

IN THE HIGH COURT OF SINDH KARACHI

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

**Petition number, name of the petitioner and their counsel.**

1. C.P. No.D-1770 of 2016  
Jameel Akhtar V. Chairman NAB & others.  
Jameel Akhtar S/o Abul-Haq (petitioner No.1)  
Through Mr. Iftikhar Hussain, Advocate.
2. C.P. No.D-5599 of 2016  
Khalil ur Rehman V. Director General NAB & others.  
Khalil ur Rehman S/o Muhammad Hanif (petitioner No.2).  
Through Mr. Muhammad Rehman Ghous, Advocate.
3. C.P. No.D-6276 of 2016  
Abdul Hameed Khan Ghouri V. Chairman NAB & others  
Abdul Hameed Khan Ghouri S/o Abdul Ghani Khan  
(petitioner No.3).  
Through Mr. Iftikhar Hussain, Advocate.

**Counsel for the Respondents**

Mr. Yassir Siddiqui, Special Prosecutor, NAB

Date of hearing: 13.12.2017.

Date of order: 13.12.2017.

**ORDER**

**Mohammad Karim Khan Agha, J:** Through the above petitions, the petitioners seek pre arrest bail in **Reference No.51 of 2016 (The State v. Muhammad Yousuf and others)**.

2. Brief facts of the case as narrated in the NAB Reference No.51 of 2016 are that the investigation revealed that accused No.1 Muhammad Yousuf got registered a firm in the name and style of M/s Samee Textile by misusing the CNIC of his employee namely Muhammad Hanif with the Sales Tax Department vide Sales Tax Registration No.1204999975482 on 13.6.2003 as an exporter. Subsequently M/s Samee Textile applied for change of particulars of its business status from exporter of General items to Exporter/Importer of Textile

Made-ups and also changed its business address to Office No.1/1-1-2, Jethanand Building, Burns Garden Area, Karachi. The passport and travel history of Muhammad Hanif purported owner of M/s Samee Textile revealed that he was in Oman from 28.9.2003 to 12.11.2004. However, the firm M/s Samee Textile obtained the sales tax refunds for the months of March, Sep, Oct and Nov, 2004 when he was not in Pakistan. This shows that the firm was registered in his name but operated by accused No.1.

3. The investigation further revealed that M/s Samee Textile obtained total Sales Tax Refund to the tune of Rs. 3,745,834/- during the period from March, 2004 to March, 2005 as per the following details:

CLAIM NO.	TAX PERIOD	REFUND CLAIM	SANCTION AMOUNT	CHEQUE NO.	RPO NO.	PRO DATE
T120304100505	1-Mar-04	202,500	202,500	439994	24568	20-Sep-04
T120904100108	1-Sep-04	83,668	83,668	483437	28236	08-Dec-04
T121004100019	1-Oct-04	673,042	673,042	484311	29046	28-Dec-04
T121104100490	1-Nov-04	81,446	81,446	507206	32028	24-Mar-05
T121204100381	1-Dec-04	216,373	216,373	507205	32027	24-Mar-05
T120105100122	1-Jan-05	712,277	712,277	507211	32033	24-Mar-05
T120305100201	1-Mar-05	1,776,528	1,776,528	508414	33279	26-May-05
	Total	3,745,834	3,745,834			

4. The investigation revealed that M/s Samee Textile used Sales Tax invoices of following Supplies:

Sr. No.	Name of Supplier	Sales Amount	15% Sales Tax Amount	Sales Tax Registration No.
1	White Line Traders	15,172,550/-	1,979,028	11-22-9999-063-37
2	G.S. Exporters/	13,545,744/-	1,766,806	17-00-5111-029-55
		Total	3,745,834/-	

5. The investigation also revealed that the above said claims were bogus as Muhammad Arshad Ghouri and Rehan Ahmed, the purported owners of supplier firms M/s White Line Traders and M/s G.S. Exporters respectively, denied owning / registering these supplier firms with FBR and opening of any bank account in the name of these firms.

