

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-2587 of 2021

C.P.No.D-2588 of 2021

C.P.No.D-2589 of 2021

Date

Order with signature of Judge(s)

Before:

Mr. Justice Nazar Akbar

Mr. Justice Muhammad Faisal Kamal Alam

1. C.P.No.D-2587 of 2021

Petitioner No.1 : Iltaf Hussain S/o Miandad
Petitioner No.2 : Azharuddin S/o Qamaruddin

Versus

Respondent No.1 : The Federation of Pakistan.
Respondent No.2 : The Director General NAB, Sukkur.
Respondent No.3 : Mr. Ashar Abbasi, Assistant Director,
Investigation Wing-II, NAB, Sukkur.

2. C.P.No.D-2588 of 2021

Petitioner : Sundar Khan S/o Chakar Khan

Versus

Respondent No.1 : The Federation of Pakistan.
Respondent No.2 : The Director General NAB, Sukkur.
Respondent No.3 : Mr. Ashar Abbasi, Assistant Director,
Investigation Wing-II, NAB, Sukkur.

3. C.P.No.D-2589 of 2021

Petitioner : Sadique Ali Leghari S/o Alam Khan

Versus

Respondent No.1 : The Federation of Pakistan.
Respondent No.2 : The Director General NAB, Sukkur.
Respondent No.3 : Mr. Ashar Abbasi, Assistant Director,
Investigation Wing-II, NAB, Sukkur.

Mr. G.M Bhutto, Advocate for petitioners in
all petitions.

Date of Hearing : **19.04.2021**

Date of Decision : **20.05.2021**

ORDER

NAZAR AKBAR, J:- By this common order, we intend to dispose of above three constitution petitions. All the petitioners have sought the following relief(s).

- i. To reduce the surety amount to a reasonable and just sum to enunciate that the grant of bail is a form of relief and not a method of punishment as observed by the Hon'ble Supreme Court of Pakistan as well.
- ii. To reduce the surety amount from the alleged financial liability fixed by the NAB authorities, to the amount which was fixed/granted at the time of Pre-Arrest Bail petition.
- iii. Any other relief(s) which this Hon'ble Court deems fit and proper may kindly be granted.

2. The office of Petition Branch has raised objection No.1 that *“how these petitions are maintainable for reducing of surety amount of bail, which were granted by this Court at Sukkur Bench, when the remedy of applications in the said petitions is available under the law”*.

The counsel for the petitioners has not replied this office objection.

3. On query from the Court, learned counsel for the petitioners was unable to satisfy the Court that how an independent/fresh constitution petition can be filed when the petitioners are aggrieved by a common order dated **16.03.2021** passed by this very Bench at Sukkur on their C.P Nos.D-1482/2020, 1479/2020 and 1480/2020 respectively alongwith two other petitions bearing C.P. No.D-1481/2020 and C.P No.D-130/2021 were disposed of by the same order. In the first place if the petitioners were aggrieved by the findings, they should have filed petitions for leave to appeal before Hon'ble Supreme Court. Otherwise, if it was a case of reduction of surety on compassionate grounds they should have filed miscellaneous applications in their respective petitions for reduction of surety. Therefore, these petitions are not maintainable and liable to be dismissed on this score alone.

4. Learned counsel for the petitioners has stated at the bar that the petitioners have earlier challenged the order dated **16.03.2021** before the Hon'ble Supreme Court in C.P No.1022, 1223, 1260 and

1261 of 2021 which were disposed of by the Hon'ble Supreme Court by order dated **01.04.2021** with the following observations:-

Learned counsel for the petitioners submits that the **petitioners had not consented to the confirmation of their bails before arrest upon payment of the liability in the amounts indicated in paragraph 11 of the impugned order.**

We note that **paragraph 3 of the impugned order clearly records the consent of the appellants and if they had any objection to that order**, their remedy lies before the leaned High Court and not before us. In view of the aforesaid observation, learned counsel does not press these petitions. Dismissed as not pressed. However, the impugned order shall be implemented in the province of Sindh after 06.04.2021. (Emphasis provided).

5. After not pressing the petitions before Hon'ble Supreme Court in view of para-3 of the order dated **16.03.2021** the petitioners at the most were required to file miscellaneous applications for reduction of surety before the Sukkur Bench. Relevant para-3 of the order is as follows:-

3.
.....Learned counsel for the Petitioners, after arguing the matter at some length, submitted that though the allegations leveled against the Petitioners in the Reference are false but **inspite of that they are ready to deposit an amount equivalent to the extent of loss allegedly caused to Government exchequer by each of the Petitioner** individually as allegedly attributed to each of them in the Reference within a reasonable time.

