

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Constitutional Petition No.420 of 2019

Petitioner Imamuddin Marwat son of Sahib Din Marwat through Mr. Jamil Ahmed a/w Mr. Khawaja Muhammad Azeem, Advocates.

Respondent Federation of Pakistan & 4 others through M/s Zahid Hussain Baladi and Riaz Alam Khan, Special Prosecutors NABa/w I.O. Parkash.
Mr. Irfan Ahmed Memon, DAG.

Constitutional Petition No.2408 of 2019

Petitioner Gulsher Ahmed Chachar son of Muhammad Paryal Chachar through Mr. Mohsin Shahwani, Advocate.

Respondent National Accountability Bureau {NAB} and another through M/s Zahid Hussain Baladi and Riaz Alam Khan, Special Prosecutors NAB a/w I.O. Parkash.
Mr. Irfan Ahmed Memon, DAG.

Dates of hearing 10.07.2019, 31.07.2019 and 01.08.2018

Date of announcement of order **09.08.2019**

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ORDER

SHAMSUDDIN ABBASI, J:- Through their respective petitions, petitioners Imamuddin Marwat and Gulsher Ahmed Chachar, nominated as accused No.1 and 8 in the reference, seek post arrest bail in National Accountability Bureau {NAB} Reference No.22 of 2017 under Section 9(a) of National Accountability Ordinance (NAO), 1999, punishable under Section 10 of the Ordinance and Schedule thereto, which is pending adjudication before Accountability Court, Karachi.

2. In essence the allegations against the petitioners as emerged in the reference are that they in connivance with other accused, nominated in the reference, misappropriated {imported} urea of NFML and caused loss of Rs.143.296 million to Government exchequer through falsification of record, corruption, misuse of authority and other deceitful means, thereby they have committed offences of corruption and corrupt practices as defined under Section

9(a) of NAO, 1999, punishable under Section 10 of the Ordinance and schedule thereto.

During investigation it was found that petitioner Imamuddin Marwat and accused Inamuddin Marwat, Afaquddin Marwat and Shaukatullah, owners/directors of M/s Inam & Company, masterminded a plan to steal/misappropriate imported urea worth millions of rupees by changing their faces and variant nomenclatures through bogus/unregistered front/dummy firms in various names and availed a contract of Transportation, Tally, Labour and Security of Karachi Godown through its dummy firm M/s Sindh Goods Transport Company in May – June, 2013, and M/s Shahmeer Tally Labour & Security during December, 2013-2014 through fraudulent means in connivance with petitioner Gulsher Ahmed Chachar, Export Incharge/Regional Manager, National Fertilizer Marketing Limited {NFML} & other co-accused Uzair Abubakar {Ex.AGM/DGM}, Amjad Iqbal {Store Incharge} & Mushtaq A. Qaiser {Deputy Manager} NFML, who by misusing their authority collusively awarded contract to a bogus/dummy firm M/s Inam & Company {M/s Sindh Goods Transport Company}, owned and controlled by petitioner Imamuddin Marwat and accused Inamuddin Marwat, Afaquddin Marwat and Shaukatullah, without approval of competent authority and submission of genuine documents or fulfilling requirements of tenders/bids as per rules and regulations of Public Procurement Regulatory Authority Ordinance, 2002. It has also come on record that petitioner Gulsher Ahmed Chachar & co-accused Uzair Abubakar, Amjad Iqbal & Mushtaq A. Qaiser {officials of NFML} abrogated and disregarded all SOPs/manuals and mandatory documentation, allowing petitioner Imamuddin Marwat and accused Afaquddin Shaukatullah, Abdul Ghaffar and Usman Asghar to violate the essential requirements and conduct their malicious designs of misappropriation, pilferage, quantity lessening {sweep}, dumping and shortage.

After disclosure of shortage of urea in respect of M/s Sindh Goods, petitioner Imamuddin Marwat and co-accused Inamuddin Marwat, Afaquddin, Shaukatullah, Abdul Ghaffar and Usman Asghar launched another dummy firm “M/s Inam & Company namely, Shahmeer Tally, Labour and Security and availed possession of

Pakistan Godown, Karachi, through an irregular tender in connivance with petitioner Gulsher Ahmed Chachar and co-accused Uzair Abubakar, Amjad Iqbal and Mushtaq A. Qaiser by way of an agreement between NFML and M/s Shahmeer Tally for 22 days from 09.12.2013 to 31.12.2013, which was extended till 08.01.2014 and 10.02.2014 and finally till the finalization of fresh tender process on various pretexts.

