

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Const. Petition No. D- 7761 of 2018

Roshan Ali Kanasro
VERSUS
Federation of Pakistan and others

Const. Petition No. D- 5378 of 2019

Shahenshah Hussain
VERSUS
Federation of Pakistan and others

Const. Petition No. D- 6795 of 2019

Waqar Ali Shah
VERSUS
Federation of Pakistan and others

Const. Petition No. D- 7188 of 2019

Altaf Hussain
VERSUS
N.A.B and others

Const. Petition No. D- 7439 of 2019

Abdul Fattah Daudpoto
VERSUS
N.A.B and others

Const. Petition No. D- 7482 of 2019

Abdul Majeed Soomro
VERSUS
N.A.B and others

Const. Petition No. D- 7496 of 2019

Muhammad Azam
VERSUS
N.A.B and others

Const. Petition No. D- 7707 of 2019

Ghulam Murtaza Daudpoto
VERSUS
Federation of Pakistan and others

Date of hearing: **28.09.2020 and 29.09.2020.**

Date of order: **09.10.2020.**

M/s. Kamran Khan and Ghulam Akbar Panhyar, Advocates for the petitioner in C.P.No. D-7761/2018.

Mr. Basheer Ahmed Ghoto, Advocate for the petitioner in C.P. No. D-5378/2019.

Mr. Ahmed Ali Ghumro, Advocate for the petitioner in C.P. No. D-7439/2019.

Mr. Munawar Alam Khan, Advocate for the petitioner in C.P. No. D-7707 and D-7482/2019.

Mr. Shaukat Hayat, Advocate for the petitioner in C.P. No. D-7496/2019.

Mr. Muhammad Riaz, Advocate for the petitioner in C.P. No.D-6795/2019.

Mr. Zahid Hussain Baladi, Special Prosecutor, N.A.B.

<><><><><>

ORDER

ZULFIQAR ALI SANGI, J:- Through CP. No.D-5378 of 2019 petitioner Shahenshah Hussain seeks post-arrest bail, while petitioners Roshan Ali Kanasiro, Waqar Ali Shah, Altaf Hussain Memon, Abdul Fattah Daudpoto, Abdul Majeed Soomro, Muhammad Azam and Ghulam Murtaza Daudpoto in CPs. Nos.D-7761 of 2018, D-6795 of 2019, D-7188 of 2019, D-7439 of 2019, D-7482 of 2019, D-7496 of 2019 and D-7707 of 2019 seek pre-arrest bail in National Accountability Bureau (NAB) Reference No.19 of 2019 under Section 18 (g) read with Section 24(b) of National Accountability Ordinance, 1999 (NAO) punishable under Section 10 of the Ordinance and Schedule thereto.

2. The facts relevant to these petitions are that upon receipt of a complaint pertaining to the allegations of corruption and corrupt practices in Sindh Tourism Development Corporation (STDC) by the then Managing Director STDC, an inquiry was authorized on 04.09.2018 and the allegations were substantiated. Subsequently, the inquiry was upgraded into an investigation on 03.04.2019 by the competent authority. During the investigation it came to surface that an advertisement regarding tender for purchase of furniture, repair of vehicles, event management, and printing/publications was published on 31.08.2017 in Daily Islam, Daily Sada-e-Sindh, Daily Sindh Special and Daily the National Status on 29.08.2017. These newspapers are not widely circulated in the province of Sindh. The contracts/tenders were awarded to five firms namely M/s. Sameer Enterprises, M/s.Fahad Enterprises, M/s. RMA Sahita Brothers, M/s.Burraq Business and M/s.Total Computing Technology. Investigation has revealed that the jobs/works were distributed among the favorite bidders through a ring by the accused Roshan Ali Kanasro, Chairman of the Tender Committee/ MD STDC in connivance with the other members of the tender committee/ Altaf Hussain and Muhammad Azam. None of the said companies/ firms were registered with the SECP or Registrar of the Firms. The said bidders did not possess the prescribed eligibility criteria which was published in the newspapers.

