

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi

C.P.No.D-4775 of 2019

Younus Mandviwala

Versus

National Accountability Bureau (NAB)

C.P.No.D-4776 of 2019

Khurram Mandviwala

Versus

The Federation of Pakistan & others

**For date of hearing
& order**

: 26.05.2021

Mr. Umar Farooq, advocate for petitioner

Syed Mohsin Imam Wasti, advocate for respondents

Mr. Riaz Alam, Special Prosecutor, NAB a/w IO Karim Bux

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioners, father and son, standing a trial as accused in Reference No.14/2019 pending before the relevant Accountability Court Sindh at Karachi have asked for pre-arrest bail through these connected petitions.

2. Initially an FIR No.04/2012 by Directorate of Intelligence and Investigation-Inland Revenue was registered against the petitioners on the charges that they being proprietors of M/s Eksha Enterprises manufacturing plastic utensils (Sales Tax No.1100620088564) had claimed sales tax refunds from April, 2009 to December, 2011 against fake/flying invoices on the basis of SRO 549(1)/2008 dated 11.08.2008 contemplating four items i.e. Sprinkles, Drip Equipments, Drip Equipments, Spry Pumps and Nozzles to be charged to tax at zero percent rate. In the ensuing investigation, physical verification of the factory at registered address i.e. F-609, Near KESC Power House, SITE, Karachi was carried out. It was found closed since long and the machines were out of order and mostly scrap. The premises looked like a private warehouse with no manufacturing activity underway.

3. While the trial was in progress, the case in terms of Section 16-A NAO, 1999 was transferred to the learned Accountability Court vide an order dated 28.06.2019 passed by this court in C.P. No.D-4225/2016.

Thereafter NAB submitted an application seeking permission to take on further investigation into the matter and ascertain role of officials of FBR involved in the matter, which was granted by the trial court vide an order dated 17.09.2019 stipulating one month period for this purpose.

4. Learned counsel defending the petitioners has drawn our attention to this order and has submitted that NAB miserably failed to finalize investigation within stipulated time and therefore the trial court has proceeded to examine certain witnesses in the case, who according to him, have not implicated the petitioners in the alleged offence. He in order to further strengthen his case has referred to the orders passed by relevant forums of FBR in favour of the petitioner in regard to his tax liability against same activity during the relevant years as a proof of his false implication in the case.

5. On the other land, learned Special Prosecutor, NAB and IO have defended allegations and have submitted that after transfer of the case, petitioners are not cooperating in further investigation and submitting the record despite issuance of call up notice. IO has stated that due to Covid-19 in the year 2020 and promulgation of an ordinance meanwhile taking out jurisdiction of NAB over sales tax matters, the investigation was put in abeyance. But thereafter when petitioners were approached for investigation, they got non-committal and refused to cooperate. While referring to the evidence, so far recorded, learned Special Prosecutor, NAB states that sufficient material against the petitioners connecting them in the alleged offence has come on record and they are not entitled to the concession of relief of pre-arrest bail which is extra-ordinary in nature.

6. We have considered submissions of the parties and perused the material available on record. Allegations against the petitioners are that they being proprietor of M/s EKSHA Enterprises received an amount of sales tax refund to the tune of Rs.215.72 million against fake/flying tax invoices against an SRO dated 11.08.2008 setting out zero percent tax against manufacturing of plastic items i.e. Sprinkles, Drip Equipments, Drip Equipments, Spry Pumps and Nozzles. In investigation, when physical checking of premises used for manufacturing of said articles was conducted on 07.05.2015, just after five months of such activity i.e. December, 2011,

the same was found being used as a private warehouse instead with zero manufacturing activity, the machines in a dilapidated condition, mostly scrap and out of order. The persons/entities who were supplied the goods purportedly by the petitioners could not be verified being unregistered ones and some of the monthly returns reflected refunds obtained against taxable goods like PP bags.

7. Learned defence counsel since himself took us to evidence of prosecution witnesses with a view to appreciate it, although not a strict requirement for determining entitlement of an accused to a remedy interim in nature, we somehow could not help but to take a squiz over it and have found that *prima facie* PW Muhammad Shakeel in his evidence has supported prosecution case as set out against the petitioners. The order passed by Appellate Bench by Inland Revenue in favour of the petitioners is in respect of charge for evasion of tax and not tax refunds and it covers only civil liability of the petitioners, which is different than the criminal one being determined here.

8. Be that as it may, when there is sufficient *prima facie* evidence against the petitioners and nothing in their defence to explain refund of huge amounts, which when estimated against actual sale that keeping in view ratio of tax refund at 17% shall run in billions is not available. We assume that petitioners are not entitled to judicial protection in the shape of pre-arrest bail, which is extended solely to save an innocent from horrors of abuse of process of law in a criminal case accentuated by malafide and ulterior motive on the part of complainant or police. Verification of pleas of petitioners of having been implicated falsely, constructed upon mere denial, is contingent upon recording of evidence and cannot be gone into at this stage in absence of any material to that end.

9. Accordingly, these petitions for pre arrest bail are dismissed, and the interim pre-arrest bail earlier granted to them vide order dated 19.07.2019 is hereby recalled. The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE