

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-3225 of 2019
C.P. No.D-6440 of 2019

Date	Order with signature of Judge
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1. For order on CMA No.4152 of 2021.
2. For order as to maintainability of petition.

19.05.2021

Mr. Haider Waheed, Advocate a/w petitioner Syed Ali Raza.
Barrister Usman Shaikh, holding brief for Mr. Farooq H. Naek,
Advocate a/w petitioner Mashkooor Ahmed Khan.
Mr. Shahbaz Sahotra, Special Prosecutor NAB a/w I.O.

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Petitioners seek pre-arrest bail in Reference No.09 of 2019, pending adjudication before Accountability Court No.I {Sindh}, at Karachi.

2. At the very outset, on our query, learned Special Prosecutor NAB and I.O. submit that no warrant of arrest has been issued by Chairman NAB or the Director General NAB, Karachi, against petitioners. Learned counsel for petitioners submitted that learned trial Court has issued NBWs against the petitioners, which as per decision of this Court would be deemed to procure their attendance. In C.P. No.D-1914 of 2020 and other connected petitions the issue with regard to non-issuance of warrant of arrest by the Chairman NAB or any officer authorized by him has been finalized in the following terms:-

{i} *An accused under the NAO against whom the Chairman NAB has not issued any permission/direction to arrest, but against whom a Reference is filed, when such accused appears or is brought before the Accountability Court pursuant to a process issued under section 204 Cr.P.C, whether summons,ailable warrant or non-ailable warrant, he can be required by the Court to execute a bond with or without sureties under section 91 Cr.P.C to assure his appearance before the Court;*

{ii} *Section 91 Cr.P.C is not available for an accused who appears before the Court on bail, except where*

he is on bail against the very warrant issued to compel his appearance in Court;

{iii} If the accused under the NAO is denied pre-arrest bail, he is exposed to arrest by the NAB either under section 24(a) NAO if such direction had been issued prior to the Reference, or under section 24(c) NAO if a direction for his arrest is given after the Reference, and if the accused is so arrested then section 91 Cr.P.C will not be available when he is brought before the Court;

{iv} If on the rejection of the petition for pre-arrest bail there is no direction for arrest pending under section 24(a) NAO, nor is one subsequently issued under section 24(c) NAO, the situation is the same as at serial (i) above with the same consequences.

3. In the light of the above principles laid down by this Court, these petitions are disposed of. The petitioners shall be free to approach the learned trial Court and furnish a bond in terms of Section 91, Cr.P.C. to ensure their presence in the trial in view of above principles based on *Sarwar's case* reported as 2014 SCMR 1762. As to the contention that the learned trial Court has issued warrant of arrest against petitioners is concerned, suffice it to say that it would be deemed to procure their attendance in the reference in view of *Capt. {R} Muhammad Safdar's case* decided by the Hon'ble Supreme Court in Civil Petition No.1435 of 2018 on 24.04.2018.

4. The petitions, listed herein above, stand disposed of in the foregoing terms.

JUDGE

JUDGE