

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

C.P. No.D-3813 of 2019.

Petitioner: Yacoob Suttar through Mr. Sarmad Hani, Advocate.

Respondents/State: Federation of Pakistan and others through M/s. Zahid Hussain Baladi and Suttar Muhammad Awan, Special Prosecutors NAB assisted by Mr. Adnan Hafeez Abbasi, I.O.

C.P. No.D-1048 of 2020.

Petitioner: Sheikh Imran-ul-Haque through M/s. Muhammad Ashraf Kazi and Irshad Ahmed Jatoi, Advocates.

Respondents/State: Federation of Pakistan and others through M/s. Zahid Hussain Baladi and Suttar Muhammad Awan, Special Prosecutors NAB assisted by Mr. Adnan Hafeez Abbasi, I.O.

C.P. No.D-2582 of 2020.

Petitioner: Shahid Khaqan Abbasi through Mr. Khawaja Naveed Ahmed, Advocate.

Respondents/State: Chairman NAB and others through M/s. Zahid Hussain Baladi and Suttar Muhammad Awan, Special Prosecutors NAB assisted by Mr. Adnan Hafeez Abbasi, I.O.

C.P. No.D-2583 of 2020.

Petitioner: Arshad Mirza through Mr. Khawaja Naveed Ahmed, Advocate.

Respondents/State: Chairman NAB and others through M/s. Zahid Hussain Baladi and Suttar Muhammad Awan, Special Prosecutors NAB assisted by Mr. Adnan Hafeez Abbasi, I.O.

Dates of hearing: 27.08.2020 and 03.09.2020.

Date of announcement: 03.09.2020.

ORDER

Mohammad Karim Khan Agha, J.- Petitioners Shahid Khaqan Abbasi (**Abbasi**) former Minister of Petroleum, Arshad Mirza (**Mirza**) (former Secretary Petroleum) and Yacoob Suttar (**Suttar**) (former DMD PSO) have all approached this court for confirmation of their pre arrest bail which was earlier granted to them by this court. Whereas Shaikh Imran-ul Haque (**Imran**) former MD PSO who earlier had been ordered not to be arrested by NAB by this court seeks confirmed pre arrest bail.

2. The very brief facts of the case as alleged in National Accountability Bureau (NAB) **Reference 05/2020 State V Shahid Khaqan Abbasi and others** are that petitioner Abbasi in collusion and connivance with petitioner Mirza misused their authority by illegally appointing and promoting respectively beneficiary petitioners Imran (who allegedly had a conflict of interest with PSO) and Suttar in PSO with a view to introducing LNG into PSO's business by violating the relevant rules and regulations and by paying them massive salaries which caused a loss to PSO and as such all the petitioners had committed offences of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO) which had lead to the aforesaid reference being filed against them by NAB which is now proceeding before the accountability courts in Karachi.

3. Learned counsel for petitioner Abbasi submitted that this and another reference which had been filed against him in Islamabad had been filed by NAB on account of malafide because he was a senior opposition politician who spoke out against the present Government and needed to be silenced. The malafide was also clear from the fact that there was absolutely no tangible evidence against him in this reference which had been filed simply to keep him under pressure. With regard to the appointment of petitioner Imran as MD this was done through advertisement which petitioner Imran qualified for; that he had nothing to do with the short listing of Imran pursuant to the advert as the short listing was carried out by a reputable firm of head hunters who shortlisted 6 names out of the applicants; that at that time the Board of Management (BOM) of PSO had been dissolved by the Federal Government and during this period Shahid Islam was acting MD of PSO and had full authority to act as MD PSO in the absence of the BOM; that the shortlisted names were considered by petitioners Abbasi and Mirza out of which 3 after careful consideration of their CV's and other

