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IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-1873 of 2016

Before:

Mr. Justice Irfan Saadat Khan, J.

Mr. Justice Mohammad Karim Khan Agha, J.

Petitioner: Abul Qasim, through Mr. Muhammad Hanif Bhatti, Advocate.

Respondents: NAB, through Mr. Noor Muhammad Dayo, D.P.G. NAB & Mr. Muhammad Aslam Bhutta, Special Prosecutor NAB.

Date of hearing: 30-08-2016

Date of Order: 06-09-2016

ORDER

Mohammad Karim Khan Agha, J:- Through this petition, the petitioner seeks post arrest bail in National Accountability Bureau (NAB) Reference No. 19 of 2016 State V Mohammed Suleman Mullah and others filed under S.9 (a) of the National Accountability Ordinance 1999 (NAO).

2. In essence the reference revolves around officials of Taluka Municipal Administration Sujawal, District Shujawal embezzling funds of the town committee Shujawal in connivance with contractors and others with respect to development work which was not carried out. The reference has been filed against 30 accused most of whom were either Town officers of Shujawal, from the Local Fund Office Thatta or contractors in connection with the scam. As per reference it has been established during investigation that accused No.1 to 14 being government officials and accused No.15 to 30 being private persons, in connivance with each other, have embezzled Rs.86,513,159/- and thereby caused huge loss to the government exchequer. Thus, the accused persons have committed the offence of corruption and

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corrupt practices as defined under section 9 (a) and punishable under section 10 of the NAO, 1999 and the schedule thereto.

3. According to the reference the petitioner Abul Qasim served as Town Officer in Town Committee Sujawal from July, 2014 to September 2014, where as Town officer, he authorized the issue of cheques worth Rs. 24,493,575/- in connivance with accused No.7 (Naeem Akhtar Shoro, Ex Accountant Town Committee Shujawal) and contractors accused No.27 to 29 (Quwat Ali Shah, Nazakat Ali Sabro and Mehboob Ali Shah respectively) in respect of work which had been contracted to the aforesaid contractors to be carried out and paid for but which in fact had not been carried out at Town Sujawal and had been embezzled by the petitioner, other accused and the contractors through his misuse of authority for their benefit. He also issued an open cheque of Rs. 500,000/- in his own name and withdrew the same in cash in person without being entitled to the same.

4. During the course of inquiry, 19 accused entered into Voluntary Return (VR) under Section 25 (a) of NAO to the tune of Rs. 32,212,715/- out of total embezzled amount of Rs. 115,726,130/-.

5. Learned counsel for the petitioner submitted that he is completely innocent and has committed no offence at all and he has been falsely implicated with malafide intention and ulterior motives by the NAB. Learned counsel submitted that the investigation officer has failed to provide tangible evidence with regard to the allegations leveled against the petitioner and the allegations leveled against him are based on presumptions and bare allegations and no specific documentary evidence has been filed by the investigation officer against the petitioner which shows that he has committed any offence. He next submitted that the petitioner has not issued an open cheque of Rs. 500,000/- in his own name and the allegation is denied in its totality and a fake cheque has been produced against him and the petitioner has nothing to do with the same, as during his

tenure of service he has not misused his authority in any manner whatsoever and has strictly complied with the rules and regulations whilst performing his duties honestly, diligently and in the best interest of the department. He also submitted that there had been undue delay in the commencement of the trial which also entitled him to bail. He lastly submitted that no case is made out against the petitioner for corruption and corrupt practices, that bail could not be withheld as a punishment and therefore the petitioner is entitled for grant of post arrest bail. In support of his aforesaid contentions learned counsel placed reliance upon the cases of **Tariq Saeed & another v. Chairman NAB & two others** (2005 YLR 445) and **Abul Aziz Khan Niazi v. The State through Chairman NAB, Islamabad** (PLD 2003 S.C. 668).

6. In addition, learned counsel also submitted that he was entitled to bail based on the rule of consistency. This was because accused No.11 Javed Ahmed Shaikh has already been granted post arrest bail in the same reference vide order dated 16-05-2016 passed in the case of Javed Ahmed Shaikh v. Chairman NAB being C.P. No.D-635/2016.

7. Learned ADPGA for the NAB vehemently opposed the submissions advanced by the learned counsel for the petitioner and submitted that there is sufficient material available on record against the petitioner to prove his guilt in this case beyond a reasonable doubt and as such his petition for post arrest bail should be dismissed.

8. We have considered the arguments of learned counsel, studied the record and the relevant law and case law cited at the bar.

