

IN THE HIGH COURT OF SINDH, KARACHI

Before:-
Mr. Justice Muhammad Iqbal Kalhoro, J.
Mr. Justice Mohammed Karim Khan Agha, J

Petition No. and name of petitioner along with counsel.

1. C.P. No.D-1810 of 2016 Iqbal Z. Ahmed V National Accountability Bureau through its Chairman & others.
Iqbal Z. Ahmed s/o Zafar Ziauddin Ahmed (petitioner),
through M/s. Farooq H. Naik & Muzamil Soomro, Advocates.

2. C.P. No. D-1151 of 2016. Khalid Rahman V The State through the Chairman NAB & others.
Khalid Rahman s/o Mohammad Rahman, (petitioner),
through M/s. M.A. Kazi & Irshad Ali Jatoi, Advocates.

3. C.P. No. D-1390 of 2016 Malik Usman Hasan V The State through the Chairman NAB & others.
Malik Usman Hasan s/o Malik Mahmood Hasan (petitioner)
through M/s. M.A. Kazi & Irshad Ali Jatoi, Advocates.

4. C.P. No. D-1818 of 2016 Yusuf Jamil Ansari V. The State through the Chairman NAB.
Yusuf Jamil Ansari s/o Jamil Ahmed Ansari (petitioner).
through M/s. Mahmood Alam Rizvi & Obaid-ur-Rehman,
Advocates.

5. C.P. No.D-1824 of 2016 Basharat A. Mirza & another V. NAB through its Chairman & others.
Basharat A. Mirza s/o Ghulam Ahmed Mirza (petitioner),
through M/s. Mian Shabir Asmail & M. Azhar Siddiqui,
Advocate.

Counsel for the Respondents.

M/s. Mohammed Altaf & Munsif Jan, Special Prosecutors,
NAB along with Abdul Fateh I.O. NAB

Date of Hearing: 09-04-2018

Date of Order: 09.04.2018.

ORDER

Mohammed Karim Khan Agha, J. By this common order we propose to dispose of the above mentioned petitions filed by the petitioners namely Bisharat Mirza, Khalid Rehman, Malik Usman, Yousuf Jamil Ansari and Iqbal Z Ahmed all of whom

have been granted ad interim pre arrest bail through various orders of this court.

2. The brief facts of the case are that the National Accountability Bureau (NAB) filed a reference **No.19/2016 State V Dr.Asim Hussain and others** on 04-03-2016 against the petitioners and other co-accused for acts of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO). In essence the official petitioners (being former senior management of Oil and Gas Development Corporation Limited (OGDCL) and Sui Southern Gas Company Limited (SSGCL) were alleged to have misused/failed to exercise their authority in order to favour Jamshoro Joint Venture Limited (JJVL) headed by petitioner Iqbal Z Ahmed who in effect was the beneficiary of the misuse of authority/failure to exercise authority which led to the award of various illegal contracts in favour of JJVL which caused a colossal loss to the national exchequer.

3. Learned counsel for Iqbal Z Ahmed (JJVL), who was the alleged beneficiary of the misuse/failure to exercise authority of the official petitioners and co-accused, submitted that the S.161 Cr.PC statements had been taken before the authorization of the investigation and as such were of no legal effect; that the time between authorization of the investigation and the filing of the reference was only two weeks which meant that no proper investigation was carried out in such a short period in such a technical case; that the petitioner had not been associated with the inquiry/investigation into the

illegal award of contracts as his call up notice was in respect of misuse of authority and misappropriation and it appeared that he was being called as a witness; that there was no material on record to prove that the contracts had been awarded illegally and that this was a case of further inquiry; that he was an old man of 72 years of age and had suffered from cardiac problems in which respect he referred to medical documents on record and the fact that the petitioner already had four stents in place. In particular he pointed out that three of the main accused in the reference had already been granted bail by orders of this court in the same reference which orders had been upheld by the Hon'ble Supreme Court (one on medical grounds and the other on merits) and since he was a beneficiary his role is less serious than the other co-accused who had already been granted bail as such he is entitled to bail based on the rule of consistency and his pre arrest bail should be confirmed.

4. The other petitioners also contended that since they had played a lesser role than the co-accused who had already been granted bail by this court and the Hon'ble Supreme Court and as such they were also entitled to bail based on the rule of consistency and as such their pre arrest bail should be confirmed.

5. On the other hand special prosecutor for the NAB submitted that the case of the petitioners was different to the case of the co-accused who had already been granted bail and as such the rule of consistency did not apply to them as in

those cases the co-accused were either granted bail on medical and/or hardship grounds respectively; and even other wise there was no malafides on the part of the NAB and there was sufficient material on record to connect each of the accused to the offense for which he has been charged under the reference and as such the pre arrest bail of all the petitioners should be recalled with immediate effect.

