

ORDER SHEET

THE HIGH COURT OF SINDH AT KARACHI

Date _____ Order with Signature(s) of Judge(s) _____

Present:-

Muhammad Iqbal Kalhoro, J.
Agha Faisal, J.

Constitutional Petition No.D-501 of 2022

Saleem Ibrahim Kapoorwala

Versus

The State & Another

For hearing of main case

31.03.2022.

Mr. Khalid Mahmood Siddiqui, advocate and Mr. Ghulam Rasool Korai, advocate for the petitioner.

Mr. Irfan Ahmed Memon, Deputy Attorney General.

Mr. R.D. Kalhoro, Special Prosecutor NAB.

Mr. Umesh Kumar Malani, Investigation Officer, NAB.

Mr. Muhammad Adeel Khan, Investigation Officer, NAB.

ORDER

Muhammad Iqbal Kalhoro, J:- An FIR No.49/1997 was registered, under Section 409, 420, 406, 109, 471 PPC read with Section 5(2) PCA II of 1947 at P.S. CBC Circle FIA, Karachi pursuant to a complaint by Allied Bank of Pakistan Karachi alleging issuance of various Usance Letter of Credits on 120 days DA from 29.01.1994 to 28.03.1994 by East Mediterranean Trust & Banking Corporation (“EMTBC”) in favour of M/s. Tawakkal Limited at the request of Marco Service Limited of Hong Kong, the purported importer of goods.

2. In the investigation, the said company was found to have dishonestly presented 22 export documents amounting to Rs.67.183 million drawn against those Usance LCs. When such documents were submitted to EMTBC for payment of bills, it failed to do so. Later, it was also discovered that EMTBC was not the correspondent bank of ABL and was not even recognized by Govt. of Pakistan, and was established on the basis of a special power of

attorney executed, among others, by the petitioner as one of the directors. The alleged transactions caused a loss of Rs.96.563 million to ABL. In FIR, name of petitioner did not transpire. Subsequently in terms of section 16A of the National Accountability Ordinance, 1999, NAB assumed jurisdiction of the matter, investigated it, and submitted reference 21/2003 against various accused including petitioner showing him absconder, however.

3. It is informed in the course of arguments that petitioner, even before registration of FIR in the year 1997, had left Pakistan in the year 1994 for Qatar and was not aware of any pending proceedings against him till he returned to Pakistan on 03.07.2020. But behind him proceedings u/s 87 and 88 CrPC were taken and he was declared absconder u/s 512 CrPC. In any case, when he approached this court was granted protective bail first and then ad interim pre arrest bail not only in the instant reference but in other references in which he had been convicted in absentia due to his abscondence. His petition for pre-arrest in this case was finally dismissed and he was taken into custody on 25.09.2020.

4. It has next been argued that in other references filed on allegations more or less similar in nature he has been granted bail, and conviction given to him on account of his abscondence has been set aside by this court. He is in jail since 25.09.2020 but in this case. His application for post arrest bail was dismissed by this court vide order 21.05.2021 with directions to the trial court to conclude the trial within a period of three months. Those directions were not complied with and when petitioner filed application for bail before the trial court has been dismissed by impugned order dated 17.01.2022. Out of 13 witnesses, only five have been examined. The process to procure attendance of remaining witnesses has been returned unserved and there is no hope for the time being to procure their attendance. The petitioner is an old frail person aged about 67 years and suffering from multiple diseases. His incarceration is of no benefit to the prosecution whose case is based on documentary evidence. In the evidence of five witnesses, examined so far, no incriminating evidence has come on record against him.

5. Learned special prosecutor NAB and IO, *per contra*, have opposed the bail request of petitioner and submit that five witnesses including I.O. have been examined and there is *prima facie* strong evidence which connects him with the alleged offence.

6. Heard. Entire proceedings including FIR were conducted when petitioner was not in the country and had already left in the year 1994. He returned to Pakistan in the year 2020 and approached this court for a relief enabling him to appear before the trial court in pending cases against him. His surrender, immediately after return, is a testament to his conduct willing to comply with the course of law and not to go against it as alleged. Therefore, probability of his remaining absconder due to unawareness of pending proceedings cannot be ruled out. He is in jail since September 2020 and the prosecution in about 18 months since has utterly failed to conclude the trial. It is still looking for remaining 8 witnesses out of 13 despite many chances given by the trial court in this regard, which speaks volumes of its proficiency and diligence to expedite the trial as directed. Nothing has been brought on record to show that the petitioner in any manner has inducted delay in the trial and has caused disappearance of the witnesses. His counsel has been regularly attending the trial court and the case is being adjourned, in the main, for want of presence of the witnesses about whose whereabouts the prosecution has absolutely no clue. The case for bail on hardship ground, in such facts and circumstances, has been made out. The arrangement we are approving for petitioner as a result even otherwise is temporary in nature and is subject to final decision to be made by the trial court after appreciating the evidence, which in this case is but based on documents.

7. Consequently, this petition is allowed. The petitioner is granted bail in the subject reference subject to furnishing a solvent surety in the sum of Rs.500,000/- (five lac) and P.R. bond in the same amount to be executed to the satisfaction of the trial. The name of the petitioner however shall be placed in Exit Control List (ECL) till conclusion of the trial and he shall not at any stage try to induct a delay in the proceedings of trial. The petition is disposed of in the above terms and the observations made herein above are tentative in nature.

JUDGE

JUDGE

Khuhro/PA