

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2120 of 2013

Date	Order with signature of Judge
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For Katcha Peshi :

Date of hearing : 24.07.2013

Petitioner : Muhammad Siddiq Saddidy through
Mr. M. Siddiq Mirza, Advocate.

Respondent : NAB through Mr. Muhammad Altaf, Senior
Prosecutor, NAB.

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ORDER

NADEEM AKHTAR, J. – Through this Constitutional Petition, the petitioner has prayed that bail before arrest be granted to him in Crime No.05/2012, registered at FIA Corporate Crime Circle, Karachi, or in the alternative, the Supplementary Reference filed by the respondent / NAB be quashed. As the petitioner was arrested after filing of this petition, a request was made on his behalf on 22.05.2013 that this bail before arrest application be treated as an application for bail after arrest. Vide order dated 22.05.2013, the said request was allowed by this Court.

2. The brief facts of the case are that a direct complaint bearing Criminal Complaint No.314/2010 was filed by the Securities and Exchange Commission of Pakistan (“SECP”) in the Court of the Sessions Judge, Karachi-South under Section 29, 24(2), 28(2), 28(3) and 28(4) of the Central Depositories Act, 1997, and Sections 403, 409, 467, 468, 471 and 474 PPC read with Sections 34 and 109 PPC. The said complaint was filed against the owners / directors and senior executives of Eastern Capital Ltd (“the Company”), and some other persons. The case against all the accused was that the owners, directors and senior executives of the Company, in collusion with four banks and the Karachi Stock Exchange, had illegally and without authorisation pledged the various shares of their various clients in order to obtain finance facilities ; and, after the default committed by the accused in the repayment of such finance facilities, the said four banks sold the said pledged shares in the open market in order to recover the amounts of finance purportedly granted by them.

3. Thereafter, one Aman Aziz Siddiqui, Regional Manager, HBL Gulf, one of the victims of the alleged fraud, lodged FIR No.05/2012 on 09.02.2012 with FIA Corporate Crime Circle, Karachi, under Sections 409, 420, 477-A, 34 and 109 PPC, against the owners / directors and senior executives of the Company, namely, Munir Ladha (Executive Chairman and principal owner of the Company), Samad Ladha (Chief Executive Officer of the Company), and, Kashif Naqvi (Senior Executive Director of the Company). The said FIR was filed also against

Mudassir Iftikhar, having investor sub-account No.504, the Karachi Stock Exchange, Mybank (CDC Account No.2006-776), United Bank Ltd. (CDC Account No.2006-737), MCB Bank Ltd. (CDC Account No.2003-167), and Arif Habib Bank Ltd. (CDC Account No.2008-95). It was alleged by the complainant in the FIR that the above banks and the Company had colluded by fraudulently taking his securities from his account and had pledged the same with the banks to support the Company's borrowings ; upon non-payment of the bank's borrowings by the Company, the banks sold the securities and adjusted their borrowings from the proceeds of such sale ; all this was done without the knowledge and consent of the complainant, and without ascertaining the legitimate ownership of the securities ; and, due to such illegal and collusive acts, the complainant had been defrauded and deprived of his hard earned savings worth millions of Rupees.

4. In the complaint filed by SECP, the learned IIIrd Additional Sessions Judge, Karachi-South framed 09 charges on 21.01.2012. While the said complaint filed by SECP was pending, NAB filed a Reference dated 22.03.2012 therein under Section 16-A of the National Accountability Ordinance, 1999, for the transfer of the said complaint to the Accountability Court at Karachi. Vide order dated 19.05.2012 passed on the said Reference, the said Reference was accepted by the learned IIIrd Additional Sessions Judge, Karachi-South, and the case was transferred to the NAB Court at Karachi. Thereafter, a 'Supplementary Investigation Report' was filed on 28.03.2013, and in pursuance thereof, NAB filed Supplementary Reference No.05/2012 on 03.04.2013 before the Accountability Court No.IV Sindh at Karachi.

5. The petitioner has submitted that he is a senior citizen of 68 years of age ; he is a retired Merchant Navy Captain ; and, is presently working as a Ship Breaking Consultant at Gadani. He has further stated that due to the downfall in the ship breaking industry, he made investment with the Company in share trading, and for such purpose, he was appointed as a sub-agent and was allotted Account No.SIDX-1023 by the Central Depository Company of Pakistan

Ltd. ("CDC"). The petitioner has specifically pleaded that the Directors of the Company became involved in illegal activities, including illegal and unauthorised share trading of sub-agents / clients and pledging of their shares. It has been averred that the petitioner was never involved in any of such illegal and unauthorised activities, and in fact, he was one of the victims of the fraud committed by the Directors of the Company.

6. The learned counsel for the petitioner submitted that the petitioner was not nominated in the FIR, nor was his name mentioned anywhere in the complaint filed by SECP or in the Supplementary Reference filed by NAB. He further submitted that the petitioner was implicated for the first time in the Supplementary Investigation Report filed by NAB, wherein vague allegations were made against him. It was argued by the learned counsel that the above ground alone is sufficient for enlargement of the petitioner on bail. In addition to this, he submitted that the petitioner is entitled to the grant of concession of bail also in view of his status and advanced age. Lastly, it was contended that one of the co-accused ; namely, Syed Muhammad Furqan, was granted bail by a learned Division Bench of this Court in Criminal Bail Application No.380/2012 vide order dated 18.04.2012 reported as *2013 CLD 1273*, subject to his furnishing surety in the sum of Rs.1,000,000.00 and a surety bond in the like amount to the satisfaction of the Nazir of this Court.

7. Mr. Muhammad Altaf, the learned Senior Prosecutor NAB, opposed this bail application *inter alia* on the grounds that the petitioner is one of those clients of the Company against whom substantial amount is outstanding ; the petitioner's name is mentioned in the Supplementary Investigation Report showing an amount of Rs.183,832,998.70 as receivable from him, which is equivalent to 59% of the total amount receivable from all the clients of the Company ; and, an inquiry was conducted by SECP, which supports the case of the prosecution. The learned Senior Prosecutor NAB, however, had no reply as to why the petitioner was not nominated in the FIR, or why his name was not

mentioned anywhere in the complaint filed by SECP or in the Supplementary Reference filed by NAB.

8. We have heard the learned counsel for the parties and have also perused the record available before us. It is an admitted position that the petitioner was not nominated in the FIR, and his name was not mentioned anywhere in the complaint filed by SECP or in the Supplementary Reference filed by NAB. We have noticed that though the Supplementary Reference was filed by NAB after submission of the Supplementary Investigation Report showing the petitioner's name for the first time, but the Supplementary Reference is completely silent with regard to the role of the petitioner in the alleged offence. We have further noticed that in paragraph 11 of the Supplementary Reference, it is stated that the other co-accused mentioned therein had defrauded the clients. In view of the above, it is our considered opinion that the matter requires further inquiry in order to determine the guilt or innocence of the petitioner.

9. As a result of the above discussion, this petition is allowed in terms of prayer (a). Let the petitioner be enlarged on bail subject to his furnishing solvent surety in the sum of Rs.1,000,000.00 (Rupees one million only) with a surety bond in the like amount to the satisfaction of the Nazir of this Court. It is clarified that in case the concession of bail is misused by the petitioner in any manner, the learned trial Court will be at liberty to take action against the petitioner and / or the surety in accordance with law. It is further clarified that the observations made and the findings contained herein shall not prejudice the case of any of the parties, and that the learned trial court shall proceed to decide the case strictly in accordance with law.

Judge

Judge