6. We have heard the parties and gone through the record and considered the case law cited by them. We have only tentatively assessed the material before us and as per settled law on bail we have not gone into a deeper appreciation of such material.

7. One of the main co-accused in this case is former Adviser on Petroleum and Natural Resources Dr. Asim Hussain whose bail granted by this court was upheld by the Hon'ble Supreme Court. However, since he was granted bail on medical grounds, which is a different kind of bail this is not relevant for the purposes of this case. The other main accused who have been granted bail by this court are Zuhair Ahmed Siddiqui and Shoaib Warsi both former MD's of SSGCL vide order dated 01-07-2016 reported as **Shoaib Warsi V Federation of Pakistan** (PLD 2017) Sindh 243 which in material part in respect of the reasons for grant of bail at P.274 reads as under:

“No sufficient incriminating material specifying the role of the petitioners relating to allegations of misuse of authority and corruption or the benefit derived by the petitioners or extended to M/s JJVL has been produced by the NAB, therefore, the

possibility of misuse of authority and the mala fide on the part of NAB Authorities as alleged by the learned counsel for the petitioners cannot be ruled out. **Moreover, the prosecution could not place on record any material, which may establish beyond reasonable doubt that petitioners have played some material role in the alleged offence i.e. misuse of authority or corruption in SSGCL through illegal benefit extended to M/s JJVL. The prosecution has also failed to refer to any material, which may suggest that the petitioners are the beneficiary of the alleged misuse of authority and corruption.** Decision cannot be attributed to the petitioners only as there is yet to be determined as to whether the alleged misuse of authority and corruption in the SSGCL while taking such decision in the meeting of Board of Directors was the outcome of some ill intention to cause loss of revenue to public exchequer and to extend benefit to M/s. JJVL by the entire members of the Board of Directors, who participated in such meeting or it can be attributed to any specific member(s). **Prosecution has filed the reference along with relevant documents, whereas, the petitioners are no more required for further investigation. Admittedly, inspite of considerable lapse of time i.e. more than a year since arrest of the petitioners, the trial has not yet commenced before the Accountability Court nor even the charge has been framed, whereas, there is inordinate delay in the trial which cannot be attributed to the petitioners, and such delay has not been explained by the prosecution.** Inordinate delay in trial while keeping the accused person(s) behind the bars as punishment is contrary to the very spirit of the NAB Ordinance, 1999, which requires expeditious decision in the matters relating to NAB. **We are of the opinion that the petitioners who are behind the bars for more than a year, whereas, other co-accused persons have been granted ad interim pre-arrest bail subject to furnishing surety, as the matter requires further inquiry.** Accordingly, the petitioners, namely, Shoaib Warsi in C.P. No.D-1199/2016 and Zuhair Siddiqui in C.P. No.D-214/2016, were admitted to bail vide short order dated 01.07.2016" (bold added)

8. It would appear from the order of the Sindh High Court that hardship (namely that the petitioners had already spent a year in jail and the charge was yet to be framed) was **not the exclusive ground** for the grant of post arrest bail to the two main accused. In fact the word "hardship" is not specifically mentioned in the order. **In addition,** the order

also makes reference to insufficient incriminating material specifying the role of the petitioners relating to allegations of misuse of authority and corruption or the benefit derived by the petitioners or extended to M/s JJVL; that the prosecution could not place on record any material, which may establish beyond reasonable doubt that petitioners have played some material role in the alleged offence; that the prosecution has also failed to refer to any material, which may suggest that the petitioners are the beneficiary of the alleged misuse of authority and corruption; that the petitioners are no more required for further investigation; that inspite of considerable lapse of time i.e. more than a year since arrest of the petitioners, the trial has not yet commenced before the Accountability Court nor even the charge has been framed.

9. This order was upheld by the Hon'ble Supreme Court in Civil Petitions 67 and 68 **NAB V Shoaib Wasi and another** dated 21-09-2017 (unreported) in the following terms at Para 4's, 5 and 6 which for ease of reference are set out below:

"4. We have considered the submissions of the learned Special Prosecutor, NAB and have also gone through the relevant record. We have asked the learned Special Prosecutor NAB to show from record material prima-facie establishing connection of these two respondents with the crime as alleged in the Reference. The learned Special Prosecutor, NAB, in this respect referred to report of investigation dated 01.03.2016 filed with the petitions. **We have noted that in the investigation report certain accusations were made against the respondents but material which can substantiate such accusation was not shown to the Court although it was asked for repeatedly.** The learned Special Prosecutor NAB further admitted the fact that both the respondents were taken into custody initially by the Pakistan Rangers, Sindh on 26.08.2015 under Section 11EEEE(1) of the Anti-Terrorism Act, 1997

and after keeping them in custody for 90 days, their custody was given to the NAB officials and until the bail was granted to them by the impugned order they remained in custody. The learned Special Prosecutor, however, contended that in calculating period of custody of these two respondents, the period of custody with Pakistan Rangers, Sindh should not be counted.

