

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Cr. Bail Application No.D-33 of 2023
C.P. No.D-293 of 2023**

DATE ORDER WITH SIGNATURE OF JUDGE(s)

For orders on office objections.
For hearing of main case.

23.05.2023.

Mr. Shamail Sikander advocate for petitioner/applicant.

Mr. Jangu Khan Special Prosecutor NAB along with Irfan Ali Investigation Officer /AD NAB Karachi.

Applicant is present on ad-interim pre-arrest bail.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Petitioner/applicant has filed abovementioned Criminal Bail Application No.D-33/2023 for pre-arrest bail in NAB investigation arisen out of Crime No.G.O.05/2022 registered with PS Matiari/Hyd ACE District Hyderabad u/s 409, 420, 467, 468, 471-A, 34 PPC r/w section 5(2) Act-II of 1947, and C.P. No.D-293/2023 praying for quashment of investigation of NAB in the matter and warrant of arrest issued against him.

Brief facts of the case are that as of October 2022 an amount of Rs.4,634,959,685.23 from National Highway Authority (NHA) with profit of Rs.542,189,855/- was received in the bank for land acquisition for construction of M-6 project. The scam surfaced, when it transpired that an amount of Rs.2,119,157,363/- illegally withdrawn from the bank by the accused including Land Acquisition Officer / Assistant Commissioner Saeedabad, Bank officials and Deputy Commissioner Matiari, in collusion with each other was distributed by them among themselves before passing of any award of land acquisition. Inquiry followed and it was concluded that in fact all the accused had embezzled billions of rupees given to District Matiari for purchasing land for construction of M-6 project.

Initially after registration of FIR, interim Challan was submitted in the Court of learned Special Judge Anti-Corruption (Provincial) Hyderabad. Applicant approached the Court and was

granted ad-interim bail. After transfer of investigation to NAB, he filed an application afresh before learned Accountability Court-II Hyderabad for the same purpose. His application has been dismissed vide order dated 12.04.2023.

Learned defence counsel has argued that applicant/ petitioner is innocent and has been falsely implicated in this case. There is absolutely no evidence against him. He has been implicated in this case on the basis of statement of co-accused Land Acquisition Officer/ Assistant Commissioner Saeedabad which is inadmissible in law. Applicant has a long association with Makhdooms of Hala and is politically active person. He was contributing to flood relief efforts during relevant time and due to such preoccupation he was present in the Deputy Commissioner's house. Applicant, who is neither a Government Officer nor a land owner, has got nothing to do with the alleged scam of embezzlement of amount meant for construction of Motorway, therefore, he is entitled to bail. He has further argued that investigation of NAB is illegal void ab initio. Applicant/petitioner has not been provided a copy of inquiry report. The NAB has not conducted any further investigation into the matter and simply on the basis of allegations leveled by Anti-Corruption Establishment is trying to arraign applicant/petitioner in this case. The warrants issued against the applicant and investigation/reference thus are illegal and the same may be quashed. He has relied upon 2005 YLR 915, 2022 SCMR 676, PLD 2021 Supreme Court 738, PLD 1994 Supreme Court 314, 1999 SCMR 2203, 2023 YLR Note 17, 2022 YLR 2259, 2022 YLR 173, 2013 SCMR 669, 2017 MLD 1042, 2007 YLR 3135, PLD 2012 Supreme Court 369, 2022 PCrLJ 1466, 2022 MLD 584, 2023 SCMR 383, 2022 SCMR 2077, 2023 YLR 690, 2022 YLR 1377, 2022 YLR 769, PLD 2022 Supreme Court 475, 2016 SCMR 18, 2022 PCrLJ Note 86, 2021 YLR 2190 and AIR 1960 All 1, in support of his arguments.

On the other hand, his case for both the reliefs as above has been opposed by learned Special Prosecutor NAB and Investigation Officer of the case, who have drawn Court's attention to the role of applicant identified in the investigation and his ubiquitous presence in the DC house Matiari where a camp office with the name of "Motorway office" was established for the purpose of dealing with

matters concerning M-6 Project, and where the alleged offence took place.

We have heard the parties and perused material available on record, taken guidance from case law cited at bar. A perusal of impugned order shows that applicant was not consistent in appearing before trial Court on the dates of hearing when his application for bail was fixed. To justify his absence, he always submitted some documents to prove that he was not well on particular dates and was admitted in some hospitals at Karachi. Learned trial Court realizing offensive irregularity of applicant in appearing before it, got the medical record submitted by him checked from relevant hospitals and came to know of fakeness and fabrication of claims made by applicant to justify his absence. In paragraph No.7 of impugned order, learned trial Court has reproduced such facts and its observation and a further fact in paragraph No.8 that applicant has failed to join investigation.

