

478

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

C. P. No.D- 1534 of 2015

~ Ali Ahmed Lund

Vs.

The State & others

Date of hearing:	29.04.2016.
Date of Order	13-05-2016
Petitioner:	Through M/s. Narain Das C. Motiani & Masroor Ahasn, Advocates.
Respondents:	Through Muhammad Altaf, Special Prosecutor NAB along with Baqa Muhammad, I.O. NAB.

ORDER

Mohammed Karim Khan Agha, J. By order dated 25.03.2015 this Court admitted the petitioner to ad-interim pre-arrest bail as he anticipated his imminent arrest by the National Accountability Bureau(NAB) in connection with an inquiry which NAB was conducting under the National Accountability Ordinance 1999 (NAO) against him with respect to the offense of having assets beyond his known sources of income under S.9 NAO.

2. The brief facts of the case as per NAB reference 47/2015 are that on receipt of a complaint against petitioner Ali Ahmed Lund Ex-Secretary Local Government, Government of Sindh regarding accumulation of assets beyond known sources of income, an inquiry was authorized by NAB which was subsequently converted into an investigation on 07.05.2015. The investigation report reveals that the petitioner joined government service on 18.10.1984 as Assistant Controller (BPS-17) in the Department of Commerce and Trade (C&T) Group and retired from the government service on 01.04.2014 in BPS-20. The petitioner remained posted on various important posts during his service including Director General Trade Development Authority of Pakistan (TDAP) and Secretary Local Government, Government of Sindh. The investigation reveals that the petitioner received Rs.

478

9,946,747/- as salary for the entire period of his service i.e. 1984 to 2014. The investigation further reveals that the petitioner and his son namely Zaheer Ahmed owned 288 acres and 01 ghunta of agricultural land in Taluka Bulri Shah Karim, District Tando Muhammad Khan. Out of total 288 acres and 01 ghunta, the petitioner inherited 180 acres and 37 ghuntas agricultural land in Deh Sherani and 107 acres and 04 ghuntas were purchased by the petitioner in the year 1994, 2005 and 2007. The investigation reveals that the petitioner received an amount of Rs. 9,751,631/- as net income generated from the total agricultural land of 288 acres and 01 ghunta. The investigation further reveals that the petitioner also owns petrol pump namely Baloch Petroleum Service as attorney of his deceased mother (Mst. Begi) in Bulri Shah Karim. The income generated through this petrol pump from the year 2001 to 2015 amounts to Rs. 6,028,228/-. The total income of the petitioner from all sources is calculated to be Rs. 25,726,606/-. The investigation further reveals that the petitioner maintained and operated 13x bank accounts in various banks in his name and in the name of his son Zaheer Ahmed. The total deposits in all 13x accounts amounts to Rs.399,068,577/-.

3. Assets beyond known sources of the income of the petitioner:

Sr.#	Particulars	Amount in Pak Rupees
a.	Assets.	
i)	Assets in form of credits/deposits in all banks accounts.	399,068,577
ii)	Cost of agricultural Land purchased during service. This is not included in the calculation of total assets held / acquired by the petitioner on the presumption that the said land was purchased from the amount deposited in the bank accounts.	2,930,000
	Total assets held/acquired by the petitioner	399,068,577
b.	Known sources of Income of inflows.	
i)	Salary Income (according to the record provided by AGPR sub-office Karachi, AG Sindh and District Accounts Office, Hyderabad).	3,962,087
ii)	Salary income for the period which has been calculated on average basis with 10% increment every year because the record for that period has neither been provided by AGPRs or AG Sindh & DAO	5,984,660

22

480

	Hyderabad.	
iii)	Agricultural Income from inherited land	4,298,865
iv)	Agricultural Income from Purchased land	5,452,766
v)	Income from M/s Baloch Petroleum Service	6,028,228
vi)	Loan obtained from ABL SASM Branch	4,500,000
vii)	Inter-account transfer of funds from account no.01-200-3487-6 maintained at ABL SASM Branch to account no.01-1670003-6 maintained by the petitioner Ali Ahmed in the same branch. This is deducted to avoid duplication of deposits in the accounts.	13,725,000
viii)	Inter-account transfer of funds from account no.01-200-0456-7 maintained at ABL SASM Branch to account nos.01-167-0003-6 & 01-162-0001-9 maintained by the petitioner Ali Ahmed in the same branch. This is deducted to avoid duplication of deposits in the accounts.	3,000,000
ix)	Transaction dated 06.11.2012 which was initially withdrawn through pay order bearing no.1649043 dated 04.09.2012 from the account of M/s Baloch Traders against 4x cheques bearing no.09902910 to 09902913 but later on the same was deposited back in the account. This is deducted to avoid duplication of deposits in the account.	10,000,000
x)	10% Withholding Tax (WHT) which is deducted at source from the account on the profits earned on the deposits in bank accounts (Rs.21,213,350x 10%)	2,121,335
xi)	Credits which were subsequently reversed (Reverse Credit Entries in all accounts)	609,169
xii)	Proportion of Total Profit earned on justified deposits	1,563,662
	Sum of all sources of income and deductions	61,245,762/-
c.	Unjustified Deposits / Credits in all bank accounts (a-b)	337,822,815/-

