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IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Irfan Saadat Khan, J.

Mr. Justice Mohammad Karim Khan Agha, J.

**C.P. No.D-2343 of 2015.**

Masood Ahmed

v.

State

through Director General NAB

**C.P. No.D-1717 of 2015.**

Aftab Ahmed Lakho

v.

Federation of Pakistan

through Director General NAB

Petitioners: Through Mr. Muhammad Rehman  
Ghous, Advocate and Mr. Hussain Bux  
Baloch Advocate.

Respondents: through Mr. Noor Muhammad Dayo,  
DPG NAB & Mr. Muhammad Aslam,  
Special Prosecutor NAB a/w Sarvech  
Shaikh, IO NAB.

Date of hearing: 07-09-2016

Date of Order: 19-09-2016  
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**ORDER**

**Mohammed Karim Khan Agha, J:-** By this common order, we intend to dispose of the above petitions for confirmation of ad interim pre arrest bail filed on behalf of petitioner No.1 (Masood Ahmed) and petitioner No.2 (Aftab Ahmed Lakho).

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2. The brief facts of the case are that the petitioners along with three other co-accused (Syed Hashim Raza Rizvi, Muhammad Kamran and Haseeb Khan) all of whom were employees of National Bank of Pakistan(NBP) following an internal inquiry by the NBP were found to have been involved in embezzling RS 261,411,407 from NBP (KDA Civil Centre Branch) Karachi whilst dealing with the receipt of motor vehicle tax which was to be forwarded to the taxation authorities.

3. Based on the internal inquiry FIR 24/2011 was lodged by Muhammed Majeed Awan, AVP NBP KDA Civic centre Branch Karachi before the Federal Investigation Agency (FIA) at PS FIA CBC Karachi under Sections 409,420,468,471,477-A, 34, 109 PPC read with section 5(2) PCA II 1947 on 17-05-2011.

4. As per the aforesaid FIR the brief facts of the case and the role attributed to each accused/petitioner is set out as under:

The daily income tax and Withholding Tax on Motor Vehicle Tax received by Excise and Taxation Department on their counters, as per practice used to be deposited by them at the counter of the National Bank of Pakistan KDA Civic Centre Branch, Karachi in the same evening at about 6-7 PM which was to be received by Muhammad Haseeb Khan, Operation Manager and Syed Hashim Raza Rizvi, Senior Head Cashier, Incharge Cash who were bound to transfer the said amount to National Bank of Pakistan, Income Tax Building Branch, Karachi (Link Branch) on the following day.

It was the legal obligation of the Senior Head Cashier, Incharge Cash Syed Hashim Raza Rizvi to account for the said amount into respective Account Daily and it was also the duty of the Muhammad Haseeb Khan, Operation Manager to verify that the amounts are being transferred to the Link Branch accordingly.

The Assistant Commissioner, Inland Revenue Zone-V, Regional Tax Office-II, Karachi addressed a letter no. ACIR/Zone-V/RTO-II/2011, dated 19.04.2011 asking the Manager Operation Muhammad Haseeb Khan to confirm as to whether the amount of Rs.402,595,800/- and Rs. 427,931,847/- making a total 830,527,647/- being the collection amount of Income Tax and Withholding tax on Motor Vehicle Tax for the period from July 2010 to March 2011 had been deposited into Federal Treasury and he also asked to provide the evidence of such deposits. In reply to the said letter of the Assistant Commissioner, Inland Revenue Zone-V, Regional Tax Office-II, Karachi the Operation Manager Muhammad Haseeb Khan vide his letter

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no.KDA/DV/2010 dated 27.04.2011 confirmed deposit of the sum of Rs. 639,963,347/- out of 830,527,647/- for the period from July 2010 to March 2011 in Federal Treasury and he also provided copies of scrolls as evidence, with regard to the remaining amount of Rs. 190,564,300/- he contended that the verification of remaining challans would be completed within a few days. However, subsequently the Assistant Commissioner, Inland Revenue Zone-V, Regional Tax Office-II, Karachi in reply to the letter of Muhammad Haseeb Khan Operation Manager clarified that the total undeposited amount was Rs. 261,411,407/-.

