

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Date

ORDER WITH SIGNATURE

FRESH CASE.

1. For orders on CMA No.18303/2019
2. For orders on office objection No.1
3. For orders on CMA No.18304/2019
4. For hearing of main case.

19.06.2019.

Mr. Mahmood Alam Rizvi, Advocate for the Petitioner
Mr. Amjad Ali Shah, Additional Prosecutor General, NAB
On Court Notice D.G. NAB, Sindh Mr. Farooq Naseer Awan.

Mohammad Karim Khan Agha, J. The petitioner has made an application for the grant of transitory bail after arrest. The petitioner was arrested at about 10:30 a.m. this morning by the NAB by virtue of warrant of arrest and has taken into NAB custody in connection with the fake accounts case pending before NAB Rawalpindi. According to the NAB he has also been produced today before the concerned Accountability Court Judge who has ordered his transitory remand to Rawalpindi where the inquiry / investigation is proceeding against him.

2. According to the learned counsel for the petitioner this Court, despite the petitioner being in NAB custody, can order the release of the petitioner and grant him protective / transitory bail so that he can seek pre-arrest bail from the concerned Court. In this respect he relied on Section 86 of Cr.P.C keeping in view the fact that under Section 17 of the NAO the provisions of Cr.P.C. would apply if they are not covered by the NAO. He could not produce any other authority in support of grant of protective / transitory bail after arrest.

3. Learned Deputy Prosecutor General, NAB submitted that he had no objection to the petitioner being released from NAB custody and him being granted transitory / protective bail by this court so that he may approach the concerned Court at Rawalpindi for pre-arrest

4

bail. According to him this was the settled legal position as he understood it. We also sought the assistance of the DG NAB, Karachi who had ensured the execution of the arrest warrants as signed by the Chairman NAB on the petitioner. He strongly opposed the petition as the petitioner had been legally arrested by the NAB through an arrest warrant and NAB had been granted his 4 day transit remand by the Accountability Court Judge. In his view the legal position was that it was for the petitioner to approach the concerned court which had territorial jurisdiction for post arrest bail.

4. We have heard the parties, considered the record and relevant law.

5. At the outset we are of the view that Section 86 Cr.P.C. is not applicable to the petition at hand since this section applies to procedure by a Magistrate before whom a person is arrested whereas this is a High Court and we are not sitting as Magistrates and in any event a Magistrate under the NAO cannot admit a person to bail. We are also of the view that this is a matter of post arrest bail where remand of the petitioner has already been taken, the proper course would be for the petitioner to have applied before the Court which had territorial jurisdiction in this matter to adjudicate on a post arrest bail. In our view since the investigation is pending in Islamabad / Rawalpindi the relevant Court having territorial jurisdiction would either have been the Islamabad / Rawalpindi High Court and not this Court.

6. In view of the above, as (i) the petitioner is already under arrest by virtue of a valid arrest warrant issued by Chairman, NAB (ii) remand has already been granted by the Accountability Court (iii) the learned counsel for the petitioner has been unable to point out any provision of law that gives this Court powers to admit a person already arrested to be released on transitory/protective bail and (iv) DG NAB categorically stating that the arrest warrant will not be withdrawn nor does he agree with the stance taken by the DPG, NAB and that the petitioner must be interrogated for which a valid remand has been obtained from the concerned Accountability Court, we are

left with no option but to dismiss the petition. The petitioner of course is at liberty to seek post arrest bail from the court with the relevant territorial jurisdiction if so advised.

7. These are the reasons for our short order passed earlier to day which reads as under:

"We have heard learned counsel for the petitioner as well as Additional Prosecutor General NAB who have advanced their arguments in this petition. We have also called D.G. NAB Sindh who has categorically informed us that the petitioner has been arrested by the NAB under a legitimate arrest warrant and has been taken into custody of the NAB which has been given transitory remand by the Accountability Court Judge, Karachi and in his view he is not agreeable to the release of the petitioner, who in his view can apply for post arrest bail at the Court which has the relevant territorial jurisdiction.

We, for reasons to be recorded later, and according to the contentions raised by the parties hereby dismiss alongwith all listed applications".

MAK/PS