4. The investigation further reveals that the petitioner has deposited an amount of Rs. 337,822,815/- in the bank accounts disproportionate to his known source of income from the year 1984 to 2014, which he could not reasonably account for. Thus the petitioner has committed the offence of corruption and corrupt practices as envisaged in Section 9(a) (v) of the NAO, 1999 and schedule thereto punishable under Section 10 of the said Ordinance. As such a reference was filed against him by NAB on 27th November 2015 before the Administrative Judge Accountability Courts Sindh Karachi.

✓

481

5. Learned counsel for the petitioner submitted that there are no reasonable grounds to believe that the petitioner has committed an offence under section 9 and 10 of the NAO, 1999 and this Court while considering the question of grant of bail in exercise of its constitutional jurisdiction has to keep in mind that the liberty guaranteed under Article 9 of the Constitution of Pakistan is one of the fundamental rights which cannot be done away with arbitrarily and for flimsy reasons.

6. He next contended that the petitioner and his family are in possession of agricultural land since the year 1984 and was receiving handsome income from the agricultural crops which they had grown on that land and had subsequently sold. That in addition to his salary, the agricultural income which the petitioner received he also received a 50% share of the profits in a petrol station which were all deposited in his different banks accounts a part of which was subsequently used for the purchase of other lands which lead to even greater profits being made and as such he has fully accounted for his assets which are not disproportionate to his known sources of income and that NAB during its inquiry had failed to properly consider and value the income which he was receiving from his agricultural lands and mainly concentrated on his salary.

7. Learned counsel replied upon the cases of Ali Nawaz Shah v. The State (PLD 2003 S.C. 837), Dr. Muhammad Anwar Kurd and 02 others v. The State through Regional Accountability Bureau, Quetta (2011 SCMR 1560), Ghulam Sarwar Zardari v. Piyar Ali @ Piyaro and another (2010 SCMR 624), Anwar Ahmed Khan v. The State (1996 SCMR 24), Raja Rustam Ali Khan v. Muhammad Hanif (1997 SCMR 2008 R. 2012), Ch: Shah Muhammad, Inspector v. Mst. Ramzan Bibi (1998 SCMR 2415), Abdul Aziz Khan Niazi v. State (PLD 2003 SC 668), Manzoor 4 others v. State PLD (1972 SC 81), Haji Ghulam Ali v. The State (2003 SCMR 597), Ch: Shujjat Hussain v. The State (1995 SCMR 1249), Saeed Ahmed v. The State (1996 SCMR 1132).

8. On the other hand, learned Special Prosecutor NAB has vehemently opposed the submissions raised by the learned counsel for the petitioner and submitted that NAB has uncovered more

482

than enough material to prove beyond a reasonable doubt that the petitioner has committed the offense of possessing assets beyond his known sources of income and have illustrated the same with the chart showing the income of the petitioner and his assets which is a part of the reference and was reproduced above and as such the petitioners order for ad interim pre arrest bail should be recalled.

9. We have considered the submissions raised by the learned counsel for the parties, perused the record and case law cited by them at the bar.

10. As per settled law we have only made a tentative assessment of the material placed before us in making this order, which shall not prejudice the case of either party at trial, which shall be decided on merits based on the evidence by the trial court.

11. At this point it would be useful to clarify that the authorities relied upon by the petitioner are of little, if any, assistance to him at this stage based on the facts and circumstances of his particular case. His citations largely relate to plea bargains (PB), malafide investigations, the power of this Court to grant bail, that only a tentative assessment of evidence is required at the bail stage, what amounts to reasonable grounds and the impact of documentary evidence. This is because this case does not concern a PB, there does not seem to have been a malafide investigation as NAB quite rightly at inquiry stage before converting an inquiry into an investigation gives an accused the opportunity to enter into a voluntary return (VR), as noted above we are only making a tentative assessment of the evidence, that in this case witnesses as well as documentary evidence are involved and the Court is well aware of what the test is for "reasonable grounds" for the grant of bail.

12. In the case of **Muhammed Hashim Babar V State** (2010 SCMR 1697) the Hon'ble Supreme Court set out the ingredients of what were required to prove an assets beyond known sources of income case under S.9(a) (v) NAO as under at P.1704:

"It is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution

to prove the ingredients of the offence which are as follows:-

- (i) It must establish that the petitioner was holder of a public office.
- (ii) The nature and extent of the pecuniary resources of property which were found in his possession.
- (iii) It must be proved as to what were his known source of income.
- (iv) It must prove, quite objectively, that such resources or property found in possession of the petitioner were disproportionate to his known sources of income.