To wriggle out of their own binding statement before the Court, the petitioners have chosen to file these constitution petitions which are patently not maintainable in view of the fact that no petition lies before the same bench or any other bench against the order of a Division Bench in any constitution petition. Be that as it may, the petitioners even on merit have no case. Their counsel, irrespective of the legal position that these petitions are not maintainable, in arguments has reiterated following grounds:-

(i). That the impugned judgment passed by the Hon'ble Court whereby it confirmed the Ad-Interim Bail Before Arrest already granted to the petitioner **on the alleged statement of some counsel who is not definitely counsel for the petitioner even otherwise, order for depositing entire amount equivalent to its final liability (which is fixed by Court of law) is based upon misconception of the relevant record in the instant case as well as relevant law on the subject.**

(ii). That the Hon'ble **High Court misinterpreted the law on the grant of Bail** since the grant of concession of Bail is only an interlocutory arrangements to ensure physical presence of the accused i.e the petitioner never remained absent till today and will be attending the case till pending conclusion of the trial before the learned Trial Court.

(iii). That the Hon'ble **High Court failed to take into consideration that the relied precedent of the Hon'ble Supreme Court of Pakistan wherein, Bail was granted on the ground based upon while granting the confirmation of the bail petitions of the petitioner and failed to consider** that petitioner have joined the investigation which has been finalized and a Reference has been filed before the learned Accountability Court, the petitioners are ready to face trial and no delay has been attributed to the petitioners till today.

(iv). That this August Court on numerous occasion has confirmed the ad-interim Pre-Arrest Bail, wherein **surety bonds are ordered to be submitted according to the financial status of the petitioner**, petitioner are servicemen, cannot submitted with the trial Court as surety.

6. Even the language of these petitions is suggestive of an appeal against the order dated **16.03.2021** and they are seeking reduction of surety as a matter of right on the allegation that their counsel has not made the offer mentioned in para-3 of the order dated 16.03.2021.

7. The contents of first ground mentioned above amounts to contempt of Court as it contains false statement attributed to the Court on the face of the Court. The claim of the Petitioners that contents of para-3 of the order dated **16.3.2021** to which the Hon'ble Supreme Court has also referred in its order dated **01.4.2021** is a false statement on oath. The expression that **“alleged statement of**

some counsel who are not definitely counsel for the petitioners”

amounts to alleging that the Judges at their own have recorded this observation on behalf of their counsel. The record of court file contradicts the allegation of petitioners as it is evident from the following:-

(i) Admittedly the petitioners in person were present in Court on **16.03.2021** along with 5 other petitioners. Out of total 9 petitioners, Mr. **G.M Bhutto**, Advocate in **C.P No.D-1842/2020** represented 5 petitioners and all of them were present in Court when statement/offer of their counsel was recorded in the order.

(ii) Out of 5 beneficiaries of the statement made by their counsel, **Mr. G.M Bhutto** only two petitioners, namely, Iltaf Hussain son of Miandad and Azharuddin son of Qamaruddin (C.P No.D-2587/2021) on oath have alleged that their counsel has not made such offer/statement. Three petitioners have not denied or disputed the offer made by their counsel and incorporated in para-3 of the order dated **16.3.2021**. Rather the other three petitioners have availed the benefit of the order as a consequence of the offer of their counsel.

(iii) The petitioners while claiming that such statement was not made by their counsel **Mr. G.M Bhutto**, it was duty of the petitioners' counsel to have filed his own affidavit to the effect that he has not made the said statement on behalf of the petitioners mentioned in para-3 of the order.

(iv) Why the petitioners have not taken any action against their counsel Mr. G.M Bhutto, who after failing to make out a case of bail before arrest on merit, made this statement categorically in the Court for obtaining confirmation of bail without **touching the merits of the case**.

(v) The petitioners have made similar false statement before the Hon'ble Supreme Court as may be seen from the order of Hon'ble Supreme Court reproduced in para-4 above and repeated the same false statement in the instant petitions.

(vi) Learned counsel for the NAB has even contested the confirmation of bail before arrest on deposit of pay order equivalent to the amount of loss caused by corruption of the accused by referring to another judgment of Hon'ble Supreme Court reported as **2017 SCMR 1152** and the bench has followed the order of Hon'ble Supreme Court relied upon by the learned counsel for petitioners in support of accepting the offer/statement of the petitioners' counsel regarding deposit of alleged amount as reproduced in para-3 of order dated **16.03.2021**.