6. The investigation further revealed that the firm M/s GS Exporters got registered by (accused No.5) Abdul Hameed Ghouri by misusing the CNIC and signatures of Rehan

Ahmed. Further, the accused No.5 also prepared and submitted the fake tenancy agreement to FBR in the name of Rehan Ahmed for registering the M/s GS Exporters in Sales Tax. The investigation revealed that office premises Flat No.269, Maria Apartments, North Karachi of the said firm was taken by accused No.5 on rent. Further, accused No.5 also got registered another firm M/s White Line Traders and opened a bank account no.4394-7 of M/s White Line Trades at Bolan Bank, New Chali Branch, Karachi by misusing the CNIC of Arshad Ghouri.

7. The investigation revealed, that a forged cheque No. 0036758 of M/s Samee Textile Faysal Bank Cloth Market Branch, Karachi amounting to Rs. 155,500/- dated 29.06.2004 issued in the name of M/s While Line Traders was submitted to FBR as a proof of payment to the supplier for the compliance of section 73 of sales Tax Act 1990. However the investigation revealed that the actual cheque no. 0036758 of Rs. 1,552,500/- dated 24.06.2004 was issued in the name of M/s Fatani International and the same cheque was credited on 29.6.2004 in the account of the said firm maintained at Faysal Bank Cloth Market Branch. The investigation revealed that the said bank account of M/s Fatani International was opened by accused No.1 which established that M/s Samee Textile submitted the fake invoices of M/s White Line Traders as no payment was actually made to the said supplier.

8. The investigation revealed that Muhammad Yousuf (accused No.1) was the Real Proprietor and beneficiary of M/s Samee Textile who fraudulently and in active connivance of accused No.2 Jamil Akhtar got registered the firm in the name of his employee Muhammad Hanif in Sales Tax as commercial exporter. Subsequently, accused No.1 in connivance with accused no.3 got the particulars of M/s Samee Textile changed from General Exporter to Textile Exporter and also changed the business address. Further, the accused no.1 submitted fake tenancy agreement to FBR

executed between his employee Muhammad Hanif and the owner of the premises namely Saad Ahmed Qureshi. The investigation further revealed that the office premises i.e. Office No.1/1 and 2/1, Jethanand Building, Khushaaldas Street Burns Garden Area, Karachi was never rented out to Muhammad Hanif but the same was actually rented out to accused no.1. Further, from Bank Alfalah account No.01356785 of M/s Samee Textile, where the cheques of refund were deposited two payments were made to Abdul Wahid by the accused no.1 which shows that he was real operator of M/s Samee Textile and actual beneficiary of the Sales Tax Refund.

9. The investigation revealed that the accused No.2 Inspector Jamil Akhter submitted the physical verification report of M/s Samee Textile wherein he mentioned that he met with Mr. Feroze. Further, accused no.2 did not meet with Muhammad Hanif, the purported owner of the firm for the purpose of verification of the owner and the firm. Thus, accused no.2 without verification of ownership of the firm prepared the physical verification report resulting in registration of said firm which subsequently obtained illegal Sales Tax Refund.

10. The investigation revealed that when M/s Samee Textile applied for Change in Particulars of business address and business nature the accused no.3 Inspector (Retired) Khursheed Ahmed Khan on 13.4.2004 verified the same and prepared the fake physical verification report by mentioning the meeting with Muhammad Hanif purported owner of the said firm. However, investigation revealed that Muhammad Hanif was in Oman during the said date. Hence, accused No.3 prepared the false verification report which enabled M/s. Samee Textile to remain in existence and obtain illegal sales tax refund on fake and flying invoice causing loss to the National Exchequer.