qualifications and experience were sent for consideration to the Prime Minister (PM) for final selection who appointed petitioner Imran as MD PSO as opposed to the other two whose names were put forward; that all relevant rules and regulations were followed so far as possible keeping in view that there was some ambiguity whether the decisions should have been made by a Board of Directors under the Companies Act or the BOM under the Marketing of Petroleum Products (Federal Control) Act 1974 and the fact that the BOM had been dissolved; that all necessary summaries were moved and were duly approved; that there was no evidence to show that petitioner Abbasi had influenced either the head hunters, Secretary Mirza or even the PM concerning the appointment of petitioner Imran and that if the appointment was illegal then the PM should also have been included in the reference; that petitioner Imran was well qualified for the job and performed very well by increasing PSO's profits; that petitioner Imran was already earning approx RS43 lacs in his position as SEVP at Engro and as such his salary was not excessive and was in line with market rate salaries (as per the advertisement) paid to other MD's of oil companies and as such petitioner Imran had not benefited by being appointed as MD of PSO; that there was no allegation that petitioner Abbasi had personally gained out of the appointment and as such on account of any or all of the above reasons his pre arrest bail should be confirmed.

4. Learned counsel for petitioner Mirza contended that the only role ascribed to him was that he colluded and connived with petitioner Abbasi to have petitioner Imran illegally appointed as MD PSO and that the only material against him was that he and petitioner Abbasi after examining the short list provided by the head hunters forwarded 3 out of the 6 names to the PM for final selection; that he did not gain anything personally and followed all the relevant rules of business in such appointments by moving the relevant summaries etc; that NAB had malafidely roped him into the reference only because he helped finalize the 3 short listed names with petitioner Abbasi and thus for any or all of the above reasons his pre arrest bail should be confirmed.

5. Learned counsel for petitioner Imran contended that the petitioner had applied for the position of MD PSO through an advertisement in the newspapers; that he was qualified for the job; that he was selected by the headhunters on merit and thereafter his name along with two others was forwarded to the PM for consideration and he was duly appointed; that he did not influence anybody

experience in the oil and gas industry and management skills; that he did not benefit financially by the appointment as he was already being paid a package of around RS43.5 lacs pcm at Engro which was his last job before joining PSO; that he had no conflict of interest as he only left Engro and joined PSO once the PSO related work (if any) was over and his salary had been agreed; that after joining PSO PSO's performance and profits greatly improved; that he had been malafidely roped into this reference simply because the NAB wanted to fix petitioner Abbasi who was a political opponent of the current Government and thus for any or all of the above reasons his pre arrest bail should be confirmed.

6. Learned counsel for petitioner Suttar contended that as acting MD he had full authority to appoint petitioner Imran; that he had been promoted in accordance with law on merits and that he had received no undue benefit by such promotion; that he had been malafidely roped into this reference simply because the NAB wanted to fix petitioner Abbasi who was a political opponent of the current Government and thus for any or all of the above reasons his pre arrest bail should be confirmed.

7. On the other hand learned special prosecutor NAB contended that petitioners Abbasi and Mirza in collusion and connivance had illegally appointed petitioner Imran by malafide getting the BOM dissolved as they wanted Imran to help PSO enter into the LNG business and as such had illegally rejected recommendations of the BOM for MD PSO (before they dissolved it) so that the job could be re advertised in a manner tailored to suit Imran and that they could manipulate the illegal appointment of petitioner Imran who they paid an unjustified heavy salary package to and illegally promoted petitioner Suttar on account of favoritism and nepotism by enabling petitioner Imran once appointed MD PSO to do the needful on their behalf and also by paying petitioner Suttar a massive salary which benefited petitioners Imran and Suttar at the expense of the State. In particular he contended that the original advert for the post and those who applied under it were not considered and a fresh advertisement was made in order to ensure petitioner Imran's appointment; that the short listed 6 names should have gone to the BOM for further consideration but instead they were illegally considered by petitioner Abbasi and Mirza only without interview and petitioners Abbasi and Mirza illegally arranged for petitioner Imran to be paid a massive salary which unduly benefited him and caused loss to the State and as such the pre arrest bail of both petitioners Abbasi

8. With regard to petitioner Imran he contended that he was completely unqualified for the post of MD PSO; that he had been appointed out of favoritism and nepotism by petitioners Abbasi and Mirza who had unduly favored him by misusing their authority because they wanted to use his experience to enable PSO to enter into the LNG business by not only appointing him but by paying him a massive salary of RS50 lacs which was completely unjustified which caused a loss to the State; that he had a conflict of interest with Engro and PSO which was detrimental to PSO and as such the pre arrest bail of petitioner Imran should be recalled.

