

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

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Zulfiqar Ali Sangi**

CP No. D- 2019 of 2014

Ashkaran @ Aashankar Vs. The State (NAB) and others

CP No. D- 2274 of 2014

Govind and another Vs. State (NAB) and others

CP No. D- 2088 of 2014

Muhammad Ibrahim and others Vs. Federation of Pakistan and others

CP No. D- 173 of 2015

Imran Ali and another Vs. Government of Pakistan & others

CP No. D- 241 of 2015

Farooq Ahmed Vs. Government of Pakistan & others

Date of Hearing : **03.09.2019 & 18.9.2019**

Date of Announcement : **10.10.2019**

Mrs. Razia Ali Zaman, advocate for petitioner in CP No. D- 2019 of 2014

Mr. Zahoor Ahmed Baloch, advocate for petitioner(s) in CP No. D- 2088 of 2014, CP No. D- 241 of 2015 and CP No. D- 173 of 2015

Syed Shahzad Ali Shah, advocate for petitioner(s) in CP No. D- 2274 of 2014

Mr. Jangu Khan, Special Prosecutor NAB

Mr. Aslam Pervaiz Khan, Asst. Attorney General

ORDER

ZULFIQAR ALI SANGI, J.- All the above petitions are emanating from Reference No. 03 of 2015 pending against petitioners before Accountability Court Hyderabad wherein the petitioners are seeking bail before arrest. This Court vide orders dated 31.1.2014 in *C.P No.D-2019 of 2014*, 16.12.2014 in *C.P No.D-2274 of 2014*, 13.11.2014 in *C.P No. D- 2088 of 2014*, 29.01.2015 in *CP No. D- 173 of*

2015 and 10.02.2015 in CP No. D- 241 of 2015 admitted petitioners Ashkaran @ Aashankar, Govind, Muhammad Hassan, Muhammad Ibrahim, Imran Ali Talpur, Mir Rehan Talpur and Farooq Ahmed to ad-interim pre-arrest bail. Subsequently, petitioner Govind was let off by NAB authorities and on his behalf bail petition was withdrawn which was dismissed as not pressed while the petition on behalf of petitioners Ranjho Khan and Muhammad Sulleman was dismissed vide order dated 13.11.2014.

2. Brief facts of the case as alleged in the subject reference are that petitioner Ashkaran @ Aashankar in CP No. D- 2019 of 2014 is a contractor and running a firm in the name and style of "M.S. Dewan Contractor" at Rajo Khanani district Badin. His firm is registered with Pakistan Engineering Council. The allegation against him is that he was awarded work for construction of CC Road and Surface Drain at various places of Town Talhar, district Badin. As per report of technical experts of Pak PWD, he either did not perform the said construction works or their quality was very poor, yet he received the payments for the said works by using political influence upon the officials of Taluka Municipal Administration Talhar and thereby has caused huge loss to national exchequer. It is further alleged that by exerting political pressure he also got the schemes revised up to 100% without any need and specifying the scope of work. It is further alleged that works of co-accused contractor Sodho were also being controlled by accused Ashkaran aka Raja Dewan, and that Sodho's cheques for scheme were also collected and encashed by him.

3. Petitioner Muhammad Ibrahim is a contractor, running firm with name and style of "New Muhammad Ibrahim Construction Company". His firm was registered with Pakistan Engineering Council. The allegation against him is that he was awarded three schemes under MPA priority program. As per report of Pak PWD, the quality of works done by him was poor and substandard and he received payments for fake measurement, thus caused huge loss to national exchequer.

