

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

**Present:**

**Mr. Justice Muhammad Junaid Ghaffar.**

**Mr. Justice Muhammad Humayon Khan.**

**C.P No. D-2366 of 2016**

**Muhammad Imran -----Petitioner**

**Versus**

**National Accountability Bureau ----- Respondent**

**C.P No. D-2496 of 2015**

**Iqbal Shafique-----Petitioner**

**Versus**

**Director General Regional NAB----- Respondent**

**C.P No. D-2497 of 2015**

**Iqbal Shafique -----Petitioner**

**Versus**

**Director General Regional NAB ----- Respondent**

**C.P No. D-3362 of 2015**

**Muhammad Ajaib -----Petitioner**

**Versus**

**National Accountability Bureau ----- Respondent**

**C.P No. D-3363 of 2015**

**Muhammad Ajaib -----Petitioner**

**Versus**

**National Accountability Bureau ----- Respondent**

**Dates of hearing:** 23.05.2017.

**Date of Order:** 23.05.2017

**Petitioners:** **Through Mr. Nusrat Gul Malik Advocate in C. P. No. D-2366 of 2016.**

**Through Mr. Arshad Lodhi Advocate in C.P. No. D-2496 and 2497 of 2015.**

**Through Bashir Ahmed Channa Advocate in C.P. No. D-3362 & 3363 of 2015.**

**NAB:** **Mr. Yasir Siddique Spl Prosecutor with I.O. Muhammad Shahzeb Durrani.**

## **O R D E R**

**Muhammad Junaid Ghaffar, J.** These five Petitions have been filed for bail before arrest by the afore-stated Petitioners in respect of Reference Nos.11 and 12 of 2015 filed before the Accountability Court at Karachi.

2. The Petitioner in C. P. No. D-2366 of 2016 (**Muhammad Imran/Imran Ghani**) is alleged to be a businessmen being proprietor of M/s Usman Textile Mills (Reference No.11/2015). The Petitioner in CP No. 2496 and 2497 of 2015 (**Iqbal Shafique**) was working as Deputy Superintendent Sales Tax Department, (Reference No.11/2015 & Reference No.12/2015), whereas Petitioner in C.P. No. D-3362 & 3363 of 2015 (**Muhammad Ajaib**) is a Bank Officer wherein Imran Ghani was alleged to be operating the Bank Account (Reference No.11/2015 & Reference No.12/2015). The Precise allegation in Reference No.11 of 2015 against the principal accused **Muhammad Imran/Imran Ghani** is that he obtained Sales Tax refunds of Rs. 48.32 millions on the basis of fake invoices, whereas, in Reference No.12 of 2015 the allegation against the principal accused Noor Muhammad is to the effect that he obtained Sales Tax refund of Rs. 49.27 million on the basis of fake Sales Tax invoices. The case against Petitioner **Iqbal Shafique** is to the effect that

he was the processing officer and processed the refund claim(s) without verifying the genuineness and admissibility of such claims, whereas, it is further alleged that **Muhammad Ajaib** opened Bank Accounts of the accused without following proper procedure.

3. We have heard both the learned Counsel for Petitioners as well as Special Prosecutor NAB and our observations are as under:-

- a) Insofar as Petitioner in C. P. No. D-2366 of 2016 (**Muhammad Imran/Imran Ghani**) is concerned, learned Counsel has placed on record NTN Certificates as well Online Verification of FBR which reflects that the NTN of present petitioner is 1884717-0 issued on 16.3.2004, whereas the same NTN was also issued to one Muhammad Iqbal Memon on 15.3.2004. The petitioner's case is that he has been falsely implicated in this case as he has no concern with M/s Usman Textile Mills. This alone makes the case of this petitioner as that of further inquiry as apparently there are two NTN certificates of same Number in favor of petitioner as well as Muhammad Iqbal Memon.
- b) It further appears that Muhammad Iqbal Memon has been cited as a prosecution witness in this Reference and he has been examined in Accountability Court, wherein in his cross examination he has stated "*it is correct to suggest that according to this NTN document three companies are in the name of Iqbal Memon*". He has further stated that "*at the instance of NAB I deposed in favor of NAB otherwise I have to face consequences of arrest*". This again makes it a case of further inquiry, insofar as this petitioner is concerned.
- c) It further appears that other two witnesses of NAB namely Raza and Naeem Akbar have also not implicated this petitioner, and in fact have gone to the extent of saying that the refunds were not issued to this petitioner. In the circumstances we are of the view that this petitioner's case

is of further inquiry as the witnesses examined so far have not implicated him.

