

IN THE HIGH COURT OF SINDH AT KARACHI

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

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C.P. No.D-1775/2015
Abdul Lateef
Vs.

Chairman NAB & others

C.P. No.D-2083/2015
Shafiq Ahmed
Vs.

The State (NAB) & others

C.P. No.D-2967/2015
Kalb-e-Abbas
Vs.

Federation of Pakistan & others

C.P. No.D-2996/2015
Syed Abdul Jabbar
Vs.

The State (NAB) & others

C.P. No.D-466/2016
Hussain Bux Narejo
Vs.

Federation of Pakistan & others

Date of hearing:	08-04-2016 & 12.04.2016
Date of Order	27-04-2016
Petitioners:	Through Mr. Munsif Jan Advocate for petitioner in C.P. No.D-1775/2015, Mr. G.M. Bhutto Advocate for petitioner in C.P. No.D-2083/2015, Mr. Kumail Ahmed Sherazi Advocate for petitioner in C.P. No.D-2967/2015, Mr. Maula Bux Bhutto Advocate for petitioner in C.P. No.D-2996/2015 and M/s. Shamshad Narejo and Imam Bux Advocate for petitioner in C.P. No.D-446/2016.
Respondents:	Through Mr. Noor Muhammad Dayo, ADPGA, NAB.

ORDER

Mohammed Karim Khan Agha, J.- By this single order, we intend to dispose of the above mentioned petitions filed on behalf of the petitioners for bail, whereby the petitioners are involved in corruption and corrupt practices which comes within the ambit of section 9(a) National Accountability Ordinance, 1999 (NAO) which

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lead to National Accountability Bureau (NAB) filing NAB Reference No.14/2015 against the petitioners on 15-05-2015 before the Administrative Judge Accountability Courts at Karachi.

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2. The facts of the case as per reference are that on a complaint by Oil and Gas Development Company Limited (OGDCL) dated 23.10.2012 alleging therein that Mr. Hussain Bux Narejo (accused No.1) in connivance with Chaudhry Abdul Latif (accused No.2) and others have caused loss of Rs.230 million by pilferage of diesel of OGDCL at Tando Alam Logistic base NAB opened an inquiry. NAB's investigation revealed that OGDCL Tando Alam is the Logistics base which supplies High Speed Diesel (HSD) purchased from Pakistan State Oil (PSO) to the vehicles of all Logistic bases (i.e. Kot Addu, Kot Sarang, Tando Alam etc). The Investigation further revealed that supply process starts with requisition of HSD from logistic base OGDCL to PSO. Then the HSD truck arrives at the main gate of the OGDCL Logistic base where at the main gate security guard checks the said truck and demands the supply documents from the driver and gives the same to the security inspector. In the documents if found that the said HSD Truck is meant for logistic field then it would be allowed to enter into the logistic field after making entry in the incoming register containing the information regarding name of driver, vehicle number, invoice number, quantity of diesel and the date. Thereafter one security guard or security inspector accompany the said vehicle to store incharge logistics, where the quantity of diesel is checked through dip rod and the same is recorded on the backside of the invoice. The said truck is unloaded in the storage tank of the logistics field base. The empty HSD truck is again thoroughly checked at the main gate by security staff by way of opening all the valves of the truck to ascertain that the truck is fully emptied and then allow the truck to leave the logistics field while putting signatures of security personal, store incharge and operational manager or his reliever. The investigation report revealed that demand/requisition of HSD is generated through accused No.1 Hussain Bux Narejo duly signed by operational manager after or his reliever and faxed to PSO office. PSO as per rules forward the same to concerned who would direct the PSO depot to supply the same and generate three invoices showing tanker number, name of carrier contractor, quantity and date etc. The contractor is responsible for delivery of the same at the destination i.e. OGDCL Tando Alam Base. Before entry into OGDCL complex security personnel make entry in the

register and will sign on the back of receipt. Store incharge and operational manager also sign on the back of the invoice, which shows the token of receiving. After signature PSO contractor submit their bill for payment of transport charges from PSO and PSO claim same amount from OGDCL.