4. Petitioner Imran Ali Talpur is a private persons and claims to be zamindar, residing in town Rajo Khanani Taluka Talhar. He is brother of co-accused Mir Rehan Talpur and friend of co-accused contractor Ashkaran. Accused Sodho during investigation stated that he is former of Mir Rehan Talpur and accused Ashkaran, who was looking after and receiving the payments of works awarded in his name, made all the transactions from his bank accounts. The accounts of accused contractor Sodho in NBP Talhar and Soneri Bank Talhar revealed transfers of huge amount into the accounts of accused Imran Ali Talpur in the same banks. The details of amounts are as under:-

S#	Account Holder Name	Account No.	Cheque No. of Sodho's A/c 02011939897	Date	Amount
1	Mir Imran	378-8	140051	13.05.2011	7,200,000/-
2	Mir Imran	378-8	709914	08.09.2011	3500,000
3	Mir Imran	-	CD6 5584217	29.08.2011	4,000,000
4	Mir Imran Ali Talpur	01021610711	CD6 5584201	05.08.2011	1,500,000
5	Mir Imran	-	CDA 10135601	20.10.2011	1,500,000
6	Mir Imran	01021610711	CDA 10135613	16.01.2012	1,800,000
7	Mir Imran	01021610711	CDA 10135602	21.10.2011	505,000
8	Mir Imran	01021610711	CDA 10135637	17.05.2012	150,000
9	Mir Imran	01021610711	CD6 5584219	6.02.2012	560,000
10	Mir Imran Ali Talpur	Drawn Cash	CD6 5584224	12.09.2011	180,000

Accused Sodho stated that he is unaware of above transactions, as after signing the blank cheques he handed over the same to accused Ashkaran aka Raja Dewan. One Gul Muhammad Lashari who received an amount of Rs. 99,000/- from accused Ashkaran stated that he is former of Imran Ali Talpur who directed him to collect Rs.104,310/- from Ashkaran aka Raja Dewan for sugarcane crop. Accused Imran Ali Talpur is major beneficiary of accused Sodho's illegal payments received from TMA Talhar on account of bogus works.

5. Petitioner Mir Rehan Talpur is brother of Imran Ali Talpur. Accused Sodho is farmer of Rehan Talpur. An amount of Rs. 1,500,000/- has been transferred in his account from the account of accused Sodho and accused Sodho stated that he is unaware about the transaction as accused Ashkaran operated his bank accounts.

6. Petitioner Farooq Ahmed Jamali remained TO (Finance) in TMA Talhar. He without awarding any work to accused Sodho made him illegal payment of Rs.1,55,0974/- in connivance with TMO Ghulam Mustafa Memon who entered into VR during the investigation.

7. Petitioner Muhammad Hassan is a Clerk in Engineering Section of TMA Talhar. He was responsible for safe custody and security of scheme files of Engineering Branch. The allegation against him is that the files of schemes carried out by accused Ashkaran and co-accused Sodho were misplaced by him deliberately. He recorded bogus and fake measurements in MB of schemes done by accused Ashkaran, Muhammad Ibrahim, Ranjho and co-accused Sodho, and Lal Bux, thus caused huge loss to national exchequer.

8. On receipt of complaint by NAB against TMA officials of Talhar district Badin in relation to their involvement in embezzlement of TMA funds, an enquiry

was authorized which was subsequently converted into investigation and finally culminated in filing of subject reference against petitioners and co-accused.

9. Learned counsels for petitioners Ashkaran @ Ashankar and Muhammad Ibrahim argued that the petitioners are contractors, their firms are registered with Pakistan Engineering Council having valid license and are taxpayer, that they are innocent and involved in the present case with *mala fide* intentions, that they have completed the works awarded to them as per work orders and as per standard and specification, such completion certificates were issued to them by the authority concerned.

10. Learned counsel for petitioner Muhammad Hassan argued that he is innocent and has falsely been involved in this case; that he was not signing authority of bills etc, that no any complaint was received against the petitioner.

11. Learned counsel for petitioner Imran Ali and Rehan Ali Talpur argued that petitioners are innocent and have been involved in this case with *mala fide* intentions, they are private persons and zamindars of the locality and have no concern with the office of TMA Talhar. They received money from accused Ashkaran on account of selling of crop to him and they have nothing to do with the alleged offence.

12. Learned counsel for petitioner Farooq Ahmed Jamali argued that petitioner was T.O (Finance) in TMA Talhar. The allegations against him are false and fabricated and he has been involved in this case with *mala fide* intentions, that no documentary evidence is available against the petitioner.