9. We would like to make it clear that as per law we have only made a tentative assessment of the material before us and that this order shall not affect the trial proceedings which shall be decided by the learned Judge on merits based on the evidence before him.

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10. Turning to the rule of consistency we would like to observe that this rule will only generally apply if the roles of the accused are similar or lesser than the person who had already been granted bail. The rule is not blindly to be applied to all cases simply because they relate/arise out of the same FIR or reference. Each case must be judged against the case in which bail has already been granted to see if the rule of consistency is also applicable based on the facts and circumstances of the particular case which is placing reliance on the rule of consistency. Bearing this in mind we note that in the case of Accused No.11 at the time of granting him bail at Para 5 of the order it was conceded by the special prosecutor for the NAB that no reference had been filed. At that time the order held the case to be one of further inquiry and granted bail.

11. In our view the above case is distinguishable from the present case. This is because a reference has now been filed and the case is no longer one of further inquiry. Furthermore, the Accused No.11 was Ex AD Fund officer (Accountant) Thatta whilst the petitioner is Ex Town officer Town Committee Shujawal and as such they played different roles in the scam. In our view the role of the petitioner was far greater than that of Accused No.11 as he had far more authority than the Accused No. 11 and was much more closely and directly involved in the scam and with the contractors as he authorized the release of funds to the contractors and even received an unexplainable RS 500,000 in cash payment which was not the case with Accused No.11. Thus, we find the rule of consistency not to be applicable in this case

12. The petitioner was Town officer and it was his responsibility to authorize the release of funds for development work, keep a record of the relevant work orders, bills and invoices and ensure that the work was carried out. During his tenure as Town officer over RS 24,493,575 worth of work was released under the petitioner's authority/approval to accused contractors such as

Quwat Ali Shah, Nazakaty Ali Sabro and Mehboob Ali Shah of MA Enterprises and Development which it appears had even been awarded the contract in violation of the relevant rules. However no vouchers or receipts are available in respect of such disbursements in respect of work done or to be done. Furthermore, according to the S.161 statement of Ashfaq Ahmed Shah and Muhammed Ali Khatti no work was carried out on the ground on account of which funds had been disbursed. This fact was corroborated by Zulfiqar Shah during NAB's own ground check. It has also come on record that the petitioner was even signing cheques to contractors in his capacity as Town officer some of which were paid to MA Enterprises. The record also revealed that contractor Quwat Ali Shah also received payment for work which was not carried out.

13. It also needs to be borne in mind that a large number of contractors have already entered into voluntary returns (VR) under the NAO, thereby admitting their guilt in this scam. Likewise accused 18 to 22, all of whom were contractors, applied for plea bargain under the NAO and thereby admitted their guilt, which application was rejected by the Accountability Court. Thus, there appears to be little doubt that a scam took place and the petitioner was involved in it bearing in mind that large amounts were authorized to be paid to contractors by the petitioner for work which was not carried out (and upon the progress of which he should have monitored) based on fake invoices and most of the contractors have applied for VR or PB in admittance of their guilt.

14. With regard to the RS 500,000 cash cheque payable to the petitioner we have been shown a copy of this cheque which is a cash cheque payable to the petitioner. When confronted as to why this cash cheque had been made out to the petitioner and what it related to the learned counsel for the petitioner could not furnish any satisfactory explanation. Instead he referred us to a relinquishing of charge report dated 10-5-2014 whereby the petitioner had allegedly relinquished his charge as Town Officer,

Town Committee Sujawal with effect from 10-09-2014 which in effect also acknowledged that illegal activities were being committed by the town committee. However, it was observed that the cash cheque was given to him 2 months **after** the date of his letter allegedly relinquishing charge for which he could again provide no satisfactory explanation. NAB also produced a further cash cheque payable to the petitioner of 3 lacs 35,000 for which the petitioner had no explanation for receiving. It would seem prima facie that the relinquishing of charge letter was only written to camouflage the petitioners' earlier illegalities.

15. Taking into account the senior position of the petitioner, his releasing of funds to contractors for work which was not carried out and his unexplained cash payments of RS 5,00,000 and 3,35,000 which in our view are likely to be his kickback, bribe or pure embezzlement in connection with the scam we are satisfied that there is sufficient material on record to provide reasonable grounds to connect the petitioner with the offense for which he is charged and as such we hereby dismiss this bail petition. However the Accountability Court dealing with this matter is directed to complete the trial within 6 months of the date of this order. The office is directed to provide a copy of this order to the Accountability Judge with whom this reference is pending for compliance.

Dated 06-09-2016