Consequent upon discovery of this huge shortage in deposit of funds, the then Manager Mr. Inyatullah Ansari, under the instructions of the Controlling Office asked the Operation Manager Muhammad Haseeb Khan and Senior Head Cashier Incharge Syed Hashim Raza Rizvi to immediately reconcile and verify the amount of deposit along with challans and on their failure to do so on 02.05.2011 along with Mr. Syed Mehmood Jaffer, OG-I/Compliance Officer in presence of the witnesses namely Masood Ahmed OG-II Mrs. Bilquis Bano Rizvi OG-III and Miss. Talat Naz, Assistant, searched the drawers of cash department and found seventy one (71) challans lying therein pertaining to the period from July 2010 to December 2010 amounting to Rs. 176,844,995/- of Income Tax/Withholding Tax in respect of Motor Vehicle Tax which did not bear the Cash/Transfer received Stamp and signatures of the cashier and joint custodians. These Challans appeared to have not been sent to the link branch as per procedure. All these Challans were taken into custody in presence of above witnesses. However the Challan pertaining to period from January 2011 to 31<sup>st</sup> March 2011 could not be traced which amounted to Rs. 84,566,412/-.

It is further stated that Mr. Aftab Ahmed Lakho was the joint custodian with Senior Head Cashier Incharge Syed Hashim Raza Rizvi for some period during July 2010 to March 2011 and Mr. Masood Ahmed was also joint custodian with Senior Head Cashier Incharge Cash Syed Hashim Raza Rizvi from November 2010 to 12.05.2011. In absence of Mr. Syed Hashim Raza Rizvi, OG-II, Senior Head Cashier Incharge Cash Mr. Muhammad Kamran OG-II performed his duty in his place.

Besides the recovered 71 Challans Rs. 176,844,995/- remaining Challan are not traceable with the branch. However, the details of embezzled amount come as under:-

S #	Month	Amount (Rs).
a.	July 2010	70,898,448/-
b.	August 2010	19,486,690/-
c.	September 2010	17,626,949/-

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d.	October 2010	17,978,757/-
e.	November 2010	23,316,387/-
f.	December 2010	28,437,764/-
g.	January to March 2011 (not traceable)	84,566,412/-
	Total	261,411,407/-

In view of the facts mentioned above Mr. Muhammad Haseeb Khan s/o Abdul Majeed Khan, OG-I/Operation Manager, CNIC # 41303-1501320-1 and Syed Hashim Raza Rizvi s/o Syed Raza Imam, OG-II/Senior Head Cashier Incharge, CNIC # 42101-1879861-5 have embezzled the amount of Rs. 261,411,407/- while it was also the duty and responsibility of Mr. Aftab Ahmed Lakho s/o Shahnawaz Lakho, OG-I CNIC# 42201-0429427-1, Mr. Masood Ahmed s/o Muhammad Latif, OG-III/Joint Custodian CNIC # 42101-8836174-1, Mr. Muhammad Kamran s/o Muhammad Arman, OG-II/Senior Head Cashier CNIC # 42201-7613262-5 (failed) to deposit the embezzled amount with the link Branch.

Therefore being employees of NBP they have committed the offence of criminal breach of trust, falsification of Accounts and frauds and forgeries in their capacity as public servants.

5. Interim challan was filed on 03-06-2011 before the Special Judge (offenses in Banks) Karachi and supplementary challan (final) was filed on 30-11-2011 which in large part reflected the interim challan. The charge was framed against the petitioners and other co-accused and thereafter 9 out of 16 PW's recorded their evidence before the special judge. Thereafter the case was transferred to the Accountability Courts pursuant to the National Accountability Bureau's (NAB) application under S.16 (A) (a) of the National Accountability Ordinance 1999 (NAO).

6. Learned counsel for petitioner No.1 submitted that he had been in jail already for one year for this offense before being released on statutory bail by the special judge. Now he feared that NAB would again arrest him since the case had now been transferred to the NAB purely on account of malafides. He further submitted that there was no material to link him to the commission of the offense. In this regard he pointed to the final two pages of the final challan which had prescribed no role to him. He also submitted that 9 PW's out of 16 had been examined and none had deposed against him. No recovery had been made from



him, no evidence of him living beyond his means had been found and that the offense took place during the evening whilst he was working usual office hours and not evenings. He also had acted as a witness in the recovery of the 71 challans from the drawers in the bank. According to learned counsel the petitioner No.1 was a junior level banking officer who had secondary responsibility for the receipt and deposit of funds which primary obligation lay with Senior Head Cashier Incharge Cash Syed Hashim Raza Rizvi and operations manager Muhammad Haseeb Khan. He further submitted that he had already spent a year in jail and now the Accountability Court was intending to re hear the entire case from scratch and if bail was refused this would amount to leaving him to rot in jail for years on end. He submitted that for all the above reasons he was entitled to have his bail confirmed. In support of his contentions he placed reliance on **Waqar Ahmed v Chairman NAB** (PLD 2015 Kar 295) and **Sanjay Chandra V Central Bureau of Investigation** (2012 SCMR 1732)