11. The investigation further revealed that accused No.4 Khalil ur Rehman assisted, aided and abetted accused no.1 by opening fake and fictitious bank accounts in the name of M/s Samee Textile, M/s GS Exporter, M/s Wasay International and M/s Iqra Corporation. The accused No.4 made multiple paper entries by transferring the amount from his business bank account titled as M/s Khalil Hanif Impex to these bank accounts and after touting the amount multiple times, the amount again deposited into his bank account. This enabled M/s Samee Textile to show the transaction as a proof of payment to its supplier M/s GS Exporters. This act of accused facilitated the accused no.1 in obtaining illegal Sales Tax Refund which caused loss to the National Exchequer.

12. The investigation further revealed that accused No.5 Inspector Abdul Hameed Ghouri got registered the fictitious firms M/s GS Exporters and M/s White Line Traders. The said firm issued fake invoices to M/s Samee Textile and caused heavy loss to the National Exchequer.

13. It has been established that the accused No.1 in connivance with accused no.2 to 5 obtained illegal sales tax refund to the tune of Rs.3,745,834/-, causing loss to the National Exchequer. The accused no.2, 3 and 5 misused their authority to extend undue favor to the accused No.1. The accused No.4 abetted, aided and assisted accused no.1 by opening fictitious bank accounts. Thus the accused persons have committed the offence of corruption and corrupt practices as defined u/s 9(a) of NAO, 1999 punishable u/s 10 of the Ordinance and scheduled thereto and thus Reference No.51 of 2016 (The State v. Muhammad Yousuf and others) has been filed against them before an accountability court in Karachi.

14. Learned counsel for the petitioners submitted that accused No. 3 Khursheed Khan had been admitted to post arrest bail by this Court vide order dated 03-04-2017 in CP D

6120/2016 in the same reference and that his role was equal if not greater than that of the petitioners and as such based on the rule of consistency all the petitioners were entitled to have their pre arrest bail confirmed.

15. Learned Special Prosecutor NAB was unable to rebut this contention.

16. We have considered the submissions of learned counsel for the parties; case law cited by them and carefully perused the material available on record.

17. Khursheed's case (Supra) has not been challenged by NAB and has reached finality. It appears that petitioners 1, 2 and 3 and accused Khursheed Khan all connived with each other and the alleged main accused Muhammed Yousaf in one way or the other in order to enable the alleged main accused Muhammed Yousaf, who is now absconding, to illegally claim a sales tax refund in the region of RS 37 lacs.

18. Having considered the roles of each of the petitioners it appears that each of their roles was similar to, or no worse than, that of the accused Khursheed Khan who vide above referred order dated 03-04-2017 has already been granted post arrest bail by this court. As such in our view the petitioners are prima facie entitled to have their pre arrest bail confirmed based on the rule of consistency. We have also taken into consideration that the amount involved is relatively minor being in the region of RS 37 lacs in the context of this being a NAB case under the NAO which is meant to deal with cases of mega corruption especially if we split the liability 5 ways between each of the 5 accused which would make the liability of each accused on NAB's own calculations less than RS 8 lacs per accused.

19. It is true that these petitions relate to pre arrest bail which requires different considerations to post arrest bail which was the case of Khursheed (Supra) as mentioned above

such as the presence of malafide on the part of the complainant or the investigative agency. However in our view to recall the petitioner's pre arrest bail on this ground alone would serve no useful purpose and would defeat the ends of justice as based on Khursheed's case (Supra) the petitioners would all be granted post arrest bail in any event on the rule of consistency. In this respect reliance is placed on the case of **Muhammed Ramzan V Zaffarullah** (1986 SCMR 1380).

20. Thus for the above reasons Jameel Akhtar S/o Abul-Haq (petitioner No.1), Khalil ur Rehman S/o Muhammad Hanif (petitioner No.2) and Abdul Hameed Khan Ghouri S/o Abdul Ghani Khan's (petitioner No.3) pre arrest bail is confirmed on the same terms and conditions.

M.Tahir/PA.