

**IN THE HIGH COURT OF SINDH, KARACHI**

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.  
Mr. Justice Mohammad Karim Khan Agha, J.

**C.P. No.D-2633 of 2016**

Petitioner: Muhammad Shakeel Ahmed Khan  
S/o Abdul Rasheed Khan Through  
Mr. Saadat Hasan, Advocate.

Respondents: National Accountability Bureau &  
others through Mr. Muhammad Altaf,  
Special Prosecutor, NAB.

Date of hearing: 08.09.2017.

Date of Order: 18.09.2017.

**ORDER**

**Mohammad Karim Khan Agha, J:-** The petitioner (Muhammad Shakeel Ahmed Khan) through the above petition has prayed as under:-

“It is therefore, prayed that this Hon’ble Court may be pleased to issue writ, order directions against the respondents that he should be brought before this Hon’ble Court to satisfy itself to the legality and detention of the detinue as to mandatory requirements of law and in case no sufficient ground of arrest substance is provided to the detinue, his detention may be declared as illegal and his confinement as wrongful and order for his immediate release may be passed.

That it may be held that in the absence of valid authority with the Respondent No.2 as the authorization of investigation / enquiry against the detinue, the purported enquiry order No.242005/FCIW/CO-B/NAB-Sindh/2014-K 2071, dated 17.06.2014 is illegal and abi-initio, void and the same to be declared null and void and subsequent proceedings based on this should be declared nullity in the eyes of law.

Order for release of the detinue on the same surety on furnishing of fresh bail bond, if deem proper, by the police station NAB where he has been kept by respondents.

That pending petition this Hon'ble Court may be pleased to release the detinue on furnishing surety to the satisfaction of this Hon'ble Court or pass any other order which may be deemed fit and proper in the circumstances of the case."

2. Briefly stated the facts of this case are that the petitioner was cited as Accused No.2 in National Accountability Bureau (NAB) **Reference No.13 of 2014 State Vs. Zafar Ali Zuberi and others dated 30<sup>th</sup> September 2014** whereby the petitioner along with co-accused were alleged to have misappropriated/embezzled millions of rupees of Custom Collection collected at Air Freight Unit (AFU) Booth of NBP Karachi during the years 2011 to 2013 which amounted to acts of corruption and corrupt practices under the National Accountability Ordinance, 1999 (NAO) hence the NAB filed the aforesaid Reference against the petitioner and other co-accused. The petitioner was arrested in this Reference and was later released on post arrest bail. However, after attending the court proceedings in the aforesaid reference he was again arrested by the NAB in **Reference No.48 of 2015 State V Muzzafar Ali Zuberi dated 19.11.2015.**

3. Learned counsel for the petitioner mainly contended that Reference No.48 of 2015 was identical to earlier filed Reference No.13 of 2014, as such his case amounted to double jeopardy under Article 13 of the Constitution of Pakistan, 1973 and as such the latter Reference No.48 of 2015 should be quashed and the petitioner should be released from custody. Even if the Reference No.48 of 2015 was not quashed in alternative the petitioner was entitled to post arrest bail since he was completely innocent and there was no evidence against him.

4. On the other hand, learned Special Prosecutor, NAB contended that it was not a case of double jeopardy as the latter Reference No.48 of 2015 was different from the Reference No.13 of 2014 and as such there was no ground for quashment. With regard to the grant of bail he submitted

that there was more than sufficient material on record to connect the petitioner to the offence for which he has been charged in Reference No.48 of 2015 and as such both the application for quashment and post arrest bail should be dismissed. In support of his contentions he placed reliance on the case of **Ms. Farhana Muzaffar vs. National Accountability Bureau and 4 others** (2017 P Cr. L J 1) and **Order dated 10<sup>th</sup> June 2015 (unreported) passed by the Hon'ble Supreme Court of Pakistan in Civil Petition Nos.298-K, 309-K, 310-K and 315-K of 2015 (Noor Jahan Mangi and 3 others vs. Federation of Pakistan through Secretary, Ministry of Interior & another (the Order))**.

5. We have considered the arguments of learned counsel for the parties, gone through the relevant record and considered the relevant case law.

6. In terms of quashment of the reference 48/2015 on the ground of double jeopardy it would be of assistance to set out Article 13 of the Constitution of Pakistan, 1973 which provides as under:-

*"13. Protection against double punishment and self-incrimination.*

*No person -*

(a) ***shall be prosecuted or punished for the same offence more than once; or (bold added)***

(b) *shall, when accused of an offence, be compelled to be a witness against himself."*

7. We have compared the two references (13 of 2014 and 48 of 2015) where it would appear that a similar modus operandi was used by the petitioner with six other co-accused cited in Reference No.13 of 2014 in embezzling hundreds of millions of rupees, however Reference No.13 of 2014 relates to the period 2011 to 2013 and Reference No.48 of 2015 relates to the period of 2009 to 2010 (see reference 48/2015 and S.161 statement of Muhammed Hasan, Branch Manger of NBP Airport Branch) and that both references were

authorized on the basis of separate complaints received after each other and the references were based on separate investigations which disclosed that in each case the petitioner along with co-accused through the commission of corrupt practices had embezzled hundreds of millions of rupees and had caused a massive loss to the State Exchequer. In reference 13/14 there are 7 accused and the loss was over RS one billion, whilst in reference 48/15 there are 4 accused and the loss is approximately RS 500 million making a combined total of approx RS 1.5 billion as total loss to the exchequer.

