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IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Ahmed Ali M. Sheikh**
Mr. Justice Muhammad Karim Khan Agha

C.P. No.D-328/2016

Abdul Jabbar

V

Fed. of Pakistan and others.

C.P No.D-5095/2015

Nasir Moorad

V

Fed. of Pakistan and others

Date of hearing	02-03-2016
Date of Order	15-04-2016
Petitioners	Through Mr. Muhammad Wasim Samo, advocate for petitioner in C.P. No.5095/2015. Mr. Wazir Hussain Khoso, advocate for petitioner in C.P. No.D-328/2016
Respondent	Through Noor Muhammad Dayo, ADPG, NAB a/w Abdul Fateh I.O.

ORDER

MUHAMMAD KARIM KHAN AGHA, J: - We intend to dispose of these petitions by common order since they stem from the same Reference No.37/2015 State V Abdul Jabbar and another which was filed before the Administrative Judge Accountability Courts Karachi on 16-11-2015. Both the petitioners are in custody and have applied for post arrest bail.

2. The brief facts of the case as per Reference in connection with Abdul Jabbar (petitioner No.1) was that he was an Ex Cash Officer grade 1 of the National Bank of Pakistan (NBP) based at its Port Qasim Branch who was later made incharge weboc collection counter. On the other hand Mr.Nasir Moorad (petitioner No.2) is running a business in the name of Moorad Shipping Agency, dealing in clearing and forwarding, especially in edible oil.

3. The petitioner No.1 on 20-6-2015 cleared 24 Goods Declarations (GDs) of different oil and ghee importers pertaining to

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petitioner No.2 against the receipt of only 8 payment orders amounting to Rs 985,995 and thus made short fall of Rs.208,247,464/- and in so doing by illegally favoring petitioner No.2 in this regard petitioner No.1 received millions of rupees from petitioner No.2. The net result was that petitioner No.1 in connivance with petitioner No.2 misappropriated Rs.208,247,468/- (although this shortfall was later made up by petitioner No.1 by illegally clearing pay orders of six other different importers between 25th to 30th June 2015 with such importers GD's remaining unpaid) in return for huge sums of money which found its way into either his or his families bank accounts which remain unexplained which is still payable against NBP and thereby through his misuse of authority was liable for the offense of corruption under S.9(a) of the National Accountability Ordinance (NAO).

4. The petitioner No.2 whilst running Moorad shipping Agency as mentioned earlier submitted 24 GD's with petitioner No.1 without sufficient amounts in pay orders which lead to a shortfall in the amount actually payable (Rs.208,247,468/-) which the petitioner No.2 got cleared in connivance with petitioner No.1 without payment in return for the petitioner No.2 paying petitioner No.1 huge amounts of money for this illegal favour and misuse of authority which benefited petitioner No.2.

5. Accordingly both the petitioners had committed acts of corruption under S.9 (a) NAO and hence a reference was filed against them by NAB on 16-11-2015.

6. Learned Counsel for petitioner No.1 submitted that he was entirely innocent; that no claim/ demand is still pending of the Collectorate Customs with NBP, PQA branch thus no amount of Collectorate of Customs or NBP has ever been misappropriated; that the GD's are being cleared through pay order submitted by either clearing agent or by the companies in favour of Colletorate of Customs as such no question arises to deposit or clear the pay orders in personal accounts; that in the entire transaction there is no involvement of cash, hence there is no probability for misappropriation of money in any manner.

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7. Learned Counsel for petitioner No.2 submitted that the petitioner is running a clearing and forwarding agency under a license issued by the Customs Department and that he is completely innocent; that during the course of business and as per prevailing trend and trust the petitioner 2 had paid duty and taxes on behalf of other so many clients and due to late arrival of shipment, shortfall of accounts accrued; that the matter was reported to Pakistan Vanaspati Manufacture Association (PVMA) and on 28.7.2015, it was suggested by the Secretary, PVMA that the petitioner will pay 72 per cent after office audit as per ratio after reconciliation of short fall or balance will be adjusted in new billing and also give the statement of short fall of GD B.L as there is a short fall of a large amount amongst so many clients but inspite of that the I.D and password in customs were blocked and as such the petitioner was not in a position to work; that the petitioner sent notices to the client to settle the account as per the meeting held in the office of PVMA but despite that on complaint of M/s Hameeda Industries the petitioner was arrested; that as per the letters of NBP and Customs and Port Qasim no loss has been caused to Govt. from 2012 to 2015 and as such he cannot be liable under the NAO.He denied making any illegal payments to petitioner No.1.