8. The petitioners have suppressed the facts that why they have made the offer for confirmation of bail without touching merits of the case. And why they have relied on two judgments of Hon'ble Supreme Court in which pre-arrest bail were confirmed only on the SOLE ground that the petitioners/ accused were agreed to deposit entire amount allegedly misappropriated by them and it was followed by this Bench in the order dated **16.03.2021** in para-7 and 8 are reproduced below:-

7. The contention of learned Special Prosecutor NAB that the Hon'ble Supreme Court in the case of Rai Muhammad Khan v. NAB through Chairman and others (2017 SCMR 1152) has disapproved this offer has been rebutted by learned counsel for the Petitioners by placing reliance on two unreported Judgments / Orders of Hon'ble Supreme Court passed viz. (i) C.P.No. 2300 of 2018 and (ii) C.P.No.1175-K of 2020 wherein the accused on depositing entire amount of alleged loss attributed to the accused. The relevant portion of the Order dated **26-11-2020** passed in Civil Petition No.1175-K of 2020, is reproduced herein below:

*“We have observed that **bulk of accused nominated in the reference are enlarged on bail either due to acceptance of plea bargain or had deposited their incurred liability with the trial court.** Otherwise we have been informed that as per order of Accountability Court, Sukkur dated 27.07.2020 a letter bearing No.ABL/JCD/2(20) dated 27.07.2020 from Allied Bank Limited Jacobabad Branch was received to the trial court wherein it is submitted that DD bearing No.BBB1351295 dated 20.07.2020 amounting to Rs.34,72,100/- is genuine and the entry of the same has been made in the register in the name of trial court. **It is noticed that the pre-arrest bail of co-***

accused Mujeeb-ur-Rehman has been confirmed on deposit of pay-order in civil petition No.277-K/2020 by this Court vide order dated 15.07.2020. The petitioner has already deposited his individual liability of Rs.34,72,100/- before the learned trial court and leave this case has already been granted on 07.08.2020 at Karachi Branch Registry of this Court, hence, in the interest of safe administration of criminal justice, the petitioner be released on bail subject to his furnishing bail bond in the sum of Rs.5,00,000/= with two sureties each in the like amount to the satisfaction of the learned trial court.”

8. Similar view was taken by Hon'ble Supreme Court in the case of Mumtaz Ali v. The State through Chairman NAB (C.P.No.1149-K of 2018). The Order is reproduced below:

*“Mr.Muhammad Ashraf Kazi Senior Advocate Supreme Court, submits that **the petitioner is ready and willing to deposit with the trial Court the entire amount of his liability so far determined by the prosecution.***

*Syed Amjad Ali Shah learned DPG NAB present in Court waives the notice and submits that in view of the case of Shamraiz Khan v The State (2000 SCMR 157) he would have no objection for the grant of a **bail to the petitioner subject to his depositing the entire amount of his liability in this case being Rs.61,79,238/- (Rupees Sixty One Lac, Seventy Nine Thousand, Two Hundred and Thirty Eight)** with the Additional Registrar of this Court at Branch Registry Karachi.*

In these circumstances, this petition is converted into an appeal and allowed, the petitioner is admitted to bail subject to his depositing with the Additional Registrar of this Court the above amount.”

9. In view of the above legal and factual position, the contention of the petitioners that any law for the grant of bail has been misinterpreted by this bench of High Court is contrary to the findings of the Hon'ble Supreme Court relied upon by the petitioners' counsel themselves and quoted by this Bench in the order dated 16.03.2021. The petitioners neither before Hon'ble Supreme Court nor before this Court in these fresh petitions have argued that they have a case for confirmation of pre-arrest bail on merit and therefore, the surety amount should not have been equivalent to the alleged claim of embezzlement or misappropriation.

10. The only logical conclusion of all the above discussion is that the petitioners, who were enjoying ad-interim pre-arrest bail granted to them **without touching merit of the case**, have attempted to misguide and cheat the Court by first making offer/statement for confirmation of their bails again without touching merits of their cases on the basis of judgments of the Hon'ble Supreme Court and then backed out from the offer by alleging before the Hon'ble Supreme Court that the said statement/ offer was not made by their counsel. Then again even before the same bench through these petitions they have repeated their false statement as is evident from preceding para. This conduct of the petitioners and their counsel by no means can be considered anything short of contempt of court as deliberate attempt to misguide the Court to obtain an order without touching merit of their entitlement for conformation of pre-arrest bail.

