Supreme Court of Pakistan, this petition is accepted and it is directed that the petitioner shall be released on bail subject to furnishing bail bonds in the sum of Rs.1,00,00,000/- (one crore) with four sureties each in the like amount to the satisfaction of the learned trial court. The petitioner shall remain in contact with the members/affectees of the Housing Scheme, as he has received huge amount from, in the name of "Jeddah Town" Phase-I and Phase-II with their extensions and also with the NAB Authorities to ensure that the aforementioned charter is acted upon and the claims of the general public/affectees are satisfied in a systematic manner. The petitioner has been made to understand that the very purpose of the grant of bail by this Court, to him is, to minimize the difficulties,*

financial losses and economic crunch of the aggrieved members of the Housing Scheme, who otherwise are bearing the brunt of, increasingly intolerable economic disaster. The petitioner has to liquidate his liability within the stipulated period, which is the sole purpose of his release on bail.

However, the name of the petitioner shall be included in the Exit Control List. He shall also surrender his passport before the learned trial court at the time of submission of his bail bonds. The Bank Accounts of the petitioner mentioned in the reference submitted against him in the learned trial court, shall not be operated by him. The petitioner shall not alienate his properties mentioned in the stated reference pending disposal in the learned trial court."

15. In view of the above-referred case law as well as the two medical reports, we feel that the cardiac ailment, which the petitioner is suffering from, cannot be properly treated in the jail premises. Hence, we are inclined to accept the instant petition and grant bail to the petitioner subject to his furnishing bail bonds in the sum of Rs.1,00,00,000/- (Rupees One Crore) with two sureties each in the like amount to the satisfaction of the learned Accountability Court. The petitioner is directed to surrender his passport before the learned Accountability Court unless the same has already not been taken from him by the NAB. The petition is allowed in the above terms.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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