5. Be that as it may, the respondents have remained in custody with Pakistan Rangers Sindh and with the NAB for a considerable time without due process and until the order granting bail by the High Court was passed, **they remained in custody for almost one year. It was admitted by the Special Prosecutor NAB before us that charge has not so far been framed that the matter is fixed before the Accountability Court tomorrow for this purpose. It was admitted by the learned Special Prosecutor NAB that as investigation in the matter has already been concluded and all record pertaining to the allegations made in the Reference have been collected by the NAB authorities, there is no possibility on the basis of which it can be said that these respondents will tamper with such record.**

6. The High Court, in the impugned order, has dealt with the matter very exhaustively and noted so many instances where illegalities have been committed particularly in the matter of arrest and keeping these respondents in detention **and also as a fact made an observation that the allegations in the Reference against these respondents are vague and no specific role identifying misuse of authority or corruption on their part were shown and further no material was shown which could suggest that these respondents have been beneficiaries of the alleged benefit to JJVL. Similar position as it was before the High Court stands before us too in that the learned Special Prosecutor has not been able to show us any prima-facie material to connect these respondents with the alleged offence in the Reference. No allegation whatsoever was made that these respondents have misused the benefit of bail granted to them or are likely to repeat the offence alleged against them.** Having considered the submissions in the light of the available record, we are satisfied that the learned Division Bench of the High Court through the impugned order has exercised discretion of granting bail to these respondents which exercise of discretion is not found by us to be perverse or suffering from any patent illegality

and thus we are not inclined to interfere in the same. Both these petitions are, therefore, dismissed and leave refused.(bold added)

10. It would appear from the order of the Hon'ble Supreme Court **that again the question of time spent in custody was only a minor factor out of many factors that was considered and that the main grounds for upholding the grant of post arrest bail by the Sindh High court were** that in the investigation report certain accusations were made against the respondents but material which can substantiate such accusation was not shown to the Court although it was asked for repeatedly; that the charge had not been framed yet and was to be framed the next day; that as investigation in the matter has already been concluded and all record pertaining to the allegations made in the Reference have been collected by the NAB authorities, there is no possibility on the basis of which it can be said that these respondents will tamper with such record; that similar position as it was before the High Court stands before us too in that the learned Special Prosecutor has not been able to show us any prima-facie material to connect these respondents with the alleged offence in the Reference; that no allegation whatsoever was made that these respondents have misused the benefit of bail granted to them or are likely to repeat the offence alleged against them.

11. Thus, it would appear from both the orders of the Sindh High Court and the Hon'ble Supreme Court that the reason for granting the main accused bail was **not exclusively** that

of hardship but included many other relevant factors as alluded to above.

12. When confronted to show us whether material existed to controvert the above position in connection with the petitioners in this case, the learned special prosecutor NAB was unable to do so. We also note that the Charge has only just been framed and only one out of 26 witnesses has so far been examined. Since there are about 8 accused the trial is likely to take a considerable time to conclude; the petitioners are no longer required for investigation and that the case is one mainly of documentary evidence and thus there is little chance of the same being tampered with. The petitioners Khalid Rehman and Iqbal Z.Ahmed have been granted permission to travel abroad by this court on a number of occasions and have always returned as per court orders and in the case of petitioner Khalid Rehman he returned to Pakistan **after** the filing of the reference in order to face trial and thus they have shown their good faith and there appears to be little chance of them absconding; that none of the petitioners have misused the concession of interim pre arrest bail; that there seems little purpose in sending them to jail under these circumstances; that there has been no allegation that any of them have caused any delay in the trial and thus we find that there case is on the same, if not better, footing to that of the two main co-accused who have already been granted post arrest bail (namely Shoaib Warsi and Zuhair Ahmed Siddiqui) by this court and upheld by the Hon'ble Supreme Court. We thus hereby based on the rule of

consistency confirm the interim pre arrest bail of all the petitioners on the same terms and conditions **except** that those petitioners who have paid a surety of less than RS two million (twenty lacs) shall immediately make up the balance to RS two million and PR bond in the like amount to the satisfaction of the Nazir of this court. The Ministry of Interior is also directed to place the name of each of the petitioners (if their names are not already so placed) immediately on the ECL.

13. With regard to the question of malafides since these petitions concern pre arrest bail reliance is placed on the case of **Muhammad Ramzan V Zafarullah and another** (1986 SCMR 1380) whereby it held that it would be a pointless exercise in canceling pre arrest bail on this ground when the petitioners would be entitled to post arrest bail on the rule of consistency.

14. It goes without saying that this order shall have no bearing on the trial of the reference which shall be decided by the trial court on merit based on the evidence before it.

15. A copy of this order shall be faxed to the secretary Ministry of Interior for information and compliance.

16. The petitions stand disposed of in the above terms.