

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Muhammad Humayon Khan**

C.P No.4102/2016.

Syed Muhammad Haider Naqvi-----Petitioner.
Versus
Federation of Pakistan & another -----Respondents.

C.P No.D-5576/2016

Ahmer Abidi -----Petitioner.
Versus
The NAB & another-----Respondents.

Dates of hearing: 27.04.2017 & 22.05.2017

Date of Order: 26.05.2017

Petitioner in C.P No.D-4102/2016: Through M/s. Rasheed A. Rizvi and Abbas Rizvi, Advocates.

Petitioner in C.P No.D-5576/2016: Through Mr. Muhammad Ashraf Kazi, Advocate.

NAB: Through Mr. Mr. Yasir Siddique, Spl. Prosecutor along with Muhammad Ibrahim, I.O.

Federation of Pakistan: Through Ms. Naheed Parveen, DAG.

Complainants: Through Mr. Khawaja Shamsul Islam, Advocate.

ORDER

Muhammad Junaid Ghaffar, J. Both these Petitions have been filed for obtaining bail in Reference No.34/2016. The Petitioner in C.P No.D-5576/2016 (Ahmer Abidi) has been shown as Accused

No.3 and is under custody, whereas, Petitioner in C.P No.D-4102/2016 (Syed Muhammad Haider Naqvi) has been shown as Accused No.6 and is on Ad-interim Pre-arrest Bail.

2. The precise allegation against the both these Petitioners is to the effect that they acted as commission agents for Accused Nos.1,2,4 & 5 and induced people for making investments in their Companies working under the name and style of NTF Traders and AM Enterprises. It is further alleged that they enticed people to invest in fraudulent Forex Trading schemes of the said Companies on prospects of exorbitant profits. The precise allegation in the Reference is detailed out in Para 6 & 9 respectively, which reads as under:-

6. That the investigation revealed that the accused No. 3 Ahmer Abdi worked as agent of NTF Traders and AM Enterprises on commissions basis. He enticed people to invest in fraudulent Forex Trading schemes of NTF Traders and AM Enterprises on prospects of exorbitant profit. He received an amount of Rs. 20,206,525/- from NTF Traders and AM Enterprises which was credited into his bank accounts in Dubai Islamic Bank. He applied for VR but did not pay the amount of his liability.

9. That the investigation further revealed that the accused No. 6 Syed Muhammad Hyder Naqvi wormed as agent of NTF Traders and AM Enterprises on commissions basis. He lured people to invest in fraudulent Forex trading schemes carried out by the companies NTF Traders and AM Enterprises on exorbitant profits. He has received Rs. 11,400,000/- by way of commission. In addition to being an agent, he invested Rs. 23,657,200/- on which he managed to received unjustified profit of Rs. 43,664,960/- and US\$ 28,600. The accused No. 6 applied for VR, but did not pay the amount of his liability.

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

a. It appears to be an admitted position that insofar as Petitioner in C.P No.D-4102/2016 (Syed Muhammad Haider Naqvi) is concerned, he has been implicated on the basis of statement of co-accused and two complainants namely Dr. Pervaiz Mehmood Hashmi and Sajad Nadeem, (Sajjad Hashmi) whereas, 23 witnesses have been examined

before the trial Court but none of them has implicated this Petitioner. It further appears that both the complainants have not yet appeared before the Trial Court and have rather avoided to do so, by seeking regular adjournments. It further appears that according to NAB, there were 296 affectees, who have made investments with the main accused through various agents and interestingly the name of one of the complainant Sajjad Hashmi / Sajjad Nadeem also appears as an agent, who induced Malik Nazir Ahmed to invest an amount of Rs.5.6 Million available at Serial No.146 of the said List.

- b. The case of the present Petitioners has not been denied by the NAB Authorities that they were also investors in the Companies of the main accused. It is the case of the petitioners that they invested money and on gaining profits others also approached them for such investments.
- c. It further appears to be an admitted position that the payments were made directly in the name of the Companies and there is nothing on record so as to suggest that any cheque was issued in the name of both the petitioners. It further appears that majority of the transactions were on Cash basis and up to date record of such investment has not been traced, directly implicating the present petitioners, which at the most can only be proved at the Trial through evidence, making out their case as of further inquiry. In fact in the investigation report, such fact has come on record, which reads as under:-

