

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C P No.D-2136 of 2012
D-2170 of 2012

Present: Mr. Justice Hasan Azhar Rizvi
Mr. Justice Salahuddin Panhwar

Order with signature of Judge

For katcha peshi

18.07.2012

MR. Abdul Hafeez Lakho, Senior counsel for petitioner Ahmed Jameel Ansari
Mr. Faisal Siddiqi, Advocate petitioner & Mr. Shaukat Hayat, Advocate for
petitioner Hassan Jameel Ansari
Mr. Noor Muhammad Dayo, Senior Prosecutor NAB
Ms. Shiraz Iqbal, Standing Counsel

SALAHUDDIN PANHWAR, J. These two petitions have been preferred by the
petitioners / accused in Reference No.03 of 2012, under section 18(g) read with
section 24(6) of National Accountability ordinance 1999, before the
Administrative judge Accountability Courts, Sindh at Karachi. Petitioners seek
post arrest bail and pre-arrest bail under writ jurisdiction of this Court.

2. The relevant facts under consideration are that Chairman, National
Accountability Bureau (NAB), filed Reference against eight accused persons,
mainly on the following alleged charges:

(i) That Pakistan Telecommunication Company Limited
(PTCL) and M/S Callmates Telips Telecom Limited(CTTL),
signed an Enter connected Agreement in august 2004 for the
provision Long Distance International (“LDI”), however, they
started defaulting regarding payment of their liabilities, CTTL,
failed to pay the due amount, postdated cheques were dishonoured.

(ii) That during Annual Report of CTTL, Company revealed
that an amount of Rs.994,501,000/- was shown as trade debts, out
of that an amount of Rs.278,501,000/- was due against M/s Quality
Telecom Cards Limited. It was come on the record that said
company was owned by its former Chief Finance Officer, Imran
Mehmood (accused). Similarly it is manifested in annual Report of

2007, that an amount of Rs.73,854,000/- was due against the same company in 36th Board Meeting of august, 2007. Question was raised about guarantee and protection in regard to amount in question, accused Muhammad Ajmal Ansari, Ex Chairman Callmate answered that no guarantee or protection was obtained on demand about recovery of the amount, new director Ahmed Jamil Ansari (Petitioner in CP No. D2170 of 2012), and accused Nadeem Ahmed Khan, Ex director Callmate Telips Company Limited, undertook full responsibilities for it and assured that the same will be recovered from accused Imran Mehmood director / Chief Finance Officer Callmate Telips Limited. The modus aperiendi applied for siphoning off company money that two companies, M/s quality telecom Card Limited UK and m/s American Technologies USA were formed as front companies, owned and controlled by accused Imran Mehmood for distribution of CTTL Calling Cards, these companies sold calling cards to public, collected money but failed to pay the money, payable to CTTL, by this amount many properties were purchased by accused in the name of Syed Mehmoodul Hassan (accused) father of the accused Imran Mehmood.

(iii) That according to investigation, Property 133, Survey No.26, Phase I, DHA, Karachi, was purchased by accused Mehmoodul Hassan, vide registered Sale Deed dated 26th June 2006 by paying cost of land of Rs.50,000,000/- and cost of construction Rs.182,000,000/- total Rs.68,000,000/-. The ex-management of CTTL, purchased this property from accused Mehmoodul Hassan father of accused Imran Mehmood on exorbitant rules, and the Agreement of Sale was signed after making payment of Rs.3000,000,000/- on March 31, 2006 for taking possession but the Conveyance Deed was executed in June 29, 2006 for Rs.49,000,000/-. The accused Mehmoodul Hassan earned profit of Rs.231,800,000/- thereby caused loss to public money.

(iv) That during investigation, it came on surface that property No. 29, Block L Gulberg II, Lahore was purchased by accused Mehmoodul Hassan vide Sale Agreement dated 18.01.2006, under

sale consideration of Rs.116,217,333/-. Sale Deed was executed on April 15, 2006. Although this property was purchased by the accused Nadeem Ahmed Khan, Ex director Callmate Telips Telecom Limited. Earnest money of Rs. 1 Million was paid by Malik Harris Anwar through his personal cheque, drawn on Bank Alfalah Limited, Defense Branch, Lahore, who was the then General Manager Sales and Services of CTTL and finalized the deal on behalf of CTTL.