13. All the learned counsel submit that material witnesses have been examined by the trial court and the petitioners have never misused the concession of bail granted to them by this court and are regularly attending the trial court, therefore their bail may be confirmed. In support of their case they have relied upon the order dated 13.07.2015 passed by this Court in C.P No. D- 5899 of 2014 & C.P No. D- 194 of 2015 wherein this Court granted post-arrest bail to co-accused Sodho and Muhammad Akhlaq Shaikh.

14. Mr. Jangu Khan, learned Special Prosecutor NAB has opposed grant of bail to the petitioners on the ground that there is sufficient evidence against the petitioners connecting them with the alleged offence. He led us to various documents showing that without any proper documentation the estimates regarding several schemes were revised up to hundred percent and then enhanced payments were made to the contractors in violation of relevant rules. In order to lay emphasis

on his arguments, he maintained that physical inspection of works awarded to the petitioners were conducted along with technical experts of Pak PWD for the purpose of measurement and to see the quality of work, which was found very poor at some place and at some schemes even no work was carried out. He lastly requested for dismissal of bail petitions.

15. We have heard learned counsel for the petitioners, learned Special Prosecutor NAB and perused the material available on record for deciding entitlement of petitioners to the concession of pre-arrest bail.

16. At the outset, it observed that the above petitioners are seeking pre-arrest bail, therefore, before considering the cases of petitioners for such a relief, we may observe that the conditions for grant of pre-arrest and post arrest bail are quite different as set out in the case of *Rana Mohammed Arshad v. Muhammad Rafique* (PLD 2009 SC 427). The said conditions are as under:

- a. grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- b. pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- c. bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified in subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- d. not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;
- e. such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- f. in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.

At para 15 of the aforesaid judgment it was also held as under:

"It had also been repeatedly held by the Superior Courts (reference be made to *Zia-ul-Hassan's* case *supra*) that no Court would have any power to grant pre-arrest bail unless all the conditions specified for allowing bail before arrest especially the condition regarding *Mala fides* were proved.

17. The record shows that during investigation of the case Assistant Executive Engineer Pak PWD along with Investigating Officer NAB and Administrator / A.C. Town Committee Talhar visited the works of petitioners and submitted report. The said report shows that petitioner Ashkaran @ Aashankar proprietor or M/s. Dewan Contractor as per MB No.110 was paid first bill for an amount of Rs.8,207,554/- for "Construction of CC Road at various places of town Talhar; second bill was paid to him for an amount Rs.10,501,231/- for the same Development Scheme; third bill was paid to him for an amount of Rs.5,604,780/-; fourth bill was paid to him for an amount Rs.10,217,311/-; fifth bill was paid to him for an amount Rs.3,084,421. But on inspection of site the work(s) was/were found poor in condition, wherein the ratio in respect of every item was less than shown in the measurement book. It was also seen that no new drains were found, nor any sewerage pipes were available. At some points, only repaired and raised drains were found, and no earth filling work found. As per measurement, the cost of entire work becomes Rs. 225,560/- but the petitioner received an amount of Rs.37,915,297 and thus caused a loss of Rs.37,689,737/- to the government exchequer.

18. As per report of Pak PWD, Petitioner Muhammad Ibrahim constructed Pacca Road from Pacca Road to Shah Gurio Dargah on an area of 1718 RFT for an amount of Rs.4,700,000/-. But on physical measurement the work was found less than recorded in measurement book in respect of every item. The cost of entire work was estimated at Rs.1,997505/- on the rate, as mentioned in the MB, but the petitioner received an amount of Rs. 47,00,000/- and thus caused a loss of Rs. 27,02,495/- to the government exchequer.

Petitioner Muhammad Ibrahim also carried out construction work of CC road at various villages of UC Peeru Lashari and Saeedpur Taluka Talhar. The report of Pak PWD shows that four bills were paid to him for an amount of Rs.14,089,438. On physical check up less work on the spot than recorded in measurement book was discovered. The cost of work done by the petitioner comes to Rs. 24,87,551/- but the petitioner received an amount of Rs.1,40,89,438/- and thus caused a loss of Rs.11,601,887/- to the government exchequer.