9. With regard to petitioner Suttar he contended that he had been illegally promoted as DMD by petitioners Mirza and Imran out of nepotism in return for him approving the appointment of Imran as MD PSO whilst petitioner Suttar was acting MD PSO; that he was not qualified for the job and that he had been unduly benefited by receiving a massive salary of RS7 lacs pcm which caused loss to the State and as such the pre arrest bail of petitioner Suttar should be recalled.

10. We have heard the arguments for the parties, considered the record along with the relevant law.

11. At the outset we would like to make it clear that this order is based on only a tentative assessment of the evidence on record and shall have no bearing on the trial which shall be decided by the trial court based on merit whilst considering the evidence before it.

Turning to the question of malafides.

12. It is settled law that pre arrest bail cannot be granted unless there has been malafide on the part of the investigating agency. In this respect reliance is placed on **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427). We have noted that petitioner Abbasi is an out spoken critic and opponent of the current Federal Government; that another reference has already been filed against him in Islamabad in which he was imprisoned for 7 months before being granted bail and thereafter this reference was filed and as such we cannot rule out malafides on the part of NAB in order to put political pressure on petitioner Abbasi to stay mum and keep him incarcerated especially as in our view the reference and the evidence against him and the other petitioners is prima facie

cognizant of the fact that such a situation has potentially recently been recognized by the Supreme Court in another NAB bail case of **Khawaja Salman Rafique and Another V NAB** dated 17.03.2020 in Civil Petitions No.2243L and 2986L where it was held as under at para 67;

"The bureau seems reluctant in proceeding on one side of the political divide even in respect of financial scants of a massive proportion while those on the other side are being arrested and incarcerated for months and years without providing any sufficient cause."

13. Interestingly when the special prosecutor NAB and the IO were confronted by this court as to how many references had so far been filed against the majority political party in both Sindh and Pakistan despite allegations of corruption being made against members of that political party they had no answer. Even otherwise malafide is very hard to prove and as such it can also be inferred from the facts and circumstances of the case and as such in this case we also make such an inference of malafide by the NAB against the petitioners who are on pre arrest bail who are in one way or another associated with petitioner Abbasi.

14. **Turning to the case of Abbasi.** Admittedly he was Minister for Petroleum when the appointment of petitioner Imran was made as MD PSO. The post was initially advertised and a number of applications were forwarded by a reputable head hunter however petitioner Abbasi did not consider any of these applicants as according to him a number of them had FIA and other criminal investigations outstanding against them or were associated with the petrol crisis which lead to the dissolution of the BOM by the Federal Government. Thus, it was the Federal Government acting through the PM and **not** Abbasi who dissolved the BOM on account of the petrol crisis. When confronted with this position NAB was unable to refute the same. This means that the whole foundation of NAB's case against Abbasi that he wanted to get the BOM out of the way so that he could appoint petitioner Imran to pursue an LNG policy for PSO collapses as it was the PM who dissolved the BOM with good reason on account of the petrol crisis which was widely published through the media who expected heads to role. Interestingly the IO did not even bother to interview the PM or treat him as a suspect. **Even more interesting is the fact that these allegations form no part of the charge before the trial court which appears to be restricted to illegal appointments and financial loss due to excessive salaries.** Thus, in our view petitioner Abbasi acted appropriately in discarding the applicants. Petitioner