3. As per statement of witnesses and entry register, 195 HSD Bowzers/Tankers having 2940000 liters of HSD amounting to Rs. 182,025,383/- were never received at OGDCL Tando Alam Logistic Base, however accused No.1 in connivance with other accused through fake signatures pilfered/embezzled the said quantity of the HSD. The investigation further revealed that Logistic Base OGDCL Tando Alam purchased 6804059 liters of HSD for the period 2006-2011. Accused No.1 and 2 made fake entries in store documents which shows as HSD issued/consumed, when the consumption was checked through log books of all vehicles which entered into Logistic Base Tando Alam, it transpired that 3492131 liters of HSD is pilfered/embezzled. It was proved beyond any doubt that 195 HSD Bowzers/Tankers having 2940000 liters total amounting to Rs.182,025,383/- never entered into OGDCL Logistic Base Tando Alam and sold by accused No. 1 to 9 in connivance with each other. According to PSO invoices and documentary evidence following Bowzers did not enter into OGDCL Tando Alam, however the amount of the same was reimbursed to PSO on the basis of fake signature made by accused Hussain Bux Narejo in connivance with co-accused Abdul Latif. As per Agreement with PSO, Supply Contractors of PSO and Vehicle Owners are responsible for delivery of HSD at OGDCL Tando Alam Logistic Base, however they failed to deliver the same hence they are responsible to make good the loss caused to Government exchequer. Details of Tanker/Lorry No. along with Primary Contractor and Vehicle Owner is as under:

Name of Carriage	Name of the Primary Contractor	Name of the Owner of Lorry/Tanker	Quantity	Amount involved	Tanker Lorry No.
Abbas & Co.	Sajid Ali S/o Hazoor Bux		220000	8,238,583	CI-1627 PP-0018 TTA-499 KTA-30 45 QAC-8845
Raza and Co	Kalb-e-Abbas	Shafiq Ahmed Soomro	2600000	167888415	JP-0839 JP-1310 LSA-8068 MNN-2265

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					QAC-7027 QAC-8845 QAD-9256 QAE-3005 TTA-023 TTB-241 DNB-3545 TTB-241
Prince Enterprise	Saiful Malook	Ghullam Nabi Jokhio	30000	2,075,444	TTA-264
Jawaid Brothers	Muhammad Saeed Khan		15000	566,240	QAC-8845
Jabbar Enterprise	Syed Abdul Jabbar Gardezi	Shafiq Ahmed Soomro	75000	3,256,701	JP-1319
Total			2940000	182,025383	

4. As per investigation report, year wise breakup of HSD did not enter/receive at OGDCL Tando Alam is as under:

Sr. No.	Year	Quantity	Value in Rs
01	2006	90000	3,397,440/-
02	2007	310000	11,605327/-
03	2008	810000	45,134,225/-
04	2009	590000	36,205,715/-
05	2010	1020000	76,002,558/-
06	2011	120000	9680,118/-
Total		2940000	182,025,383/-

5. In view of the above, as per NAB reference it has been established that the accused No.1 to 9 in connivance with each other fraudulently embezzled an amount of Rs.182.025/- million and caused loss to the government exchequer. Thus the accused persons have committed the offence of corruption and corrupt practices as envisaged under Section 9(a) of the NAO, 1999 punishable under Section 10 of the Schedule thereto.

6. Learned counsel for petitioner No.1 (Hussain Bux Narejo/accused No1 in reference) C.P. No.D-466 of 2016 who is currently on ad interim pre arrest bail by order of this Court dated 9-6-15 and was the ex store incharge OGDCL argued that he was completely innocent and that he had been falsely implicated and those who also bore responsibly such as the guards who were meant to check the tankers had been let off. Furthermore, all his signatures on the invoices were false and as such his pre arrest bail should be confirmed. He also placed reliance on the cases of

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7. Learned counsel for petitioner No.2 (Abdul Latif/accused No.2 in the reference) in C.P. No.D-1775/2015 who is currently in jail was technical officer of OGDCL submitted that he is completely innocent and his arrest is illegal, unlawful, false, fabricated and concocted as the same did not disclose any commission of offence as the petitioner has nothing to do with the alleged pilferage of diesel. He further contended that some of the other co-accused were on bail and as such he was also entitled to bail based on the rule of consistency. Furthermore all his signatures on the invoices were false and there was no other evidence against him to connect him to the commission of the offense and for all the above reasons he is entitled to be enlarged on bail.

