

IN THE HIGH COURT OF SINDH AT KARACHI

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

C. P. No.D- 5715 of 2016

Ali Ahmed Lund

Vs.

The State and another

Date of hearing:	10-04-2017.
Date of Order	14-04-2017
Petitioner	Through Dr. Farogh Naseem, Advocate.
Respondents	Through Muhammad Altaf, Special Prosecutor NAB.

ORDER

Mohammed Karim Khan Agha, J. By this order we propose to dispose of the petitioner's (Mr. Ahmed Ali Lund's) petition for post arrest bail arising out of NAB Reference 47 of 2015.

2. Earlier the petitioner had applied for pre arrest bail which was dismissed by this Court vide order dated 13-05-2016 which was upheld by the Hon'ble Supreme Court vide order dated 03-10-2016.

3. The brief facts of the case as per NAB reference 47 of 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. 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 years 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 13 accounts in various banks in his and name of his son Zaheer Ahmed. The total deposits in all 13 accounts amounts to Rs.399,068,577/-.

4. **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 Hyderabad.	5,984,660
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	13,725,000

	Ali Ahmed in the same branch. This is deducted to avoid duplication of deposits in the accounts.	
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/-

5. 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.

6. Learned counsel for the petitioner took the court through numerous documents which formed a part of his post arrest bail application and submitted that since his pre arrest bail application was dismissed by this Court new material and facts had arisen which justified the petitioner being enlarged on post arrest bail. He firstly submitted that his salary had been completely miscalculated to the extent of 92 lacs, that he had received much more income from his agricultural property than the NAB had given him credit for and that the S 161 statement of Mr. Junaid Hammed Samo Assistant Commissioner

Bulri Shah, District Tando Mohammed Khan which had been relied upon in the earlier order of this court declining pre arrest bail to the petitioner had now been contradicted in his cross examination, that the NAB had deliberately suppressed approximately 25 years of his agricultural income when filing the reference, that according to his calculations the NAB had exaggerated the income from his petrol pump by 4 lacs and that the NAB had totally failed to consider the investments which he had made in offices which had been allotted to him and as such had his salary, agricultural income, income from the petrol pump and his investments in the office property been considered by NAB it would have become obvious that he had not acquired assets beyond his known sources of income. He submitted that it was a case of further inquiry that as the case was largely based on documentary evidence the petitioner would not be able to interfere with it, the petitioner had already spent 6 months behind bars and was even prepared to deposit 18 cores as surety with the NAB until the outcome of the trial and for all the above reasons he was entitled to be enlarged on post arrest bail

7. Learned counsel in support of his contentions placed reliance on **Saeed Ahmed V The State** (1996 SCMR 1132), **Brig. (R) Imtiaz Ahmed V The State** (PLD 2017 Lah 23), **Ghani-ur-Rehman V National Accountability Bureau and others** (PLD SC 2011 1144), **Khalid Aziz V The State** (2011 SCMR 136), **Pir Mazharul Haq and others V The State through Chief Ehtesab Commissioner, Islamabad** (PLD 2005 SC 63), **Syed Qasim Shah V The State** (2009 SCMR 790) and an unreported order of this Court dated 07-11-2014 in CP D 3439/2014 **Muhammad Younus Warind V DG NAB**

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 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 where due credit had been given to the petitioner for his salary, agricultural income, income from petrol pump etc and has also relied on additional S.161 statements to refute the petitioners arguments and in particular the investments from the offices which had never before been mentioned by the petitioner prior to the filing of the reference which according to NAB were manipulated and bogus

applied for and wanted to enter into a voluntary return with NAB which was rejected and as such the petition for post arrest bail should be dismissed.

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 the outset, we would like to make it clear that in our view the case law relied on by the petitioner is of little, if any, assistance to him as it is in our view, distinguishable from the particular facts and circumstances of the instant case. For example, this case is not solely based on documents as there are also 18 PWs, even if the income statements and wealth statements of the petitioner were ignored there is still sufficient material on record against him etc.

12. This Court whilst rejecting the petitioners pre arrest bail petition vide order dated 13-05-2016 which was upheld by the Hon'ble Supreme Court vide order dated 03-10-2016 also considered the merits of the case and for ease of reference and in order to avoid duplication those findings are set out below.

"12. In the case of **Muhammad 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

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'ble 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 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, Muhammad 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 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 **Muhammad 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.”

13. Now turning to the new information which has allegedly arisen since the rejection of the petitioner's pre arrest bail application which also as mentioned above dealt with the merits of the case.