Abbasi then ordered the re-advertisement of the post by which time the PM had dissolved the BOM with good cause. It is true that the second advertisement was different from the first advertisement however after comparing the two adverts we are of the view that in essence the second advertisement only differed from the first advertisement in that it widened the scope of the job criteria and potentially allowed for more applicants to apply. Importantly, it still stressed that the applicant should have "profound knowledge of oil and gas sector in Pakistan" and when read holistically in our view only allowed suitably qualified applicants to apply although from a wider field which in our view is no bad thing as PSO is now working in a competitive environment and also needs to encourage private sector applicants to apply so that it can appoint the best people with experience of the private sector with which PSO is competing. We note that, unlike in some cases, the advertisement has **not** been drafted in such a manner so that very few persons such as petitioner Imran could apply as has been done in the past in order to favour blue eyed boys. In fact having examined his C.V it appears that petitioner Imran qualified under the advertisement. The record shows that petitioner Imran applied for the job pursuant to the advertisement and that a reputable head hunter shortlisted him along with 5 others where it was noted that he was one of the top candidates whilst 2 others were noted to be alternate candidates. There is no evidence to suggest that petitioner Abbasi or any other person influenced the head hunter to short list petitioner Imran along with the 5 others. Since the BOM had been dissolved over the petrol crisis and PSO was in need of a full time MD (and petitioner Abbasi had been directed by the PM to appoint one within 3 months) in order to set out and implement its vision through a permanent MD the position of MD PSO needed to be filled (today sadly a large number of Public Sector Enterprises remain with acting heads and thus remain rudderless vis a vis a long term future vision and strategy as a person holding acting charge has no job security and another appointee can reverse his strategy overnight) and thus in our view it was not unreasonable for the Minister and his Secretary to sit down and consider the short listed applicants in the absence of the dissolved BOM. Interviews may have been advantageous however these had already been carried out by the head hunter and based on the particular facts and circumstances of the case where petitioner Abbasi already knew the qualities and experience of all 6 short listed candidates such interviews based on the particular facts and circumstances of this case do not appear to be absolutely necessary especially as the BOM had been dissolved and as such no selection board could be formed and their were

time constraints in making the appointment and thus there was prima facie nothing particularly repugnant **in the given circumstances** in the Minister and Secretary considering the applicants through their detailed CV's three of whom were forwarded to the appointing authority for consideration i.e the PM. It is significant that 3 names went forward for consideration and **not** just the name of petitioner Imran and it was the PM's discretion to appoint any one of the three proposed persons. In fact the summary moved to the PM includes the names of all the 6 persons who the head hunter short listed. The PM in his discretion could have appointed any one of the 6 names, 3 names or even rejected all the recommendations. Petitioner Imran however was appointed out of the 3 by the PM. There is no evidence on record that Abbasi (or any of the other petitioners) influenced the PM's decision and if NAB's allegation against Abbasi is to be believed then the PM should also have been added to the reference which he was not. With regard to petitioner Imran's salary it is significant that he was already earning a package of RS43.5 lacs at Engro so an uplift of around RS7 lacs cannot be regarded as excessive especially as this is the market rate for MD's of Oil marketing companies which has not been refuted by the NAB and even otherwise this salary package was approved by the competent authority (Federal Government/PM), Finance Ministry and later ratified by the Board. Significantly considering the turn over/profit of PSO which was far higher than any other oil marketing company in Pakistan his salary although high was not excessive. It is also important to give attractive salary packages to MD's of Public Sector Enterprises to ensure that the best people are appointed and that they remain profitable in an increasingly competitive market. The so called loss in salary of around RS7 lacs pcm in our view based on the facts and circumstances of the case is relatively inconsequential keeping in view the fact that NAB's mandate is to investigate mega corruption cases involving billions of rupees. Even otherwise it appears that PSO flourished under the new MD (petitioner Imran) and did not make any losses and in fact in certain areas became more profitable. The fact that Abbasi might have had an eye on moving PSO into the LNG business has not been proven and in our view is not particularly significant as petitioner Imran was fully qualified to be MD PSO even if it did not move into the LNG business. It is interesting to note that by way of a comparative analysis the petitioner was equally if not better qualified than some former MD's of PSO and that if he had remained with Engro he would have probably been earning more money today. There is also no evidence that any of the other petitioners including petitioner Abbasi were related to petitioner Imran and appointed him out of nepotism. The

main role attributed to petitioner Mirza is that he helped to select the three names which went to the PM, by way of a summary which included all 6 names, for the PM to appoint one of them as MD for PSO. It appears that all the relevant summaries and all other codal formalities were complied with in this respect. We have already discussed earlier the reason why no interviews were held and why this was justified in the given circumstances. Thus based on the above discussion we find that with regard to the illegal appointment of petitioner Imran and loss to the State this is a case of further inquiry where NAB's theory on the real reason to appoint petitioner Imran i.e PSO's entry into the LNG business and the plan to appoint him by illegally dissolving the BOM on a fake pre text will only be determined after evidence has been lead at trial (**although this does not appear to be a part of the Charge which has been framed in the case**) and as such the pre-arrest bail earlier granted to petitioners Abbasi and Mirza is confirmed on the same terms and conditions.

