

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-5574 of 2018

C.P. No.D-7099 of 2018

C.P. No.D-7123 of 2018

C.P. No.D-988 of 2019

Present:

Ahmed Ali M. Shaikh CJ.

Mohammad Karim Khan Agha J

Petitioners

1. Gulzar Ali S/o. Ch. Muhammad Ali,
2. Salman Mansoor S/o. Mian Ghalib Mansoor,
3. Umer Shahzad S/o. Nadir Khan
4. Syed Naveed S/o. Syed Majeed, presently all confined in Central Prison, Karachi through M/s. Shaukat Hayat, Gul Fareen, Nasir Jahangir Rifat Sheikh and S.M. Iqbal, Advocates.

Respondent/State:

The State through Mr. K.A. Vaswani, Special Prosecutor NAB.

Date of hearing:

18.02.2019 and 25.02.2019

Date of Judgment:

06.03.2019.

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- By this common order we propose to dispose of the post arrest bail petition's filed by the petitioners Gulzar Ali, Salman Mansoor, Syed Naveed and Umer Shahzad. All the petitioners are accused in National Accountability Bureau (NAB) Reference 50/2016 State V Sharjeel Inam Memon and others for acts of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO) which reference is currently proceeding before the accountability courts at Karachi.

2. All the petitioners vide consolidated order of this court dated 25-10-2017 had their ad interim pre arrest bail recalled and were taken into custody on the same day. All the petitioners applied for post arrest bail to this court which was dismissed by this court on merits vide order dated 02-03-2018 where upon petitioners Gulzar Ali, Salman Mansoor and Umer Shahzad moved the Supreme Court for bail on merits. The Hon'ble Supreme court vide order dated 19.04.2018 allowed the petitioners to withdraw their petitions on the basis that if any fresh ground for bail arose they could approach this court again for post arrest bail and with regard to petitioner Gulzar Ali that he may approach this court on

✓

medical grounds again and this court shall consider any medical documents which he placed on record before deciding the same hence these petitions for post arrest bail.

3. The brief facts of the case as alleged in **Reference No.50/16 State v Sharjeel Inam Memon and others** which was filed by NAB on 28-09-2016 against the petitioners and other co-accused concerned a financial scam by officials of the Information and Archives Department Government of Sindh(GOS) and various advertising agencies whereby the advertising agencies were appointed illegally and in violation of the relevant rules through a misuse of authority/failure to exercise authority by the government officials who malafide, deliberately and in connivance with each other awarded contracts to advertising agencies at exorbitant rates which unduly benefited the advertising agencies who are beneficiaries in this case who acted in connivance with the government officials which lead to a colossal loss of approximately **RS 5 Billion** to the state exchequer hence the aforesaid reference was filed against the petitioners by NAB under the NAO on the grounds of corruption and corrupt practices.

4. The petitioners are all beneficiaries of the scam as alluded to in the above paragraph. Two of the petitioners Gulzar Ali and Salman Mansoor are directors of the advertising agency Adarts whilst the other two petitioners Umer Shazad and Syed Naveed are sole proprietors of media concerns who Adarts illegally sub let their contract with the GOS to.

5. Initially learned counsel for Gulzar Ahmed sought bail on medical grounds and to this effect took this court through various documents on record. Learned counsel however was not able to explain to us the extent of the petitioner's illness which these documents disclosed and as such he made application for this court to constitute a medical board to opine about petitioner Gulzar Ali's medical condition. During the course of his arguments however he withdrew his plea that bail should be granted to petitioner Gulzar Ali on medical grounds along with his application to constitute a medical board.

6. All the learned counsel for all the petitioners contended that they should be granted post arrest bail on the ground that they were prepared to deposit the amount of loss which had allegedly been caused to the State by their actions as determined by NAB with the registrar of this court

until the final determination of the reference against them. In support of their contentions they placed reliance on order of Supreme court dated 26.12.2018 in the case of **Mumtaz Ali** (unreported), order of Supreme court dated 17.10.2018 in the case of **Asad Ahmed Khan** (unreported), **Shamraiz Khan V State** (2000 SCMR 157) and **Syed Muzafar Ali V Chairman NAB** (2016 P.CR.LJ 1183)

7. On the other hand learned special prosecutor NAB opposed the grant of post arrest bail on the above grounds in that such a ground was not envisaged under the NAO.

8. We have heard the parties, gone through the record and considered the relevant case law.

9. The first point to note is that this is a mega corruption case which caused a loss of approx **RS 5 Billion** to the government exchequer and that the amount of loss caused by the petitioners amounted to approx RS 23 crores. For offenses of corruption charged under the NAO (white collar crimes) the Hon'ble Supreme Court in the case of **Rai Mohammed Khan V NAB** (2017 SCMR P.1152) has emphasized that the **grant of bail in such cases must be construed strictly and rigidly** even if, as in that case referred to above, the amount involved was on the lesser side being only approx RS 12M (**as opposed to over RS 5 Billion as in this case**) in the following terms at P.1154 para 7;

"Under the principle of law and justice, each bail petition is to be decided on its own merits and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well being of the poor people, is consistently embezzled / misappropriated at a large scale and while the majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. **It has become the foremost obligation of each and every institution, including the Judicator, to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply the Anti-Corruption laws somewhat rigidly, once in fact the case is made out, at bail stage, against the accused person.** Distinction, however, is to be drawn between the ordinary criminal cases and of corruption on the above analysis and grounds,

while dealing with bail matter to an accused person, charged for such like crimes and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence."

