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IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Irfan Saadat Khan, J.

Mr. Justice Mohammed Karim Khan Agha, J.

C.P.No.D-1592/2016

Mukarram Alam

v.

NAB & another

C.P.No.D-1663/2016

Muhammad Naseem Akhtar

v.

NAB

C.P.No.D-1907/2016

Khawaja Hasnain

v.

NAB & another.

C.P. No.D-1822/2016

Muhammad Salman Nasim

Vs.

The Director General (Sindh Region) NAB.

Date of hearing: 17th, 24 and 30th August 2016

Date of order: 05-09-2016

Petitioners: Through Mr. Ameer Raza Naqvi,
Advocate in C.P. No.D-1882/2016,
Mr. Muslim Shamim, Advocate, in C.P.
No.D-1592/2016, Mr. Abid Akram,
Advocate, in C.P. No.D-1663/2016 &
Mr. S.M. Iqbal, Advocate in C.P. No.D-
1907/2016.

Respondents: Through Mr. Noor Muhammad Dayo,
DPG NAB and Mr. Muhammad Aslam
Bhutta, Special Prosecutor NAB

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ORDER

Mohammed Karim Khan Agha, J:- By this common order, we propose to dispose of the above mentioned petitions filed on behalf of the petitioners seeking therein post arrest bail who are accused of being involved in corruption and corrupt practices by the National Accountability Bureau (NAB) under the National Accountability Ordinance 1999 (NAO) vide Reference No.10 of 2016 State Verses Mukarram Alam and others.

2. The brief facts of the case as gleamed from the aforesaid reference is that all the petitioners were working in some capacity or another for Askari Leasing Limited Karachi (Askari) in connection with Askari providing finance to applicants in order to purchase vehicles (cars or trucks) and in one case machinery for their personal/business use. This finance was to be secured against the purchase of the vehicles/and or machinery which the applicant proposed to purchase from Askari's loan. That the petitioners connived and colluded to enable vehicle finance and in one case finance for machinery to be loaned out by Askari on the basis of forged and fake documents to applicants who did not exist which caused a loss to Askari as such fictitious applicants never repaid any of the loan which was disbursed to them. In total 13 such leases were granted against which finance was disbursed by Askari details of which are set out below.

Sr. No.	Customer No.	Facility Type	Name	Terminal Value
1	003123/KI	Consumer	Muhammad Amir	502,149
2	003281/KI	Consumer	Bux Ali	1,365,588
3	003369/KI	Consumer	Ali Muhammad	1,524,962
4	003442/KI	Consumer	Gohar Ali	3,034,700
5	003450/KI	Consumer	Ibrahim	3,706,977
6	003467/KI	Consumer	Ashfaq Hussain	720,465
7	003497/KI	Consumer	Muhammad Siddiq	2,106,756
8	003499/KI	Consumer	Shaikh Muhammad Izhar	1,849,685
9	003511/KI	Consumer	Behzad Ahmed	1,833,886
10	4676	Corporate	Universal Plastic	11,217,170
11	000421/KIC	Corporate	M/s. Naik Wali & Co.	4,640,819
12	000437/KIC	Corporate	M/s. Qalandar & Co.	3,907,158
13	000438/KIC	Corporate	M/s. Qalandar & Co.	3,913,857
TOTAL				40,324,172

3. In essence the petitioners were involved in Sale and Lease back cases where the lease documents were fake and the assets did not exist which lead to the disbursement from Askari head office of loans based on false information / fake verification reports / forged documents for which no security was taken. Neither the customer nor the assets are traceable in the above mentioned 13x cases. The asset price has also been over invoiced which resulted in excess disbursement and caused huge loss to Askari.

4. As per reference it has been established from the investigation that the accused No.1 to 6 in connivance with each other have processed 13x leases on fake and forged documents which resulted into loss to the tune of Rs.40.324 million (approx.) to Askari. Thus the accused persons have committed the offence of corruption and corrupt practices as defined under section 9(a) of NAO 1999, punishable under Section 10 of the NAO and Schedule thereto.