15. With regard to petitioner Imran he had no role in placing the advertisement for the job of MD PSO. He simply applied for the position and was selected by the head hunters as one of the six names to go forward because as per the advertisement and their assessment he had the required qualifications and experience and was deemed by the headhunters to be a prime candidate for the job of MD PSO. There is no suggestion that either he, Abbasi, Mirza or Suttar influenced the head hunters in his favour. From a cursory review of his C.V it is apparent that he is a senior management figure having worked at Engro for 27 years finally reaching the position of SEVP. He also appears to have rich experience in the oil and gas sector and senior management. Having reviewed his CV he was certainly not a duffer and in our view qualified for the job in hand. As for his salary as discussed above he was already earning a package of around RS43 lacs so an increase to RS50 lacs is hardly earth shattering keeping in view that this is the market rate for such a position and according to the advertisement the MD PSO was to be paid the market rate. It is also not unusual for employees when they leave one job for another job to do so on the basis of a higher position and higher salary package. As discussed above an increase in salary package of around RS7 lacs pcm when he was already being paid RS43 lacs appears to us to be relatively inconsequential keeping in view NAB's mandate to deal with corruption cases involving billions of RS. If, of course, his qualifications were that of a peon and he was only being paid RS one lac pcm in his previous job then the position may have been different however this was not the case. His was not the

only name which was short listed by petitioners Abbasi and Mirza for the job. Three names went to the PM, including his, who was the appointing authority and there is no evidence to suggest that either petitioner Abbasi or he or any other person influenced the PM's decision. If this was the case then the PM should have been made a part of the reference which he was not. With regard to the conflict of interest issue we note that petitioner Imran did not assume charge of PSO until he had finished up at Engro and his salary at PSO had been agreed with PSO. Thus, prima facie, we do not see any conflict of interest especially as it appears that neither Engro nor PSO lost out pursuant to any of his actions before he left Engro and joined PSO. If anything it appears that both companies benefited. Whilst petitioner Imran was MD PSO it appears that PSO became more profitable so we are unsure how the issues of nepotism, undue benefit or loss arises out of an apparent misuse of authority. There is no evidence on record to support NAB's case theory that petitioner Abbasi was determined to move into the LNG sector and that he had tapped up petitioner Imran for this purpose. Such theory is based on assumptions, presumptions and suspicions which can never replace hard evidence. Such aspects including his appointment and salary appear to us to be a matter of further inquiry which will be thrashed out only after the recording of evidence at trial and thus petitioner Imran's petition is converted into one for pre arrest bail and he is granted confirmed pre arrest bail subject to him furnishing solvent surety of RS 5 lacs and PR bond in the like amount to the satisfaction of the Nazir of this court within 3 days of this order.

16. With regard to petitioner Suttar it appears that he was appointed as in Charge MD PSO shortly after the BOM had been dissolved. His appointment was made by the Federal Government and **not** petitioner Abbasi. Under S.6(4) of the Marketing of Petroleum Products (Federal Control) Act 1974 once the BOM was dissolved the MD PSO or in this case the look after charge/acting charge MD PSO had full power to assume the powers of MD PSO. As such he was in a position to approve the appointment of petitioner Imran as MD PSO and approve his salary package which had been earlier approved by the Federal Government after following all codal formalities. After petitioner Imran was appointed as MD PSO a post of DMD (Finance) needed to be filled. Petitioner Suttar applied for the post. His CV shows that he had rich experience in PSO especially in Finance as he had been the CFO in PSO for 7 years and had even been sent to Asia Petroleum Limited (a subsidiary of PSO) as its MD in 2013 and in 2015 had look after charge on MD PSO so it appears to us that he was prima

