

*ORDER SHEET***IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD****Present:**

Mr. Justice Salahuddin Panhwar.

Mr. Justice Fahim Ahmed Siddiqui.

CP No. D-615 of 2017

CP No. D-631 of 2017

CP No. D-870 of 2016

CP No. D- 952 of 2016

CP No. D-1060 of 2016

CP No. D-1150 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
Date of hearing:	14.09.2017.
Date of order:	14.09.2017.

M/s. Ghulam Akbar Jatoy, Syed Tarique Ahmed Shah, Ghulamullah Chang, Nazeer Ahmed Bhatti and Waqar Ahmed Memon, Associate of Mr. Amjad Ali Sahito, Advocates for petitioners.

Petitioners Shamsuddin Dal, Syed Noor Ahmed Shah, Muhammad Safar, Qurban Ali Noonari, Tawakkal Ali Shah, Anwar Ali and Faheem Haider are present on interim pre-arrest bail.

Mr. Lutufullah Arain, Assistant Attorney General of Pakistan.

Mr. Anwar H. Ansari, State Counsel.

Mr. Jangu Khan, Special Prosecutor NAB.

ORDER

This single order will dispose of the captioned constitutional petitions, filed by the petitioners namely Allah Bachayo Khaskheli (CP D-870/16), Muhammad Saffar Katchhar (CP D-952/16), Syed Noor Ahmed Shah (CP D-1060/16), Qurban Ali Noorani, Faheem Haider Memon,

Tawakal Ali Shah, Anwer Ali Halepoto (CP D-1150/16) whereby seeking *pre-arrest bail* in respect of the call upon notices issued to them by NAB Authorities as well as the petitioner Mansoor Ahmed (CP D-631/17), who is seeking post arrest bail. All of these bail applications are in connection with the Reference No. 9 of 2017/H filed by NAB authorities against the petitioners.

2. As per the aforesaid reference, it was revealed after investigation, that the Secretary Education and Literacy Department recorded approval for appointment of OT, DT, PTI and AWI in BPS-09 in District Jamshoro for the year 2012. At that time, the Government of Sindh issued general instructions and specific TORs for the recruitment process which the recruitment committee was bound to follow. It was clarified by the department that all appointments are to be made against sanctioned and clear vacant posts of the particular cadre/post and if clear vacant post of a particular cadre/BPS is not available, then the appointment is deemed to have been made in excess of the sanctioned strength and create a burden upon Provincial Exchequer and as such become illegal. Besides, the Finance Department had issued clear instructions that for release/disbursement of salaries of newly recruited persons, district -wise final merit list duly signed by the Administrative Secretary with official stamp on a prescribed format is required to be furnished directly to the office of the Accountant General Sindh and concerned District Accounts Office, any deviation in this regard would render the release of salaries as an authorized and illegal.

3. During investigation, it was revealed that the Government of Sindh Education and Literacy Department issued notification No. SO (S-I)/10-263/2011 dated 15th December, 2011 for the selection / recruitment of staff under the administrative control of the respective Directorate of School Education and the committee would be constituted comprising of following numbers and TORs were communicated to the Regional Director School Education.

- Regional Director School Education

Chairman

- District Education Officer of the respective District Member
- Office/Head of the institution having vacancies Member

It was also revealed during investigation that at the relevant time Shamsuddin Dal (accused No. 4), the Director Schools Education, Hyderabad, was the chairman of the District Recruitment Committee (DRC). Allah Bachayo Khaskheli (accused No. 1), the District Education Officer Jamshoro, was the member of the District Recruitment Committee (DRC). Muhammad Saffar Kachhar, the District Education Officer (Elementary), was also a member of the District Recruitment Committee (DRC) and as such all of them were jointly and severally responsible for transparent, fair and meritorious selection.

4. The investigation further revealed that the accused No. 4 Shamasuddin Dal (Chairman DRC) got published an advertisement in newspaper daily 'Kawish' on 04-04-2012 regarding recruitment of Drawing Teacher (BPS-9), Assistant Workshop Instructor (BPS-9), Junior Physical Training Instructor (BPS-9) and Oriental Teacher (BPS-9) for District Jamshoro, Hyderabad Region without specifying the number of vacancies against each basic-scale which is a violation of Rule 11, Chapter-III of the Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974.