“e. Investment Record:- Maintenance of record of investment was terribly poor. There was no individual profile of investors showing how much amount was deposited by them. The accused persons kept old fashioned accounts registers to maintain investment record. There registers numbering 6x (annex-L) were recovered during search of the office of accused persons. The registers are in disintegrating condition, and the description of investment and profit transactions in them is too unprofessional, complex and totally deceptive. At many places, the transactions of millions of rupees are mentioned in delible writing of pencil. There are no contact details of most of the investor, only some investors CNIC copies are available this reflects that the accused persons were never upright in investment record keeping and deliberately kept it messy with intention to conceal investors and details of exact amount of investment. Furthermore, there is no mention of

the amount paid to the agents who introduced people on commissions. They stated that they carried out several transactions in cash, thereby meaning that they paid and received money from investors in cash in hand. There are no receipts and signed documents of such transactions in cash. However, the undersigned confronted their registers and bank record to accused persons to prepare a list of investors list shows that the accused persons collected Rs. 786,716,507/- from 296 people starting from the year 2009 to 2015. The list is attached as annex-K.”

- d. Insofar as both these Petitioners are concerned, it is NAB’s own case that they were working as agents and have invested money as well, therefore, it can be safely said that their case is of further inquiry.
- e. Even otherwise, since both these Petitioners have been implicated on the statement of co-accused, therefore at least at this stage such statements cannot exclusively be used against the Petitioners and can only be considered at the Trial of the case with corroborating evidence.
- f. Though some of the affectees have implicated the Petitioner (Ahmer Abidi) in C.P No.D-5576/2016 in their 161 Cr.P.C. Statement, however, when such Statements are compared with their cross-examination recorded at the trial, it appears that there is contradiction in their statement viz-a-viz their cross-examination. The benefit of this at this stage of the proceedings must go to the Petitioner.
- g. It further appears that the two complainants initially lodged F.I.R against the accused under Section 489-F Cr.P.C for dishonoring of cheques and after being unsuccessful approached NAB Authorities and lodged their complaint, which was proceeded with inquiry and investigation and then a Reference before the Accountability Court.
- h. It further appears to be an admitted position that though there were various agents, who were allegedly working for main accused in inducing people for investment, however, all of them have not been implicated and only a few agents have been cited as accused. This appears to be a pick and choose exercise by the NAB Authorities.

- i. In a more or less similar situation, wherein, people had made investments with a Company working in the name of Nationwala Financial Services, a learned Division Bench of this Court through Order dated 25.07.2014 in C.P No.D-2820/2014 and other connected matters has been pleased to grant Post Arrest Bails to persons, who had a similar role as that of the present Petitioners. The accused in that matter were also working as commission agents and on bringing investments, commission was being paid and thereafter Reference was filed by NAB Authorities. Three such accused were granted bail by the learned Division Bench through the said order.

- j. Insofar the argument of learned Special Prosecutor that Bank Account details of both the accused have come on record and is sufficient to implicate them is concerned, we may observe that once NAB itself says that both were investors as well, therefore, any details of accounts is meaningless at the stage of bail, as it is a natural corollary that both the petitioners were having credit and debit entries in their accounts and these accounts might have some nexus with the accounts of the company owned by the main accused. In the investigation report (pg:21-22) regarding accused (Syed Muhammad Haider Naqvi) it has been stated that.... "The accused Syed Muhammad Haider Naqvi is commission agent of NTF Traders and AM Enterprises. On account of commission for introduction, he received commission of Rs.11,400,000/- as admitted by the accused Talal Asghar. *There is no record of the commissions paid to the accused Syed Muhammad Haider Naqvi. The accused Talal Asghar stated that he paid this commission to accused Hyder Naqvi in cash, but did not get any receiving nor did he keep any record of it. He said that all transaction was in cash.*.. Whereas, in respect of the other petitioner Ahmer Abidi, the investigation report is only to the extent that he was a commission agent and he lured people to invest. This piece of evidence clearly makes out the case of the petitioners as of further inquiry.

4. In view of hereinabove facts and circumstances of the case, we are of the view that both the Petitioners have make out their case as it appears to be a case of further inquiry. Whereas, in the evidence so far recorded both Petitioners have not been directly implicated, therefore, the Petitioner in C.P No.D-5576/2016 (**Ahmer Abidi**) is admitted to Post Arrest Bail in the sum of Rs.500,000/- with P.R bond in the like amount to the satisfaction of Nazir of this Court besides deposit of his Passport. Whereas, the pre-arrest bail granted to the Petitioner (**Syed Muhammad Haider Naqvi**) in C.P No.D-4102/2016 vide Order dated 28.07.2016 is confirmed on the same terms. Both the petitions are allowed in the above terms.

Dated: 26.05.2017

Judge

Judge

Ayaz