7. Learned Counsel for petitioner No.2 adopted the arguments of petitioner No.1. He submitted that prior to the transfer of the case to the Accountability Court he had already been granted post arrest bail by the Sindh High Court on merits which had been upheld by the Hon'ble Supreme Court. He also submitted that he had only held the position as joint cashier for 27 days i.e. 02-07-2010 to 29-07-2010 and during this period no criminality had been committed. In this respect he pointed to a balance confirmation certificate from the office of the AETO/Chief Cashier Motor Registration Karachi signed by Asst. Excise and Taxation Officer confirming the reconciliation of all transactions from July to December 2010 during his period as joint custodian. Even otherwise as with petitioner No.1 he was a junior employee of the bank and only joint cashier and the main liability rested with Head Cashier Incharge Cash Syed Hashim Raza Rizvi, Mohammed Kamran who had stood in for a few days for Mr. Rizvi and operations manager Muhammad Haseeb Khan. According to learned counsel this was a case of further inquiry. He further submitted that he had been attending trial regularly and had been reinstated at the bank after the bank's internal inquiry. For all the above reasons he submitted that his pre arrest bail should be confirmed.

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8. On the other hand, learned ADPGA on behalf of NAB vehemently opposed the confirmation of the bail of both the petitioners. He submitted that they were fully involved in the crime and there was sufficient evidence to prove beyond a reasonable doubt that both the petitioners had committed the offense for which they had been charged in this connection he referred to various S.161 Cr.PC statements and other documents.

9. In particular learned counsel for NAB submitted that both the petitioners were joint custodians and as such could not escape their liability. They had both been fully implicated by the banks internal inquiry. With respect to petitioner No.1 there was no evidence that he was not working evenings and that of the 99 challans only 71 had been found. With regard to petitioner No.2 he pointed to a number of vouchers which had been signed by petitioner No.2 but had not been deposited. He also relied on the S.161 Cr.PC statements of Mohammed Majid Awan (Complainant), Altaf Ahmed and Inayatullah Ansari which according to him fully implicated both the petitioners. He further submitted that the earlier grant of bail, whilst the case was pending before another forum i.e the special court, was not relevant and that fresh bail had to be applied for. In this respect he placed reliance on an order of the Hon'ble Supreme Court dated 18-03-2015 whereby the pre arrest bail of Mohammed Hasseb Khan (operations Manager) and Syed Hashi Raza (head cashier) both of whom are accused in this case was dismissed. In support of his contentions he placed reliance upon the cases of **Mohammed Jahanghir Badr V State** (PLD 2003 SC 525) and **Faisal Hussain Butt v The State** (2009) SCMR 133).

10. We have considered the arguments of learned counsel, perused the record, relevant law and case law cited by them at the bar.

11. As per settled law, we have only made a tentative assessment of the material before us and this order shall not affect the trial proceedings which shall be decided by the learned Judge on merits based on the evidence before him.

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12. It would appear that the main accused is Syed Hashim Raza who was the Head Cashier and Mohammed Hasheeb Khan who was the Operations Manager both of whom recoveries were made from. Both of these accused had their pre arrest bail petitions declined by the this Court vide order dated 18-02-2015 which was upheld by the Hon'ble Supreme Court on 18-03-2015 which lead to the absconsion of Mohammed Hasseb Khan. Mohammed Kamran it seems was also a Head Cashier who filled in for Syed Hashim Raza Rizvi for a time and is absconding in this case.

13. Both the petitioners played a similar role although petitioner No.2 for a shorter period.

14. Their role as set out in S.161Cr.PC statement of Mohammed Majeed Awan was to ensure that all the payments received by Cashier/Head Cashier were properly entered into the books. Prepare or maintain the exact record. It is not disputed that at the time of the deposits both the petitioners were with the head cashier and even some of their signatures are present on the relevant record. It would therefore seem prima facie that both the petitioners to a certain extent were involved in the commission of the offense at least as aiders and abettors. Indeed of the PW's examined it appears that the prosecution is making out a case against both the petitioners through evidence.

15. We however have to consider that no recoveries were made from the petitioners and that there has been no accusation that they have been living beyond their means by making numerous trips abroad etc as is the case with some other of the accused in this reference.

