

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

- 1. Cr. B.A. No.S-1305 of 2019
- 2. Cr. B.A. No.S-1306 of 2019
- 3. Cr. B.A. No.S-1307 of 2019
- 4. Cr. B.A. No.S-1308 of 2019
- 5. Cr. B.A. No.S-1309 of 2019
- 6. Cr. B.A. No.S-1310 of 2019
- 7. Cr. B.A. No.S-1311 of 2019
- 8. Cr. B.A. No.S-1312 of 2019
- 9. Cr. B.A. No.S-1313 of 2019
- 10. Cr. B.A. No.S-1316 of 2019
- 11. Cr. B.A. No.S-1330 of 2019
- 12. Cr. B.A. No.S-1331 of 2019
- 13. Cr. B.A. No.S-1332 of 2019
- 14. Cr. B.A. No.S-1333 of 2019
- 15. Cr. B.A. No.S-1401 of 2019
- 16. Cr. B.A. No.S-1402 of 2019
- 17. Cr. B.A. No.S-1403 of 2019
- 18. Cr. B.A. No.S-1404 of 2019
- 19. Cr. B.A. No.S-1405 of 2019
- 20. Cr. B.A. No.S-1406 of 2019
- 21. Cr. B.A. No.S-1407 of 2019
- 22. Cr. B.A. No.S-1408 of 2019
- 23. Cr. B.A. No.S-1409 of 2019
- 24. Cr. B.A. No.S-1410 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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13.01.2020

M/s Muhammad Aleem Arain, Agha Ghulam Abbas, Zulfiquar Ali Abbasi and Qurban Ali Khaskheli, Advocates for Applicants in all bail applications.

Applicants in all bail applications namely, Om Parkash Nagdev, Munawar Hussain Baloch, Muhammad Ayoob and Ghulam Mujtaba Wadhar are present on interim pre-arrest bail.

Ms. Rameshan Oad, A.P.G.
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Abdul Maalik Gaddi, J.-By this common order, I propose to dispose of aforementioned twenty four bail applications together, as more or less same are interconnected with each other with regard to lodgment of F.I.Rs as well as nature of incident, hence common question of law as well as fact is involved.

2. Through aforementioned bail applications, Applicants / accused Om Parkash Nagdev, Munawar Hussain Baloch, Muhammad Ayoob and Ghulam Mujtaba Wadhar seek their admission on pre-arrest bail in Crime Numbers, as mentioned in each bail application. Earlier, pre-arrest bail plea preferred by

them before the trial Court has been declined by means of orders dated 18.11.2019.

3. The facts of the F.I.Rs registered in all these cases are more or less same except quantum of amount, allegedly misappropriated by each applicant. However, it appears that same were registered with approval of Competent Authority Chairman ACC-I Sindh Karachi in its meeting held on 07.10.2019 as a result of enquiry into complaints made by the complainants, whose names are mentioned in the said F.I.Rs. In the said F.I.Rs it is alleged that the Applicants / accused who were / are employees of Live Stock & Fisheries Departments have committed misappropriation of funds allocated by the Government in respect of different developments schemes and these schemes were not completed, they have caused loss to Government Exchequer.

4. Learned counsels for Applicants / accused submits that they were working under the supervision of higher authorities and whole work and powers were concerned with the Deputy Director; that they have nothing to do with the alleged offence but they have been falsely implicated in these cases with malafide intention; that no specific role is attributed to them and the allegations are based on false contention; that the F.I.Rs are lodged with an inordinate delay for which no plausible explanation has been furnished by the prosecution.

5. As regard applicant / accused Muhammad Ayoob is concerned, learned counsel also submits that he has remained as Office Assistant from the year 2006 to 2008 and he remained at different places and posts and finally he was promoted as Office Superintendent; that neither Applicant Muhammad Ayoob was member of the Committee in respect of purchase of items nor prepared any bill even he was not custodian of record but he has been falsely implicated in this case.

6. As regard Applicant / accused Ghulam Mujtaba Wadhar (the then Director, Fisheries Sindh (Inland) Hyderabad) is concerned, Mr. Qurban Ali Khaskheli further submits that his client is innocent, that inquiry against him

was entrusted to Ghulam Shabbir Dhalwani, Incharge Vigilance Cell E&ACE Karachi, who submitted his reported to Chairman, E&ACE Sindh-Karachi with recommendation to close / file the complaint. Thereafter, re-inquiry was also conducted by Manzoor Ahmed Memon, Inspector of ACE Hyderabad on the application of present Applicant and the said Enquiry Officer had recommended to refer the matter to the Secretary, Livestock & Fisheries Department, Government of Sindh for action; however, again on the recommendation of Deputy Director, ACE Hyderabad for referring the matter to the Secretary, Livestock & Fisheries Department, Government of Sindh, the then Chairman ordered to re-open the enquiry; that Enquiry Officer Zahid Mirani, Inspector without conducting fair enquiry and preparing mashirnama proposed to lodge FIR against the applicant and others; that the applicant has been falsely implicated on account of refusal to pay huge bribe to the Minister of Livestock & Fisheries, Chairman, ACE and Enquiry Officer Zahid Mirani. Lastly, the learned counsels for the applicants / accused pray for confirmation of interim pre-arrest bail earlier granted by this Court to them.

