

399

**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-17 of 2016  
Mumtaz Ali Nizamani

Vs.

NAB & another

Date of hearing:	07-04-2016
Date of Order	18-04-2016
Petitioner	Through Mr. Dilbar Khan Leghari Advocate
Respondents:	Through M/s. Noor Muhammad Dayo, ADPGA, NAB and Muhammad Aslam Bhutta, Spl: Prosecutor NAB alongwith Kamran Janwari I.O./Assistant Director NAB.

**ORDER**

**Mohammed Karim Khan Agha, J.**- The petitioner Mumtaz Ali Nizamani seeks post arrest bail in respect of National Accountability Bureau (NAB) Reference No.20/2016 filed before the Administrative Judge Accountability Courts Karachi on 14-03-2016.

2. The brief facts of the case as per reference are that M/s Asif Traders (accused No1) made an application for a bogus sales tax refund claim based on a non existent manufacturing unit of paper, paper board and other stationary items. Accused No.1 is registered as an individual in his NTN who claimed and obtained a sales tax refund by declaring himself as a manufacturer and also submitted an undertaking that he had manufactured the goods out of which such refund was claimed. The accused No.1 obtained refunds of sales tax amounting to Rs. 11,870,280.

3. According to FBR registration file accused No.1 had a manufacturing unit at P.17 Singoo lane, Wali Hasan Road Lyari Karachi however during investigation it was found that this premises was only a cottage like hall with no machinery installed. No evidence of ownership of the house was found. According to a tenancy agreement attached in all claims filed by accused No.1 with the FBR the said house was owned by a Mr. Nabil who during investigation categorically denied the ownership of the house.

✓



4. The petitioner in his capacity as Inspector IRS/FBR was supposed to verify the existence of the premises and business on which the sales tax refund had been claimed. However the petitioner submitted a false physical verification report that the accused premises existed and was used as a manufacturing unit without visiting the premises or even meeting accused No.1

5. Mohammed Adil Ashraf (accused No.3) was the beneficiary of the scam as the illegal sales tax refunds were transferred from the account of accused No.1 into two banks accounts .One of which was his own whilst the other belonged to Ms Zeenat Impex. During investigation accused No.3 could not justify these transactions into his bank accounts.

6. In essence during the course of their investigation it was established by NAB that accused No.1 and 3 in connivance with each other managed to embezzle an amount of RS 11,870,280 obtained as illegal sales tax refund and that the petitioner of the IRS/FBR by misusing his authority (i.e. confirming that a business was running from the address given by accused No.1 when no such business was running) in connivance with accused No.1 and 3 by extending undue favour to them had also lead to the aforesaid loss to the national exchequer through bogus sales tax refunds. Accordingly NAB filed a reference against all three accused (including the petitioner) for committing acts of corruption under S.9 of the National Accountability Ordinance, 1999 (NAO) on 14-03-2016

7. Learned counsel for the petitioner submitted that the petitioner is innocent and has been falsely implicated in this private complaint/case with malafide intention and ulterior motives by the complainant. He further submitted that both the companies were existing on the website of FBR, the addresses were also available online with the FBR and the FBR have never black listed the subject factories and the owners of the factories have not denied the existence of factories, the same fact have been mentioned in report of the petitioner that the manufacturing address as per STR-I unit found existing working condition and engaged in paper and paper board even the owners have endorsed their thumb impression upon the application for ST-FED registration form same was available at online system of the FBR.

8. Learned counsel further contended that the report of the petitioner was submitted on 09-10-2012 and the alleged enquiry have authorized on 09-06-2015 after a delay of more than 3 years and the statements of the owners of the factories have not been confronted with the petitioner in the presence of case officer. He further submitted that this is a case of no evidence against the petitioner, the alleged evidence which has been collected by the I.O. is available with NAB authorities in shape of documentary evidence. He also submitted that neither the petitioner embezzled any government funds nor misused his authority to favor accused No.1 and 2. It was a case of further inquiry and he was entitled to be enlarged on bail on this ground.

9. Learned Counsel submitted that the object of criminal law is to ensure availability of the petitioner to face trial and not to punish him for offence allegedly pending final determination by competent court of law. In this respect he placed reliance on the case of **Muhammad Nadeem Anwar v. NAB & others** PLD 2008 SC 645. He further relied on the case of **Air Marshal Waqar Azeem v. The State** 1989 P.Cr.L.J. 2456 wherein it was held that the accused causing monetary loss amounting to million USD in relation to sale of PIA Aircraft was granted bail, hence involvement of huge amount is no ground for withholding concession of bail. For all the above reasons he submitted that the petitioner was entitled to be enlarged on bail.

10. In opposition, Learned ADPGA for NAB has submitted that the petitioner misused his authority by giving false verification report on the basis of which said units were registered and they were given STRN number which facilitated them to obtain a massive amount in illegal sales tax refund and there is sufficient material available on record to prove the guilt of the petitioner beyond a reasonable doubt, hence the petitioner is not entitled for the concession of bail.

11. We have carefully perused the record, considered the law and the submissions of learned Counsel and the case law cited by them at the bar.

wy

(403)

M/s Asif Enterprises is fake and I have never entered such agreement.

**M/s. Asif Traders**

When NAB team reached plot No.17 Singoo Lane Wali Hassan Road, Karachi where KE meter No.SC62266 declared in FBR registration, was installed. It was revealed that there was a hall like single story construction which was locked and there were no machines installed there. A window was opened through which all vacant space of hall was sight able. Undersigned asked the neighboring persons regarding status and ownership of said construction but nobody was authentically sure regarding ownership of the building. Whereas, as per FBR registration the Tenancy Agreement shows the owner of said plot as Nabeel S/o Muhammad Haneef. He was called to NAB office where he stated that he do not own any immovable property and he works as sales man in the mobile shop in Bahadurabad. He further stated that he has never met or seen Muhammad Asif S/o Abdul Jabbar."

14. The S.161 Statement of Hafiz Muhammad Ishaq (K-Electric Manger) confirms that the K Electric meter was installed on a building which was closed and that there was no sign of any business/manufacturing activity. The S.161 Statement of Mr. Nabil confirms that plot No.17 Singoo Lane Wali Hassan Road, Karachi is not owned by him and he had never signed any tenancy agreement with accused No.1 which is fake and fabricated and he has never met accused No.1

15. The NAB ground check report indicates that the premises were never open and that no business ever was running from it. This is corroborated to an extent by the above referred S.161 Statements. It therefore seems apparent that the petitioner did not carry out a verification of the premises as alleged in his verification report or even otherwise made hardly any efforts to verify the veracity of the information before him and through his misuse/failure to exercise his authority in connivance with accused No1 and 2 has caused a loss to the national exchequer.

16. The petitioner has been assigned a specific role in the reference and in our view after briefly scanning all the material placed before us there are reasonable grounds to believe that the petitioner is connected to the offense

17. For these reasons the petitioner's petition for post arrest bail stands dismissed. However the trial court is directed to ensure that

13

the trial is completed within 4 months of the date of this order a copy of which the office is directed to immediately send to the concerned trial court.

18. We would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us and that this order shall not prejudice the case of any party at trial whose case shall be decided on merits based on the evidence produced before the trial court.

Dated: 18-4-2016