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## IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Mohammed Karim Khan Agha

C.P. No.D-3533/2016

Iqbal Ahmed Bablani

Vs.

Federation of Pakistan & others

Date of hearing:	19-09-2016.
Date of Order	28.09.2016
Petitioner:	Through Mr. Muhammad Ishaq Memon, Advocate.
Respondents:	Through Mr. Noor Muhammad Dayo, ADPGA NAB.

### ORDER

**Mohammed Karim Khan Agha, J.** By this order we propose to dispose of CP.3533/2016 whereby the petitioner (Iqbal Ahmed Bablani) has applied for post arrest bail in National Accountability Bureau (NAB) Reference No.1 of 2016 The State Verses Iqbal Bablani and others where he along with 5 other co-accused have been accused of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO). Earlier by order of this Court dated 23-05-2016 the ad interim pre arrest bail of the petitioner was recalled and as such he has now applied for post arrest bail.

2. As per reference the petitioner at the time of the alleged scam was Secretary Transport and Mass Transit Department Government of Sindh. In essence by misusing his authority and also taking bribes/kickbacks the petitioner in connivance with the other co-accused caused a massive loss to the National Exchequer as well as benefiting himself through processing, approving and making illegal advance payments in respect of the purchase of heavy vehicles, IT equipment and mini buses and Mazda trucks.

3. Learned counsel for the petitioner submitted that the petitioner is completely innocent in connection with the illegal purchase of any vehicles from local market. He further submitted that the purchase committee invited tenders through Information Department, in newspapers and awarded the contract to M/s Shaheer Enterprises for supply of foreign made vehicles from the local market and vehicles were supplied by the contractor and they were duly received by Mr. Mazhar Ali Mangi, Section Officer General on 28.05.2011. He further argued that being Secretary of the Department, it was not the duty of the petitioner to receive the vehicles personally. He also submitted that no advance payments were made. According to the petitioner there is nothing on record that the delivery of the 11 vehicles was not made and it is the presumption of the Investigation Officer, which carries no weight in the eye of the law and as such it is a case of further inquiry. Furthermore, even if the petitioner had committed irregularities, which was denied, this would not amount to a criminal offense. As such for all the above reasons the petitioner was entitled to post arrest bail.

4. On the other hand learned ADPGA NAB submitted that NAB had enough evidence on record to prove the guilt of the petitioner beyond a reasonable doubt. He pointed to various S.161 statements, other documents on record and our order dated 23-05-2016 in CP D-3813/2015 Iqbal Bablani V Chairman NAB whereby the petitioner's ad interim pre arrest bail was recalled by this Court.

5. We have heard the learned counsel for the petitioner, ADPGA NAB, perused the record very carefully and the case law cited at the bar by them.

6. As per settled law we have only made a tentative assessment of the material placed before us and this order shall not prejudice the case of any party at trial which shall be decided by the trial court based on the evidence before it.

7. Initially this Court declined to confirm the petitioner's ad interim pre arrest bail by order dated 23-05-2016 in CP D-3813/2015 Iqbal Bablani V Chairman NAB. As is well known the considerations for the grant of pre arrest bail and post arrest bail are different. By our earlier order recalling the ad interim pre arrest bail granted to the petitioner we found no malafides/ulterior

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motives on the part of NAB and hence some of the preconditions for the grant of pre arrest bail had not been met and hence it was recalled.

8. However in our aforesaid order we **also examined** in considerable detail whether based on the material placed before us, when read in a holistic manner, based on the merits of the case there were reasonable grounds as would appeal to a prudent man to connect the petitioner to the offense which in essence is the requirement for the denial of post arrest bail.

9. Having again fully examined the material on record, which has not materially changed since we last reviewed it around 3 months ago, we find no reason to change our earlier finding with respect to the merits of the case. We do not consider this to be a case of further enquiry as all the relevant evidence seems to have been collected and the trial is under way.