8. Learned counsel for the petitioner No.3 (Syed Abdul Jabbar Gardezi/accused No.4 in the reference) and is currently on ad interim pre arrest bail by virtue of this Court's order dated 27-5-2015 in C.P. No.D-2996/2016 was one of the main contractors with PSO to transport the HSD by truck to and from the logistics base argued that he was completely innocent and even otherwise the selection of the case for investigation or any possible trial in the court of law is in violation of principle laid down by the superior court as this matter does not fulfill the purposes for which National Accountability Bureau has been created. That there is not a single piece of evidence against him and as such his ad interim pre arrest bail should be confirmed.

9. Learned Counsel for the petitioner No.4 (Kalb-e-Abbas accused No.7 in the reference) and is currently on ad interim pre arrest bail by virtue of this Court's order dated 27-5-2015 in C.P. No.D-2967/2015 who was one of the main contractors with PSO to transport the HSD by truck to and from the logistics base argued that he was completely innocent and that he had simply performed his role as was provided for in the cartage agreement dated 29.3.1983 between himself and PSO. He further contended that the malafide and ulterior motives of the respondent No.6 (the NAB IO) can be gauged from the fact that the focus and crux of the enquiry had been turned towards the actual owners, drivers of the cartage vehicles (Petrol tankers) and in this regard the petitioner had informed the respondents that he is neither the owner nor did

he at any material time have control over the drivers making the delivery. He further contended that all the invoices had been duly signed and that PSO had no complaint with respect to his services and had paid his invoices. That although his cartage contract with PSO did not entitle him to sublet his contract, which he was doing, this was accepted by PSO as a matter of practice. Furthermore, no PW had deposed against him and he had not been mentioned in any of the S.161 Statements and as such he was entitled to the confirmation of his ad interim pre arrest bail.

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10. Learned Counsel for the petitioner No.5 (Shafiq Ahmed/accused No.8 in the reference) who is currently on ad interim pre arrest bail by virtue of this Court's order dated 17-4-2015 in C.P. No.D-2083/2015 argued that he was a lower level transporter for carrying diesel within the territory of Sindh, now a days he is working with other goods companies from time to time but not permanently with any company and is poor and innocent person, having small family and the petitioner is not government employee of OGDCL or Government Contractor and so far allegation against him of being involved in the pilferage of diesel is concerned it is false, baseless and there is no evidence to support it. In essence he is only a sub contractor of one of the main contractors and for all the above reasons his ad interim pre arrest bail should be confirmed.

11. On the contrary, Learned ADPGA for NAB has submitted that the petitioners have all been assigned specific roles in the commission of offence which has lead to the fraudulent embezzlement of Rs.182,025/ million which caused a massive loss to the Government exchequer and in respect of all the petitioners there is sufficient material on record to prove the guilt of the petitioners beyond a reasonable doubt, hence the petitioners are not entitled for concession of bail and hence the petition for post arrest bail by petitioner No.2 should be dismissed and the ad interim pre arrest bail orders granted to all the other petitioners should be recalled.

12. We have carefully perused the record, considered the law and the submissions of learned counsel at the bar.

13. 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

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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.

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14. Turning firstly to the case of petitioner No.1 (Hussain Bux Narejo/accused No1 in reference). He has been assigned a specific role in the reference as under:

"Accused No.1 Hussain Bux Narejo, being Store Incharge was responsible for receipt of HSD at Tando Alam Base and its consumptions but as per record 2940000 liters of HSD is pilferage through fake signatures and entry on weekly statement. He therefore in connivance with Ch. Abdul Latif and Carriage Owner/drivers caused loss of Rs.182.025 million"

