

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Constitutional Petition Nos.D-405, 2085, 2357, 3034 and 3133 of
2016, C.P Nos.No.D-1290, 1300, 1321, 1329, 1398, 1480, 1554,
2047, 2059, 2232, 2827 and 2828 of 2017.

Present:

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Khadim Hussain Tunio, JJ.**

Petitioners: Muhammad Yousuf in C.P No.D-405 of 2016 through Mr. Ishrat Ali Lohar advocate.

Partab Rai in C.P No.D-2085 of 2016 through Mr. Waqar Ahmed Memon advocate.

Manzoor Hussain Talpur in C.P No.D-2357 of 2016 through Mr. Ghulam Nabi Jarwar, advocate.

Menghraj in C.P No.D-3034 of 2016 through Mr. Meetharam Dharani advocate.

Ali Akbar Bhurt in C.P No.D-3133 of 2016 through Mr. Ayaz Ali Rajer advocate.

Shahnawaz Rahpoto in C.P No.D-1290 of 2017, Sohail Raja and Abdul Wahid in C.P No.D-1300 of 2017, Lutuf Ali in C.P No.D-1329 of 2017, Chetan in C.P No.D-1398 of 2017 and Menghraj in C.P No.D-2232 of 2017 through Mr. Pervaiz Tarique Tagar advocate.

Kalimullah, Abdul Latif and Ghulam Rasool in C.P No.D-1329 of 2017 through Barrister Muhammad Azmatullah Channa advocate.

Mst. Rehana Mumtaz Hussain Shaikh in C.P No. D-1321 of 2017 through Mr. Muhammad Dawood Narejo advocate.

Ramchand s/o Dhalo and Ramchand s/o Ghansham in C.P No.D-1480 of 2017 through Mr. Muhammad Sachal R. Awan advocate.

Soojo in C.P No.D-1554 of 2017 through Mr. Bilawal Bajeer advocate.

Jahangir Agha in C.P No.D-2047 of 2017 and Aqeel Ahmed Qureshi in C.P No.D-2827 of 2017 through Mr. Nisar Ahmed Tarar advocate.

Ghulam Rabbani in C.P No.D-2059 of 2017 through Mr. Zulfiqar Ali Shah advocate.

Mst. Rehana Mumtaz Hussain Shaikh in C.P No. D-2828 of 2017 through Mr. Shahnawaz Ayoub Dahri advocate.

All the petitioners are present on ad-interim pre-arrest bail except petitioner Mst. Rehana Mumtaz Hussain Shaikh.

NAB: Through Mr. Jangu Khan Rajput Special Prosecutor NAB.

Date of hearing: 23.04.2020 and 28.04.2020.

Date of decision: 28.04.2020.

ORDER

Khadim Hussain Tunio, J.- Petitioners are seeking their pre-arrest bail by filing these petitions in reference No.06/2017 pending against them before learned Accountability Court No.VI at Hyderabad. C.P No.D-1321 of 2017 filed by petitioner Mst. Rehana Mumtaz Hussain Shaikh is, for suspension/quashing of investigation, however, was filed before filing of the reference. All these petitions are being disposed of by way of this single order.

2. Precisely, facts of the captioned petitions as reflected from record are that National Accountability Bureau (NAB), Karachi received a complaint from Imran Ali, General Secretary, Shehri Ittehad regarding misappropriation and embezzlement of funds of Town Committee, Diplo. In the ensuing inquiry and investigation, it contemplates that petitioners, either the officials who worked in different capacities in Town Committee, Diplo like Town Officer, Accountant, Engineer, etc.or in Local Audit Fund Department or the purported contractors, in connivance with each other misappropriated an amount of more than Rs.105 million from funds of said Town Committee against repair of wells and jungle

clearing/cutting carried out in different villages in the years 2012 and 2013.

