

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Ahmed Ali M. Shaikh, CJ
Mr. Justice Mohammed Karim Khan Agha

CPs No.D-8232 of 2017, 8313 of 2017, 303 of 2016 & 1664 of 2016

Dates of Hearing: 07.12.2017, 19.12.2017, 16.1.2018, 07.2.2018,
06.3.2018, 09.3.2018 and 27.3.2018.

Date of Announcement: 10.04.2018

Petitioner Mansoor Ahmed Rajput through Mr. Zubair Ahmed Rajput,
Advocate in CP No.D-8232 of 2017

Petitioner Zulfiqar Ali Shallwani through Mr. Shabeeh Ishrat Hussain,
Advocate in CP no.D-8313 of 2017

Petitioner Noor Muhammad Leghari, present in person, through ~~Mr. Ahmed Khan Balouch~~, Advocate in CP No.D-1664 of 2016

Petitioner Dr. Atta Muhammad Panhwar, present in person, through Mr. Aamir Raza Naqvi, Advocate in CP No.D-303 of 2016

Mr. Muhammad Altaf, Special Prosecutor, NAB for respondent

Mohammed Karim Khan Agha, J.- Through captioned petitions, petitioners Noor Muhammad Leghari and Dr. Atta Muhammad Panhwar seek pre-arrest bail while petitioners Mansoor Ahmed Rajput and Zulfiqar Ali Shallwani ask for post arrest bail in Reference No.30 of 2016 filed by the respondent under Section 18(g) read with Section 24(b) of National Accountability Ordinance, 1999 (NAO).

2. On receipt of complaint against involvement of officers/officials of Information and Archives Department, Government of Sindh, in embezzling millions of rupees in a project "Facilitating Working Environment and Supply of Computer Hardware, Software, Printers, Scanners and Networking of Information Department" (the project), NAB conducted inquiry which was later converted into an investigation. On 15.5.2012 the Chief Minister-Sindh accorded approval of the project and Information and Archives Department, Government of Sindh on 10.7.2012 got published Expression of Interest (EOI) in different newspapers inviting interested firms/companies having sound technical and proven experience of similar working to collect EOI document and submit the same for pre-qualification. Investigation further revealed that in terms of Sindh Public Procurement Rules, 2010 (SPPRA) a Consultation Selection Committee (CSC) under the Chairmanship of accused/petitioner Dr. Zulfiqar Ali Shallwani, the then Director General, Information and Archives Department was constituted to, inter alia, shortlist the consultants, evaluate technical and financial proposals, approval and issuance of Request for Proposal (RFP) to the selected companies. From eight bidders the CSC shortlisted four, including M/s

Prime Trading for award of contract and forwarded the same for approval to Dr. Atta Muhammad Panhwar, accused/petitioner, who accorded approval of the project to the tune of Rs.193.971 Millions to M/s Prime Trading, which has no previous history and experience in Information Technology. However, the contract was signed.

3. M/s Prime Trading violating the terms and conditions of the agreement dated 19.10.2012 subletted the project to M/s Sistech, which carried out certain works causing loss of Rs.126855998.00. Moreover, M/s Prime Trading procured hardware and LAN/WAN accessories from M/s Real Tech in Rs.14.9 Million against which it received Rs.35.45 Million from the Government. During investigation it also revealed the accused Aijaz Ahmed, Proprietor of M/s Prime Trading willfully and with ulterior motives submitted fake company profile and in connivance with members of CSC succeeded in obtaining the contract. The Sales Tax Return number furnished in the profile was actually in the name of Ibrahim Traders. Investigation further revealed that item wise GST was wrongly calculated at the rate of 13.5% instead of 16% and had the item wise GST was calculated fairly runners up M/s Sistech Systems would have been the successful bidder.

4. During pendency of CPs No.1664 and 303 of 2016, interim pre-arrest bail was granted to the petitioners Noor Muhammad Leghari and Dr. Atta Muhammad Panhwar.