facie certainly well qualified for the job which he applied for. Under PSO internal Rules for appointments and promotions at para 2.8 the appointment/promotion to the position of a DMD could be approved by the BOM. However in this instance the BOM had been dissolved and its powers and functions as mentioned earlier had devolved to the MD PSO so it appears to us prima facie that petitioner Imran as the newly appointed MD PSO had full power to appoint petitioner Suttar as DMD (Finance) under S.6 (4) of the Marketing of Petroleum Products (Federal Control) Act 1974. We have already found that petitioner Imran's salary was not excessive. We also do not find the salary of petitioner Suttar being an increase of only one lac which was decided by the Federal Government and not Abbasi, Mirza or Imran to be excessive keeping in view the market rates for such a position and his qualifications and experience and as such his appointment of Imran as MD PSO, his promotion and salary become a case of further inquiry which we will need to be thrashed out at trial after the recording of evidence and as such petitioner Suttar's pre arrest bail is confirmed on the same terms and conditions.

17. The fact that the reference is largely based on documents which are in the possession of NAB and cannot be interfered with by the petitioners has also weighed heavily in confirming the pre arrest bail of the petitioners. Likewise the question of whether any loss at all has occurred to the State in appointing petitioner Imran as MD PSO, promoting Suttar as DMD and even PSO's entry into the LNG market which is purely a business/policy decision of PSO (which does not appear to be part of the charge which appears to be a case concerning illegal appointments in PSO on high salaries) which loss, if any, may not be on account of corruption but other factors such as a weak international market etc. NAB have also confirmed that the petitioners co-operated throughout the investigation and are no longer needed for investigative purposes. We have also heeded the well settled law that bail can never be used as a punishment and by placing the names of the petitioners on the ECL the threat of their absconsion has been removed.

In conclusion.

18. Petitioner Shahid Khaqan Abbasi (**Abbasi**) former Minister of Petroleum, petitioner Arshad Mirza (**Mirza**) (former Secretary Petroleum) and petitioner Yacoob Suttar (**Suttar**) (former DMD PSO) pre arrest bail are **all confirmed** on the

MD PSO's petition is converted into one for pre arrest bail and he is granted confirmed pre arrest bail subject to him furnishing solvent surety in the amount of 500,000 (Five Lac) and P.R. bond in the like amount to the satisfaction of the Nazir of this Court within 03 days of the date of this order **however** the Ministry of interior is **directed** to immediately place the names of all the petitioners on the ECL. A copy of this order shall be sent by fax to the Secretary Ministry of Interior Government of Pakistan for compliance.

19. These are the reasons for our short order dated 03.09.2020 which is set out below for ease of reference;

"In continuation of order dated 27.08.2020, Mr. Irshad Jatoi, learned counsel appearing in C.P. No.D-1048 of 2020 has completed his arguments.

Mr. Sarmad Hani, learned counsel appearing in C.P. No.D-3813 of 2019 has also completed his arguments.

Special Prosecutor, NAB assisted by I.O. has made his submissions in respect of all the petitions.

For the reasons to be recorded later, interim pre-arrest bail granted earlier to the petitioners Shahid Khaqan Abbasi, Arshad Mirza and Yacoob Suttar is hereby confirmed on the same terms and conditions.

However, Petitioner Sheikh Imran-ul-Haque son of Sheikh Nisar-ul-Haque in C.P. No.D-1048 of 2020 is granted confirmed pre-arrest bail subject to furnishing his solvent surety in the sum of Rs.5,00,000/- (Rupees Five Lac) and P.R. bond in the like amount to the satisfaction of the Nazir of this Court within 03 days.

The names of all the aforesaid petitions (Shahid Khaqan Abbasi, Arshad Mirza, Yacoob Suttar and Sheikh Imran-ul-Haque) shall be placed on the ECL.

A copy of this order shall be sent by fax immediately to Secretary, Ministry of Interior, Government of Pakistan for compliance. The petitions are disposed of in the above terms.

Office is directed to place a copy of this order in all the connected petitions.

20. The petitions stand disposed of in the above terms.