3. Learned counsels mainly contend by defending the petitioners against such allegations that petitioners are innocent and have been falsely implicated in this case; that no incriminating evidence has been collected against them; that the works were assigned in terms of Rule 16 of Sindh Public Procurement Rules, 2010; that since the expenditure on each work was estimated less than Rs.100,000/-, on the basis of quotation from three different contractors, the work was awarded to the one with the lowest rate; that work was duly carried out and the payments were made only after receiving completion certificate; that the relevant law and rules were duly complied with in awarding the contracts and no embezzlement was committed; that relevant sites were not inspected by the technical expert and his report is not part of record, hence there is nothing on record verifying allegations; that it has been admitted in the investigation report that the nature of work was such that it would not have been possible to verify the same after six months as the bushes had grown up again and wells had gotten silted up in the meantime; that because investigation of the works was carried out in the years 2012 and 2013 which started in the year 2015, no trace of them was left; that there is contradiction in the figure of payments cited in the reference/investigation report and the ones mentioned in the bank statements; the learned counsel for the petitioners lastly contended that the petitioners are entitled to the confirmation of their pre-arrest bail as they are innocent of all allegations against them.

4. On the other hand, these submissions have, however, been rebutted by learned Special Prosecutor NAB, who has vehemently opposed the grant of bail to the petitioners on the ground that they are involved in a

scam of millions of rupees; that there is sufficient material available on record to connect each of the petitioners to an offence under National Accountability Ordinance and there had been no malafide on the part of NAB.

5. We have heard the learned counsel for the petitioners and learned Specifiable Prosecutor NAB and perused the record with their able assistance which, undoubtedly, identifies role of each accused in detail with reference to his individual liability, duly supported by the documentary evidence in the shape of bank statements of relevant accounts, cheque leaves used by the petitioners, bills, vouchers, work orders, NTN certificates, letter-pads of contractor petitioners' companies, dummy quotations, etc. have been collected. Besides, statements of relevant bank officers verifying account opening by the contractor petitioners and necessary formalities, issuance of cheque books, delivery of ATM cards in person to them, etc. and statements of other PWs working in the said Town Committee supporting allegations against the petitioners have also been recorded. From the perusal of record, it further contemplates that surprisingly, for repair of a well in a particular village several bills in the name of contractor company within Rs.100,000/- (Rupees One Lac) were prepared on the same date and next day again the bills were drawn against the same well in the same village. Likewise, against charges on jungle cutting in a certain village, several bills of less than Rs.100,000/- (Rupees One Lac) were prepared on the same date in favour of contractor company and that process was followed on the next date as well. Evidence also reflects that the amount of such bills was credited from official bank account of said Town Committee in the bank accounts of contractor petitioners' companies, which have not been denied by the petitioners.

6. Besides the above observation, during investigation, NAB tried to get physical verification of the alleged works by site inspection, but the petitioners were unwilling and failed to cooperate. They did not turn up on a given date and at an agreed place despite approached in advance through notices and telephonic calls. Learned defense counsel tried to justify the same by urging that the works i.e. jungle cutting and repair of wells were done in the years 2012 and 2013, therefore, had become unverifiable after six months due to natural growth of bushes and constant use of wells by the villagers meanwhile. They could not however, justify absurdity of necessity of jungle cutting or well repairing repeatedly day after day frequently in a same village located in a deserted area like 'Thar'. When asked by the Court, they could not even assert that before or after the alleged activity, ever a similar exercise was done and a huge capital of government exchequer amounting to Rs.105,627,565/- was consumed.

7. Not only that, there is also sufficient *prima facie* evidence establishing credentials of contractor petitioners to be dummy actors in the whole episode. In the case of contractor petitioner Ms. Rehana Shaikh, a resident of Karachi, she is the wife of an officer working in Local Government Department, Government of Sindh, and that seems to be her qualification. She is the sole proprietor of M/s Shahrukh Enterprises and operates an account of that company in ABL Schon Circle Main Clifton Branch, Karachi. According to record, Shahrukh is the name of her son. In her said bank account, she had been receiving huge amounts on different occasions from official bank account of said Town Committee. In the investigation, she tried to distance herself from the company and claimed to be a housewife, but sufficient evidence rebutting her claim has been found. Furthermore, relevant bank forms bearing her signature with her