5. The role of the petitioners as per reference is set out as under:

6. Mukarram Alam (petitioner No.1) approved the granting of 13 leases amounting to approx Rs 40.324million on forged and fictitious documents which he sent to head office for approval and in so doing as Vice President and Chief Manager of Askari committed criminal negligence while discharging his official duty which resulted in huge loss to Askari

7. Khawaja Husnain (petitioner No.2) was in the sales department and used to deal in Askari Individuals, Askari Corporate and Machinery cases from initial processing till disbursement. He was involved in 8x Sale and Lease back cases where the lease documents were fake and the assets did not exist which were forwarded to petitioner No.1. Neither the customers nor the assets are traceable in these leases.

8. Naseem Akhtar (petitioner No.3) was in the sales department and used to deal in Askari Individual, Askari Corporate and Machinery cases from initial processing till disbursement. Petitioner No.3 had forwarded 5x cases on false information / fake verification reports / bogus documents. Neither the customers nor the assets are traceable in these leases. Additionally, as reported in Charge Sheet by Askari Leasing, a Corolla Xli lease to M/s. Qalander Khan & Co. (Lease No.3410/ki) remained under his use for many months.

9. Muhammad Salman Naseem (petitioner No.4) was serving as Assistant Manager Marketing and marketed the case of Universal Plastic where forged documents were provided. The machinery was mortgaged as additional security which was on fake documents. This case was forwarded to petitioner No.1 on false information / fake verification reports / forged documents. Neither the customers nor the assets are traceable in this lease.

10. Learned counsel for petitioner No.4 initially submitted that this was a case of fraud committed by bankers and as such NAB did not have jurisdiction in such matters especially since the complainant (Askari) was a private company and no loss had been caused to the State Exchequer. Even otherwise it was a recovery case based on default under the Financial Institutions (Recovery of Finances) Ordinance 2001 and as such was not a criminal case under the NAO especially since no reference had been made by the Governor of the State Bank of Pakistan under S.31 (D) NAO to the NAB. He also submitted that NAB had proceeded on a pick and choose manner since they had requested 123 leasing cases from Askari but Askari had only provided them with the instant 13 cases.

11. He further submitted that petitioner No.4's role in the entire transaction is very limited as he was only the assistant marketing officer whose job as per Standing Operating

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Procedure (SOP) was simply to introduce potential customers to Askari and he is not involved in the processing of the loan or verification of the documents. Even otherwise he pointed to documents which he had filed with his statement dated 28-06-2016 that all necessary formalities had been completed.

12. He further submitted that he was only involved in one out of thirteen cases mentioned in the reference and therefore his case was distinguishable from the cases of the other petitioners. Furthermore, the applicant he had introduced had made an initial down payment and had provided post dated cheques and the fact that the applicant had defaulted could not be laid at his door. There was also no mens rea on the part of the petitioner

13. The petitioner No.4 had been in jail for 6 months already and only the charge had been framed. The Court was lying vacant and none of the 21 PW's had been examined and as such the trial was not likely to be concluded in the near future and as such he was entitled to bail on this ground alone. In this respect he placed reliance on the case of **Mohammed Nadeem Anwar V NAB** (PLD 2008 SC 645).

14. For all the above reasons he submitted that petitioner No.4 was entitled to be enlarged on bail.

15. Learned Counsel for petitioner No.2 submitted that he was in a similar position to petitioner No.4 above as he only played a minor introductory role and that he had nothing to do with the approval of the leases which was the responsibility of petitioner No.1 and it was up to the verification officer to ensure that all necessary requirements for the approval of the lease had been fulfilled. Furthermore, no benefit accrued to him and if anything this was a case of negligence. In support of his contentions he placed reliance on the case of **Air Marshall (Rtd) Waqar Azim V State** (NLR 2003 Criminal 361)

16. Learned counsel for petitioner No.1 adopted the submissions of petitioner No.4. According to him this was not a criminal case but a civil one. He had been removed from service on account of his alleged involvement in this matter which was subject to appeal before the High Court and that was the issue in this case which was still subjudice. He also submitted that petitioner No.1 had no role in disbursing the loan which approval came from the head office. He was more like a post box who simply forwarded the completed documents to head office which would take a final decision on the matter.

17. He also submitted that the petitioner was a cardiac patient and had already served 6 months in jail and hence for all the above reasons he was entitled to be enlarged on bail.