3. That the investigation has further revealed that the Notice Inviting Tenders (NIT) were divided into various categories, but the tenders were awarded by mixing in disregard of the published categories according to required relevant experience. As per the record and the statements of the witnesses all the participating companies except Aamir Traders were awarded partial jobs in the same tender and the total tenders were distributed among five bidders against the SPPRA Rules as the works were awarded against the rules and regulations by disregarding mandatory requirements. Exorbitant rates were quoted by the concerned firms / accused bidders, which were accepted by the accused officers of STDC. The investigation has transpired that the works of Rs.72.861 Million were distributed among the firms namely M/s. Fahad Enterprises, M/s. RMA Sahita Brothers, M/s. Sameer Enterprises, M/s. Burraq

Business Corporation and M/s. Total Computing Technology and payment of Rs.47.161 Million was made to the firms against the awarded works. **It is also observed that an amount of Rs.1,54,23,435/- has been recovered through Plea Bargain u/s 25(b) of the NAO, 1999, from accused contractors namely Fahad Ali, owner M/s.Fahad Enterprises, Liaquat Ali, owner of M/s. Burraq Business Corporation, Shahid Hussain Abro, owner of M/s.Sameer Enterprises, Shahbaz Ali, and Asif Ali, owners and co-workers of M/s. Total Computing Technology and Mashooq Ali, owner of RMA Sahita Brothers** which was accepted by the competent authority and approved by the Accountability Court, Karachi vide order dated 28.09.2019 and 01.10.2019 respectively. It is also observed that most of the contractors made a plea bargain with the NAB and repaid the amount which they misappropriated with the connivance of these official petitioners seeking pre-arrest bail. The investigation has further revealed that SPPRA Rules, 2010 were violated by not publishing the advertisement / NIT in leading newspapers and procedures of STDC were also violated by disregarding the concerned Promotion and Publicity Section in the advertisement process. Accused namely Roshan Ali Kanasro (MD) STDC in connivance with other members of tender committee namely Muhammad Azam and Altaf Hussain Memon did not open the tenders as per the published address and instead tenders were opened and processed at the office of the Directorate of Planning & Development Works at C-82, Clifton, Karachi. Tenders were managed for misappropriation and embezzlement of amounts by officers/ officials of STDC without fulfillment of the prescribed work and billing on higher rates by compromising the quality and quantity of the products against the criteria and NIT of the bid documents. Most of the events never occurred, but the payments were made to the accused bidders namely Fahad Ali, Liaquat Ali, Shahid Hussain Abro, Shahbaz Ali, Asif Ali and Mashooq Ali, fraudulently by the accused Roshan Ali Kanasro in connivance with accused Shahenshah Hussain, Accountant STDC. The investigation has unearthed that accused Roshan Ali Kansaro in his capacity as Managing Director, Sindh Tourism Development Corporation (STDC), managed to publish advertisements in newspapers which were not widely circulated thus he willfully avoided fair competition and paved the way for ineligible

contractors namely M/s. Sameer Enterprises, M/s. Fahad Enterprises, M/s. RMA Sahita Brothers, M/s. Burraq Business and M/s. Total Computing Technology to be illegally awarded contracts. The jobs/works were distributed among the said contractors on exorbitant rates and most of the works have not been carried out as per specification.

4. Bills and cheques of the awarded works were issued by the accused, without fulfilling prescribed procedure. The investigation has further revealed that accused Shahenshah Hussain in his capacity as Accountant at STDC and Secretary of the Tender Committee failed to ensure that the codal formalities were complied with and signed the cheques along with other accused and illegally issued payments to the contractors without verification of bills and delivery challans of items as per specification thus causing a loss of Rs.42.533 Million. The investigation has highlighted the role of the accused Altaf Hussain Memon, Section Officer Information and Archives Department and accused Muhammad Azam, Assistant Manager, STDC in their capacity as Members of the Tender Committee in connivance with other co-accused who failed to ensure the advertised criteria was met and without verifying the legitimacy / scrutiny of eligibility criteria of 5x contractors and declared the contractors successful, thus the works were awarded to ineligible contractors which resulted in a loss to the national exchequer.

5. The investigation has further found that accused No.5 Ghulam Murtaza Daudpoto, Deputy Director (Promotion and Publicity) STDC in his capacity as Chairman Procurement Committee in connivance with accused No.7, illegally awarded the works of Rs.27.110 Million to accused Nos.6, 8 and 9 without convening the meeting of opening of bids and violated the rules and regulations for inviting tenders by not floating the tenders on the SPPRA website and advertisement in leading newspapers. He with malafide intention favored the accused No.6 (his brother) who did not carry out the awarded work. The investigation has further revealed that accused No.6 Abdul Fatah Daudpoto being the owner of M/s. D&F Consultant got awarded a contract of Rs.10.51 Million in his favor in connivance with accused Nos.2 & 9 and did not carry out the awarded work and illegally

received payment of Rs.10.51 Million in his bank account. Thus, he is an illegal beneficiary of the said amount.