15. Being store incharge he was responsible for any shortages in diesel. Although no handwriting expert was used for checking his signatures however he has been fully implicated in the offense by the following witnesses in their statements which are mainly corroborative of his actions of making false entries of tankers which in fact did not enter the Logistics base. These witnesses include Niaz Ali Arbab Manager Operation OGDCL Logistic Field Tando Alam, Nazakat Ali Lund Security Inspector Logistic base OGDCL Tando Alam, Mohammed Lakhan Dino Security Inspector logistic field Tando Alam, Mohammed Irfan Hussain and Ghulam Murtaza both Technical Officer Logistic OGDCL Tando Alam and others. A number of PW's who have already recorded their evidence before the trial court have also fully implicated him in the offense

16. The authorities relied on by his counsel are of little, if any, assistance to the petitioner since they concern cancellation of bail when the trial is almost over but this is not the case in these petitions and as such are distinguishable.

17. Thus, in our considered view there are reasonable grounds to believe that there is sufficient evidence to connect petitioner No.1 to the commission of the offense and as such his order for ad interim pre arrest bail dated 9-6-15 is hereby recalled.

18. Turning to the case of petitioner No.2 (Abdul Latif/accused No.2 in the reference). He has been assigned a specific role in the reference as under:

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"Accused No.2 Abdul Latif was associate of Hussain Bux Narejo and taken his share for signature on Store documents and failed to inform the seniors. He was receiving his share **from main culprit Hussain Bux Narejo** and in return he signed the Store Documents which shows fake consumption. **He admitted his guilt before departmental inquiry officer and returned the amount of Rs.200,000/- vide cheque No.4603108 of account No.0010411857 of UBL**" (bold added).

19. Petitioner No.2 was an OGDCL employee working closely with petitioner No.1 (Hussain Bux Narejo). He has denied his signatures on all the invoices. However, not only do various witness statements such as Manther Ali Store man incharge logistics store ODCL Tando Alam fully implicate him but a handwriting expert in his report dated 22-3-16 have found his signatures on the invoices to be genuine. A PW at trial has also fully implicated him in terms of his repaying RS 200,000 on account of his involvement in the offense

20. Thus, in our considered view there are reasonable grounds to believe that there is sufficient evidence to connect petitioner No.2 to the commission of the offense and as such his petition for post arrest bail is dismissed.

21. Turning next to the cases of petitioner No.3 (Syed Abdul Jabbar Gardezi/accused No.4 in the reference), petitioner No.4 (Kalb-e-Abbas accused No.7 in the reference) and petitioner No.5 (Shafiq Ahmed/accused No.8 in the reference)

22. They have been given a specific role in the reference as under:

"Syed Abdul Jabbar Gardezi accused No.4, Kalb-e-Abbas accused No.7 Carriage Contractors and Shafiq Ahmed Soomro accused No.8 Owners of bowzers/tanker mentioned in para 6 of this reference. As per PSO Agreement they are primarily responsible for delivery of HSD to the destination but they further let out the contract and hired private vehicles. Such vehicles did not enter into OGDCL complex Tando Alam therefore they are responsible to make good the loss caused to OGDCL. If they would had strong check then such fraud could not have been committed".

23. The petitioners 3 and 4 have admitted that they illegally sublet their obligations to supply tankers for the logistic base at Tando Alam in breach of their cartage agreements with PSO. Furthermore, the scam could not have taken place without the active connivance of the contractors. The contractors were paid in

full for oil which was not delivered and as such they were beneficiaries. Common sense would dictate that if you are being paid in full for a non supply the only reasonable inference is that you are also giving someone else a cut for doing this such as petitioners 1 and 2.

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24. Thus, in our considered view there are reasonable grounds to believe that there is sufficient evidence to connect petitioners No.3 and 4 to the commission of the offense and as such their respective orders for ad interim pre arrest bail both dated 27-5-2015 are hereby recalled.

25. With regard to petitioner No.5 he was a sub contractor who was not officially or as per contract connected with PSO and as such he would not have known that the main contractor had no legal right to sublet a part of the contract to him. He seems to have played a lesser role in the scam and his case appears to be one of further inquiry as such in our view his order dated 17-4-2015 for ad interim pre arrest bail is hereby confirmed.