CNIC and NTN certificate for opening the bank account, her home address, next kin, etc., statement of bank officials visiting her home, meeting her in presence of her husband in verification process and delivering cheque books to her in person and her signature on receipts have also come on record. Her regular visits in the bank for operating the said account have also been confirmed by the said PWs. In addition to the above, evidence of her second account in the said bank, transferring money to it from her company account and investing it in some profitable scheme in the same bank has also been made part of the record. We find her claim that she did not carry out any alleged work as she has no concern with the company itself lending credence to allegations. Almost identical evidence with certain variance is available against other contractor petitioners. More so, at the stage of enquiry 10 accused similarly placed admitted their guilt and entered into voluntary return, which circumstance cannot be ignored at least at bail stage. Thus, it is *prima facie* obvious that the petitioners in connivance with each other have misappropriated a huge amount of government exchequer under the garb of well repairing and jungle cutting, the work which they seem to have chosen purposely because of its nature of being unverifiable, and to cover up the same, bogus documents were prepared in the name of fake companies. In presence of such material against the petitioners, we are of the view that they are not entitled to extraordinary relief of pre-arrest bail which is essentially meant to provide refuge to the innocent and the vulnerable from rigors of abuse of process of law and to protect human dignity from humiliation of arrest intended out of mala fide and ulterior motives. Such remedy oriented in equity cannot be invoked in every run-of-the-mill case prima facie supported by material and the evidence constituting a non-bail offense. We are fortified in this respect

by the case of *Talat Ishaq vs. National Accountability Bureau through its Chairman (Civil Petition No. 632 of 2018)*, vide order dated 01.10.2018, wherein it has been held that:-

“(d) In an appropriate case through exercise of its jurisdiction under Article 199 of the Constitution a High Court may grant bail to an accused person arrested in connection with an offence under the National Accountability Ordinance, 1999 and section 9(b) of the said Ordinance does not affect the jurisdiction of a High Court conferred upon it by the Constitution. The constitutional jurisdiction of a High Court is, however, an extraordinary jurisdiction meant to be exercised in extraordinary circumstances and not in run of the mill cases or as a matter of course.”

8. Moreover, the judgment of Honorable Supreme Court dated 03.03.2020 in the case of *Ghulam Farooq Channa vs. Special Judge ACE (central-) Karachi & another* can be cited being recent. Grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction, it is diversion of usual course of law as held by Hon’ble Supreme Court in the case of *Rana Abdul Khalique Vs. The State & others (2019 SCMR 1129)*. Relevant portion is reproduced as under:-

“2. Grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases, a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of malafide; it is not a substitute for post arrest bail in every run of mil criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayatullah Khan’s case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law, situation wherein court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge in chamber unambiguously reaffirms above

judicial doctrine and thus reliance be most inapt is unfortunate to save the least.”

9. Furthermore, the Hon’ble Supreme Court in the case of ***Raj Muhammad Khan vs. NAB through Chairman and others (2017 SCMR 1152)*** has observed that a distinction is to be drawn between the ordinary criminal cases and ones involving corruption. The introduction to the National Accountability Ordinance elucidates that it has been enacted to eradicate “corruption” and “corrupt practices” and hold accountable all those persons accused of such practices. Other contentions raised by the learned counsel for the petitioners require deep appreciation of evidence which is not permissible at this stage. Any finding of this Court on merits of the case may prejudice the case of either party. NAB inquiry has been initiated on the complaint of Shehri Ittehad Organization of Diplo Town. Learned counsel for the petitioners could not satisfy this Court on the point of malafide on the part of NAB against petitioners. Reliance in this respect is placed on the case of ***Muhammad Islam v. The State (Civil Petition No. 3213-L of 2019)***, vide order dated 14.04.2020, wherein the Hon’ble Supreme Court has been pleased to observe that:-

*“Principles, applicable to grant of anticipatory bail in a cognizable/non-bailable offence are by now well entrenched;**a claimant must point out circumstances, reasonably suggesting abuse of process of law with strappings of mala fide, lurking behind the intended arrest;**same goes for a detailed and comprehensive investigative process, carried out pursuant to call up notice, followed by an inquiry, findings whereof, are prima facie pointed upon petitioner’s culpability for an offence wherein grant of bail is narrowly jacketed.”*

10. For the foregoing reasons and discussions, all the petitions including C.P No.D-1321 of 2017 filed for suspension/quashing of investigation which in view of filing of the reference has become

infructuous are dismissed and the orders whereby ad-interim pre-arrest bail were granted to the petitioners are hereby recalled.

11. It is pertinent to mention here that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party on merits before the trial Court.

JUDGE

JUDGE