

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Mohammad Karim Khan Agha

C.P. No.D-810 of 2018.

Allah Bachayo Khaskheli

Versus.

Federation of Pakistan and others

Petitioner : Allah Bachayo Khaskheli	Through Mr. Ejaz A. Awan, Advocate.
Respondents No.2 to 4	Through Mr. Jangu Khan, Special Prosecutor NAB.
Date of hearing	24.09.2018
Date of order	24.09.2018

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- Through instant petition, petitioner Allah Bachayo has sought the following main relief:-

- “(a) That this Honourable Court may kindly be pleased to declared that the investigation / proceeding initiated against the petition on the sanction letter dated 24.8.2016, issued by respondent No.2 to respondent No.5 are illegal, unlawful, void ab-initio and all material collected are nullity in the eye of law and the investigation report dated 13.03.2017 of respondent No.5 are liable to be ignored being unauthorized and without jurisdiction.
- (b) That this Honorable Court may also be pleased to declare that purported unwarranted action / proceedings are in flagrant violation of law and without sanction, thus coram non judge, illegal and without lawful authority and of no legal effect and as such the Reference No.9/2017-H filed by respondent No.2 dated 26-04-2017 and same is still pending before learned Administrative Judge, Accountability Court No.4 Sindh at Hyderabad is liable to be Quashed.

- (c) That this Hon'ble Court may kindly be pleased to **grant the bail after arrest to the petitioner** as he is innocent and has been falsely implicated in present reference"

2. At the outset, learned counsel for the petitioner submitted that he does not press prayer clauses "a" and "b" and only presses prayer clause "c", which concerns the grant of post-arrest bail to the petitioner in NAB Reference No.9/2017. Accordingly, the instant petition is dismissed with regard to prayer clause "a" and "b" and by this order we propose to dispose of the instant petition only in respect of prayer clause "c" which concerns the grant of post arrest bail to the petitioner

3. Succinctly, as per the aforesaid reference, it was revealed after investigation, that the Secretary Education and Literacy Department recorded approval for appointment of OT, DT, PTI and AWI in BPS-09 in District Jamshoro for the year 2012. At that time, the Government of Sindh issued general instructions and specific TORs for the recruitment process which the recruitment committee was bound to follow. It was clarified by the department that all appointments are to be made against sanctioned and clear vacant posts of the particular cadre/post and if clear vacant post of a particular cadre/BPS is not available, then the appointment is deemed to have been made in excess of the sanctioned strength and create a burden upon Provincial Exchequer and as such become illegal. Besides, the Finance Department had issued clear instructions that for release/disbursement of salaries of newly recruited persons, district-wise final merit list duly signed by the Administrative Secretary with official stamp; on a prescribed format is required to be furnished directly to the office of the Accountant General Sindh and concerned District Accounts Office, any deviation in this regard would render the release of salaries as an authorized and illegal.

4. During investigation, it was revealed that the Government of Sindh Education and Literacy Department issued notification No. SO(S-I)/10-263/2011 dated 15th December, 2011 for the selection / recruitment of staff under the administrative control of respective Directorate of School Education and the committee would be constituted comprising of following numbers and TORs were communicated to the Regional Director School Education.

Regional Director School Education	Chairman
District Education Officer of the respective District	Member
Office/Head of the institution having vacancies	Member

5. It was also revealed during investigation that at the relevant times Shamsuddin Dal (accused No. 4), the Director Schools Education, Hyderabad, was the chairman of the District Recruitment Committee (DRC). **Allah Bachayo Khaskheli** (the petitioner), the District Education Officer Jamshoro, was the member of the District Recruitment Committee (DRC), Muhammad Saffar Kachaar, the District Education Officer (Elementary), was also a member of the District Recruitment Committee (DRC) **and as such all of them were jointly and severally responsible for transparent, fair and meritorious selection.**

6. It was also revealed during investigation that recruitment of 138 candidates was conducted in violation of instruction of the government. No proper record of the written test and interview was maintained by the District Recruitment Committee (DRC). During investigation, it was also revealed that accused No.1 to 4 recruited 138 persons by declaring them eligible for appointment while they have recruited only one person who was already declared by them as ineligible. They have also recruited 108 persons who had not applied for the said posts, but they were selected due to the nepotism and in violation of recruitment procedure and instructions, as such they defeated the merit and made the entire process of recruitment illegal. It was also observed that the appointment of 74 persons was made in excess of the actual strength, which resultantly caused loss to the national exchequer.

7. It was also revealed during the investigation that the case of those newly appointed persons was illegally processed for release of their salaries, issued allocation of BPS-14. The instructions were violated and in connivance with accused No.1 to 4 and amount of Rs. 110,323,296/- illegally released by the accused No.5 to 8 of District Account Office, Hyderabad, as such, they are also responsible for causing great loss to the national exchequer by misusing their authority in order to benefit others and have committed the offense of corruption under S.9 of the National Accountability Ordinance 1999 (NAO) hence the National Accountability Bureau (NAB) filed reference 9/2017 against the petitioner and other co-accused before the Accountability court in Hyderabad.