26. **In summary.**

1. Petitioner No.1 Hussain Bux Narejo's order for ad interim pre arrest bail dated 9-6-2015 is hereby recalled.
2. Petitioner No.2 Abdul Latif's petition for post arrest bail is dismissed.
3. Petitioner No.3 Syed Abdul Jabbar Gardezi's order for ad interim pre arrest bail dated 27-5-2015 is hereby recalled.
4. Petitioner No.4 Kalb-e-Abbas's order for ad interim pre arrest bail dated 27-5-2015 is hereby recalled.
5. Petitioner No.5 Shafiq Ahmed's order for ad interim pre arrest bail dated 17-4-15 is hereby confirmed

Dated: 27-04-2016

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IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. 276 & 279-K of 2016
arising out of C.P Nos. D-2967 of 2015 & 466 of 2016

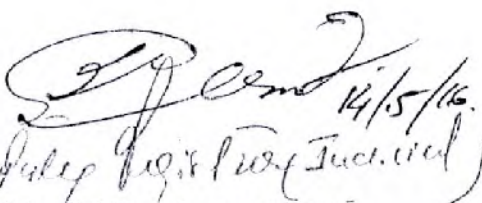
Submitted:

It is submitted that being aggrieved and dissatisfied with the Order passed by this Court dated 27-04-2016 by a Division Bench headed by Hon'ble Mr. Ahmed Ali M. Sheikh, the Petitioners filed the above-mentioned Petitions in the Hon'ble Supreme Court of Pakistan. The above Petitions have been dismissed of by the Hon'ble Apex Court vide Order dated 05-05-2016 (flag-X/1 & X/2).

The Order passed by Hon'ble Supreme Court of Pakistan may perhaps be filed and an endorsement to that effect may be made at the foot of Judgment dated 27-04-2016 passed by this Court.

Submitted for favor of kind perusal.

14/5/2016


Additional Registrar (Writ)

Assistant Registrar (Writ)

HON'BLE MR. JUSTICE AHMED ALI M. SHEIKH

Phone: 9212310.

NO: C.P 276 - K OF 2016
SUPREME COURT OF PAKISTAN

Karachi, the 10th May, 2016

From:

The Senior Court Associate,
Supreme Court of Pakistan,
M.R. Kayani Road,
Karachi.

460/B
FORWARDED TO 3855
BRANCH 2B
DATE 11/5/16
HIGH COURT OF
KARACHI

To,

The Registrar,
High Court of Sindh,
Karachi.

SUBJECT:- CIVIL PETITION NO: 276 - K OF 2016
(Kalb-e-Abbas Vs. Federation of
Pakistan and others)

On appeal from the Judgment/Order of
the High Court of Sindh, Karachi.
Dated: 27-04-2016, in C.P No. 2967/2015.

~~C.O. 1775/15~~

I am directed to enclose herewith for information and necessary
action a certified copy of the Order of this Court dated: 05-05-2016, Dismissing
the above-cited Civil Petition.

2. The receipt of this letter along-with its enclosure may kindly be
acknowledged.

Encl:- Certified copy of Order.


(SYED ZAFAR ALI)
Sr. Court Associate


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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar

Mr. Justice Amir Hani Muslim

Mr. Justice Khilji Arif Hussain

Civil petition for leave to appeal No.276-K of 2016

*(On appeal from the order dated 27.4.2016 of the
Sindh High Court, Karachi passed in C.P. D-2697 of 2015)*

Kalb-e-Abbas

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Petitioner

Versus

The Federation of Pakistan
& others

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Respondents

For Petitioner:

Mr. Shahab Sarki, ASC along with Petitioner
Mr. K.A. Wahab, AOR

For Respondents:

N.R.

Date of Hearing:

05.5.2016

ORDER


Amir Hani Muslim, J. Through these proceedings, the Petitioner seeks pre-arrest bail, which was dismissed by the impugned order of the learned Division Bench of the Sindh High Court.

2. It is contended by the learned Counsel for the Petitioner that the Petitioner is innocent and has no role to play in the alleged reference filed by the NAB Authorities. According to him the Petitioner was falsely involved in the case.