5. It was also revealed during investigation that recruitment of 138 candidates was conducted in violation of instruction of the government. No proper record of the written test and interview was maintained by the District Recruitment Committee (DRC). During investigation, it was also revealed that accused No. 1 to 4 recruited 138 persons by declaring them eligible for appointment while they have recruited one person who was already declared by them as ineligible. They have also recruited 108 persons who had not applied for the said posts, but they were selected due to the nepotism and in violation of recruitment procedure and instructions, as such they defeated the merit and made the entire process of recruitment illegal. It was also revealed that the appointment of 74 persons was made

in excess of the actual strength, which resultantly caused loss to the national exchequer.

6. It was also revealed during the investigation that the case of those newly appointed persons was illegally processed for release of their salaries, issued allocation of BPS-14. The instructions were violated and in connivance with accused No. 1 to 4 and amount of Rs. 110,323,296/- illegally released by the accused No. 5 to 8 of District Account Office, Hyderabad, as such, they are also responsible for causing great loss to the national exchequer.

7. Syed Tarique Ahmed Shah, learned counsel for the petitioner Qurban Ali Noonari and others (CP No. 1150/20016) submits that his clients are having no concern with whatever has happened during the appointments and the allegations against them is only that they have released salaries to the persons who have been appointed by the other accused persons. According to him, as per the circular issued from Accountant General Sindh, they are obliged to release salaries to those employees of Education, Department whose salary bills are assigned by the DDO and countersigned by the EDO concerned. He submits that his clients have obeyed the directions given under the said circulars and when the salary bills were received signed by the concerned Drawing and Disbursing Officer (DDO) and the same was countersigned by the concerned Executive District Officer (EDO), they had to process the same and issue/release salaries.

8. Mr Ghulam Akber Jatoy, the learned counsel for the petitioner Masroor Ahmed Khan (CP No. 631/2017) submits that his client has been arrested and since arrest he is confined. According to him, his case is at par to those whom the concession of interim pre-arrest bail was already granted. According to him, the case against the petitioner and other co-accused rests on documentary evidence and as he is the permanent resident of Hyderabad; therefore, there is no likelihood of his being absconder. According to him, the trial has yet not initiated and bail to the

petitioner cannot be withheld as the same amounts to punishment in advance.

9. The other counsel representing the rest of the petitioners prefer to adopt the arguments advanced by both of the above learned members of the bar.

10. Mr Jangu Khan, Senior Special Prosecutor NAB opposes the bail plea of the petitioner by submitting that they are responsible for illegal appointments in the education department for the district Jamshoro and have caused huge loss to the national exchequer. According to him, they are the beneficiary of all the illegal practices. He points out that there was no test for appointment, as no result sheet or merit list was prepared. He submits that the act done by the petitioners is the worst example of corruption and nepotism.

11. We have heard the arguments and have gone through the available record.

12. At the very outset, it needs be emphasised that principles for dealing a request for *bail* for an *ordinary* would not be *stricto sensu* apply to a case, involving an allegation of *corruption* because an *ordinary* offence normally affects an *individual* while latter the *society* as a *whole*. Thus, distinction is *always* to be drawn between an *ordinary* criminal case and that of *corruption* not only while dealing with *bail* plea (s) but as well while recording conviction, if same is found to have been established. We would also add that there shall be no *distinction* in applying this principle while dealing with an application for post-arrest or *pre-arrest* even. Reference in this regard may well be made to the case of Rai Muhammad Khan v. NAB thorough Chairman 2017 SCMR 1152 wherein it is *categorically* held as:

“7. Under the principle of law and justice, each bail petition is to be decided on its own merits and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has come a threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well

being of the poor people, is consistently embezzled / misappropriated at a large scale and why the majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. It has become the foremost obligation of each and every institution, including the judicator, to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply the Anti-corruption laws somewhat rigidly, one on the fact the fact the case is made out, at bail stage, against the accused person. Distinction, however, is to be drawn between the ordinary criminal cases and is of corruption on the above analysis and grounds, while dealing with bail matter to an accused person, charged for such like crimes and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence.

