

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:**

**Mr. Justice Muhammad Junaid Ghaffar**

**Mr. Justice Muhammad Humayon Khan**

C.P No.7079 of 2016

Adnan Hyder Khan-----Petitioner.

Versus

National Accountability Bureau & another-----Respondents.

Date of hearing: 17.05.2017

Date of Order: 17.05.2017

Petitioner: Through Mr. Nabeel Kolachi,  
Advocate

NAB: Through Mr. Raiz Alam Khan,  
Special Prosecutor NAB along  
with Investigation Officer.

Respondent No.4 Ms. Naheed A Shahid, Advocate

**ORDER**

**Muhammad Junaid Ghaffar, J.** Through this Petition, the Petitioner seeks Post Arrest Bail in Reference No.42 of 2016 pending before the Accountability Court at Karachi. The case is of willful default in terms of Section 31-D and 5(r) of the NAB Ordinance 1999, against directors of a company (Trans Livia Private Limited) of whom the present petitioner was a Director and a Guarantor.

2. We have heard the learned Counsel for the Petitioner, Respondent No.4 (Bank) as well as Special Prosecutor NAB and by means of a short order on 17.5.2017 we had granted bail to the petitioner. However, before the reasons could be recorded, one of

us namely *Muhammad Humayun Khan.J*, is no more an additional Judge of this Court pursuant to a decision of the Judicial Commission of Pakistan dated 12.6.2017. Therefore, the reasons have been recorded by me, and my observations are as under:-

- a. It appears to be an admitted position that insofar as the Petitioner is concerned he acted as a guarantor to the finance facility granted to the company and is not a principal borrower, whereas, the main directors are absconding. It is also the case of the petitioner that he had resigned from the company somewhere in the year 2005.
- b. It is further case of the petitioner that he was never served with the notice as required under Section 5(r) of the NAB Ordinance, 1999 on his given address, either by the Bank or by the Governor State Bank of Pakistan. Reliance in this regard has been placed on the leave to defend application filed in the Suit filed by Respondent No.4 / Bank, wherein a new address for service was given, and notwithstanding this, the notice as required under Section 5(r) *ibid* was issued on the previous address of the petitioner which could not be served. In fact while confronted the learned Counsel for the Bank has contended that notices were issued on the available address in record and the Bank was not required to send the notices on the fresh address for service filed in Suit as it was only for the purposes of Suit. However, we are notice convinced with such line of argument for the reason that law i.e. Section 5(r) of the NAB Ordinance requires that a person is said to have committed willful default if he does not pay or return the amount due....*and a thirty days' notice has been given to such person* and similarly after this notice of 30 days, the Governor State Bank is also required to *give a seven days' notice to such person for repayment*. The Hon'ble Supreme Court in the case of *Khan Asfandiyar Wali v Federation of Pakistan* (**PLD 2001 SC 607**) has been pleased to observe that the

statutory notice of 30 days and 7 days as required under section 5(r) shall be *served* upon the alleged defaulter to satisfy Governor State Bank of Pakistan that he has not committed any willful default. This appears to be mandatory in nature and the word *served* has been interpreted on various occasions and need not be dilated any further, except making this case as of further inquiry to the extent of petitioner who has been appearing in the Execution proceedings as well and has not absconded like the other principal borrowers and was admittedly not served with any such notice on his fresh and or changed address.

- c. In the report of Governor State Bank of Pakistan prepared pursuant to Section 31-D *ibid*, it has been admitted that show cause notices were issued to all directors but were delivered only to two out of five borrowers / guarantors, but no details have been mentioned as to whom they were delivered. This requires evidence as contended by the special prosecutor NAB as well.
- d. It is also an admitted fact that the Bank by exercising powers under the then Section 15 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, [now declared *ultra vires* by the Hon'ble Supreme Court-see *National Bank of Pakistan v Saif Textile Mills Limited* (**PLD 2014 SC 283**)] had sold the leased Vehicles without any proper valuation and recovered an amount which was much less than the outstanding amount.
- e. Insofar as the present petitioner is concerned it is also an admitted position that Bank / Respondent No.4 has entered into negotiations to the extent of his share / liability in terms of section 146 of the Contract Act (Co-sureties liable to contribute equally), and an amount of Rs.1.0 Million has already been paid which has been accepted by the Bank, whereas, learned Counsel for Respondent No.4 under instructions has conceded to the extent of grant of bail to the present petitioner.
- f. The petitioner was arrested on 26.10.2016, whereas, out of 08 witnesses only 1 witness has been examined, whereas, other directors are absconding and this may

result in in-ordinate delay of completion of trial as we have not been assisted on behalf of NAB as to whether any efforts have been made to separate the case / trial of other absconding co-accused from the petitioner.

3. In view of hereinabove facts and circumstances of the case, we are of the view that no useful purpose would be served if the petitioner is kept behind bars. Accordingly he has made out a case for grant of bail and therefore by means of a short order dated 17.05.2017, we had granted bail to the Petitioner on his furnishing surety of Rs.500,000/- with bail bond to the satisfaction of the Nazir of this Court, in addition to deposit of his original passport and placing of his name on Exit Control List. These are the reasons thereof.

Judge

Judge

Ayaz