11. Now coming to the merits of the case of these petitioners in **Reference No.25/2020**. Out of nine petitioners whose petitions were disposed of by common order dated **16.3.2021** on the basis of offer/ statement of their counsel mentioned in para-3 of the order, only four petitioners are before us and five other petitioners, namely, **(i)** Mir Ashraf Ali, **(ii)** Bashir Ahmed, **(iii)** Iltaf Hussain son of Abdul Karim **(iv)** Imtiaz Ali sand **(v)** Sikandar Ali Chandio have not disputed that their counsel has not made such statement rather they are beneficiary of it. The remaining four petitioners, namely, Sundar Khan in C.P No.D-2588/2021, Iltaf Hussain and Azharuddin in C.P No.D-2587/2021 and Siddique Ali Leghari in C.P No.D-2589/2021, are those who are alleged mastermind of corruption in Government funds of Taluka Municipal Administration, Tangwani, Kashmore at Kandhkot in Reference No.25/2020. The principal accused **Sundar Khan** was T.O Finance, District Kashmore at Kandhkot on receiving a call-up notice on **28.6.2018** has filed **C.P No.D-5526/2018** in

Karachi and obtained exparte ad-interim pre-arrest bail on **27.7.2018** in the following terms:-

“Be that as it may, **without dilating upon the merits/de-merits of the case, the petitioner is admitted to ad-interim pre-arrest bail** subject to his furnishing solvent surety in the sum of Rs.500,000/- (Five Lacs) and P.R bond in the like amount to the satisfaction of the Nazir of this court. The petitioner is directed to join the investigation/enquiry and extend full co-operation with the respondents in the subject enquiry/investigation.”

Likewise petitioners Iltaf Hussain and Azharuddin with 3 others filed a petition No.5773/2020 and petitioner Siddique Ali Leghari filed C.P No.D-5928/2020 at **Karachi** and obtained similar order on **16.11.2020** and **23.11.2020** respectively on the basis of abovementioned order in the petition of Sundar Khan. Subsequently these petitions were transferred to Sukkur and renumbered as C.P Nos. D-1479, 1482 and 1480 of 2021 which were disposed of by order dated **16.3.2021**. Two petitioners, namely, **Iltif Hussain** son of Miandad and **Azharuddin** son of Qamaruddin in C.P No.D-2588/2021, as per enquiry report on record which was supplied to them, are close relatives of petitioner **Sundar Khan**. Petitioner **Iltaf Husain** is nephew of Sundar Khan and petitioner **Azharuddin** is son of brother-in-law of Sundar Khan and the 4th petitioner **Siddique Ali Leghari**, in C.P No.D-2589/2021 is Taluka Municipal Officer, TMA Tangwani and during his tenure from February, 2012 to December, 2012 he has issued several cheques without codal formality for illegal transfer of money in the account of Sundar Khan and others. The petitioners and their counsel have avoided to contest the allegation against them on investigation report showing bank transactions in their name from the account of TMA Tangwani.

12. In fact the petitioners were on pre-arrest bail and they have realized that no further adjournment would be granted by the Court

and they knew that order on merit would send them to jail, therefore, all the petitioners (total **nine** petitioners) and several others in different References of NAB made the offer to submit **pay orders** equivalent to the alleged misappropriation with the backing of order of the Hon'ble Supreme Court judgment leaving hardly any room for the High Court to refuse to accept their offer. Five of the accused have availed the benefit of the order and the four petitioners, by making false statement on oath, have managed to avoid consequences of non-confirmation of their pre-arrest bail in connivance with the NAB authorities and Investigation Officer after dismissal of their petitions for bail before arrest on completion of 15 days from **16.03.2021**. As per Reference No.25/2020, petitioner **Sundar Khan**, Incharge Account Section, and petitioner Sadique Ali Leghari, Taluka Principal Officer were custodian of the official funds and two other petitioners also close relatives of Sundar Khan as contractor/supplier, have allegedly misappropriated the huge funds through banking transactions, therefore, it cannot be said that there was any malafide on the part of the prosecution. The documentary evidence in the shape of bank record of accused/petitioners was more than enough to prima-facie find enough material to connect the accused with the alleged offence and dismiss their pre-arrest bail.