10. We do not intend to re invent the wheel and since the circumstances have not materially changed since we last heard this matter albeit at the pre arrest bail stage, whilst excluding our findings on malafide, we re iterate parts of our said order which reads as under in respect of the petitioner (in these excerpts (para's 27 to 36) he is referred to as petitioner No.1 as it was a common order).

"27. A specific role has been assigned to petitioner No.1 in the Investigation Report as under:

"a. Iqbal Ahmed Bablani, Ex-Secretary, Transport & Mass Transit Department (BPS-20).

(1) The accused with conscious knowledge and in connivance with the (a) Ex-Section Officer (Gen), Mr. Mazhar Ali Mangi, and (b) Accountant, Mr. Ramchand, misused his authority by making illegal advance payment of Rs.20.475 million to M/s Shaheer Enterprises for the procurement of 11x heavy vehicles. M/s Shaheer Enterprises supplied 6x heavy vehicles only while government funds for the remaining 5x heavy vehicles were misappropriated / embezzled. He received kickbacks from the said contractor for his role in the misappropriation / embezzlement of government funds.

(2) The accused with conscious knowledge and in connivance with the (a) Ex-SO (Gen), Mr. Mazhar Ali Mangi and (b) Accountant, Mr.

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Ramchand, misused his authority by making another illegal advance payment of Rs.15.3 million to M/s Mehran Associates for the "Supply of Mini Buses and Mazda Trucks etc". M/s Mehran Associates neither procured nor handed over any buses and trucks to T&MT Department and the entire amount was misappropriated/embezzled. He received kickbacks from the said contractor for his role in the misappropriation/embezzlement of government funds.

(3) The accused, with conscious knowledge, and in connivance with Ex-SO (Gen), Mr. Mazhar Ali Mangi opened an HBL Account No.09167900241103 in the name of Secretary & SO (Gen), Transport Department at Sindh Secretariat Branch using a fake permission letter purportedly issued by Finance Department, Government of Sindh. He, in collusion with Ex-SO (Gen) and Accountant, Transport Department collected Rs.10M in bribe from M/s Mehran Associates. He later in cash withdrew Rs.1 million from the said account and could not justify its utilization.

28. At the time of the scams petitioner No.1 was Secretary Transport. It appears from the earlier referred to Notification dated 26-3-2011 that he as Secretary Transport appointed himself as chairman of the purchasing committee which contains a rider aimed to place the blame on the SO in the event that any irregularities take place. He however in our view as Chairman of the committee must take most of the responsibility for its working no matter how the notification is drafted. As per minutes of the meeting which he headed on 28-3-11 during the procurement process the SPPRA Rules were to be complied with.

29. It is observed that advertisements dated 14.04.2011 for the required heavy vehicles were placed in one English newspaper the "Daily National Courier" and one urdu newspaper, "Daily K-2" both of which are relatively unknown and with a low circulation compared with other leading English and urdu newspapers.

30. The advertisements read as under:

"No.SO(V)/ADP/2010-11(RDTS)  
GOVERNMENT OF SINDH  
TRANSPORT DEPARTMENT  
Karachi, dated 14<sup>th</sup> April 2011

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### TENDER NOTICE

Interested firms are invited to quality their machineries within 15(Fifteen) days details of which are as under:-

Offer forms may be obtained from the office of undersigned.

- 1- One Multimedia Projector
- 2- Three Cranes
- 3- Three Fold Lifters (sic)
- 4- Two Dumpers
- 5- Two Bulldozers

(MAZHAR ALI MANGI)  
SECTION

OFFICER(GEN/T1)  
INF/KRY No.1259/11

For Secretary to  
Government of  
Sindh"