(v) During investigation, the authorities collected evidence that Ex Management of CTTL purchased property No. 29-L, Gulberg II, Lahore from M/s Quality Products (Pvt) Ltd on sale consideration of Rs. 180,000,000/- by Sale Agreement dated 29th august, 2005, and an amount of Rs.245,000,000/- was paid on June 2006, Sale deed was executed with accused Mehmoodul Hassan, payment was made in advance from September 07,2005 to December 2005. The price of this property to seller was effected from the personal account of accused Mehmoodul Hassan. Thus a loss of Rs.63,782,667 was caused to the public money.

(vi) That it is also alleged that outstanding balance of the local calling cards with the distributors/ retailers/ and users, which had become inoperative due to termination of requisite facilities by the PTCL due to default of Callmate.

3. On these allegations, petitioners alongwith other co-accused were nominated by the NAB authorities, through reference filed in National Accountability Court, charging that seven accused have committed offence of criminal breach of trust, cheated public at large, and caused losses to Public Exchequer to the tune of Rs.5.64 Billion. Thus the accused Nos. 1 to 7 are alleged to have committed offence of corruption and corrupt practices under section 9(a) of the National Accountability Ordinance, 1999.

4. Mr. Faisail Siddiqi, learned counsel for the petitioner Hassan Jameel Ansari has, inter-alia, contended that no direct role has been assigned to the petitioner with regard to alleged offence of criminal breach of trust; no specific

property has been specified to prove the involvement of petitioner; petitioner is not beneficiary in any manner from alleged transaction; Nadeem Ahmed Khan co-accused has been granted bail by order dated 18.06.2012 in CP No. D-2240 of 2012 (Nadeem Ahmed Khan vs National Accountability Bureau) passed by this Court; Directors and Sharers are not liable to any fraud committed in public limited companies under any rules of companies; only presumption that accused is involved in this fraud is not sufficient proof against the petitioner.

5. Mr. Shaukat Hayat learned counsel for the same petitioner has contended that there is no complaint in Audit and Annual Report of Company against the petitioner; the whole case is based on documentary evidence, veracity of documents can be determined at trial stage; there is no chance of tempering in documents as the same are lying in the possession of prosecution. Both Counsels have cited these authorities: PLD 2003 K 526 (Muzammal Niazi vs The State), 2008 SCMR 1316 (Muzafar Ayaz Abid vs NAB), 2007 SCMR 843 (Lal Muhammed Kalhoro vs The State), PLD 2008 SC 438 (Muhammad Nawaz vs The State). 2012 MLD 362 (Nadeem Hussain vs The State), 2011 SCMR 902 (Manzoor Hussain vs The State), 2009 YLR 155 (Muhammed Shoib Wasti vs The State), PLD 1998 SC 1 (Hakim Ali Zardari vs The State), 2011 SCMR 161 (Abid Ali alias Ali vs The State), 2001 SCMR 1040 (Anwar Saifullah vs The State) and 2003 P Cr L J 266 (Javed Hashmi vs The State). 2011 MLD 602 (Muhammed Zafar Maniar vs Shahzad Ahmed & others, 2002 SCMR 282 (Muhammed Saeed Mehdi vs The State), 2000 P Cr L J 1123 (Jan Muhammed vs The State).