None would deny that corruption can occur at any point in a system where *individuals* are vested with discretion. It is unfortunate for the entire nation that the manic of corruption has entrenched and embedded deeply in our system, and the same should be rooted out with iron hands. There will be no second opinion that the corruption and nepotism are obnoxious for the society in general, but the same are intolerable in the field of education, as it is a question of our future generations. The officers working in education department are not only the gatekeepers of the educational system, but in fact they are custodians of our future generations. As education is widely viewed as access to life opportunity, higher lifetime earnings, and greater social mobility, even seemingly small decisions are often awarded great value. It is really unbearable that corrupt practices are thriving in the education sector, virtually at every level, from the central ministry down to the schools and even classrooms. We would not hesitate in saying that it is the *teacher* in whose hands the *future* rests therefore, an allegation of *corrupt* practice / *corruption*, in such like charge the *criterion* shall become a *little* tight then the one for an allegation of *corruption* effecting *society* only. The distinction between “*society*” and “*generation*” needs to be kept in view while dealing with *bail* pleas even.

13. In the present case, one set of the petitioners / accused are charged of having acted in violation of *rules*, procedure and *even* specific criterion while making appointment (s). Before going to unfold further discussion

on such *set* of petitioners / accused, it is relevant to mention here that *normally* the concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local Police. Reference may be made to the case of *Mukhtar Ahmed v. The State and others* 2016 SCMR 2064. Such set of petitioners / accused have never *prima facie* established a *mala fide* on part of the investigating authorities in involving them in the case *falsely*. Normally, such failure is sufficient to disentitle one from concession of *extra ordinary* relief of pre-arrest bail. However, what is *prima facie* evident is that such set of petitioners / accused have not been able to deny the following facts, brought on surface during investigation, i.e:

- i) appointment of even that who was declared *ineligible*;
- ii) appointments of those who *even* never applied;
- iii) appointments have been made in excess to sanctioned strength;

Since, these petitioners / accused *legally* cannot take an exception to their *bounden* obligations to ensure fair and transparent appointment process which *always* required to forward every single case after *due* examination, scrutiny as well *verification* therefore, said *glaring* illegalities *prima facie* have no justification at all. Further, the petitioners / accused have also not claimed any “**relaxation of rule**’ or ‘**criterion**’ , so set for recruitment process. We would add that the *motivation* for an act of *corruption* or *corrupt* practice may either be with intention to supplement income; to extend status or power, create future career opportunities, or conform to the expectations of those whose patronage they seek yet none of them would *ever* be an excuse nor shall lessen the *gravity* thereof, therefore, *prima facie* these petitioners / accused are guilty of the offence with which they are charged. Thus, conclusion could be *nothing* but that such set of petitioners / accused *prima facie* linked with offence with which they are charged.

14. As regard the set of petitioners / accused, who, *though* are not directly involved in *recruitment* process but have been named for being *guilty* of releasing *salaries* of employee, appointed much more than sanctioned strength. There can be no *denial* to the fact that *sanctioned* strength is never kept in *dark* rather always remain under *light* i.e in active knowledge of all, including Treasury Office / District Account Office. Every single *public* official is always required to *prima facie* establish to have worked bonafide and *vigilantly*. The term *vigilantly* never binds the official to *blindly* follow the sent up papers or *given* instructions but demands much more than, which, shall always include proper *scrutiny* and *verification* of record when it comes to financial matter (s). The *circular* regarding processing a *bill* duly signed by DDO and counter-signed by EDO even must be given due weight in matter (s) where once the *legal* induction is established. This alone, *however*, would not be an *excuse* to blindly release the money without verification and scrutiny the relevant record. A *timely* action would have saved *government exchequer*. We would add that conspiracy or *collusion* would be presumed if one, legally requires to pin-point an *illegality*, chooses to remain silent. In addition to this these accused persons have not *prima facie* established *least* pleaded any *mala fide* on part of the investigating agency for falsely choosing them as *accused* from whole *office*.

15. If all the facts, record and circumstances are viewed *jointly*, *prima facie* it appears that all the petitioners / accused did participate in the *offence* either by active participation or choosing to remain *silent* at relevant time which too against commitments of their job requirements. It is a case wherein process of appointment was tinted with malpractice, personal gain and nepotism, which not only has caused considerable loss to the national exchequer at the cost of the future of our children but did impinge upon statutory rights of the citizens. Those, involved, regardless of their *pleaded* small or *big* roles, would deserve no *mercy*. The upshot of the above discussion is that the petitioners who have applied for the anticipatory bail as well as post-arrest bail are not entitled to any relief, as

such are the petitioners are dismissed. The ad interim relief given to those petitioners is hereby recalled and the bail plea raised for petitioner Masroor Ahmed is declined.

JUDGE

JUDGE