Petitioner Muhammad Ibrahim also carried out the construction work of C.C. road at various wards of town Talhar. The record shows that three running bills for an amount of Rs. 9,400,000/- were paid to him. But on physical checkup the work in respect of every item was found less than shown in the measurement book. The cost of work carried out by petitioner comes to Rs.13,75,143 whereas he received an amount of Rs.94,00,000/- and thus caused a loss of Rs. 80,24857 to the government exchequer.

19. The role against accused Muhammad Imran and Rehan Talpur is that they received money from the accounts of co-accused Sodho which were being run by accused Ashkaran. They are major beneficiaries of illegal payments received from TMA Talhar on account of bogus works. In support of such allegations sufficient documentary evidence in shape of bank statements is available on record.

20. Petitioner Farooq Ahmed Jamali has remained TO (Finance) in TMA Talhar. The role against him is that he without awarding any work to accused Sodho made him illegal payment of Rs. 1,55,0974/- in connivance with TMO Ghulam Mustafa Memon who had entered into VR during investigation.

21. Petitioner Muhammad Hassan has remained as clerk in TMA Talhar. He was responsible for safe custody and security of scheme files of Engineering Branch. As per record the files of schemes carried out by accused Ashkaran and co-accused Sodho were intentionally misplaced by him. He recorded bogus and fake measurements in MB of schemes done by accused Ashkaran, Muhammad Ibrahim, Ranjho and co-accused Sodho, and Lal Bux, thus caused huge loss to national exchequer. Against him also sufficient documentary evidence is available.

22. We have gone through the order dated 13.7.2015 passed by this Court in C.P No. D-5899 of 2014 and CP No. D- 194 of 2015 and referred by all the learned counsel in support of their case, wherein co-accused Sodho and Muhammad Akhlaq Shaikh have been granted bail by this court. As far as applicability of rule of consistency, we may observe that said co-accused were granted post-arrest bail which is governed by different principles than the ones regulating pre-arrest bail as observed above. Moreso, the role ascribed to them is quite different to what has been alleged against the petitioners. There is nothing on record to show petitioners have been implicated in this case out of *mala fide* on part of NAB so as to bring their case within defined lines on which pre-arrest bail is granted. In the case of Talat Ishaq v. National Accountability Bureau through its Chairman (Civil Petition No. 632 of 2018) the Honourable Supreme Court has observed that jurisdiction of High Court under Article 199 of the Constitution to grant bail in NAB matters is an extra ordinary jurisdiction which is meant to be exercised only in exceptional cases and not in ordinary cases. The relevant clause of paragraph 23 of the judgment is reproduced hereunder for ready reference.

“(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”.

23. No *mala fide* on the part of NAB officials is pointed out by the learned counsel. It is now settled law that pre arrest bail is an extraordinary relief and is only available in cases where there has been mala fide on the part of complainant or the investigating agency. In this regard reference may be made to the case of Rana Mohammed Arshad v. Muhammad Rafique (PLD 2009 SC 427) and Mukhtar Ahmad v. The State and others (2016 SCMR 2064).

24. Record further shows that during investigation accused Mukhtiar Ahmed Bhurt, Ghulam Mustafa Memon and Muneer Ahmed Khowaja who were posted as TMOs, Muhammad Aslam Korejo TO (I&S) and Lal Bux Contractor had entered into VR and their VRs were approved and payments were made to the government exchequer.

25. It will not be out of place to observe that cases of white collar crime are complicated and the whole transaction and each component of the scam needs to be viewed completely and not separately, because in most cases, offence could not be committed without active involvement of others in chain of events which lead to the commission of the offence.

26. With regard to government officials, it may be said that they are paid employees to serve the State and have special fiduciary duty to protect and safeguard the government property and to ensure that the tax payers' money and property is well spent and not wasted or misappropriated through corruption in performing their duties.

27. Lastly we may observe that while deciding bail petitions an elaborate sifting of evidence cannot be made but only tentative assessment is required, and a cursory glance of the record show that all the petitioners in connivance with the official of TMA Talhar have caused huge loss to the government exchequer, therefore, their pre-arrest bail is dismissed. Resultantly, the interim pre-arrest bail granted to them is recalled.

28. The observations made hereinabove are tentative in nature and shall not prejudice the right of either party at trial.

JUDGE

JUDGE