6. Mr. Abdul Hafeez Lakho, learned counsel for the petitioner Ahmed Jameel Ansari, in CP No. 2170 of 2012, as regard to allegation leveled in Reference, has contended that co-accused Nadeem Ahmed Khan, against whom there was allegation that one property was purchased by him by way of corruption has been released on bail by this Court vide order dated 18.06.2012, in CP No. D-

2240 of 2012, hence rule of consistency is applicable to the case of petitioner; there is no evidence against petitioner, except that, allegedly petitioner along with co-accused Nadeem Ahmed Khan stood guarantee for recovery of due amount from accused Imran Mehmood; petitioner is innocent and has been involved falsely with mala fide intention and ulterior motive; there is no iota of evidence against the petitioner, that how and under what manner petitioner has cheated or committed fraud is not defined in Reference; not a single witness has stated against the petitioner in their statement; whole Reference is based on presumption and false theory; he has relied upon 2003 P Cr L J 1230, 1993 P Cr L J 1795 (Muhammed Nasim Khan v. Fida Khan), 1968 P Cr. L J 1880 (Painda Khan v. Muhammed Sidiq), PLD 1989 SC 346 (Hassan Bano v. Mumtaz Younis), 1985 SCMR 1949 (Jamalddin vs The State); PLD 2003 SC 3668, 2009 P Cr L J 101, 2011 SCMR 1123, 2012 MLD 830 and 2002 SCMR 843 (Lal Muhammed Kalhoro vs The State), 2008 YLR 1087 (Najma Swaleh Syed vs The State), 2010 MLD 223 (Nazar Muhammad vs NAB), 2008 YLR 2229 (Zulfiqar Ali Abbas vs The State).

7. Conversely, Mr. Noor Muhammad Dayo, learned Senior Prosecutor NAB, has maintained in regard to post arrest bail that this is a most sophisticated white collar crime of petitioners; petitioners have misused their authority hence have committed offence of corruption and corrupt practices; this is a case of misappropriation of huge amount of public exchequers; petitioners are completely liable to be charged under National Accountability Ordinance 1999, as they have misused their authority. While responding to plea of pre-arrest bail of petitioner Ahmed Jameel Ansari, learned Senior Prosecutor NAB, has argued that no political motivation is evident in this case ; learned counsel for the petitioner is unable to point out any mala fide or ulterior motive on the part of NAB Authorities; NAB Authorities provided fair opportunities to the petitioners under

law to settle the dispute under National Accountability Ordinance, 1999; matter is in Court, hence no question of harassment or ulterior motive is available to the petitioner; petitions are also not maintainable under the law; He has relied upon the case law, 2008 YLR 2217, 2007 MLD 347 (Frida Rohal vs The State), 2007 P Cr L J 1088 (Dr Mirza Raza Ali vs The State); MLD 2008.... 1400, PLD 2005 KAR 558 and 2008 YLR 1081 (Shahid Hussain Awan vs The State) 2008 YLR 795 (Azam Solangi vs The State), 2007 P Cr L J 1116 (Abrar Ahmed vs NAB), 2007 P Cr L J 1097 (Syed Mohsin Abas Abidivs NAB), 2009 SCMR 133 (Faisal Hussain But vs The state), PLD 2003 Lahore 669 (Syed Javed Iqbal Bukhari vs the NAB), PLD 2003 Lahore 94 (Mohammad Khalid vs The State), 2009 SCMR 448 (Muhammed Najeeb vs The State).

8. We have heard counsels at length, perused whole record and examined numerous case laws.

9. Counsel have relied a Plethora of citations. Out of them, the cases, P Cr L J 1968 Lah 1880 (Painda Khan vs Muhammed Sadiq) MLD 2012 362 (Nadeem Hussain vs The State), 1998 PLD SC 1 (Hakim Ali Zardari vs The state) 1993 P Cr L J 1795, 2000 PCRLJ 1123 (Jan Muhammed vs The State), YLR 2000 1368 (Abdul Majeed alias Bholavs The State), 2011 SCMR 161 (Abid Ali alias Ali vs The State). SCMR 2011 902 (Manzoor Hussain vs The State), 1998 P Cr L J 251, PLD 1989 SC 347 (Meeran Bux vs The State), PLD 2003 LAH 94 (Hammad Khalid vs Chairman, NAB), 2009 SCMR 448 (Muhammed Najeeb vs The State), 2000 P Cr L J 1230 (Bashir Dawood & other vs The State), PLD 2003 Lahore 669 (Syed Jawaid Iqbal Bukhari vs NAB), 1993 PCRLJ 1795 (Muhammed Nasim Khan vs Fida Muhammed Khan), are not relevant because the facts and principles, decided in these cases, are not germane to these petitions in hand; as the same are on different points such as appeals, quashments, amendment of charge which got no relevancy with matters of bail as appreciation of evidence in appeal, quashment, is entirely different from principles so set for appreciation of

