

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No.D-8671 of 2017
Const. Petition No.D-1379 of 2021
Const. Petition No.D-1404 of 2021

Date	Order with signature of Judge
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For hearing of case:

1. For hearing of main case

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02.09.2021.

Mr. Nadeem Yaseen, Advocate in C.P.No.D-8671 of 2017.
Mr. Aziz-ur-Rahman Akhund, Advocate in C.P.No.D-1404 of 2021.
Mr. Shahbaz Sahotra, Special Prosecutor NAB a/w I.O. Naeemullah.

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Shamsuddin Abbasi, J:- Petitioners seek pre-arrest bail in Reference No.9 of 2017 and 9B of 2021, pending adjudication before Accountability Court No.III {Sindh}, at Karachi, and are on ad-interim pre-arrest bail granted to them by this Court through different orders.

2. A statement has been filed by learned Special Prosecutor NAB, duly signed by I.O., which is taken on record, stating therein that no warrant of arrest has been issued by the Chairman NAB or any officer on his behalf 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 certain other 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, bailable warrant or non-bailable 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 stand disposed of in the foregoing terms. Office is directed to place a copy of this order in all petitions listed above.

JUDGE

JUDGE