A departmental enquiry was also initiated wherein it was established that accused Uzair Abubakar {AGM/DGM} misused his authority in respect of M/s Sindh Goods Transport while in another departmental enquiry it was found that M/s Shahmeer Tally submitted forged and bogus documents in getting the tender. The departmental enquiry committee of NFML ascertained the losses and responsibility of NFML officers and found that 1947.5 M. tons of urea was missing from Rasheed Godown and 700.85 M. tons from Kohinoor Godown, which were handed over without written contract but remained under the management and responsibility of M/s Sindh Goods Transport {dummy of Inam & Company}, which failed to hand over the godowns duly accounted for urea and caused shortage. The committee found that accused Uzair Abubakar abused his position as acting GM to force his subordinates at Karachi to give the contract to M/s Sindh Goods Transport Company despite already quoted lower rates, which seems to have been tampered. The illegal possession of company continued for months but petitioner Gulsher Ahmed Chachar {Port Office Incharge} failed to take any action and kept discharging urea from godowns while accused Uzair Abubakar in collaboration with petitioner Imamuddin Marwat and accused Inamuddin Marwat, Afaquddin and Shaukatullah got initiated the bogus/pseudonymous application apparently signed by a person "Jumair Shah" alongwith his CNIC, who denied any such application or proprietorship, whereas petitioner Gulsher Ahmed Chachar and accused Uzair Abubakar and Amjad Iqbal deliberately allowed a defaulting carriage contractor to appear as new bogus firm namely, M/s Sindh Goods Transport Company and also accepted their pseudonymous and false documentations without appearance and confirmation of real owner/representative at the time of submission of documents and handing over of urea possession at later stage and petitioner Gulsher Ahmed Chachar and accused Amjad Iqbal issued

NOC/recommendation for award of a temporary contract with processing of the blank stamp paper, even bogus authority letters were accepted to further transfer/shift the responsibility on someone else instead of beneficial owners/directors and such process at NFML was completed by accused Uzair Abubakar and Mushtaq A. Qaiser.

It was further revealed that petitioner Imamuddin Marwat and accused Inamuddin Marwat, Afaquddin and Shaukatullah orchestrated a process of fraudulent registration in the name of their employees while petitioner Imamuddin Marwat got registered various other companies and firms for availing contracts in different departments including NLC, TCP, NFC and NFML for which he and his family were beneficial owners. He frequently misappropriated Government properties through contracts in pseudonymous names, printing fake letter heads, making fake/dubious stamps and placing front men to avail contracts and in case of disclosure or blacklisting of said firms, he used to register other firms through misrepresentation of particulars/fraudulent use of identification papers of his employees online NTN's or impersonations of other person ultimately implicating them in an offence actually committed by him. During investigation it was further revealed that shortage of 755,30 M. tons {15,106 urea bags} at Rakesh Godown, Karachi, was established by a Court appointed Commission as such NFML took over the possession on Court directions, which caused a massive loss to the Government exchequer, hence this reference.

3. After arguing their respective petitions at some length, both the learned counsel, appearing on behalf of petitioners, jointly submit that though the petitioners are innocent and have nothing to do with the allegations leveled against them in the reference but they are ready to pay/deposit their individual liability i.e. Rs.17,500,000/- {Rupees seventeen million five hundred thousand} each in trial Court against their bail and as such amount of liability would be secured and no loss would be caused in any case the decision comes either in acquittal or conviction of the petitioners. Reliance in this regard has been placed by them on the cases of *Shamraiz Khan v. State* {2000 SCMR 157}, *Mohammed Rashid Umar v. State* {SBLR 2012 SC 78} and an unreported Order of this Court rendered in the case of *Mohammed Tariq Mirza v. NAB and others* dated 07.07.2015. In addition to the

above, the learned counsel for petitioner Gulsher Ahmed Chachar has also pressed the ground that his earlier petition for post-arrest bail was declined by this Court with direction to the trial Court to conclude the trial within a period of four months but such directions have not been complied with, which entitle the petitioner to bail. Both learned counsel submit that completion of trial would take sufficient time and out of 76 witnesses only one has been examined and the petitioners are facing hardships in jail, therefore, they may be enlarged on bail instead of keeping them in jail.