material at bail stage, which restricts deeper appreciation of evidence .It is well settled law that while deciding bail application only tentative assessment is to be made; it is to be seen whether prima facie, existence of reasonable grounds are available against the applicants for the offence falling within the prohibitory clause of Section 497 Cr. P.C or otherwise.

10. It is for the prosecution to prove the reasonable grounds to believe that accused have committed the crime, in other words it can be said that liberty of person is prime consideration as envisaged by all laws, only sub section 1 of section 497 Cr.P.C, prohibits the release of accused in certain conditions, such conditions must be proved by prosecution, else every citizen has right of liberty and cannot be put in jail without reasonable grounds.

11. Now we would like to dilate upon the maintainability of writ petitions in respect of bail matter. This issue is already settled by the honourable apex Court in series of decisions which are binding upon all courts, as precedents on identical points, it is a case of stare decisis, meaning thereby, that to stand by decision and not disturb the undisturbed, this is understood to mean that courts should generally abide by precedents and not disturb settled matters. It is settled logic that “the conspicuous advantage of a system of precedent is that legal principles are framed not merely as conceptions in abstracto, but as practical rules operating in concreto”, therefore cases decided by our superior courts are clear in view that under writ jurisdiction bail can be granted and parameters of bail grant and refusal will be same as defined under section 497 and 498 Cr P C. We would like to refer the case of NAB v. Khalid Masood and another reported in (2005 SCMR page 1291), Hon'ble Supreme Court, held that High Court can always grant bail in appropriate cases in exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, to any person / accused of an offence under the National Accountability Ordinance, 1999, notwithstanding the bar contained

in section 9(6) of the said Ordinance, same view is taken in the case of Haji Ghulam Ali v. the State reported in (SCMR 2003 597),and also in the case of Abdul Aziz Niazi v. The State reported in (PLD 2003 SC 668).

12. Learned counsels for petitioner, have relied case law on consideration of bail grant of, under section 497 Cr P C, same is discussed in case of Muhammad Zafar Maniar v. Shahzad Ahmed and others (2011 MLD 602), petitioner being Managing Director of M/s Humair Association, in the year 1980, initiated a housing project in the name of Sachal Sarmast Town, upon 114 acres of land, petitioner received millions of rupees but failed to hand over possession, bail was granted, another case Anwar Saifullah v. The State (2001 SCMR 1040) , accused were alleged to have allocated LPG to co-accused in violation of the prescribed rules by misusing his authority, Hon'ble Supreme Court has held that 'such allegation could only be determined by the trial Court' bail was granted; another case Muhammad Saeed Mehdi v. the State and others (2002 SCMR 282), allegations against petitioner were that in 1993, while holding the office of the Chairman CDA, he sanctioned an amount of Rs.06. million, violated legal, financial requirement, thus committed offence corruption and corrupt practices within the meaning of section 18(a) read with section 24 of the National Accountability Ordinance 1990,in this case, Hon'ble Court has held, prima facie, petitioner did not appear to be guilty of mis-use of official position or misappropriation of public funds to his use or any relative or friend, truth or otherwise, such allegation could only be determined at the trial hence bail was granted; also in case of Muhammad Nawaz v. The State,(PLD 2008 SC 438), it is alleged that petitioner while posted as a Collector of Customs, approved the claims of rebate payable on the export such rebate was false thus bogus rebate was sanctioned by the petitioner, Hon'ble supreme Court held 'no opinion could be expressed regarding the guilt of accused without scrutiny of the entire record, therefore, the case of further inquiry' bail was granted; in case Muhammad Shoib

Wasti vs The State(2009 YLR 155) it is held that “prosecution evidence and the comments had revealed that the allegations made against the accused could only be determined at the conclusion of trial, bail was granted.