18. Learned counsel for petitioner No.3 adopted the arguments of petitioner No.4. He submitted that the petitioner was completely innocent and that he had not engaged in any fraudulent activity and that this was a case of further inquiry. In support of his contentions he placed reliance on the case of **Raqias V The State** (2004 P.Cr.LJ 186) and **Sardar Amin Farooqui V Chairman NAB** (P.Cr.R LJ 2014 P.186)

19. On the other hand learned ADPGA for NAB submitted that all the petitioners were liable under the NAO for the offense charged and it was a criminal case and not a civil case. All the petitioners had connived together and committed a fraud which had caused huge loss to Askari.

20. He brought to the Court's attention various relevant documents in respect of the scam and read a number of S.161 statements which directly implicated all the petitioners in the offense. In short he submitted that the material collected on record showed that there were reasonable grounds for believing that the petitioners were connected to the offense and as such they were not entitled to post arrest bail and as such all the petitions should be dismissed. In

support of his contentions he placed reliance on the cases of **Zubair V The State** (2008 MLD 1400), **Mst Naseer Begum V Sain** (SCMR 1972 584) and **Malik Khuda Bakhsh V The State** (1995 SCMR 1621)

21. We have considered the submissions of learned counsel for the various parties, carefully gone through the record and the relevant law as well as the case law cited at the bar.

22. At the outset we would like to make it clear that as per settled law we have only made a tentative assessment of the material before us and that this order shall not effect the trial proceedings which shall be decided by the learned Judge on merits based on the evidence before him.

23. We are of the view that the NAO is applicable to this case. To us it prima facie appears to be a case of fraud by the petitioners rather than willful default which has either caused loss to Askari and /or benefited other individuals. Furthermore, as was held in the case of **Azizullah Memon V State** (PLD SC 2013 594) the NAO is not restricted to public officials but also encompasses private individuals. Even if there is a civil aspect to the case this does not exclude the NAO which apart from being a criminal law is also a special law with overriding effect over other laws as per S.3 NAO

24. With regard to the argument of this being a pick and choose case this aspect does not effect the culpability (if any) of the petitioners. It may however be wise for NAB to follow up on the other leases which were requested and not provided by Askari to ensure complete transparency and equal treatment before the law.

25. We will deal with the case of each petitioner in turn in the order of their oral pleadings before us.

26. Petitioner No.4's role has been set out earlier in this order and it would seem that he played a relatively minor role

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in the process of one application where it turned out that fake documents had been provided and the loanee ended up defaulting. Whether all the petitioners were in connivance it is difficult to determine at this stage (and will ultimately be up to the trial court to rule upon) but the fact that the petitioner No.4 was only involved in one lease tends to suggest prima facie that he was not a part of a wider scam along with the other petitioners. The documents which he has drawn the Courts attention to in his statement filed before the Court also tend to suggest that his job had been checked out by independent sources. This case related to the lease of machinery where NAB found the Mortgage to be genuine, a down payment was made after which default was made on the loan. It appears from the NAB investigation report that the loan was made to an employee who existed but who did not have the capacity to enter into the lease agreement and subsequently disappeared. Based on the above we find petitioner No.4's case distinguishable from the other cases as he was only involved in the one transaction and as such based on the circumstances above he is in our view entitled to the benefit of doubt. His mens rea and whether there was any criminal involvement on his part in respect of this one transaction will be determined by the trial court based on the evidence which is produced before it. As such petitioner No.4 is hereby granted post arrest bail subject to him furnishing solvent Surety in the sum of RS 500,000 (five lacs) and PR bond in the like amount to the satisfaction of the Nazir of this Court. He shall also deposit his passport with the Nazir of this Court and the Ministry of Interior Government of Pakistan is directed to place his name on the ECL.

