

NFR

CDC Case

244

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Muhammad Iqbal Kalhor, J.

Mr. Justice Mohammad Karim Khan Agha, J.

Petition number, name of the petitioner and their counsel.

C.P. No.D-4722 of 2018 Abdul Munaf (petitioner) V/s. Chairman NAB through Mr. Shahzaib Akhter Khan, Advocate.

Counsel for the Respondents

Mr. Khalid Mahmood Awan, Special Prosecutor, NAB.

Date of hearing: 08-04-2019 and 15-04-2019

Date of order: 25.04.2019

ORDER

Mohammed Karim Khan Agha, J: By this order, we propose to dispose of the above petition filed on behalf of petitioner Abdul Munaf (the petitioner) for post arrest bail in respect of **Reference 26 of 2016 (State Vs. Haroon Iqbal and others)**. Earlier vide order dated 06-06-2018 this Court had recalled the petitioners pre arrest bail who was then taken into custody. Since then the petitioner has been facing trial before the Accountability court

2. The brief facts of the case are that the National Accountability Bureau (NAB) received a complaint from the Chairman Security and Exchange Commission of Pakistan (SECP) against M/s ACE Securities Pvt. Ltd (Brokerage House) regarding fraud, embezzlement and cheating public at large where upon an inquiry was authorized which was subsequently converted into investigation.

3. That the investigation report revealed that the SECP commenced an inquiry into the affairs of M/s ACE Securities Pvt. Ltd and in particular its dealings, business transactions in securities by the aforesaid brokerage house and the handling of securities entered in the sub-accounts mentioned under the brokerage house participant ID without authority of the sub-account holders in violation of relevant statute, rules and regulations.

4

4. That the investigation further revealed that accused No.1 Haroon Iqbal (Absconder) and accused No.2 Iqbal Ismail (now deceased) were Directors/Shareholders of M/s ACE Securities Pvt. Ltd while the petitioner Abdul Munaf was a shareholder and Manager Operations of the said brokerage house. The accused No.1 and 2 and the petitioner were the authorized signatories on behalf of the Brokerage House for operating Bank Accounts who were also authorized and empowered to operate the Participant Account No.03863 maintained with Central Depository Company of Pakistan Limited (CDC) who illegally and by unauthorized movements of shares of investors, obtained financial facilities from Bank Al-Falah by pledging shares of clients/investors without their consent/authority and thereafter allowed the bank to exercise pledge call option to settle the outstanding liability of the brokerage house with the bank.

5. That the investigation revealed that the verification of claims of affectees were conducted by Pakistan Stock Exchange with the help of a reputed chartered accountant firm for maintaining fairness and avoiding any discrimination. The total claims approved / verified turned out to be 531 with aggregate amount of Rs.409.866 Million.

6. That the investigation further revealed that accused No.1, 2 and the petitioner in their aforesaid capacity in the Brokerage House deprived the claimants / investors of their investment to the tune of Rs.409.8 million. Hence they committed the offense of cheating public at large and criminal breach of trust as defined u/s section 9(a) of the National Accountability Ordinance, 1999 (NAO) and hence the aforesaid reference was filed against them by the NAB before the accountability courts in Karachi.

7. Learned counsel for the petitioner submitted that accused No.1 had absconded, whilst accused No.2 had died and that he was the sole accused facing the reference; that since his pre arrest bail had been recalled 5 PW's had given their evidence and none of them had implicated him in the case. More importantly he placed reliance of an unreported Judgment of the Supreme Court dated

9

20-04-2016 in Civil Appeal No.881 of 2016 which although not relating to the same case concerned the similar factual matrix as had arisen in this case and in that case the supreme court had granted bail. He stressed that in the aforesaid case the petitioner who was granted bail was the CEO of the concerned company whilst he was only an employee which placed him on a better footing and as such based on the rule of consistency he was also entitled to the grant of post arrest bail. He further contended that the petitioner had been confined in jail for almost one year and that he was in the process of entering into a plea bargain with NAB where all the effectees would be compensated in so far as his share of the loss was concerned as worked out by the NAB and as such taking all these factors into consideration he was entitled to post arrest bail.

8. On the other hand learned counsel for the NAB had opposed the grant of post arrest bail to the petitioner.

9. We have considered the arguments of the parties and scrutinized the record.

10. At the outset we would also like to make it clear that the findings in this order are only based on a tentative assessment of the material available on record and not a deep appreciation of such material and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

11. In our view the supreme court judgment dated 20-04-2016 relied upon by the petitioner does relate to a similar factual matrix concerning the modus operandi in which the offense was committed to the case in hand which position has not been refuted by the NAB. Although the rule of consistency does not apply as the cited Supreme Court case does not relate to accused in the same reference as the petitioner it does show that in such types of case where clients are defrauded by unscrupulous and illegal use of the CDC by investment houses the Supreme Court has been prepared to grant bail. We have also taken into consideration the fact that

the petitioner was in essence an employee of the company and not the senior most member of the company; that he has not been implicated in the case as yet despite 5 PW's already giving evidence; that he has remained in jail for almost one year and he is making serious efforts to pay back the effectees to the extent of the loss which he caused by way of plea bargain and thus when we take all these factors together we are of the view that the petitioner has made out a case for the grant of post arrest bail.

12. Accordingly the petitioner is admitted to post arrest bail subject to him furnishing solvent surety in the amount of RS 1,000,000 (one 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 the petitioner on the ECL. A copy of this order shall be sent by the office immediately to the secretary ministry of Interior for compliance ^{and} ^{ms.} the concerned accountability court which is directed to decide the reference within 4 months from the date of receipt of this order.

13. The petition stands disposed of in the above terms