6. The investigation has further discovered that accused No.7 Abdul Majeed Soomro being the owner of M/s. Eastline Communication got awarded a contract of Rs.8.8 Million in his favor in connivance with accused Nos. 2 & 9 and did not carry out the awarded work and illegally received payment of Rs.8.8 Million in his bank account. Thus he is the illegal beneficiary of the said amount. The investigation has revealed that accused No.8 Waqar Ali Shah being the owner of M/s.Aashkar Communication got awarded a contract of Rs.7.8 Million in his favor in connivance with accused Nos.2 & 9 and did not carry out the awarded work and illegally received payment of Rs.7.8 Million in his bank account. Thus he is the illegal beneficiary of the said amount. The investigation has also revealed that accused No.9 Nazeer Ahmed Soomro in his capacity as Managing Director of STDC illegally and without the approval of the competent authority appointed accused No.5 as Chairman of the Procurement Committee and also processed the bills of the ineligible contractors without carrying out works/services and signed the cheques of Rs.27.110 Million jointly in connivance with accused No.2 issued illegally in favor of accused Nos.6, 7 & 8.

7. It has been established during the investigation that accused persons in active collaboration, connivance and collusion with each other committed the offence of corruption and corrupt practices as well as misuse of authority through illegally awarding contracts to unqualified contractors, non-provision of items/services against the awarded works which resulted in a loss to the State Exchequer to the tune of Rs.27.110 Million. Hence the aforesaid reference was filed against the petitioners which is currently proceeding before the Accountability Court in Karachi.

8. Learned counsel for the petitioner Roshan Ali Kanasro contended that the NIT was published in three newspapers and the publication was not his duty but the same was the duty of Information Department for which the petitioner issued a letter; that all the works were awarded according to the law and the applicable rules were followed; that no loss to the exchequer was caused; that

the petitioner was head of the Committee with other members and had not committed any illegality or irregularity, therefore, he is entitled to confirmation of his pre-arrest bail.

9. Learned counsel for the petitioner Altaf Hussain contended that the petitioner is innocent and committed no offence; that petitioner was the member of the procurement committee; that publication was made in three newspapers viz (1) Roznama Islam (2) Sada-e-Sindh and (3) National Status; that the NIT was also published at the website of SEPRA; that all legal requirements were fulfilled by the petitioner. Under these circumstances he prayed for confirmation of his pre-arrest bail.

10. Learned counsel for the petitioner Waqar Ali Shah contended that the petitioner was not a contractor; that he neither participated in the bid nor obtained any contract; that his company and the bank account was used for misappropriation of funds by the accused Abdul Fattah as and Abdul Fattah obtained postdated cheques; that no work was carried out but accused Abdul Fattah along with other officials used his company; that he further contended that he was aware of the act done by accused Abdul Fattah but was under threat and as such did not make any complaint; that he submits that since he has not committed any offence, therefore, his pre-arrest bail may be confirmed.

11. Learned counsel for the petitioner Abdul Majeed Soomro contended that petitioner is innocent and has committed no offence; that the publication of NIT was the duty of the officials; that he was called and awarded the contract for preparing the documentary film which he prepared and thereafter he was paid the amount; that he further contended that such documentary is also available on Google Website. Lastly, he prayed for his confirmation of pre-arrest bail.

12. Learned counsel for petitioner Abdul Fattah Daudpoto contended that petitioner is innocent; that the allegations leveled by the co-accused Waqar Ali Shah are false and fabricated; that petitioner though applied for contracts but no contract was awarded to him, therefore, he committed no offence and prayed for confirmation of his pre-arrest bail.

13. Learned counsel for the petitioner Ghulam Murtaza Daudpoto made his oral submissions and also placed on record written statement and contended that the petitioner is innocent and committed no wrong; that petitioner made complaint to CE/MD of Sindh Tourism Development Corporation dated 23-06-2018 and same was sent to D.G, NAB, Karachi for the alleged misappropriations; that on the basis of his complaint inquiry was initiated and six persons/firms made a plea bargain and an amount of Rs.1,54,23,435/- was recovered from them and the petitioner was wrongly booked in the reference as an accused when he should have been made a witness. Lastly, he prayed for the confirmation of his pre-arrest bail.