8. Learned counsel for the petitioner contended that the petitioner is innocent and has not committed any offense under the NAO; that he had no concern with any illegal appointments; that it was a case of further inquiry; that on account of the NAB's malafide investigation and the other reasons

mentioned above the petitioner was entitled to post arrest bail. In support of his contention, learned counsel for the petitioner relied upon the cases of **Khalid Hussain Shah V State** (2014 SCMR 12) and **Shoaib Warsi V Federation of Pakistan** (PLD 2017 Sindh 243).

9. Learned Special Prosecutor NAB while opposing the bail plea raised on behalf of the petitioner, contended that he is responsible for illegal appointments in the education department for the district Jamshoro and has along with the co-accused in the reference caused huge loss to the national exchequer. According to him, the petitioner misused his authority and benefited others at the cost of millions of rupees to the national exchequer. He further submitted that this misuse of authority was clearly shown by the fact that there was no test for appointment, as no result sheet or merit list was prepared and that the acts done by the petitioner were the worst example of corruption and nepotism and as such there was more than sufficient material on record to show that the petitioner had committed the offense for which he had been charged in the reference and as such the petition for post arrest bail should be dismissed

10. We have heard the learned counsel for the petitioner, learned Special Prosecutor NAB, perused the record carefully and considered the relevant law. We have only made a tentative assessment of the material on record and it is made clear that this order shall have no bearing on the trial court which will decide the reference on merit based on the evidence which comes before it.

11. Dealing firstly with the authorities relied upon by the petitioner. In the case of **Khalid Hussain Shah** (Supra) it was in essence held that bail could be granted while the trial was proceeding if a case of further inquiry was made out. In our view this is not a case of further inquiry as all the PW's have been examined and the trial is in its final stages. In **Shoaib Warsi's case** (Supra) post arrest bail was granted largely on account of the fact that the NAB had not followed the proper procedures in investigating and arresting the accused. In our view this case is also distinguishable from the instant case as in that case the trial had not begun and no prior applications for bail had been made whereas in this case the trial is on its last legs and the petitioner along with some of the co-accused have already been declined bail up to the level of the Supreme Court.

12. In this case it is significant that the petitioner applied for pre arrest bail along with other co-accused which was dismissed by this court vide order dated 14-09-2017 and thereafter the petitioner instead of surrendering himself to the NAB authorities absconded from the court and became a fugitive from law. He thereafter approached the Hon'ble Supreme Court for pre arrest bail along with some of his co-accused which was rejected by the Supreme Court vide order dated 25-10-2017. Once again the petitioner instead of surrendering himself to the NAB authorities absconded from the court and became a fugitive from law. He was finally arrested on 07-03-2018 which in effect means that he had been absconding for around 6 months after this court rejected his bail. Since the trial is on its last legs therefore in our view if the petitioner is granted post arrest bail there is a high risk of him absconding once again.

13. We are also of the view that prima facie there is sufficient material on record to connect the petitioner with the offense for which he has been charged. It is also significant in this context that another co-accused, Shamsuddin Dal, who played a similar role to the petitioner had his post arrest bail rejected by the Supreme Court vide order dated 30-05-2018.

14. Most significantly all the PW's have been examined and the trial admittedly is on its last legs and in such circumstances the Supreme Court has held that in such cases bail should neither be granted nor rejected and the appropriate course in such cases is to give a direction to complete the trial within a given period of time. In this respect reliance is placed on the case of **Rehmatullah V State** (2011 SCMR 1332) where at P.1333 it was held as under:

"Heard. The petitioner was granted bail on 21.11.2008, which was cancelled by the learned High Court on 19.3.2009, when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor-General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial court to conclude the trial of the case within specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial court to conclude the trial of the case expeditiously." (bold added)

15. We also have to take into account, as mentioned earlier that when a trial is likely to be completed shortly and the amount of loss caused is very high there are greater dangers of the petitioner absconding especially as in this case where the petitioner has already shown his propensity to abscond when given the chance.

16. Thus, for the above mentioned reasons the petitioners petition for post arrest bail is hereby declined and the trial court is directed to complete the trial within 3 months of the date of this order. The Addl.Registrar shall ensure that a copy of this order is immediately sent to the accountability court for compliance.

17. Above are the reasons for our short order passed by us in Court today i.e. 24.09.2018, whereby the instant petition was dismissed and the plea with regard to the grant of post-arrest bail to the petitioner was declined. The short order reads as under:-

"At the very outset, learned counsel for the petitioner submits that he does not press prayer with regard to quashment of NAB Reference No.09 of 2017 filed by the NAB Authorities. However, he submits that the petitioner may be granted bail. On the question of grant of bail the parties advocates have been heard at length. For the reasons to be recorded later on, the bail plea of the petitioner is also declined."