

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

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

C.P.No.D-8790 of 2018

Syed Zulfiqar Ali Jaffri

Versus

The Chairman, NAB & others

C.P.No.D-8829 of 2018

Syed Zulfiqar Ali Jaffri

Versus

The Chairman, NAB & others

C.P.No.D-4294 of 2019

Irfan Khalil Qureshi

Versus

Fed: of Pakistan & others

C.P.No.D-6553 of 2019

Muhammad Saeed Mehdi

Versus

NAB & others

C.P.No.D-1617 of 2020

Anwar Masud Zaidi

Versus

Fed: of Pakistan & others

<u>Date of hearings</u>	:	11.02.2021, 15.04.2021 & 16.04.2021
<u>Date of short order</u>	:	16.04.2021
<u>Date of reasons</u>	:	19.04.2021

Mr. Shaukat Hayat, Advocate for petitioner
Mr. Khaleeq Ahmed, Advocate for petitioner
Mr. Sarmad Hani, Advocate for petitioner
Mr. Haq Nawaz Chatha, advocate for petitioner
Mr. Shahbaz Sahotra, Spl. Prosecutor, NAB a/w Abdul Fatah, IO.

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioners have pleaded for pre-arrest bail in Reference No.17/2019 filed at Karachi pertaining to allegations of illegal supply of POL products by Pakistan State Oil Company Limited (PSOL) in terms of two sale and purchase agreements dated 07.10.2010 and 07.12.2012 to Admore Gas Pakistan Limited (AGPL).

2. As per record, NAB sprung into action after coming to know of few agreements signed by PSO with its competitor Oil Marketing Companies (OMCs) for supply of POL products worth billions of rupees, and found misuse of authority by PSO officials in awarding undue, illegal and unauthorized government POL to such OMCs without getting approval from Board Members and/or Director General (DG) Oil, Government of Pakistan in violation of Public Sector Governance Rules and Pakistan Petroleum (Refining, Blending & Marketing) Rules, 1971. Among others, M/s AGPL was also identified as one of such companies having received POL worth more than Rs.55 billion plus profit sharing margin worth Rs.552 million from PSOL.

3. Petitioner Irfan Khalil Qureshi, Senior General Manager, PSOL is alleged to have facilitated and signed agreement dated 07.08.2010 with the accused No.4 to 6 whereby High Speed Diesel (HSD) and Petrol (PMG) were directly supplied to retail outlets of M/s AGPL for two years. Accused Naeem Yahya Mir, MD PSO, is alleged to have facilitated and approved agreement dated 07.12.2012, whereas petitioner Syed Zulifqar Ali Jafri, Senior General Manager (Marketing) PSOCL is stated to have signed the same with accused No.4 to 6 for the same purpose for three years.

4. Accused Razi Ahmed Hanafi, petitioners Anwar Masood Zaidi and Muhammad Saeed Mehdi, Director Commercial, Marketing & Shareholder and CEO & President, Shareholder of M/s AGPL, are alleged to have played a vital role contributing to signing of said agreements. It has been opined that because of misuse of authority by accused No.1 to 3, on account of undue supply of POL product to M/s AGPL outlets a loss of Rs.56,464,038,159/- and due to sharing of profit margin with M/s AGPL a loss of Rs.552,456,089/- has been caused to the National Exchequer.

5. We have heard the parties and perused the record. Learned defence counsel, among others, have referred to certain documents i.e. letters dated 20.08.2008 and 09.09.2010 by Ministry of Petroleum & Natural Resources, the DG Oil to the Secretary General, Oil Companies Advisory Committees to show that DG Oil and Oil & Gas Regulatory Authority (OGRA), a copy each thereof was endorsed to, were fully on board and had the requisite knowledge about the agreements. Thus no illegality has been committed by

the petitioners. They further by referring to an order dated 12.12.2018 C.P. No.D-5251/2018 and others have urged that by this order almost in identical backdrop and issues between PSO and M/s Byco Pakistan Petroleum Limited, this court has extended relief of pre-arrest bail to the accused, some of whom are petitioners here, to shore up petitioners' case for the same relief on the rule of consistency.

