

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-1148 of 2016.

Jameel Akhtar-----Petitioner.
Versus
Chairman NAB & others ----- Respondents.

C.P No.D-1149 of 2016.

Tanveer Ahmed Siddiqui -----Petitioner.
Versus
Chairman NAB & others ----- Respondents.

C.P No.D-1047 of 2016.

Nayab Mirza -----Petitioner.
Versus
The State & others ----- Respondents.

C.P No.D-2137 of 2016.

Zafar Ahmed -----Petitioner.
Versus
**National Accountability Bureau
& others ----- Respondents.**

C.P No.D-2138 of 2016.

Asif -----Petitioner.
Versus
NAB & others ----- Respondents.

Dates of hearing: 19.04.2017 & 20.04.2017

Date of Order: 20.04.2017

**Mr. Muhammad Jameel, Advocate alongwith Petitioners
Jameel Akhtar and Tanveer Ahmed Siddiqui in C.P Nos.D-
1148/2016 and D-1149/2016.**

**Mr. S. Shoa-un-Nabi, Advocate alongwith Petitioner Nayab
Mirza in C.P No.D-1047/2016.**

Mr. Iftikhar Hussain, Advocate for Petitioners Asif and Zafar Ahmed in C.P Nos.D-2137/2016 and D-2138/2016.

Mr. Muhammad Altaf, Special Prosecutor NAB alongwith Baqa Mohammad A.D./I.O NAB.

ORDER

Muhammad Junaid Ghaffar, J. All Petitioners in these petitions have been mentioned as accused in Reference No.21 of 2016 filed before the Accountability Court at Karachi. The Petitioners in C.P No.D-1148, 1149 and 1047 of 2016 are Sales Tax Officers, whereas, Petitioners in C.P No.D-2137 & 2138 of 2016 are private persons alleged to have obtained Sales Tax refund. All Petitioners are on Ad-interim pre-arrest bail granted by this Court pursuant to Orders dated 25.02.2016, 15.04.2016 and 22.02.2016.

2. We have heard the learned Counsel for the Petitioners and so also Special Prosecutor NAB and our observations are as under:-

a. Insofar as the case against the Sales Tax Officers is concerned, the prime allegation against them is to the effect that the Sale Tax Registrations were granted to M/S. Media International, M/s Saad Textile, M/s Alaska Enterprises, M/s Gallaria Textile, M/s Brother International and M/s Shahnawaz Enterprises without proper verification as they never existed on the given address. According to the prosecution case these Companies were bogus and non-existent and were later utilized and were instrumental in the sanction of sales tax refund amounting to a total of Rs.9,578,320/-. However, the learned Counsel for petitioners have placed on record the deposition of various witness in this regard but none of them has implicated these three officers directly, and therefore, while evaluating the evidence tentatively we feel that this requires further enquiry.

b. It is also surprisingly noted that only these three officers have been implicated as accused in this matter, however, none has been questioned from the department, who was authorized to sanction refunds. This creates serious doubts regarding the alleged role of these officers for having acted in connivance in the registration process. The prosecution witness P.W. Mukhtiar Hussain while being cross-examined has not been able to suggest anything against these three officers and therefore their case is of further enquiry.

c. Insofar as the two Petitioners in C.P Nos.D-2137 & 2138 of 2016 are concerned again it appears that initially the reference was filed pursuant to the alleged suspicious transaction report (STR) received from My Bank Ltd. with NAB Authorities and when the witness P.W.1 Syed Motahir Ali (Bank Manager) was cross-examined, he stated that ***“it is correct to suggest that no any cheque of sales tax refund was credited in those accounts”***.

d. On the other hand, the prosecution witness Mukhtiar Hussain has all along in his cross-examination has surprisingly supported the case of these two Petitioners at least to the extent of further enquiry as in his cross-examination he has admitted that out of three alleged refunds one file is missing, whereas he is only in possession of photocopies of other two case files.

e. Again when he was cross-examined as to the veracity of the refund claims he says that ***“It is correct to suggest that as per Note Sheet regarding tax period August, 2003 and September, 2003 refund claims were processed and sanctioned as per law”***.

f. Again in further cross-examination he has categorically stated that the Processing Officer of Tax refunds was the Deputy Superintendent and the sanctioning authority was Deputy Collector, however, both these person have neither nominated nor have been cited as witnesses.

g. He has even admitted that he has no knowledge that any loss has happened to the Sales Tax Department in respect of these claims.

h. All evidence so far recorded clearly makes out a case of all Petitioners as a case of further enquiry, whereas, even otherwise, the entire case is dependent on documents, which are already in possession of the prosecution, whereas, they are not required for any further investigation, and therefore, no fruitful purpose would be served, if these Petitions are dismissed.

i. It is also important to note that these alleged bogus claims pertain to the year 2003, whereas, the Reference has been filed in the year 2016.

j. In more or less similar circumstances in respect of alleged involvement of Sales Tax Officers and refund claimant, in the case reported as **2016 P.Cr.L.J 79 (Sarfraz Ahmed and another v. The Chairman National Accountability Bureau (NAB) through Chairman and others**, the Court has granted bail on the principle of further enquiry, and for the reason that NAB had failed to collect any incriminating material regarding any unlawful gain or gratification for the alleged act of the officers. Similar position emerges in this case, whereas, in case of refund claimants again no material has been placed so as to suggest connivance on their part. All this makes it a case of further enquiry.

k. Reliance may also be placed on the case of ***Syed Amir Hashmi and another v. The State (PLD 2004 Karachi 617)***, and ***Muhammad Asif v. The State & Others (2016 SCMR 1540)***.

3. In view of hereinabove facts and circumstances of the case, Ad-interim pre arrest bails granted to the Petitioners vide Orders dated 25.02.2016, 15.04.2016 and 22.02.2016 are confirmed on the same terms and conditions. However, the aforesaid observations, needless to state are on a tentative assessment of the

evidence so far recorded, and shall not be taken as a final pronouncement by this Court, in any manner, and the trial Court while finally deciding the case shall not be influenced by any of such observation(s) hereinabove.

Dated: 20.04.2017

Judge

Judge

Ayaz