5. Mr. Aamir Raza Naqvi, Advocate, counsel for Dr. Atta Muhammad Panhwar contended that petitioner was innocent and after initiation of the project remained Secretary only for three months i.e. from 04.9.2012 to 17.12.2012. He further submitted that petitioner was not part of CSC, only approved its recommendations after due consultation in a transparent manner and made payments to M/s Prime Trading. He also submitted that NAB has malafidely indicted him in the Reference and prayed confirmation of interim pre-arrest bail on same terms and conditions.

6. ~~Mr. Ahmed Khan Baloch~~ ^{Mr. Mukesh Kamra}, Advocate for Noor Muhammad Leghari submitted that petitioner is completely innocent as he was not member of CSC, assumed the charge on 05.12.2012 after contract was awarded to M/s Prime Trading and even first payment was made by co-accused Dr. Atta Muhammad Panhwar. He further submitted that he approved release of second installment subject to completion of all codal formalities and other members of CSC, including co-accused Zulfiqar Ali Shallwani and Mansoor Ahmed Rajput, informed that hardware and software equipment installed satisfactorily were operative. As to his alleged malafide he submitted that the

yielding in suspension of I.O., who malafidely involved the petitioner in this case. He, therefore, prayed for confirmation of petitioner's interim pre-arrest bail.

7. Mr. Zubair Ahmed Rajput, Advocate for petitioner Mansoor Ahmed Rajput submitted that as the Secretary, CSC, he ensured observation of relevant rules and regulations like advertisements were published, M/s Prime Traders imminently qualified for the job and most deserving bidder was recommended for selection to the Secretary. He further submitted that he was made scapegoat in the case as other members of the CSC were not arraigned and he played no role in technical and financial evaluation of the companies/bidders. Learned counsel further submitted that the deduction of sales tax was the job of Accountant General and the prosecution has failed to collect sufficient evidence connecting him with the commission of alleged offence, therefore, post-arrest bail be granted to the petitioner. He in support of his contention has relied upon the cases reported in PLD 2003 SC 668, 2016 P.Cr.L.J 79, 2016 P.Cr.L.J. 761, 2002 SCMR 282, 2012 SCMR 1732 and an unreported order dated 28.4.2017 passed in the case of Hafeezullah Abbasi v. Federation of Pakistan.

8. Mr. Shabeeh Ishrat Hussain, learned counsel for petitioner Zulfiqar Ali Shallwani contended that petitioner is innocent and adhered to SPPRA Rules and it was a case of pick and choose as he informed NAB of the process and concerned persons dealing with SPPRA Rules but did not receive any response. He further submitted as Chairman of CSC he alongwith other members of the committee evaluated the bids and most deserving company was recommended for selection. In support of his contention for grant of post-arrest bail, he has relied upon the cases reported in PLD 2003 SC 668, PLD 2008 SC 645, 2008 SCMR 1118 and PLD 2017 Sindh 120.

9. Per contra, learned Special Prosecutor, NAB vehemently opposed the captioned petitions seeking pre and post arrest bails. During course of arguments he took us to various documents available on record fully connecting the petitioners with the commission of alleged offences. He vehemently rebutted the allegation that I.O. has malafidely implicated petitioners in instant Reference.

10. We have heard the learned counsel for the petitioners, Special Prosecutor, NAB and minutely gone through the material available on record. It is settled principle of law that each bail petition is to be decided on its own merits but the Courts cannot remain oblivious of rampant tendency of corruption in every sphere most particularly misappropriation and

embezzlement of public money manifesting application of anti-corruption laws more rigidly.