3. We have gone through the impugned order. In paragraphs 21, 22 and 23 of the impugned order specific role has been assigned to the Petitioner by the NAB Authorities. The issue as to whether the

Petitioner is entitled to bail on merits or not cannot be gone into by us

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Senior Court Associate
Supreme Court of Pakistan
Karachi.


at the stage of pre-arrest bail as the scope of pre-arrest bail is limited. The Petitioner has not pleaded *mala fide* nor any material of the nature has either been placed before the learned High Court or before this Court to bring his case within the established principles for grant of pre-arrest bail.

4. We, for the aforesaid reasons, do not find any infirmity in the impugned order, which could warrant interference. This petition is misconceived and is accordingly dismissed.



Sd/= Mian Saqib Nisar, J
Sd/= Amir Hani Muslim, J
Sd/= Khilji Arif Hussain, J

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Senior Court Associate
Supreme Court of Pakistan
Karachi.

Karachi, the
5th May, 2016
Zahid*

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Phone: 9212310.

NO: C.P 279 - K OF 2016
SUPREME COURT OF PAKISTAN

Karachi, the 10th May, 2016

From:

The Senior Court Associate,
Supreme Court of Pakistan,
M.R. Kayani Road,
Karachi.

To,

The Registrar,
High Court of Sindh,
Karachi.

SUBJECT:- CIVIL PETITION NO: 279 - K OF 2016
(Hussain Bux Narejo Vs. Federation
of Pakistan and others)


On appeal from the Judgment/Order of
the High Court of Sindh, Karachi.
Dated: 27-04-2016, in C.P No.D-
466/2016.

~~C.D. 1775/16~~

I am directed to enclose herewith for information and necessary
action a certified copy of the Order of this Court dated: 05-05-2016, Dismissing
the above-cited Civil Petition.

2. The receipt of this letter along-with its enclosure may kindly be
acknowledged.

Encl:- Certified copy of Order.


(**SYED ZAFAR ALI**)
Sr. Court Associate

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11/5/2016

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar
Mr. Justice Amir Hani Muslim
Mr. Justice Khilji Arif Hussain

Civil petition for leave to appeal No.279-K of 2016

*(On appeal from the order dated 27.4.2016 of the
Sindh High Court, Karachi passed in C.P. No.D-466 of 2016)*

Hussain Bux Narejo **Petitioner**

Versus

The Federation of Pakistan
& others **Respondents**

For Petitioner: Mr. Imam Bux Baloch, ASC alongwith Petitioner
Mr. Ghulam Qadir Jatoi, AOR

For Respondents: N.R.

Date of Hearing: 05.5.2016


ORDER

Amir Hani Muslim, J. Through these proceedings, the
Petitioner seeks pre-arrest bail, which was dismissed by the impugned
order of the learned Division Bench of the Sindh High Court.

2. It is contended by the learned Counsel for the Petitioner that the
Petitioner is innocent and has no role to play in the alleged reference
filed by the NAB Authorities. According to him the Petitioner was
falsely involved in the case.

3. We have gone through the impugned order. In paragraphs 14
and 15 of the impugned order specific role has been assigned to the
Petitioner by the NAB Authorities. The issue as to whether the

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Senior Court Associate
Supreme Court of Pakistan
Karachi.

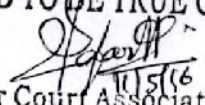
Petitioner is entitled to bail on merits or not cannot be gone into by us at the stage of pre-arrest bail as the scope of pre-arrest bail is limited. The Petitioner has not pleaded *mala fide* nor any material of the nature has either been placed before the learned High Court or before this Court to bring his case within the established principles for grant of pre-arrest bail.

4. We, for the aforesaid reasons, do not find any infirmity in the impugned order, which could warrant interference. This petition is misconceived and is accordingly dismissed.



Sd/= Mian Saqib Nisar, J
Sd/= Amir Hani Muslim, J
Sd/= Khilji Arif Hussain, J

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Senior Court Associate
Supreme Court of Pakistan
Karachi.

Karachi, the
5th May, 2016
Zahid*


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