6. Learned Special Prosecutor, NAB and IO have, however, opposed to their contentions and have tried their best to convince that the present case is predicated on facts and circumstances different to those looked upon by this court in the aforesaid case. They have also referred to rule 30 of Rules, 1971 to establish that no agreement regarding supply, purchase, sale, storage or export of any imported petroleum product can be entered into by OMC without a prior approval in writing from DG Oil. Such argument, however, in view of the letters, referred above, covering the subject matter of this case i.e. sale and purchase agreements *prima facie* appears to be besides the mark. It is obvious that not only DG Oil but OGRA was also aware of PSO executing such agreements with different OMCs for supply of oil, etc. and they took no exception to it.

7. In our earlier order, cited above, which we agree with the learned defence counsel is based on consideration of a context, more or less similar to the one in hand, we have observed in respect of applicability of rule 30 that **“.....Even we presume the petitioners have committed breach of said rule, the question would be why the authority concerned did not take an action against such violation and why it was not identified at the relevant time and for which who is responsible. Patently, a penalty for breach of such rule is provided under rule 44 of the said Rules, which stipulates that any person, who contravenes the rules, shall without prejudice to any other action under the said rules be punishable for every breach with imprisonment for a term which may extend to 3 years or with fine, which shall not be less than Rs.15000/- or with both. Therefore, a question whether under the facts and circumstances, the alleged violation is amenable to rule 44 or to the Provision of NAO, 1999 requires determination”**. These observations appear to be completely relevant to the facts and circumstances of present case, as although it has been insisted that the sale and purchase agreements are in violation of rule 30 but it has not been explained why the Authority concerned did not notice or find any illegality therein and take any action against the petitioners at the relevant time or even up to now.

8. In the flow of arguments, we asked specifically from IO when the alleged scam bubbled on the surface, what action was taken against the petitioners by the relevant authorities, he replied that except calling off transactions and cancelling the agreements no action was either proposed or taken against the petitioners, which we find mind boggling. It appears to us, therefore, that the IO simply on the basis of certain figures found available in the record and the signatures of the petitioners on the agreements has arraigned them in the reference without determining the failure, if any, of DG Oil and OGRA in muckraking the scam and/or taking an action against the petitioners. Petitioner Awar Masood Zaidi informed the court in the hearing that in the investigation he was never issued a Call-Up-Notice and only after filing of the reference against him, he approached the court and was granted ad-interim pre-arrest bail. When we confronted this fact to the IO, he was not able to deny it or forward any explanation of his failure to call this accused in the investigation. We, therefore, wondered on what consideration he was opposing bail to the petitioners now when the reference has been filed.

9. The prosecution case further alleges that petitioners, working in PSO, signed those agreements without approval of Board Members. But it has not been brought up that under what law, rule or regulation the petitioners were required to do so and were not themselves competent to wield such authority or in the wake of which what action was brought about by the Board Members against them. It is noteworthy that the payments were being made to M/s AGPL in pursuance of the agreements in open but PSO Board Members ever took any exception to such payments or found the transactions illegal or commercially unviable. It is not the case of the prosecution that Board Members were not aware of such transactions and the business was being done clandestinely. Therefore, in such circumstances, it was incumbent upon the IO to investigate the role of the Board Members, who ostensibly turned blind eye, and not to simply get affected by availability of signatures of the petitioners on those agreements to make an opinion about their culpability.

10. Insofar as the case of petitioners Anwar Masud Zaidi and Muhammad Saeed Mehdi, working in the M/s AGPL is concerned, nothing except allegation of them playing a behind-the-scene role in execution of

those agreement and receiving illegal gain being the shareholders of the company resultantly has been leveled. But regarding such allegations, we have noted that IO *prima facie* has failed to collect any tangible evidence and or to explain that how it was an illegal gain when it was being heaped on pursuant to transactions under the agreements executed in full knowledge of the authorities concerned, and those profits were being accrued to the Company (M/s AGPL) and not to the petitioners individually in their personal capacity. When we take a holistic view of these facts, on balance, we find the case of the petitioners to be one of further enquiry.

11. Accordingly, the petitions filed by petitioners for pre arrest bail are allowed and the interim pre-arrest bail earlier granted to them vide orders dated 19.12.2018, 20.12.2018, 25.06.2019, 15.10.2019, 05.03.2020 is hereby confirmed on the same terms and conditions.

12. These are the reasons for our short order dated **16.4.2021**, whereby above petitions were disposed of in 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.