8. Thus, in our view, this is not a case of double jeopardy and Article 13 of the Constitution is **not** attracted **since the transaction in each reference relates to different financial periods**. In this regard we place reliance on the Order dated 10-06-2015 passed by the Supreme Court as mentioned above which in a similar plea held as under:-

**“There is no question of double jeopardy, alleged by the counsel for the petitioners, on the basis of Reference No.69 of 2007 pending before the Accountability Court, Hyderabad, as the same pertains to the transaction conducted during the Financial Year 2002-03 which ended in June 2003, whereas the present Reference pertains to the fraud and embezzlement allegedly committed by the petitioners in July 2003”.** (bold added)

9. Thus we find no grounds to quash Reference No.48 of 2015 since this is not a case of double jeopardy and both the aforesaid references can proceed in accordance with law.

10. With regard to post arrest bail we observe from Reference No.48 of 2015 that the petitioner along with Muzaffar Ali Zuberi was one of the main accused in this Reference who misused his authority and caused massive loss to the government exchequer running into nearly half a billion rupees. He has been given a specific role in the reference at Para 5 which reads as under;

“5. That the investigation further reveals that the Accused No.2, **Muhammad Shakeel Ahmed Khan**, Incharge AFU NBP Airport Branch Karachi in the year **2009 and 2010** has been found involved in illegal debiting of various accounts i.e. Collector of Customs, Excise Department Govt. of Sindh and others. **The signatures of accused are also found on said vouchers. He illegally took millions of rupees from cash collection.** Various entries in registers and date-wise reconciliation of daily collection register with clearing registers account Nos. 1004-5 and 1003-6 show unbalancing of entries. **The accused with the connivance of accused No.1 Muzaffar Ali Zuberi illegally deployed accused No.3 Waqas Ahmed Khan and Accused No.4 Asif Siddique private person for daily banking operation, for the purpose of misappropriation in daily collections”.**

11. NAB has provided us with sufficient material to connect the petitioner with the commission of offence which caused a loss of hundreds millions of rupees to the state exchequer through S.161 statements of Muhammad Hassan, Haseeb ur Rehman, Abu Sufyan and Allauddin and documentary material in the shape of debit and credit vouchers of excise and taxation fee of the Government of Sindh and accounts of customs collection signed by the petitioner, which signature the petitioner has not denied, which the petitioner had no lawful authority to sign and amounts to a misuse of authority which was one of the main factors which enabled the scam to take place. In our view the petitioner and co-accused Muzaffar Ali Zuberi are the main accused in both references.

12. Furthermore in the case of **Ms. Farhana Muzaffar vs. NAB** (2017 P Cr LJ 1) the other main accused (Muzaffar Ali Zuberi), who stands on a similar footing to the petitioner, in Reference No.48 of 2015 had his bail recalled in Reference 13/2014 **and his application for post arrest bail in respect of reference 48/2015 dismissed** by another DB of this court in the following terms:-

“After considering the question of law as well as the incriminating material produced by the I.O., there are no reasonable grounds to believe that

the accused is not involved in the offence cognizable under the NAB Ordinance, therefore the earlier bail granted to the accused is withdrawn (i.e. in reference 13/14); the application filed by NAB seeking cancellation of bail to Zuberi is accordingly allowed; **and application filed by the petitioner seeking bail of the accused Zuberi in subsequent Reference No.48/2015 is dismissed, while the main petition is also dismissed being devoid of merits.** The surety furnished for the first bail may be discharged and returned on proper verification and identification.”(bold added)

13. The other issues raised by the petitioner in his pleadings have already been dealt with by another Divisional Bench of this Court in the case of **Ms. Farhana Muzaffar** (Supra) which we are in full agreement with and in any event are binding on us by virtue of the case of **Multiline Association V Ardeshir Cowasjee** (PLD 1995 SC 423)

14. As such we also find that there is prima facie sufficient material on record to connect the petitioner to the offence for which he has been charged in Reference No.48 of 2015 and as such his application for post arrest bail is dismissed. The concerned trial court(s) however are directed to complete the trial of both references within 4 months of the date of this order a copy of which shall be sent to the concerned trial court(s) for compliance.

15. It goes without saying that with regard to the post arrest bail aspect of the petition we have only made a tentative assessment of the material placed before us and that this order shall have no effect on the trial proceedings which shall be decided on merits by the trial court(s) based on the evidence before it/them.