

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
 Mr. Justice Muhammad Iqbal Kalhoro.
 Mr. Justice Shamsuddin Abbasi

C.P.No.D-4835 of 2016
 Muhammad Saleem Jehangir & another

Versus

Federation of Pakistan & others

C.P.No.D-8007 of 2019
 Shazia Rizvi

Versus

Federation of Pakistan & others

C.P.No.D-6548 of 2020
 Fazal-ur-Rehman

Versus

The NAB & others

<u>Date of hearings</u>	:	<u>01.04.2021 & 14.04.2021</u>
<u>Date of short order</u>	:	<u>14.04.2021</u>
<u>Date of reasons</u>	:	<u>16.04.2021</u>

Ms. Ismat Mehdi, advocate for petitioner in C.P No.D-8007/2019
 Mr. Mukesh Kumar G. Karara, advocate for petitioners in C.P No.D-4835/2016.
 M/s.Habib Ahmed and Ali Afsar Jan, advocates for petitioner in C.P No.D-6548/2020.
 Mr. Shahbaz Sahotora, Special Prosecutor, NAB a/w I.O. Sabih Rafy

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioners standing a trial in Reference No.02/2020 pending before the relevant learned Accountability Court Sindh at Karachi have applied for pre arrest bail. Allegations against them in brief are of making illegal appointments of 9,447 in various grades from 1 to 14 in Local Government Department in the year 2012, when they were running its affairs in different capacities, by misusing their authority. The appointments are said to be in violation of recruitment rules, and without a competitive process. On checking, no merit list, documents of the candidates were found available in the record, nor an approval granted in writing for such appointments.

2. Petitioner Shazia Rizvi is shown Secretary, Local Government with a tenure from 23.05.2012 to 19.07.2012; petitioner Lala Fazalur Rehman, was the Secretary from 20.07.2012 to 02.02.2013; whereas, petitioner Nisar Ahmed

Qureshi and Muhammad Saleem Jahangir were the Section Officer, and are burdened with signing of all the offer and appointment orders. Their case discussed herein under is that they did so under the directions of formers i.e. the Secretaries.

3. Learned counsel for petitioner Shazia Rizvi has urged that she was not the full-fledged Secretary and held look after charge of the post for only 56 days from 23.05.2012 to 19.07.2012; she had not signed any paper or document nor granted any permission for making any appointment, and no specific role has been attributed to her; she was issued a Call-Up-Notice in the year 2016, which she duly replied and fully cooperated in the investigation and came to the court for protection only after getting knowledge of recommendation of filing of the reference against her; that no warrant of arrest was issued against her in the enquiry or investigation and her custody was never required by NAB.

4. Learned counsel for the petitioner Fazalur Rehman has made almost identical submissions that he did not sign any document and no specific role has been assigned to him, all the appointments were made by a Departmental Selection Committee and he has nothing to do with it; the beneficiaries have not been made either accused or witness and no one aggrieved by such a process has come forward to accuse him of committing any wrong. He is seriously ill and is in need of liver transplant, which due to his frailty, he has not yet decided to undergo.

5. Learned counsel for petitioners Nisar Ahmed Qureshi and Muhammad Saleem has submitted that allegations against them are false and fabricated, no law has been violated, all the appointments were made in terms of the Sindh Local Government Ordinance, 1979, which stood revived after repeal of the Sindh Local Government Act, 2001 on 15.07.2011; that Rule 7 of Local Councils and Municipal Committee Service Rule, 1963 empowers the government to make appointments; the petitioners had signed offers and appointment letters under direction and approval of the then Secretaries; that departmental enquiry was conducted into the issue, which although concluded the said appointments as illegal but did not specifically hold the petitioners responsible for them.