13. Learned Senior Prosecutor NAB, Mr. Noor Muhammad Dayo, has relied upon the case of Mirza Raza Ali v. the State through Chairman NAB (2007 PCRLJ 1088), in this case Government funds specified for particular purpose having been entrusted to, secure the interest of Mustahqeen of Zakat, bail was refused, another case of Shahid Hussain v. the State through chairman NAB (2008 YLR 1081), in this case petitioners were involved in illegal transaction of Rs.1294 Million through their company, bail was refused. The next case of Azam Solangi v. The State through Chairman NAB(2008 YLR 795) in this matter, cross cheques were issued by petitioner on account holders, later on, altered in their name, bail was refused in circumstances;(PLD 2007 K 558), Muzaffar Ayaz Abid v. Regional direction NAB, Sindh allegation against the petitioner was that, being Bank official, opened fictitious account, misappropriated amount of taxation office, Port Qasim bail was refused. In the case of Frida Rohal v. The State through NAB (2007 MLD 347) allegations were that petitioner while performing his duties as Post Master Karachi, received deposits from number of post office account holders, malafidely misappropriated amount, bail was refused.

14. In regard to pre-arrest case law relied upon, in case of Lal Muhammad Khalid v. the State(2007 SCMR 843), bail was confirmed, as no direct role was assigned, only evidence available on record was police papers consisting upon vague statement of prosecution witness. In case of Najma Swaleh Syed v The State through NAB and another (2008 YLR 1087), embezzlement against lower staff was detected by the Audit Department, no iota of evidence was available to suggest prima facie, that accused was involved in embezzlement of funds nor NAB authorities have produced such evidence, pre-arrest bail was granted. In case of Nazar Muhammad v. NAB (2010 MLD 1623), it was alleged that

petitioner during his service, accumulated movable and immovable properties, petitioner produced tax returns, pre-arrest bail granted. In case of Zulfiqar Ali Abbasi v. The State, through Chairman NAB (2008 YLR 2229) allegations were that, petitioner/accused has misused his authority such allegation did not connect prima facie, pre arrest bail granted, on refusal of bail, case law produced are Abrar Ahmed v. NAB (2007 PCRLJ 1116), in this case, it is held that authorities or police were not arresting petitioner in their own but they were doing so under the orders of the Court, no mala fide exists in above circumstances pre-arrest bail was declined. In the case of Syed Mohsin Abbas Abidi v. NAB (2007 P cr L J 1097), in this case petitioner Mohsin Abbas with co-accused prepared plan to defraud Bank by getting loan against forged securities – no malafide exists—bail refused. In case of Faisal Hussain Butt v. the State (2009 SCMR 133), allegations were that petitioner alongwith co-accused mis appropriated Rs.298 Million from ABL – not fit case for pre-arrest.

15. On above assessment what comes out as the ratio of decidendi (authoritative proposition of law), so set in above case laws, can well be explored as follows that :-

“direct involvement and being beneficiary have been considered sufficient to decline bail plea’---bail was refused:

‘ where question of misuse of authority or willful failure in exercise of authority’ was found to be a ground for further probe-- bail was granted.

16. To come upon just and concrete conclusion, a reference to section 9(a)(vi) of National Accountability Ordinance 1999, seems to be material, which deals with subject matter and would be conducive, therefore, same is reproduced as under:

“Section 9: A holder of public office, or any other person said to commit or to have committed the offence of corruption and corrupt practices:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi) If he mis-uses his authority so as to gain any benefit or favour or himself or any other person, or renders or attempt to render or willfully fails to exercise his authority to prevent the grant or rendition of any due benefit or favour which he could have prevented by exercising his authority, perusal of relevant provision, case of petitioner falls in said criteria.”