10. Let us therefore consider the cases cited by the petitioners to consider whether they might be used as precedent for post arrest bail in this case.
11. In the case of **Mumtaz Ali** (Supra) with profound respect the NAB had no objection to the grant of bail based on the case of **Shamraiz Khan** (Supra) since the amount involved was relatively minor being only RS 61 lacs. This case is therefore distinguishable from the case at hand where NAB has objected to the grant of bail and the amount is **much greater** being approx RS 23 crores.
12. The case of **Shamriaz Khan** (supra), which was cited by NAB in **Mumtaz Ali's case** (Supra) as a ground for not opposing the grant of bail in that case, is also in our view entirely distinguishable. In **Shamraiz Khan's case** (Supra) the case had been registered under S.409/467/468/471/477-A/ 109 of the PPC and S.5 (2) of the Prevention of Corruption Act (II) 1947. None of these offenses under these Acts allowed the concept of plea bargain which is a **unique provision** under S.25 (b) NAO and thus the only option the accused had in that case was to return the misappropriated money **unconditionally** back to the food department from whom it had been misappropriated from in order to secure bail. In that case the rule of consistency was also applied as 17 other co-accused had also been granted bail in that case which is not the case in the instant case. **Most significantly**, Shamraiz Khan had agreed to **return unconditionally** the entire amount which he had misappropriated from the food department to the food department and as such the loss was made good by the return of the funds although even then he still had to face trial in respect of the penal consequences for his illegal acts. **The instant case is entirely distinguishable as the petitioners have not agreed unconditionally to repay all the misappropriated amount to the Government. Instead they want the money to be held on trust for them and then returned if they are acquitted.**
13. In our view if we were to allow such an arrangement in **every** NAB case it would virtually render S.25 (b) of the NAO which deals with plea

bargains (PB) redundant as there would be no need for an accused to enter into a PB as he could simply deposit the alleged misappropriated amount with the registrar of this court pending the outcome of the criminal case against him under the NAO. If he was acquitted he would get the money back and if he was convicted after a lengthy trial he could then, if he then so desired, enter into a plea bargain once he was taken into custody knowing the strength of the case against him. This would defeat one of the primary objectives of the NAO which is the recovery of ill gotten wealth at the earliest without the need for prolonged trials.

14. For ease of reference S.25 (b) NAO reads as under:-

"25(a)"

(b) Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Ordinance, the Chairman, NAB, may, in his discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman, NAB, the Chairman, NAB, shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused."

15. Turning to the case of **Asad Ahmed Khan** (Supra), with the greatest respect and humility at our command, that case also has distinguishing features in that (a) no loss was caused to the State through the acts of the petitioner's whereas in this case a colossal loss has been caused to the State by the petitioner's and (b) that it was perceived that the son was being punished for the acts of the father whereas in this case all the petitioners are primary accused and even Salman Mansoor who was the son of Gulzar Ali as discussed in our earlier orders on merit was fully involved in the scam through actively participating in various meetings with the GOS functionaries with whom he was in connivance with and signing various documents on behalf of Adarts in connection with the scam so there is no question of him being punished on account of the sins of his father but only on account of his own wrong doing and (c) that the loss in that case was not colossal being only approx RS 1.3 crore whereas the loss in this case is colossal being approx RS 23 crore.

16. In the case of **Syed Muzafar Ali** (Supra) once again the NAB had no objection to the grant of bail (unlike in this case) and the amount involved was again not as colossal as in this case. **Hence all the cases relied upon by the petitioners are distinguishable from the instant case based on their own particular facts and circumstances.**

17. We would however observe that despite the distinctions in this case there **may** be some cases based on their own particular facts and circumstances **coupled with additional relevant considerations** which **might** justify the grant of bail by depositing the loss so caused especially if that amount is relatively minor keeping in view NAB's mandate to pursue mega corruption cases such as the instant case

18. Thus, based on the particular facts and circumstances of this case **especially bearing in mind that the petitions for post arrest bail have been dismissed on merits and the huge amount of loss caused to the exchequer** we do not consider the new ground **alone** of depositing the loss to be held on account pending disposal of the reference a new ground which would justify the grant of post arrest bail to petitioners Salman Mansoor, Syed Naveed and Umer Shahzad who have **already been found through our previous bail dismissing orders to be fully connected with the commission of the offenses** as charged in the reference and as such the petitions for post arrest bail of petitioners Salman Mansoor, Syed Naveed and Umer Shahzad are dismissed.

19. In respect of petitioner Gulzar Ali who apart from his contention that he will deposit the amount of loss as determined by the NAB being RS 57,384,104 we find that he has **other relevant additional grounds** which tilt the grant of post arrest bail in his favour. Namely, that he is an old man approaching 80 years of age who is suffering from numerous quite severe medical conditions, as per his medical reports, which include cervical spondylitis, lung, kidney, blood and skin diseases **and in addition** is relatively infirm in that he needs assistance to walk and get about and also needs the use of a stick and very often a helper in this regard and as such on account of all of these factors **when combined together** we hereby grant him post arrest bail subject to him depositing the amount of loss which he caused to the exchequer being RS 57,384,104 with the Chairman NAB **and** furnishing solvent surety in the amount of RS 25 lacs (RS 2.5 million) and PR bond in the like amount to the satisfaction of the Nazir of

this court. The Ministry of Interior is directed to place his name on the ECL and a copy of this order shall be sent to the Secretary Ministry of Interior Government of Pakistan for compliance.

20. The trial court is **directed** to hold the trial on **a day to day basis** and not allow any adjournment on any flimsy ground (and in the case of an adjournment clearly write in the diary which defense counsel or, as the case may be, special prosecutor NAB is responsible for such adjournment and why the adjournment was granted) and complete the trial **within 4 months** of the date of this order. The office shall transmit a copy of this order to the concerned accountability court for compliance which shall submit a weekly progress report to the concerned High Court accountability court monitoring Judge through MIT II .

21. All the petitions stand disposed of in the above terms.