13. It is pertinent to mention here that from day one when this Bench was constituted at Sukkur, every lawyer appearing in the petitions against the NAB for the purpose of bail have made the similar offer without touching merits of the case. It may further be mentioned here that the unreported judgments of the Hon'ble Supreme Court quoted by us in the bail granting orders were provided to us by the counsel representing the Petitioners. Several petitioners have filed even urgent applications to place their petitions before this Bench for disposal of their bail plea on deposit of **Pay**

Orders equivalent of the alleged amount of corruption or loss allegedly caused by them on the basis of the dictum laid down by the Hon'ble Supreme Court pending the trial before NAB Court, Sukkur.

14. After passing identical orders, some of the lawyers did make few applications for reduction of surety or change of surety which we have obviously dismissed on merit as it could have been deviation from the dictum laid down by Hon'ble Supreme Court wherein pre-arrest bails were confirmed on depositing entire alleged amount of loss allegedly caused by the accused/ petitioners. We have followed the wisdom of Hon'ble Supreme Court in anti-corruption cases and NAB cases for confirmation of pre-arrest bail without touching merits of the case and in none of such cases we were supposed to grant bail by modifying the quantum of bail amount and the manner of securing the same at pre-arrest bail stage since merits were not discussed by Hon'ble Supreme Court so also by us while following the same proposition. It could have also frustrated the main purpose of creating equity between the Petitioner and the Respondent/NAB pending the decisions on merit on the References before the trial Court.

15. The Hon'ble Supreme Court in the case of Shamraiz Khan had confirmed his pre-arrest only on accepting his offer to deposit an amount equivalent to loss caused by him. At the time of Shamraiz Khan case there was no concept of any plea bargain with the accused facing charges of corruption nor there was any law for the recovery of ill-gotten money. In this back ground, the scheme of National Accountability Ordinance, 1999 (NAO, 1999) is that once the petition/accused has offered to deposit the entire amount of alleged loss caused to the government exchequer by him at least half of the purpose of NAO, 1999 is instantly achieved. The primary purpose of

the NAO, 1999 as set out in its preamble is to recover ill-gotten gain is accomplished without bargain and only penal aspect of NAO, 1999 is left to the Accountability Court.

16. The crux of the above discussion is that these petitions were not only not maintainable even on merit the petitioners who are guilty of making false statement on oath have no case. Consequently, these petitions are dismissed with cost of **Rs.50,000/-** each. The petitioners on the basis of their false statement have not complied the order nor they have been arrested despite the fact that the order dated 16.3.2021 was never suspended. If the cost is not deposited with the Nazir of High Court at Principal Seat, Karachi within one week, the Nazir is directed to attach Bank Accounts of petitioners after obtaining information from State Bank of Pakistan. In case no Bank Account is found, recover the cost under Land Revenue Law through the relevant Deputy Commissioner, District Kashmore at Kandhkot and submit report on or before **30.05.2021** to this Court for perusal in Chamber.

17. Before parting with this judgment, it is the duty of this Court to remind the Director NAB, Sukkur that in all the constitution petitions which were disposed of in the month of March, 2021 by this Bench, the operative part of the order was to the effect that *“in case of failure to deposit the entire amount equivalent to their individual liabilities in the reference through pay orders and PR bond in the like amount to the satisfaction of learned trial court within a period of 15 days, the defaulting petitioner will be taken into custody and remanded to jail till deposit of the amount against their individual liability respectively.* However, we have noticed that the NAB authorities have not complied the order. It is a settled principle of law that an order passed by a Court is binding on the parties unless it is

set aside/modified by any competent Court. Mere filing of review application or even an appeal before the Hon'ble Supreme Court does not operate as an automatic suspension of the operation of the order passed by any competent Court. These are criminal cases and in case of dismissal of bail, it is the duty of NAB authorities/ the prosecuting Agency to act in accordance with law instead of protecting the corrupt elements in the society on the pretext of pendency of any review application or petition without any order restraining the NAB not to arrest them. We have failed to understand that some of the petitioners whose petitions are still lying in Sukkur Bench in which there is no order of suspension of the earlier order passed by this Bench neither the NAB authority nor the NAB Court has followed the consequences of the orders already in the field. It is expected that the NAB authorities should act strictly in accordance with law. Copy of this order be sent to the Chairman NAB as well as Director General NAB at Sukkur.

JUDGE

JUDGE

Karachi
Dated: 20.05.2021

Ayaz Gul