4. In contra, the learned Special Prosecutor NAB submits that plea bargain application of petitioner Gulsher Ahmed Chachar has already been declined by the Chairman NAB on the ground that he has played an active role in the embezzlement/misappropriation of urea bags by awarding and recommending illegal tenders to the contractors of dummy firms, thereby caused huge loss to the national exchequer and further his individual liability had been determined as Rs.35,041,150/- whereas he has deposited pay order of amount of Rs.17,520,825/- alongwith his plea bargain application, which is not acceptable. He further submits that petitioner Imamuddin Marwat has also been assigned vital role in the commission of offence; he is father of two co-accused namely, Inamuddin Marwat and Afaquddin whereas accused Shaukatullah was Director/Manager/Supervisor in their company and a liability of Rs.70,083,300/- has been determined against them and finally he opposed the grant of bail.

5. We have given anxious consideration to the submissions of both the sides and perused the entire record available before us and the precedents cited by them.

6. These are the petitions for grant of post-arrest bail. Admittedly, this Court has already declined petitions for grant of pre-arrest and post arrest bail of petitioners and other co-accused on merits and those orders have been maintained by Hon'ble apex Court. Now the petitioners have sought bail against deposit of their individual liability as security in trial Court and non-compliance of the directions of this Court for expeditious disposal of the matter.

7. It is by now a well settled that second bail application cannot be considered without fresh ground and this view has been reaffirmed by the Hon'ble Supreme Court in a case of *Muhammad Aslam v The State and others* {PLD 2015 Supreme Court 41}. Relevant placitum is reproduced hereunder:-

“---S.497---Second/subsequent application for post-arrest bail, filing of---Fresh grounds---Scope---First post-arrest bail application filed by accused before the High Court was dismissed as withdrawn after arguments by the counsel for accused at some length. Second bail application filed by accused before the High Court did not disclose any fresh ground for his admission to bail, thus in view of the law declared by the Supreme Court in the case of Nazir Ahmed and another v. The State and others {PLD 2014 SC 241}, second bail application was not maintainable---Appeal was dismissed accordingly”.

In a recent judgment {Re: Talat Ishaq v National Accountability Bureau {PLD 2019 Supreme Court 112}, the Hon'ble Supreme Court has discussed the point of failure of trial Court for non-compliance of the directions of High Court to conclude the trial within specified period and observed as under:-

“It goes without saying that a direction issued by a superior Court to the trial court to conclude a trial within a specified period is an administrative direction and non-compliance of such a direction by the trial Court for whatever reason may not entitle the accused person to claim bail as of right”.

8. Turning to the plea of seeking bail against deposit of personal liability as security in Court, suffice it to say, it is the prerogative of NAB to determine the personal liability of an accused as provided in National Accountability Ordinance, 1999. Admittedly, the Chairman NAB has already declined P.B. application of petitioner Gulsher Ahmed Chachar on the ground that petitioner was not accounting for the whole liability. It would not lie for this Court to calculate and fix personal liability on the petitioners while deciding their petitions for bail. Therefore we are of the view that at this juncture, the plea of seeking bail against deposit of personal liability as security, which has been disputed by NAB, is not entertain-able. The case law cited by the learned counsel for the petitioners, in support of their submissions, are distinct and different from the present case inasmuch as in the said cases the bail was granted

against deposit of personal liability as security with the consent of NAB prosecutor but here in the present case the NAB has strongly opposed the bail plea of petitioners on the grounds, referred herein above. Therefore, none of the precedents cited by the learned counsel are helpful to the petitioners. As to the delay in trial is concerned, this Court called a report from the trial Court, which reveals that delay has occurred due to absconders as the trial Court initiated proceedings under Sections 87 and 88, Cr.P.C. against them and it was accused Afaquddin, who was arrested afterwards and hence the trial Court had to frame amended charge. In the mentioned circumstances, we do not see any substance in the present petitions, which are accordingly dismissed. However, in view of background of the earlier directions of this Court, we deem it appropriate to direct the trial Court to expedite the matter and conclude the trial preferably within a period of three months under intimation to this Court through MIT-II. And for this purpose the trial of the petitioners shall be separated from the absconders. Office shall communicate a copy of this order to learned trial Court for compliance. Needless to say that the observations, made herein above, are purely tentative in nature and the same are only meant for the purpose of bail and would have no impact or effect on any party during the trial.

JUDGE

JUDGE

Naeem