7. On the other hand, the A.P.G appearing for the State submitted that according to the Police Investigation of the FIR, the applicants were found guilty, therefore, they are not entitled to the extra ordinary concession of pre-arrest bail.

8. Heard arguments and perused the record.

9. It appears that case has been challaned and now the cases are pending trial, hence Applicants /accused are no more required for investigation purpose. It is noted that alleged incident(s) took place in between the years 2006 to 2012, whereas the F.I.Rs were lodged after a delay of almost 12 years for which no plausible explanation has been furnished by the prosecution. The allegations against the applicants / accused as per F.I.Rs, is that they have committed misappropriation in the funds allocated by the Government for different schemes which have not been completed as per approval / directions. This fact has been denied by the learned counsels for applicants / accused by stating that if the applicants / accused are involved in alleged misappropriation

of funds then why the concerned Department did not take / initiate any action / departmental inquiry against them. On a query, learned A.P.G submits that applicants / accused have ever not been suspended and no departmental inquiry was / is pending against any of them. It also appears from the record that the matter was investigated by NAB Authorities, which after due investigation closed / filed the same. This fact is evident from the order sheet available in C.P. No.D-7758/2017 dated 18.01.2019. Not only this, according to learned counsels for applicants / accused, the matter was also investigated by Anti-Corruption Establishment, which vide its orders dated 12.05.2015 and 07.07.2015 closed the files / inquiries regarding the complaints against the present applicants / accused. When all these facts were confronted to learned A.P.G for reply, she conceded the same. It appears that bail applications, moved by the applicants / accused before the trial Court were declined mainly on the ground that present applicants / accused are involved in huge misappropriation of Government funds but this fact has been denied by learned counsels for applicants / accused by arguing that NAB Authorities and Provincial Anti-Corruption Establishment have conducted subject inquiry and have ordered to close / file the same. Therefore, according to learned counsels for the applicants / accused, the case against them, being of two versions one as submitted in the F.I.Rs. and the other as has been noted / made by the NAB as well as Anti-Corruption Establishment, hence it is yet to be determined at the time of time which version is correct, requires further inquiry.

10. It is noted that sections applied against applicants / accused in the F.I.Rs and the challan sheets are either bailable or their punishment(s) do not fall within the ambit of prohibitory clause of section 497 Cr.P.C, except sections 409 and 467 PPC, but as observed above, it is the case of two versions, which version is correct requires further inquiry. Besides, in this case, applicant / accused Ghulam Murtaza Wadhar has been retired from his service at the at the time of retirement Deputy Director (Admn & Accounts) Directorate of Fisheries Sindh Inland Hyderabad and Director General,

Livestock / (Research) and Extension, Sindh have issued certificates of “No dues” in his favour. (Photostat copies of such certificates are available on record). Further, there is nothing on record that applicants / accused previously convict or remained indulged in such type of activity(ies) in past. In these circumstances, if the interim pre-arrest bail is cancelled and applicants / accused are sent to jail, no fruitful purpose would be served. Accordingly, the applicants / accused are entitled for confirmation of interim pre-arrest bail earlier granted by this Court in their favour.

11. In view of above, all aforementioned bail applications are allowed. Resultantly, the ad-interim pre-arrest bail earlier granted to the applicants / accused is hereby confirmed on same terms and conditions.

12. Needless to mention that observations made herein above are tentative in nature and the trial Court shall not be influenced by any of them while deciding the case on merits.

13. As reported, since the case(s) has already been challaned and is / are pending trial, hence the applicants / accused present are directed to continue their appearance before the trial Court till final decision of main case. In case of misuse of pre-arrest bail, the trial Court would be competent to cancel the bail without making any reference to this Court. Since it is alleged corruption case, therefore, the trial Court is also directed to expedite the trial and conclude the same as early as possible preferably within a period of three months and no unnecessary adjournment should be granted to either party. Compliance report shall be submitted to this Court through Additional Registrar.

JUDGE

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