27. Turning to the case of petitioner No.2. We do not find that petitioner No.2's case is on a par with petitioner No.4's case. Petitioner No.2 was a marketing and operations officer who introduced/recommended the grant of a loan to 8 separate applicants all of whom turned out to have forged and fabricated documents. In this case 5 of the lessees were untraceable (serial No's 4,5,7,9 and 13) and in 3 cases (serial

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No's. 11, 12 and 13 the lessee denied receiving the truck before disappearing (and remains untraced). In our view this tends to indicate that the petitioner No. 2 did not commit one isolated act of negligence but rather was consistently engaged in fraudulent activities. It would also not be out of place to mention here that Syed Imran Qaiser Ex marketing officer (formerly accused No. 4 in the Reference) who played a similar role as petitioner No. 2 has already entered into a plea bargain with NAB and has in effect admitted his guilt in this scam. In our view based on the material on record there are reasonable grounds to connect petitioner No. 2 to the commission of the offense as charged and as such his petition for bail is hereby dismissed.

28. Turning to the case of petitioner No. 1. We do not accept the assertion that he was simply a post box and played no role in the scam. The petitioner was Vice President and Chief Manager of Askari. This is a senior management position which carries certain responsibilities. We do not find it tenable that he was not aware of the forged and fabricated documents and what the other petitioners were up to. If anything it appears that he was a part of the scam i.e. recommending for approval loans based on false and fabricated documents which he failed to check as he was required to do before forwarding the same to head office. To let one or two fabricated applications slip through the net may be understandable but not such a high number as 13. Furthermore, the S161 statement of Arshad Quershi former verification and recovery officer of Askari completely belies petitioner No. 1's claim that he had no knowledge about the false verifications and in fact indicates that he was fully aware of all the bogus and fictitious applications which he forwarded to head office and recommended for approval. We are also of the view that his alleged cardiac problem is not one which cannot be adequately treated whilst in jail by the prison authorities. In our view there is sufficient material on record to show that there are reasonable grounds to connect

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him to the commission of the offense and as such his application for bail is dismissed.

29. Turning to the case of petitioner No.3 who was in the sales department. We do not find that petitioner No.3's case is on a par with petitioner No.4's case. Petitioner No.3 introduced/recommended the grant of a loan to 5 separate applicants all of whom turned out to have forged and fabricated documents. Of these 5 with regard to serial No. 1 the S.161 statement of Amir Mohammed shows that this vehicle was never leased to him by Askari as claimed by petitioner No.3 and likewise with respect to serial No.2 the S.161 statement of Bux Ali and his annexed civil suit clearly shows that he never received the vehicle which was allegedly leased to him by Askari as claimed by petitioner No.3. In our view this tends to indicate that the petitioner No.3 did not commit one isolated act of negligence but rather was engaged in fraudulent activities. Again it would also not be out of place to mention here that Syed Imran Qaiser Ex marketing officer who played a similar role as petitioner No.3 has already entered into a plea bargain with NAB and has in effect admitted his guilt in this scam. We do not find this a case of further inquiry. In our view based on the material on record there are reasonable grounds to link petitioner No.3 to the commission of the offense as charged and as such his petition for bail is hereby dismissed.

30. Although we do not find the delay in completing the trial at this stage to warrant any of the petitioners being enlarged on bail on this count it has however been brought to our attention that two out of the four Accountability Courts in Karachi have recently become vacant and as such this may lead to the deprivation of an accused of an expeditious trial especially keeping in view S.16 (a) NAO. We understand however that one name for appointment as an Accountability Court Judge is with the Ministry of law. Hence we direct the Federal Secretary Ministry of Law to ensure that such appointment is made expeditiously and that the other

Accountability Court is also manned by an Accountability Court Judge without further delay.

31. In summary:

- (a) Petitioner No.4 Muhammad Salman Naseem is granted post arrest bail on the terms and conditions set out earlier in this order.
- (b) Petitioner No.1 Mukarram Alam's petition for post arrest bail is dismissed.
- (c) Petitioner No.2 Khawaja Husnain's petition for post arrest bail is dismissed.
- (d) Petitioner No.3 Naseem Akhtar's petition for post arrest bail is dismissed.
- (e) The trial Court is directed to complete the trial within 6 months of the date of this order.
- (f) A copy of this order shall be sent by facsimile to both the secretary for interior Government of Pakistan and the Judge of the relevant Accountability Court hearing this reference for compliance along with the Secretary Law Government of Pakistan to ensure the filling of the vacancies of the Accountability Courts in Karachi without further delay.

Dated: 05-09-2016