d) Insofar as the case of **Iqbal Shafique** (C.P. No. D-2496 and 2497 of 2015) is concerned, though matter is being proceeded before the NAB Court and evidence has been recorded; however, the witnesses so far examined have not directly implicated the said Petitioner in any manner, whereas, even otherwise it appears that the responsibility of the petitioner was of a processing officer and not of a sanctioning officer. It further appears that two co-accused who were Deputy and Additional Collector of Sales Tax in both the References have already been granted Bail by this Court vide order dated 10.5.2017 passed in CP No.D-2592 of 2015 (**Imtiaz Ahmed Dev v. NAB**) and other connected matters. The relevant findings read as under;

e) The Special Prosecutor NAB as well as I.O. was confronted as to the status of the adjudication proceedings in this matter to which a very evasive reply was given by them, whereas, the Counsel for Petitioner submits that though certain Show Cause Notices were issued against the main accused for alleged Sales Tax refunds, but they were never adjudicated finally and no liability was determined.

g) It further appears to be an admitted position that at the relevant time when the sales tax refunds were claimed by the principal accused in both references a system known as **STARR** (Sales Tax Automated Refund Repository System) initiated by FBR was operative and under this system the officer was required not to raise petty objections and let the process of refund go through expeditiously on the basis of input already recorded in the data through the STARR system. The said system was introduced so as to curtail the discretion being exercised by the officers while objecting to the refunds at the behest and persistent demands of the business community. Ordinarily no officer was required to raise frivolous and minor objections and scrutinize what the STARR system had passed, processed and sanctioned.

h) Insofar as the data which was fed in the **STARR** system is concerned, there is no allegation in the Reference to that effect nor any such data processing and feeding officer has been implicated.

i) The only allegation against the present Petitioners is to the effect that they deliberately and illegally failed to exercise their authority to prevent the grant of such refund and therefore, misused their authority and processed / recommended for sanction of illegal sales tax refund causing loss to the National Exchequer. However, it is a matter of record that their duty, when analyzed vis-à-vis. the **STARR** system; we are of the considered view that case of both the petitioners is of further inquiry as to whether they were really involved in the alleged illegal refund of sales tax. Moreover, we do not see any specific role assigned to them which again makes their case of further inquiry.

- j) All evidence so far recorded clearly makes out a case of both 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.
- k) It is also important to note that these alleged bogus claims pertain to the year 2005, whereas, the Reference has been filed in the year 2015.
- l) 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. All this makes it a case of further enquiry.
- m) 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)**.
- e) On our query that as to whether the aforesaid order of bail has been challenged any further, no satisfactory response was received either from the Special Prosecutor NAB or from the Investigation Officer present in Court. In the circumstances we are for the view that following the rule of consistency the petitioner **Iqbal Shafique** having a more or less similar role is also entitled for concession of bail.
- f) Insofar as case of petitioner **Muhammad Ajaib** is concerned, the only allegation against him is to the effect that he being the Account opening officer of the Bank opened the accounts of accused in order to get more business for the bank. Except this there is no other allegation whereas, in the evidence so far recorded nothing incriminating has come on record against him. We have already observed hereinabove that other co-accused are also entitled for concession of bail on the ground of further inquiry and rule of consistency, therefore we do not see reason to deny this concession to this petitioner as well.

4. In view of hereinabove facts and circumstances of the case, Ad-interim pre arrest bails granted to the Petitioner in C. P. No. D-2366 of 2016 (**Muhammad Imran/Imran Ghani**) vide Order dated 27.04.2016, to

petitioner in CP No. 2496 and 2497 of 2015 (**Iqbal Shafique**) vide orders dated 07.5.2015 and to petitioner in C.P. No. D-3362 & 3363 of 2015 (**Muhammad Ajaib**) vide order dated 10.6.2015 respectively 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.

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