The aforesaid ingredients are proved then the offence as defined under section 9(a) (v) is complete, unless the petitioner is able to account for such resources or property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence meaning thereby that if an petitioner cannot explain, presumption under section 18(c) of the Ordinance that petitioner is guilty of corruption and corrupt practices is required to be drawn."

13. In the later case of **Ghani Rehman V NAB** (PLD 2011 SC 1144) not only did the Hon'be Supreme Court endorse the finding in Hashim Babar's case (Supra) but it also emphasized the need to carry out a thorough and meticulous exercise of investigating what were the actual sources of income of the petitioner and weighing this carefully against the assets which he had acquired in the following terms at P.1147.

" We have heard the learned counsel for the parties at some length and have gone through the record of this case with their assistance. It has been argued by the learned counsel for the appellant that during the investigation of this case the sources of income of the appellant had never been determined and his income had never been quantified, the Reference filed and the Charge framed against the appellant were absolutely silent about the income or the sources of income of the appellant and even during the trial no evidence whatsoever had been led by the prosecution in that regard. In these circumstances, according to him, it was not possible for the learned trial court to compare the value of the assets and pecuniary resources of the appellant, his dependents or the so-called *benamidars* with the appellant's income and to hold that the value of the assets in issue was disproportionate to the appellant's income. It has also been pointed out by

484

him in this regard that Qazi Abdul Hameed, Inspector FIA (P.W.18), the investigation officer of this case, had stated before the learned trial court in so many words that the appellant had informed him about many different sources of his income but he, the investigation officer, had not brought that information on the record of investigation and that information supplied by the appellant."

14. We have examined the chart produced by NAB showing the income of the petitioner and his assets and its supporting material and compared it with the material produced by the petitioner to show that his assets are not disproportionate to his known sources of income.

15. No doubt the petitioner is an agriculturist from which he earns income, he received a monthly salary and also received profits from a petrol pump. However it is to be observed that all these aspects have been taken into account by the NAB.

16. His assets declarations whilst in Government service reveal that he only owned 15 acres of land (5 of which were in his wife's name) and there is no mention of any petrol pump or other businesses or subsequent purchases of land. With regard to his alleged income from agricultural land this appears to have been massively inflated when compared with the figures provided by the Assistant Commissioner from the area where the land is located. With regard to bank accounts the petitioner has 13 such accounts of which 6 of them are business accounts. He has not been able to satisfactorily explain the income and massive transactions which have flowed to and from these accounts. Initially he disowned these accounts and claimed that the accounts belonged to other people who were concerned in the agricultural business (Rob Nawaz V/s Nadir Hussain, Irshad Hussain Lund V/s Syed Mudassar Ali Rizvi, Muhammed Usman, Ali Gul V/s Imran Ahmed and Niaz Hussain V/s Shafquat Hussain and he was only nominated to be guarantor and to supervise the sales and deposits in these accounts by the persons mentioned above. In support of his contention he produced copies of such agreements. It appears that on call up notice only Shafquat Hussain appeared who denied the agreement and stated that he was only involved in a small furniture repair business and provided a S.161 Statement to this effect. Of the others named above it was found that 2 only had a

485

few acres of uncultivated land whilst the other 3 had no land in the record of rights. Later on it appears that the petitioner changed his story and claimed that the money in these accounts came from his agricultural income. The amount of his agricultural income as assessed by NAB is based on a report of the concerned Mukhtiarkar and Supervising tapedar which were prepared under the supervision of Mr. Junaid Hammed Samo Assistant Commissioner Bulri Shah, District Tando Mohammed Khan who has also recorded his S.161 Statement. The report at P.103 to 108 shows that the agricultural income of the petitioner is far less than he has claimed and could not have accounted for the transactions in his business accounts.

17. It is also observed by order sheets dated 22-7-2015 and 17-08-2015 that the petitioner had approached the NAB for VR option which according to order sheet dated 17-11-15 was declined by NAB

18. In our view the analysis of the income and assets of the petitioner by the NAB has been correctly investigated and tabulated as required in the cases of **Muhammed Hashim** (Supra) and **Ghani Rehman** (Supra) and there are in our considered view reasonable grounds to connect the petitioner to the offense as charged and as such the order dated 25-3-2015 granting the petitioner ad interim pre arrest bail is hereby recalled and the petition stands dismissed. However, it is observed that the trial court has already examined 5 PW's out of 18 and as such it is directed to complete the trial within 4 months of the date of this order and not to adjourn the same on any flimsy ground especially keeping in view S.16 (a) of the NAO and the fact that there is only one accused in this case and shall submit fortnightly progress reports to this Court through MIT II. The office is immediately directed to send a copy of this order to the concerned Accountability Court for compliance.

Dated: 13.05.2016