17. Candidly, petitioners are Directors of Company. Per the available record, there is allegations against the petitioners that they have misused their authority, hence in view of above referred provision the charge against them falls under section 9 subsection vi) of National Accountability Ordinance 1999; in similar situation in case of Muzammal Niazi reported in (PLD 2003 K 526), it is held that, “it would be seen that prosecution has alleged that this was due to the acts of commission and omission of the applicants, whereby they put government monies entrusted to them their own use, unlawfully obtained for themselves and misused their authority so as to prevent the grant of such favour or undue benefit, in this regard it would be seen that above offence essentially incorporate an element of mensrea”, same view is also taken in case Tariq Javed Afridi v. The State (PLD 2002 LAH 233), PLD 2002 LAH 458 (Anwar Saifullah Khan v The State) and again confirmed in the case of Javed Hashmi v. The State, 2003 P Cr L J 266.

18. As regards to the contentions of Mr. Faisal Siddiqi and Mr. Shaukat Hayat for the petitioner, that director or sharers are not liable for any fraud or mischief committed in company, they have referred one case law of England AIR/Volume 1/Huckbery v. Elliol 1970-189 and two Indian citations (1998) 5 SC 343, the State of Haripur v. Brij Betal and others: Life Insurance corporation v. Hari Das Mindhra and others (Allahabad High Court 914 -1962). contentions are irrelevant,

assessment upon liability, requires deeper appreciation which is not permissible under law in bail matters, Reference can be made in the case of Mrs. Riaz Qayyum vs The State(2004 SCMR 1889), Hon'ble Supreme Court has held that “Elaborate sifting of evidence could not be made at the time of deciding bail application but only tentative assessment can be made”. Case law relied is distinguishable to the matter in hand, as all three cases referred, were decided on different fora, not at bail forum.

19. As regards to the contentions of learned counsel for petitioner Hassan Jameel Ansari that co-accused Nadeem Ahmed Khan has been granted bail after arrest by this Court, hence rule of consistency will be applicable to the case of petitioner, to this respect counsel relied, on case of Muhammad Sarwar v. The State (2008 YLR 304), in this case allegations against applicant were that, he received illegal gratification, co-accused was granted bail therefore applicant was also granted bail; in case of Shaikh Aijaz Ahmed v. DG NAB (2009 P Cr L J 1019), co accused with identical role was granted bail, therefore bail was granted.

20. As regards to the submissions made by Senior Prosecutor NAB Mr. Noor Muhammad Dayo “that this is a white colour crime; reference is pending before NAB Court; huge loss is caused to public money”. It will not be sufficient to merely allege that heinous offence is committed but such contentions requires unbroken chain leading towards crime. Admittedly, no direct allegation is leveled against the petitioners except misfeasance. Whole Reference seems to revolving upon accused Imran Mehmood and his father Mehmoodul Hassan as is evident from record. Per available record no speck of evidence is available to connect the direct involvement of petitioners in subject matter, prima facie and with reasonable grounds, even then prosecution has opportunity to prove the guilt of accused by producing cogent evidence at the time of trial.

21. As regard to submission of Senior Prosecutor NAB, in respect of pre-arrest bail contended that no political motivation is available in this case;

petitioner counsel failed to point out any proof of malafide and ulterior motive on the part of NAB, authorities. In this respect it will be suffice to say that ,contention regarding malafide or ulterior can be considered because same may be latent or patent, it is also worth to mention here that ground of further inquiry is also considerable at the stage of pre arrest bail as laid down by precedents, and as discussed above case law, authoritative proposition of law (ratio of decidendi)is that, in cases of liability of misuse of authority, without any direct proof of beneficiary or involvement, post arrest and pre-arrest bail can be granted.

23. No doubt, as per record, apparently role of co-accused Nadim Ahmed Khan is more than to the applicants in present case , who has been granted bail by this Court, hence applicants are also entitled for same treatment on this score alone on the plea of rule of consistency. Simultaneously case of both petitioners falls in category of further inquiry as discussed supra, consequently both petitioners are entitled for post bail and pre –arrest bail respectively.

24. We have granted bail to the petitioners by our short order dated 12.07.2012, these are the detailed reasons for the same.it may be noted here that discussion made in this order is tentative in nature and will not effect to the merit of the case in any way.

Judge

Judge

Samie ++