

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C.P. Nos. D-406, 407, 408, 410, 411, 412, 413, 415, 416, 417, 418,
419, 420, 421 and 743 of 2021.

DATE ORDER WITH SIGNATURE OF JUDGE

16-06-2021

Mr. Khadim Husain Lakho advocate for petitioner in C.P. No.D-406 of 2021.

Mr. Ghulam Nabi Jarwar advocate for petitioner in C.P. No.D-407 of 2021.

Mr. Zarar Qadir advocate holds brief on behalf of Mr. Sarmad Hani, advocate for petitioners in C.P. Nos.D-408 and 421 of 2021.

Barrister Jawad Ahmed Qureshi, advocate for petitioners in C.P. Nos.410 and 418 of 2021.

Mr. Sadique Ali Leghari advocate for petitioner in C.P. No.D-411 of 2021.

Mr. Ghulam Murtaza Shaikh advocate for petitioner in C.P. No.D-412 of 2021.

Mr. Zulfiqar Ali Abbasi advocate for petitioner in C.P. No.D-413 of 2021.

Mr. Ishrat Ali Lohar advocate for petitioners in C.P. Nos.415 and 419 of 2021.

Mr. Awadh Anwar Khan advocate for petitioner in C.P. No.D-416 of 2021.

Mr. Ghulamullah Chang advocate for petitioner in C.P. No.D-417 of 2021.

Mr. Zafar Ali Vighio advocate for petitioner in C.P. No.D-420 of 2021.

Mr. Abdul Majeed Khoso advocate for petitioner in C.P. No.D-743 of 2021.

Mr. Jangu Khan Special Prosecutor NAB alongwith I.O. Yasir Khan, Assistant Director NAB.

All the petitioners are present on ad-interim pre-arrest bail. Petitioners seek pre-arrest bail in Reference No.05 of 2021, pending adjudication before

Accountability Court Sindh at Hyderabad, and are on ad-interim pre-arrest bail granted to them by this Court through different orders.

On our specific query, learned Special Prosecutor NAB and I.O. submit that no warrant of arrest has been issued by Chairman NAB or on his behalf against petitioners. Learned counsel for petitioners submitted that learned trial Court might have issued NBWs against the petitioners, which as per decision of this Court would be deemed to procure their attendance. In all the captioned petitions bearing C.P. No.406 of 2021 and others the issue with regard to non-issuance of warrant of arrest by the Chairman NAB or any officer authorized by him has been finalized in the following terms:-

- (i) An accused under the NAO against whom the Chairman NAB has not issued any permission/direction to arrest, but against whom a Reference is filed, when such accused appears or is brought before the Accountability Court pursuant to a process issued under Section 204 Cr.P.C, whether summons, bailable warrant or non-bailable warrant, he can be required by the Court to execute a bond with or without sureties under Section 91 Cr.P.C. to assure his appearance before the Court;
- (ii) Section 91 Cr.P.C. is not available for an accused who appears before the Court on bail, except where he is on bail against the very warrant issued to compel his appearance in Court;
- (iii) If the accused under the NAO is denied pre-arrest bail, he is exposed to arrest by the NAB either under section 24(a) NAO if such direction had been issued prior to the Reference, or under section 24(c) NAO if a direction for his arrest is given after the Reference, and if the accused is so arrested then section 91 Cr.P.C. will not be available when he is brought before the Court;
- (iv) If on the rejection of the petition for pre-arrest bail there is no direction for arrest pending under section 24(a) NAO, nor is one subsequently issued under section 24(c) NAO, the situation is the same as at serial (i) above with the same consequences.

In the light of the above principles laid down by this Court, these petitions are disposed of. The petitioners shall be free to approach the learned trial Court and furnish a bond in terms of Section 91 Cr.P.C. to ensure their presence in the trial in view of above principles based on *Sarwar's* case reported as 2014 SCMR 1762. As to the contention that the learned trial Court might have issued warrant of arrest against petitioners is concerned, suffice it to say that such warrant (if

any) would be deemed to procure their attendance in the reference in view of Capt. (R) Muhammad Safdar's case decided by the Hon'ble Supreme Court in Civil Petition No.1435 of 2018 on 24.04.2018.

The petitions stand disposed of in the foregoing terms. Office is directed to place a copy of this order in all connected petitions listed above.

Needless to mention here that two other petitions bearing C.P. Nos.D-409 and 414 of 2021 which were also connected and fixed alongwith the present petitions, have already been detached from the captioned petitions and fixed for hearing on 07.07.2021 by a separate order passed in that petitions.

Irfan Ali