16. We also cannot lose sight of the fact that this is a transfer case and that petitioner No.1 was released on statutory bail while facing the case before the special court and as such has already under gone one year imprisonment whereas petitioner No.2 had been granted post arrest bail by this Court vide order dated 3-10-2011 on merits which was only assailed before the Hon'ble Supreme Court on account of the amount of the sum directed to be deposited as surety by the petitioner being too small since at that time this was a case registered under the Offenses in respect of

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Banks (Special Courts) Ordinance 1984 which specifically dealt with the amount of Surety to be furnished if bail was granted (which is not the case in an offense under the NAO). Even then the Hon'ble Supreme Court upheld the order of the High Court granting post arrest bail.

17. It may be observed that when the case was transferred to the NAB, the NAB, presumably after further investigation, did not file a supplementary reference and the matter was to proceed based on the existing evidence. Thus, in terms of material collected against the petitioners this would have remained the same when petitioner No.2 was granted post arrest bail as confirmed by the Hon'ble Supreme Court. It is true that once a case is transferred from the Special Court to the Accountability Court fresh bail applications have to be made. However in our view if post arrest bail has already been granted on merits and upheld by the Hon'ble Supreme Court and the evidence against the accused has not been added to or a great advancement made in the trial in our view in considering whether to grant bail a fresh on a transfer application some weightage should be given to the earlier bail orders passed on merits.

18. In this case at least one of the petitioners has already spent a year in jail and the other has also spent time in jail and it appears that despite 9 out of the 16 PW's already being examined by the Special Court the Accountability Court intends to re hear all the evidence from scratch. Although the petitioners have filed an application against this approach which has not been decided yet by the Accountability Court if this was to be the case then if pre arrest bail was declined the petitioners would most likely again undergo a considerable period of time in jail before their case was decided. The petitioners since their grant of bail have been regularly attending the trial Court and no abuse of this concession has been alleged.

19. It is true that the embezzled amount is large which has caused a great loss to the exchequer and there appears to be some evidence against the petitioners however in granting bail we need to carefully weigh the infringement of a person's liberty for an offense for which he may yet be acquitted of with the facts and circumstances of each particular case.

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20. On the question of malafide although this has not been fully established by the petitioners it is in our view questionable as to why NAB felt the need to transfer this case from the Special Court to the Accountability Court. Admittedly a large sum was involved however none of the accused had indicated any interest in entering into a plea bargain (which often forms the basis of such transfers where large amounts are involved) even after half of the PW's had been examined (9 out of 16). It may have been preferable to leave the trial with the special judge where a decision would most probably have been rendered more expeditiously. As such NAB should be cautious in transferring cases under the NAO which are more than half way through and none of the accused have shown any interest in entering into a plea bargain.

21. As such taking into account the facts and circumstances of this case and in particular that no recovery has been made from the petitioners, that they have already spent in one case a year in jail, in another case their post arrest bail was upheld on merits by the Hon'ble Supreme Court prior to the transfer of the case to NAB and NAB on transfer did not add any additional evidence against the petitioners, that they are regularly attending the court, the marginal need of NAB to transfer the case in the first place, the potential of the trial starting from scratch which may continue for a considerable period of time and leave the petitioners confined in jail we are of the view that the petitioners in our discretionary jurisdiction are entitled to the benefit of doubt and have their pre arrest bail confirmed.

22. For the reasons mentioned above:

- (a) petitioner No.1 Masood Ahmed's ad interim pre arrest bail is confirmed subject to him (i) furnishing an additional surety of RS 1,000,000 (one million) subject to the satisfaction of the Nazir of the Court and PR bond in the like amount and depositing his original passport with the Nazir of this Court.
- (b) petitioner No.2 Aftab Ahmed Lakho's ad interim pre arrest bail is confirmed subject to him (i) furnishing an additional surety of RS 1,000,000 (one million) subject to the

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satisfaction of the Nazir of the Court and PR bond in the like amount and depositing his original passport with the Nazir of this Court.

- (c) The Ministry of Interior is directed to place the names of both petitioners on the ECL and not to issue either of them any fresh or duplicate passports.
- (d) The learned Accountability Court is directed to decide the application moved by petitioner No.2 under S.16 (A) NAO dated 28-04-2016 concerning the necessity of recalling all the witnesses strictly in accordance with wording of S.16 (A) (a) NAO keeping in view S.16 (a) NAO and the right to an expeditious trial within 14 days of the date of this order and complete the trial within 6 months of the date of this order.
- (e) It is made clear that if either of the petitioners fail to attend the trial proceedings on each and every date of hearing or cause any delay in the trial proceedings the NAB shall be at liberty to approach this court for the cancellation of the pre arrest bail granted to either or both of them.
- (f) A copy of this order shall be sent by the office to the Secretary Ministry of Interior Government of Pakistan and the concerned Accountability Court for compliance

Dated: 19-09-2016