31. The lack of specificity of the vehicles/equipment required in the advertisements is quite startling and tends to indicate that little, if any, thought went into the specifications of the required vehicles/machinery such as engine capacity, make, model etc which such machinery would require for the work to be undertaken. This from the start therefore raises suspicions as to the bona fides of the transaction. The work order dated 6-5-2011 given to M/S Shaheer enterprises which presumably responded to the advertisements and offered the lowest bid and hence were awarded the supply contract however does not conform to the advertisements. For example, **in the advertisements two bulldozers are needed however in the work order 3 bulldozers are to be supplied. Likewise in the advertisements 2 dumpers are required however in the work order 4 dumpers are to be supplied.** In essence the advertisements do not bear any correlation to the work order which itself raises even more suspicions as to the bona fides of the transaction. **For example, 3 cranes are advertised but none form a part of the work order.**

32. In total 11 vehicles/heavy machinery was to be supplied by M/S Shaheer enterprises for which it had been given full advance payment to the knowledge of petitioner No.1. However only 6 vehicles/ machinery were delivered and the petitioner No.2 gave a false receipt for 11 vehicles knowing full well that only 6 had been delivered. There seems also to be no justification for any advance payment to be made in a tender of this nature let alone for the full amount i.e. for the supply of heavy vehicles where payment on delivery ought to be the preferred/usual course.

33. It appears that the balance of the advance payment, which was not spent on the 6 delivered heavy vehicles, was to be split between the petitioner No.1, petitioner No. 2 and Mr. Ram Chand (Incharge of Accounts who was accused No.3 in the reference and has now entered into a PB with NAB) and M/S Shaheer enterprises. In acknowledgment of their guilt Mr. Ram Chand and M/S Shaheer enterprises have already entered into plea bargains (PB) with NAB and paid back their shares of the ill gotten gain which they received. In our view the material placed before us leads us to the only reasonable inference as would appeal to a prudent mind that this scam was carried out by petitioner No1 and 2 and Mr. Ramchand and M/S Shaheer enterprises in connivance and collusion with each other.

34. This is further fortified by the role of petitioner No.1 in the second scam concerning the purchase of mini buses and mazda trucks and his connection with the HBL account in which he allegedly received bribes. Again an unjustified advance payment of RS 15.38 Million was made except in respect of the delivery of mini buses and Mazda trucks to M/s Mehran Associates which were neither procured nor supplied to the T&MT Department and the entire amount of the advance payment was misappropriated / embezzled.

35. In this case the material placed before us shows that petitioner No.1 in connivance with petitioner No.2 managed to open an account in the name of Secretary & SO(Gen), Transport Department at Sindh Secretariat Branch using a fake permission letter issued by Finance Department, Government of Sindh in which RS 10M was deposited from M/s Mehran Associates. Petitioner No.1 and 2 and Mr. Ram Chand withdrew Rs.1 million in cash from the said account and could not justify its utilization in their department. In our view therefore the only reasonable inference is that this 10M was paid as a bribe by M/s Mehran Associates as a reward for the petitioners No.1 and 2 making the advance payment to M/s Mehran Associates for trucks and vehicles which were never supplied and which enabled the advance payment to be embezzled by them. It is notable that in both the scams (heavy vehicles and supply of mini buses and Mazda trucks) that most of the key documents were signed by petitioners 1 and 2. **Furthermore** in the case of the supply of mini buses and Mazda trucks no tenders were advertised rather only quotations were called for, which creates further suspicions as to the award of the supply contract of the mini buses and

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Mazda trucks to M/s Mehran Associates especially as we shall see later the offers for quotations seemed to be contrived and done on a dummy basis whereby all the petitioners were involved.

36. In addition the S.161 statements, minute sheets and other associated documents especially the banking documents which have been placed before us on a tentative analysis show that the petitioner No.1 is linked to the offenses for which he has been charged.

11. Thus, in our view based on the material before us we remain of the considered view that there are reasonable grounds, as would appeal to a prudent man, to connect the petitioner to the offense and therefore his petition for post arrest bail is dismissed.

12. The Accountability Court hearing the reference is however directed to proceed with the reference on a day to day basis as envisaged under S.16 (a) NAO and complete the trial of the reference within 3 months of the date of this order. The office is directed to send a copy of this order to the concerned Accountability Court without any delay for compliance with the same.

JUDGE

Dated.28.09.2016