

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi

C.P.No.D-6040 2019

Aijaz Hussain Jakhrani

Versus

Chairman, NAB & others

Disposed of matter

For hearing of CMA No.83/2021(Review)

Date of order

& hearing : 15.01.2021

Mr. Farooq H. Naek, Advocate for Petitioner

ORDER

Muhammad Iqbal Kalhoro, J:- By listed application (**CMA No.83/2021**), petitioner is seeking review and recall of orders dated 17.12.2020 and 19.12.2020, whereby, this petition was dismissed and the interim order operating in favour of petitioner restraining National Accountability Bureau (**NAB**) from arresting him was recalled plus his request to grant him pre-arrest bail in Reference No.23/2020 was declined. Besides, he is asking for transfer of this petition to this court at Sukkur Bench for a fresh hearing along with C.P. No.D-1528/2020 in which reportedly the petitioner has been extended ad-interim pre-arrest bail in Reference No.23/2020.

2. We have heard learned counsel for the petitioner on maintainability of this application seeking essentially review of the order deciding entitlement of the petitioner to the relief in a criminal case. In reply, learned counsel has submitted that merits of Reference No.23/2020 were not considered at all and the bail was declined to the petitioner mainly on the question of attraction of double jeopardy in the case, and that before dismissal of petition, the petitioner was already granted ad-interim pre-arrest bail in Reference No.23/2020 by this court at Sukkur Bench, which was filed after filing of the said reference. He has also relied upon the case law reported in **AIR 1959 Allahabad 315** to support proposition that in a criminal case, review application is maintainable.

3. We have given due consideration to the arguments advanced before us and perused material filed along with listed application and are of a humble view that this application is not maintainable for the reliefs

sought for. For the reasons, that when on 10.12.2020, this petition was taken up along with other petitions for pre-arrest bail and was proposed to be transferred to Sukkur Bench along with them, learned counsel for the petitioner himself resisted the move and insisted on hearing of this petition at Principle Seat, Karachi, citing a wide range of reliefs asked for by him in this petition than merely pre-arrest bail in Reference No.23/2020 filed at Sukkur. When on next date viz. 17.12.2020, this case was taken up for hearing, no request of the sort was made before us and the case was duly presented, and it is only after dismissal, transfer of the petition is being sought. Such request in the facts as they are would be palpably not maintainable and cannot be considered. Notwithstanding, legally speaking, a party cannot be allowed to approbate and reprobate, making a particular statement at a time with a view to having some result and when such result is contrary to expectation, changing it, at a different time, to nullify its effect.

4. As to recalling and restoring the ad-interim relief to the petitioner in this petition in the wake of pendency of C.P. No.D-1528/2020 filed for pre-arrest bail in Reference No.23/2020 at Sukkur and argument of learned defence counsel that relief of pre-arrest bail to the petitioner was declined without any consideration to merits of the case, we do not find ourselves subscribing to such a view. In Para No.8 of the impugned order, we have tentatively discussed evidence available against the petitioner in Reference No.23/2020 and relevant documents supporting such accusation and connecting the petitioner *prima facie* with the alleged offence, as was required under the law. In addition, since the petitioner was asking for extra-ordinary relief of pre-arrest bail in the said reference, we also looked at the element of malafide on the part of the NAB to extend such relief to him and discussed it in Para No.12 of the impugned order, but finding none, declined such concession to him.

5. Neither factum of pendency of some other petition before this court at Sukkur Bench for same relief was brought to our notice, nor we suspect fact of this petition and the interim relief already extended to petitioner was informed to the bench at Sukkur at the time of hearing of the petition. We do not want to make any comment on the manner and way, the petitioner has tried to press for same relief before the two benches of this court, least, it may have any prejudicial repercussions on merits of his case. But to put it simply, such approach cannot be approved. We see no ground to disagree to the ratio laid down in the case cited by learned defence

counsel for maintaining an application for review in a criminal case on the grounds and for the purposes of giving effect to any order passed under the Code of Criminal Procedure; preventing abuse of the process of any court and or for otherwise securing the ends of justice, but at the same time are clear in our mind that petitioner's case does not fall in any of the aforesaid categories to warrant a different view than the one already taken by us in the impugned order. Resultantly, we do not find any other merits in the listed application (CMA No.83/2021), and dismiss it accordingly in *limine*.

JUDGE

JUDGE

Rafiq/P.A.