11. With regard to the case of Dr. Atta Muhammad Panhwar it is apparent from the record that petitioner Dr. Atta Muhammad Panhwar did not initiate the project, had nothing to do with the advertisements, was not a part of the CSC and only took charge as Secretary Information Department once the while recommendation process had been completed. It is true that he approved the award of the contract to M/s Prime Trading, signed the contract and approved its first payments, however, we have seen from the minute sheets that notwithstanding his belated entry into the process he did not sign off blindly on recommendations. The note sheets show that he called for technical committee meeting and financial evaluation in order to consider the proposal/recommendations and directed that all communications be sent to NAB, TIP and the persons concerned with the SPPRA Rules on 15.8.2012. Even when he was informed that the contract was awarded to M/s Prime Trading he noted that before the contract was approved with the M/s Prime Trading that it was to be ensured that all the legal/policy and codal formalities had been complied with. He also marked on the note sheet that various proposals needed to be considered. That he was fully briefed by petitioner Shallwani that all codal formalities and rules had been complied with and since petitioner Shallwani was an experienced officer he had no reason to doubt him. Thus, it would appear from the record that the petitioner was making some attempts, despite his belated appointment to ensure that the award of the contract was done as per rules. As such, we consider that the case of Dr. Atta Muhammad Panhwar is a case of further inquiry vis-a-vis his criminality. Accordingly, interim pre-arrest bail granted to him is hereby confirmed on same terms and conditions.

12. With regard to the case of petitioner Noor Muhammad Leghari, successor of petitioner Dr. Atta Muhammad Panhwar as Secretary Information Department, he was not part of the CSC which recommended the approval of the contract to M/s Prime Trading; that he did not sign the contract; that there is nothing on record to indicate that he knew that the contract to M/s Prime Trading had been illegally sublet to M/s Sistech; that the first payment had already been approved by petitioner Dr. Atta Muhammad Panhwar, which would indicate that the first part of the project had been completed satisfactorily and that in the minutes of the Project Monitoring Committee, Information and Archives Department, Government of Sindh, to review the overall progress of the project dated 18.1.2013 whereby he approved release of the second installment subject to completion of all codal formalities; he did so after the other members of the committee had informed him (including petitioners Zulfiqar Ali Shallwani and Mansoor

Ahmed Rajput) that the hardware and software equipment had been supplied and satisfactorily installed and were operating. It is true that there are Section 161 Cr.P.C. statements on record from other directors of the Information Department stating that little work had been done but in all fairness we consider that it was not necessary for the Secretary to personally check that the works had been carried out when he was assured by the senior members of the committee that it had been done. The persons working under him and who he relied on were senior officers whom he had no reason to doubt and it was for them to check that the work had been satisfactorily completed as it was they who had assured him in the meeting that the work had been satisfactorily carried out. His role as Secretary was not to micro manage affairs. As such, we consider that the case of petitioner Noor Muhammad Leghari is a case of further inquiry vis-à-vis his criminality. As mentioned above we have also prima facie found malafide on the part of the I.O. in respect of the petitioner and as such his pre-arrest bail is confirmed on the same terms and conditions subject to his furnishing an additional surety of Rs.800,000.00 (Rupees Eight Hundred Thousand) and PR bond in the like amount to the satisfaction of the Nazir of this Court.

13. So far as case of accused/petitioner Zulfiqar Ali Shallwani is concerned in paragraph 9 of the Reference specific role has been assigned to him. Inter alia, allegation against him is that he being Director General (Public Relations), Information and Archives Departments/Chairman, CSC in connivance with the other members of the committee has willfully qualified M/s Prime Trading for the project and played crucial role. Role of petitioner Mansoor Ahmed Rajput is specified in paragraph 10 of the Reference. Prima facie, both are involved in the scam since inception and responsible for payments to M/s Prime Trading by deliberately and illegally misrepresenting as to the status of completion of the project. The documents/evidence collected by the NAB so far amply shows that it was the Procuring Agency i.e. Information and Archives Department which prepared PC-1 of the scheme, advertisement, EOI documents on its own. Formation of CSC is defined in Rule 67 of Sindh Public Procurement Rules, 2010. Rule 67(3)(a) of the Procurement Rules, 2010 provides that nominee of the Planning and Development Department not below the rank of BS-18 shall be one of the members of the CSC while from the 161 Cr.P.C. statement of Farzana Shahani, Chief (S&T) Planning and Development Department, it appears that in terms of letter dated 03.8.2012 of the Procuring Agency she was nominated to attend the meeting scheduled on 08.8.2012, when Request for Proposals (RFP) was issued likewise the case of PW Mumtaz Ali. This reflects that the criterion for shortlisting was prepared by the Procuring

Agency in sheer violation of the Rules in vogue. Thus, we find the arguments of pick and choose advanced by the learned counsel to be without merit.