14. Firstly we would observe that the issue of his miscalculation of salary is not a new issue but never the less the S. 161 Statements of Syed Nazim Ali, Assistant Accounts officer GA IV AGPR, Mr. Parvez Ali Sangi, Assistant Accounts officer, District Accounts office Hyderabad and Mr. Asif Aziz Qureshi Accounts officer Monitoring and evaluation officer AG Sindh Office all tend to suggest that the NAB's calculations vis a vis the petitioner's total amount of salary received whilst in Government service are correct. Secondly, the allegation of a 4 lacs discrepancy in the income of the petrol pump which again is not a new issue is in our view not hugely significant as the discrepancy is extremely minor when compared to the massive amount of assets which the petitioner has allegedly acquired beyond his known sources of income. Even otherwise the S.161 Statement of Mr. Manzoor Ahmed Mangi Manager PSO Hyderabad division supports NAB's calculations of the profit made by the petrol pump. Thirdly, again with agricultural income this is not a new issue and we are of the view that on a tentative assessment (as opposed to a deeper appreciation of the material on record which is not permitted at the bail stage) of the evidence of Mr. Junaid Hammed Samo Assistant Commissioner Bulri Shah, District Tando Mohammed Khan including his cross examination does not, in our view, seem to seriously damage the

prosecution's case especially when all the other material on record against the petitioner is read in totality and viewed in a holistic manner.

15. Fifthly, we also observe that the petitioner has still not been able to adequately explain the large transactions which have taken place throughout his 13 bank accounts which was highlighted by the earlier order of this court dismissing the petitioner's pre arrest bail. The S.161 Statements of Mr. Mohammed Arif, Branch service manager Allied bank, Mr. Javed Akhtar Branch operations manager NBP and Imran Hussain Panhwar AVP NBP, Abdullah Fateh Khilji AVP NBP, Mr Amin Alam Operations manger HBL are significant in this respect along with associated banking documents.

16. It is also in our view significant that the petitioner had agreed to enter into a voluntary return with NAB which NAB rejected. This fact may not on its own amount to guilt or lead to the denial of bail but in our view it must be weighed along with all the other relevant factors. The most important question which of course springs to mind when such an offer is made is why would an innocent man agree to return any money if it was his hard earned money?

17. The only really new issue raised by the petitioner appears to us to be the contention that the NAB had not taken into consideration in its calculation of the petitioners assets and income (as can be seen from NAB's assets and liability sheet reproduced earlier in this order) the huge investments which the petitioner had allegedly made in office property which was to be constructed by Task Builders. According to this new contention the petitioner had purchased office property in Task Builders Trade Avenue Project on I.I Chundrigar Road which had failed to materialize and pursuant to complaints to the KBCA on 20-05-2005, legal notices in 2016 and negotiations with Task Builders he was repaid by Task Builders the vast amount of money which he had invested in the project which if taken into account would show that the petitioner could account for all his assets and as such there was no case against him.

18. In our view we find it quite incredible that such an important and significant piece of material explaining his income was not given by the petitioner to the NAB when his statement was taken especially since when his complaint was given to the KBCA on 20-05-2005 this was long before the inquiry, later investigation was initiated against him by NAB let alone before the reference was filed against him by NAB. No explanation has been given by the petitioner as to why he kept mum

about this most important of issues. It is also interesting to observe that all the legal notices and alleged payment was made to him by Task Builders after the reference had been filed against him. In our view prima facie this new material appears to be an afterthought based on forged and manufactured documents in order to enable the petitioner to escape from any culpability under the reference. We are fortified in our view by the S.161 Statement of Mr. Mohammed Iqbal who has confirmed that as per office complaint cell of SBICA no such complaint was received from the petitioner, the S.161 statements of Chaudhry Nabil Rauf and Mohammed Munaf both of whom were partners in Task Builders involved in the construction of Trade Avenue project on I.I. Chundrigar Road both of whom confirm that no space was ever booked by the petitioner in the aforesaid project and the S.161 statement of Gulzar Shah who booked the whole 10th Floor in the Trade Avenue building which allegedly the petitioner booked. Thus, based on the above material, we are of the prima facie view that the new material in respect of the booking and pre paid office space by the petitioner which was refunded to him is a manufactured story and also shows that the petitioner has not come to this Court in its constitutional jurisdiction with clean hands and thus on this count alone we would be justified in dismissing his petition for post arrest bail.

19. The tentative assessment of the material available on record lead us to the conclusion that there is ~~still~~ sufficient material to connect the petitioner to the offense for which he has been charged and as such his petition for post arrest bail is dismissed. However we direct the trial court to complete the trial within 3 months of the date of this order by not allowing any adjournment on any flimsy ground which in our view is manageable since there is only one accused and it seems that 7 out of the 18 PW's have already been examined. The office shall forward a copy of this order to DG NAB (Karachi) and the Accountability Court hearing this reference for compliance. Observations made hereinabove are tentative in nature which shall neither prejudice the case of either party at trial nor influence the trial Court while deciding the matter.

20. These are the reasons for our short order dated 10-04-2017⁴ whereby the petitioner's post arrest bail was dismissed by this court.