Insofar as merits of the case are concerned, applicant may not be a government servant, contractor or even land owner but his continuous presence in the camp office established in DC House Matiari at the relevant time when government money meant for construction of M-6 Motorway was being illegally distributed by the accused among themselves is self-explanatory and points out to his active involvement. In the investigation, NAB has succeeded to lay hands on Call Data Record (CDR) of applicant revealing not only his presence in DC house Matiari till late hours at the relevant time but also his calling pattern showing his constant contact with Deputy Commissioner Matiari and Land Acquisition Officer, who themselves are accused, at the time when Rs.1.8 billion were being withdrawn from the account of Land Acquisition Officer and distributed.

Arguments of learned counsel that presence of applicant in the house of DC Matiari was on account of his making contribution to flood relief efforts is belied by record of his Whatsapp messages submitted by I.O. in which no discussion over flood relief efforts has been made by the applicant. But on the contrary when the scam surfaced and some of the co-accused were arrested, he expressed his anxiousness and sought a reply from the DC about current situation and the recourse he should adopt in such a situation. CDR of

applicant further reveals that he was taking updates from DC Matiari about the fact finding committee and was tweaking him to approach one of the members of fact finding committee for redressal.

Before investigation was undertaken by ACE or NAB, and after the scam had surfaced, the Chief Secretary, Government of Sindh in November 2022 had constituted a fact finding committee comprising senior officers of Government of Sindh including Secretaries of different departments to inquire into the matter. In the report, applicant has been identified actively involved in the case. It is stated that the camp office in the DC house was being used by co-accused Rehmatullah Solangi, who is still absconder, claiming himself to be NHA employee. But on checking he was found to be a fake employee and applicant and others were working with him as his coterie.

During investigation NAB has examined atleast two PWs namely Muhammad Shoaib, Telephone Operator, working in the said camp office and Zulfiqar Ali Shah, Senior Clerk, in the office of DC Matiari who both have implicated the applicant and confirmed presence of the applicant in DC house at the relevant time when money was being doled out by the accused among themselves.

I.O. in his arguments has apprised the Court that on the pointation of co-accused Mansoor Ali Abbasi, the Land Acquisition Officer / Assistant Commissioner, recovery of Rs.42 crore was effected from his house and while giving account of remaining amount, he had disclosed giving Rs.200 million to present applicant. Main contention in defence raised by learned counsel is that this allegation has been made by co-accused and is not admissible in evidence. But we do not agree with him, this statement has been made by a person who is concerned with the entire matter. He was the Land Acquisition Officer and through him money was being withdrawn from the bank and distributed illegally as alleged. He revealed presence of 42 crore in his house, which on checking was found true and from his house Rs.420 million were recovered. That part of statement has not been disputed and is therefore relevant prima facie. We have no reason to disbelieve the other part of his statement qua applicant that he had received Rs.200 million from him, at least for the purpose of deciding entitlement of applicant to pre-arrest bail. Not least because that statement he has made has

accounted for otherwise remaining embezzled amount. I.O. has stated that almost entire embezzled amount has been accounted for except Rs.200 million given to applicant.

Furthermore, whether the part of this statement burdening the applicant to have received such a huge amount is admissible or not, cannot be decided at this stage while deciding entitlement of applicant to the relief of pre-arrest bail which requires only tentative assessment of the material. This is a white collar crime in which evidence of usual nature is hardly found as accused commit such crime by creating several layers to hide their identity. No doubt Land Acquisition Officer himself has been made accused in this case but it is not disputed that through him money was distributed to other accused for embezzlement purpose and from him Rs.42 crore were recovered. So from that angle too he is the most relevant person insofar as discovery of any evidence pointing out to delivery of money to accused including applicant is concerned.

Further, learned defence counsel has failed to show any malafide or ulterior motive on the part of NAB to implicate applicant in this case. Before the investigation was undertaken by NAB, applicant and his role in the commission of offence was already identified not only by the fact finding committee but but also by Anti-Corruption Establishment Matiari. Therefore, no ill-will or interest on the part of NAB to arraign applicant falsely in this case can be alleged. Relief of pre-arrest bail is an extra-ordinary in nature. It is not meant to save an accused from arrest in a non-bailable offence in which reasonable prima facie evidence is available against him. Relief of pre-arrest bail is meant only for a person who has been falsely implicated in a non-bailable offence to save him from arrest which otherwise is required by law.

In view of the above discussion, no case for either extending extra ordinary relief of pre-arrest bail to the applicant has been made out. Nor learned counsel for the applicant/ petitioner has been able to show any illegality or perversity in the investigation of NAB in the present case or the subsequent warrant issued against the petitioner. This being the position, we find no merits in both the captioned cases and accordingly dismiss it.

The observations, insofar as the bail application of the applicant is, are concerned, the same are tentative in nature, not meant to prejudice either party on merits in the trial.

JUDGE

JUDGE

Irfan Ali