14. Learned counsel for the petitioner Muhammad Azam contended that the petitioner is innocent and had committed no offence; that the petitioner was only a member of the procurement committee; that tenders were opened at the published address; that tenders were awarded according to law; that he was not present at the time of bidding but he signed all the papers produced before him by the other persons who had already signed the same; that the petitioner signed the bidding documents in good faith; that there is no allegation of personal gain against the petitioner. Lastly, he prayed for the confirmation of his pre-arrest bail.

15. Learned counsel for the petitioner Shahenshah Hussain contended that the petitioner is innocent; that the petitioner had committed no offence; that there is no violation in the tendering process; that the petitioner is behind the bars from the date of his arrest; that the trial will not complete in near future. Lastly, he prayed that petitioner may be released on bail.

16. Learned Special Prosecutor, NAB contended that the entire process of the tendering/bidding was carried out in violation of the rules and the regulations; that the NIT was not published in widely circulated newspapers; that companies were managed and bids were not opened at the published address; that some of the accused admitted that violations were made so also the amount was misappropriated but they are leveling allegations upon other accused

persons; that petitioners in collusion with each other misappropriated the huge amount and gave loss to the public exchequer; that there is documentary evidence against them which connects them with the commission of offence. Lastly, he prayed that all the petitioners are not entitled to the concession of bail and their pre-arrest bail petitions may be recalled and the post-arrest bail petition dismissed.

17. We have heard the petitioners and Special Prosecutor NAB and have considered the record.

18. The record reflects that vide Notification dated. 28-07-2017, the procurement committee was constituted under Rules 7 and 8 of the Sindh Public Procurement Rules 2010 wherein the petitioner Roshan Ali Kanasro, Altaf Hussain Memon and Muhammad Azam were appointed as chairman and the members of the said committee whereas petitioner Ghulam Murtaza Daoodpoto was appointed as chairman of procurement committee vide Notification dated.09-04-2016, under clause 16 (b) (iii) SPPRA Rules 2010. They issued NIT for the different works but as per the investigation conducted by the investigation officer NAB the contracts/ tenders were awarded to favorite bidders/firms in violation of the rules and the companies were not registered with SECP or Registrar of firms. Further, the firms do not possess the required criteria as to eligibility as was prescribed and published in the local newspapers.

19. We also noted that most of the petitioners are leveling allegations against each other and some of them admitted that they did not carry out any work but the company and the bank accounts were used by others while receiving the amounts from the Government in place of the said contractors. We observe that it is to be decided by the trial court after recording evidence of the witnesses that who misappropriated the alleged amount and this court has no jurisdiction to decide the same while exercising extra-ordinary constitutional jurisdiction.

20. The relief claimed by the petitioners through the instant petitions is a relief for which no provision exists in the relevant laws for which the petitioners were charged; only the High Court by

invoking extraordinary constitutional jurisdiction can grant this relief very sparingly in rare and exceptional circumstances for valid reasons to be recorded in writing. The above petitioners are seeking pre-arrest bail; therefore, before considering the cases of the petitioners for such a relief, we may observe that the conditions for grant of pre-arrest and post-arrest bail are quite different as was set out in the case of *Rana Mohammed Arshad v. Muhammad Rafique* (PLD 2009 SC 427).

21. In essence pre-arrest bail cannot be granted unless there has been mala fide on the part of the complainant or the investigating agency. In this regard, reference may be made to the case of *Mukhtar Ahmad v. The State and others* (2016 SCMR 2064). No malafide has been pointed out by the NAB against any of the petitioners seeking pre-arrest bail nor have we found any from the record.

22. We may observe here that while deciding bail petitions an elaborate sifting of evidence cannot be made but only a tentative assessment is permissible and a cursory glance of the record shows that all the petitioners in connivance with each other have misappropriated a huge amount of money from the Government from which some amount was recovered through plea bargains. Under these circumstances the interim pre-arrest bail granted to all the petitioners earlier by this court is recalled with immediate effect. We also find that with regard to petitioner Shahenshah Hussain who is seeking his post-arrest bail there is sufficient evidence against him in the shape of documentary evidence which connects him to the commission of offence to which he has been charged and therefore his petition for post-arrest bail is also dismissed.

23. Needless to say that the observations made hereinabove are only tentative in nature and shall not prejudice the right of any party at trial.

24. The above petitions are disposed of in the above terms.

JUDGE

JUDGE