6. On the other hand, learned Special Prosecutor, NAB and I.O. have opposed relief of bail to the petitioners.

7. We have considered the case of each petitioner in the backdrop of role assigned to them in the reference and highlighted in the investigation report and perused the material. The I.O. has not denied that petitioner Shazia Rizvi was officiating as the Secretary, Local Government Department when 630

appointments allegedly were made. In that context, his inability to dig out any document or paper bearing her signature or otherwise specifying permission, etc. to petitioners Nisar Ahmed Qureshi and Muhammad Saleem or to any other official for either making such appointments or issuing offer or appointment orders in favour of the appointees is not ignorable. Further, in reply to a query, he could not deny that entire case against her is based on his inference drawn on account of her incumbency when the appointments were made. Except that, no evidence in black and white specifically pointing to her nexus in the alleged offence has been ferreted out by him. Besides, the other circumstance, hardly missable, is the fact she was served with a Call-Up-Notice in September, 2016 and in the year 2019 filing of a reference against her was recommended by Executive Board Meeting (EBM). Only thereafter she filed the current petition for protection and was granted ad-interim relief. For three years, from 2016 to 2019 in the inquiry/investigation NAB never required her custody and no complaint meanwhile of her non-cooperation in the same was ever raised. These facts coupled with the material lacking specifics qua her role in the alleged scam has made her case to be of a further inquiry.

8. Likewise, the case of petitioner Fazal-ur-Rehman, who was the Secretary in the department for almost six months when 1830 appointments were routed forwarded is founded more or less on the same footing. NAB's *prima facie* inability to collect any evidence in black and white confirming his approval or any other role to the alleged appointments is writ large. Except his incumbency, which, in view of IO of the case is a sufficient proof of his involvement, nothing tangible is available against him to persuade us to agree with the inference drawn by the IO about him. On the one hand such is the position and on the other hand the IO has not been able to specify the exact role the petitioner has played out in the alleged offence. Moreover, he has admitted during the arguments that although the enquiry started in the year 2016 and he had called at least one Secretary, Shahzia Rizvi for furthering the said inquiry but he never summoned this petitioner till the year, 2019, when ultimately he was issued a Call-Up-Notice. In these facts and circumstances, in our view the prosecution case, sans of any incriminating evidence, except his incumbency requires further inquiry into his guilt.

9. Notwithstanding, the case of petitioners Nisar Ahmed Qureshi and Muhammad Saleem Jehangir carries different overtones qua their role in the alleged offence and is based on documentary evidence mainly. Learned defence counsel during arguments could not deny their signature on offers and appointment letters, which even otherwise has been established through Forensic Examination. His plea that this whole process of appointments was conducted at

relevant Districts by the Administrators holding the charge and on their recommendations the relevant approval was granted by the then Secretaries is without substance as no such material is available on the record. Not only the offer and appointment orders were signed by these two petitioners but later on in reply to queries regarding such appointments raised by the Incharge District officials they verified the same to be genuine. PW Muhammad Ramzan Awan the then Secretary, Local Government in his statement u/s 161 Cr.PC has disclosed all such details and has confirmed that about the subject appointments, no record, no merit list or no approval by any Secretary is available. His disclosure is *prima facie* a sufficient indictment at least to these two petitioners and against it there is *prima facie* nothing to suggest their false implication in this case. It may be reminded that extra ordinary relief of pre-arrest bail, rooted in enquiry, is meant to save an innocent accused implicated in the case for the purpose oblique and ulterior. The case against these two petitioners here founded on documentary evidence entails a different consideration to the one generally taken in a situation like the one above.

10. Resultantly, the petitions filed by petitioners Shazia Rizvi and Fazal-ur-Rehman (C.Ps. No.D-8007/2019 & 6548/2020) for pre arrest bail are allowed, and the interim pre-arrest bail earlier granted to them vide orders dated 10.12.2019 and 21.12.2020 is hereby confirmed on the same terms and conditions.

11. Whereas, the petition filed by two petitioners Muhammad Saleem Jehangir and Nisar Ahmed Qureshi (C.P. No.D-4835/2016) for pre-arrest bail is dismissed, and the interim pre-arrest bail granted to them is hereby recalled. These are the reasons for our short order dated **14.4.2021**, whereby above petitions were disposed of in above terms.

12. Petitions stand disposed of in the above terms. The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE
JUDGE

Rafiq/P.A.