8. On the other hand learned ADPGA has submitted that both the petitioners have been assigned a specific role in the reference and that there is sufficient evidence to prove the guilt of both the petitioners beyond a reasonable doubt.

9. We have carefully perused the record, considered the law and the submissions of learned Counsel at the bar.

10. At the outset we would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us.

11. With regard to petitioner No.1 he has been given a specific role in the reference as under:

“Accused No.1 on 20.6.2015 (Saturday) cleared 24 GDs of different Oil & Ghee importers pertaining to the Murad Shipping Agency amounting to Rs. 209,233,459/- against the receipt of only 08 payment Orders of Rs.985,995/- thus made shortfall of Rs.208,247,464/-. Accordingly on 24.06.2015, Rs. 35,000,000/- vide cheque

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No.1546905276 of account No.0731-2323-6100-2356 of son of accused No.1 transferred to the account No.0103-7479-4100-0592 of accused No.2. Later on shortfall amount of Rs. 208,247,464/- have been met against the Payment Order of other six Importers i.e. Hameed Industries, HM Extraction Ghee & Oil, Ikram Yakoob Oil & Ghee, Mujahid Oil, Latif Ghee Industries and Oil World Pvt. Ltd. through Clearing on 25.06.2015 (Thursday). The accused No.1 received millions of rupees from accused No.2 through cheques of account No.0103-7479-4100-0592 and deposited into personal account bearing No. 073-12366-9100-2311. Various accounts have been found registered in the name of accused No.1 and his family in which transactions of Million of rupees have been found. The accused No.1 also own precious Bungalow situated on plot No.19 Memon Society Near Baloch Colony and Plot No.538 Naseem Cooperative Housing Society, Hum Road, Jamshed Quarters, Karachi."

12. With regard to petitioner No.2 he has also been given a specific role in the reference as under:

"That the investigation also reveals that accused No.2 Nasir Murad is running a Murad Shipping Agency. The accused on 20.06.2015 submitted 24 GD with accused No.1 without any pay orders which the accused in connivance with accused No.1 got cleared without payment. The accused paid million of rupees as corruption proceed to accused No.1 though cheque of personal account bearing No.0103-7479-4100-0592. The accused No.2 also received Rs. 35 million on 24.06.2015 through cheque No.1546905276 of account No.0731-2323-6100-2356 of son of accused No.1 and deposited the same into his above mentioned account."

13. A tentative review of the S.161 statements of Liaquat Ali Shaikh (Branch Manager NBP PQA), Muhammed Hasan (Area Manager NBP Airport Branch), M.Majeed Awan (AVP, NBP Karachi region, operations department), Azizuddin (Ex in charge QICT Collection booth PQA Branch), Gul Munir Soomro (Operations Manager NBP PQA Branch), Mukhtar Hussain (Ex in charge Custom one Counter, QICT Collection booth PQA Branch), Muhammed Anus (operations manager MCB PECH Branch), Javed Khan and Shaikh Amir Shakeel (importers of edible product who used petitioner No.2 as their clearing agent whose pay orders were illegally used by petitioner No.1) provide reasonable grounds to connect both the petitioners to the commission of the offense for which they have been charged.

14. In addition a number of banking documents which were placed on record indicate that huge amounts, which have not been justified by the petitioners, have been paid into or out of bank

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Accounts of the petitioners or those associated with them which would support the contention that petitioner No.1 received large sums of money for illegally favouring/benefiting petitioner No.2 and that they worked in connivance with each other. In particular P.358 of the investigation report attached to the reference reveals the MCB deposit slip and cheque in favour of Petitioner No.2 which relates to the RS 35,000,000 which is important material against the petitioners in respect of the reference.

15. For the reasons discussed above both the petitioners' applications for post arrest bail stand dismissed. However the trial court is directed to ensure that the trial is completed within 4 months of the date of this order a copy of which the office is directed to send to the concerned trial court.

16. We would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us and that this order shall not prejudice the case of any party at trial whose case shall be decided on merits based on the evidence produced before the trial court.

Dated: 13-4-2016

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