14. From the record, it appears that M/s Prime Traders was declared successful despite deliberate miscalculation in their financial bid with respect to GST and not having Sales Tax Registration Number. It is also worthwhile to mention here that the contract was awarded to M/s Prime Trading on 19.10.2012 when it did not even have a bank account. It opened bank account on 16.11.2012. Further, statements of prosecution witnesses also reveal that M/s Prime Trading did not submit any completion certificates pertaining to the projects undertaken for offshore and local clients in the past; and no resumes were furnished by the said firm to establish the claim of 52 employees. For the project, two firms M/s Prime Trading and M/s Sistech were declared technically qualified while subsequent evaluation resulted in Prime Trading be declared as the lowest bidder of the two. Despite the fact that M/s Sistech System was also shorted listed but lost to M/s Prime Trading, yet the latter illegally, under the nose of petitioner Zulfiqar Ali Shallwani and in connivance with petitioner Mansoor Ahmed Rajput and other officials/officers, sublet nearly all the contract to former firm.

15. The above few instances coupled with the admission of proprietor of said firm Aijaz Ahmed, in his plea bargain application show that the prima facie the said two petitioners deliberately failed to check and verify the documents submitted by the bidder declared successful.

16. At this stage we may refer to Rule 30(1) of the Procurement Rules of 2010, which clearly provides that "the procuring agency shall disqualify a supplier, consultant or contractor, whether already pre-qualified or not, if it finds at any time, that the information submitted by him concerning his qualification and professional, technical, financial, legal or managerial competence as supplier, consultant or contractor, was false and materially inaccurate or incomplete." However, the Procuring Agency i.e. Information and Archives Department, Government of Sindh, of which petitioner Zulfiqar Ali Shallwani was Director General/Chairman, CSC and Mansoor Ahmed Rajput, Project Coordinator/Director Admin and Accounts/Secretary of CSC, prima facie, acted in connivance and misused their authority in awarding contract to M/s Prime Trading. It is also pertinent to mention here that accused Aijaz Ahmed, Proprietor of M/s Prime Trading had approached the NAB for plea bargain but later on became fugitive.

17. Prima facie, sufficient material is available on record to show that petitioners Zulfiqar Ali Shallwani, the then Director General (Public

Admin & Accounts/Secretary, CSC, misused their authority causing loss to the exchequer. Accordingly, CP No.D-8332 of 2017 and CP No.D-8313 of 2017 are hereby dismissed.

18. Before parting with this order we have noticed that the practice of changing Secretaries both at Provincial and Federal levels after a short period of time for no apparent reason gives a greater chance for such scams as this to flourish as there is no one Secretary from start to finish of such projects. If this had been the case then there was a greater chance that such Secretary would have picked up the illegalities in this case and stopped the scam. In this case, during a short period of about one year when the project was being discussed, documents checked and verified, contract awarded and payments made there were three different Secretaries over three different crucial time periods of the project and as such it was difficult for them to pick up any illegality which had taken place and were often kept in the dark over the award of contracts and when payments had to be properly made as they were left to rely on their senior albeit subordinate officers who were a part of the scam. Thus frequent movements of secretaries between departments should be discouraged and only done on account of strong reasons recorded in writing especially when important projects are midway through which the incoming Secretary will have no background knowledge of. This stance would be in consonance with the Honourable Supreme Court's decision in the case of Ms. Anita Turab v. Federation of Pakistan (PLD 2013 SC 195).

Needless to say that the observations made in this order are tentative in nature and shall not prejudice the case of either during trial.

Karachi, dated
the 10th April, 2018