

IN THE HIGH COURT OF SINDH AT KARACHI**Present:****Mr. Justice Muhammad Junaid Ghaffar****Mr. Justice Muhammad Humayon Khan****C.P No D-480/2017****Date of hearing: 17.05.2017****Date of short order: 17.05.2017****Ch. Abdul Rasheed, Advocate for Petitioner****Yasir Siddique, Special Prosecutor NAB alongwith Hamad Qamar, I.O. NAB.****ORDER**

Muhammad Junaid Ghaffar, J. Through this petition the petitioner seeks post arrest bail in References No. 15/2012. It has been contended on behalf of the petitioner that all other accused in this Reference are on ad-interim or confirmed pre-arrest bail(s), whereas, the main accused has also been granted post arrest bail by this Court and therefore following the rule of consistency the petitioner may also be enlarged on bail as he is behind bars since 20.1.2017

2. Precisely the facts of these cases are that various FIRs were registered by FIA, Crime Circle, Karachi under Section 406,409,109/34 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947 against officers of Pakistan Steel Mills and so also its dealers, commission agents and brokers precisely on the ground that they willfully and in defiance of the rules and regulations sold local as well as imported products of Steel Mill at a low price viz-a-viz the prevailing international prices at the relevant time. Thereafter the Honourable Supreme Court through Order dated 16.05.2012 passed in Suo Muto Case No.15/2009 in respect of corruption in Pakistan Steel Mills transferred these cases to NAB and in terms of Section 16-A of the NAB Ordinance, the matters were transferred from the Trial Court to the Accountability Court and such FIRs were deemed as References. All the other co-accused were either granted bails by the Trial Court

or by Single Benches of this Court in respect of the FIRs when the matters were pending before the Anti-Corruption Court. It further appears that subsequently the main accused Mueen Aftab Shaikh, who was the then Chairman of Pakistan Steel Mills was granted post arrest bail in this Reference as well as other References vide Order dated 16.12.2013 in Petitions bearing C.P Nos.D-3129, D-3130, D-3131, D-3132 and D-5030 of 2013. Such order was not challenged any further by the NAB Authorities. Similarly, another Petitioner namely Abdul Ghafoor Pathan was also granted bail vide Order dated 29.11.2016 in C.P No.D-3907/2012. Similarly another accused / Director of Pakistan Steel Mills (Sameen Asghar) in a somewhat similar Reference has been granted Pre-arrest Bail vide order dated 9.2.2017 passed in C.P.No.754/2016. Again various Petitioners, who were dealers for Pakistan Steel Mills were also granted bail by a learned Division Bench of this Court through a common order dated 17.01.2017 passed in C.P No.D-3811/2012 and other connected matters. The said Order reads as under:-

“The petitioners used to be registered dealers of the Pakistan Steel Mills (PSM), engaged in purchase of PSM’s products for onward sale to the public and in the above referred petitions have approached this Court for the confirmation of their ad-interim pre-arrest bail in NAB Reference No.08/2016.

The case of the prosecution, as summarized in Para 96 of the said Reference is based on the following assertions:

“96. That in view of the above facts and the evidence collected, it has been established that the accused No.1 to 3 being officials of PSM misused their authority and provided unlawful gain to the accused No.4 to 65 as beneficiaries and caused huge loss to PSM of Rs.378.197 Million. Thus the accused No.1 to 3 in connivance with accused No.4 to 65 have misused their authority for rendering illegal benefit to consumer / trade dealers and thereby committed offence Under Section 9 (a) (vi) of National Accountability Ordinance 1999 and punishable u/s 10 and Schedule thereof.”

Learned counsels appearing for the petitioners in above referred petitions, have unanimously submitted that the petitions had purchased the products from the PSM during 2008 and 2009 when there was slump in the international market compounded with the corrupt practices of the management of PSM. It seems that a Price Fixing Committee was formed at PSM which comprised of Chairman, PSM, Director (Commercial), Director (Billets & Finance) and D.G.M (Marketing), which in its absolute discretion fixed price of Billets, HR, CR and Galvanized products, on which prices these goods were purchased by the Petitioners from time to time. However, it was later found out that these prices were quite lower than the then prevailing market prices which resulted in huge losses to PSM. The case of the prosecution is that there was connivance between the Members of the Price Fixation Committee and these dealers and a plan was hatched to defraud PSM and accordingly the national exchequer. When these acts surfaced, the new management of PSM lodged F.I.R. with F.I.A. against the Members of the Price Fixation Committee, as well as, against the Members of the Price Fixation Committee, as well as, against these petitioners, as it was alleged that these petitioners got illegal benefits from the acts of the Price Fixation Committee. The said F.I.R. subsequently resulted in the instant Reference.

It was further submitted that in the Accountability Court not only the charge has been framed, but number of witnesses have also been examined and nothing has come on the record to show the connivance as alleged between the petitioners and the Price Fixing Committee. Per counsels, the petitioners are simply the purchaser of various steel products manufactured by PSM on a price notified by the Price Fixing Committee and that they had no role in said fixation. Per counsel even otherwise the connivance cannot be proved unless unshakable evidence is adduced.

Special Prosecutor appearing for the NAB along with Investigating Officer though opposed to the confirmation of pre-arrest bail, but was not in a position to produce any material cogent to show the nexus between the petitioners with the commission of crime and has frankly conceded that the connivance has yet to be proved by adducing evidence.

In the circumstance, in our opinion it is a case further inquiry and, therefore, fit for confirmation of pre-arrest bail, therefore, we confirm ad-interim pre-arrest bail granted to the petitioners vide different orders on the same terms and conditions.”

3. Learned Special Prosecutor NAB has though made a feeble attempt to oppose this Bail Petition; however, when confronted as to whether the earlier bail granting orders of the main accused as well as other private persons were challenged, neither he nor could the Investigation Officer satisfactorily respond. Whereas, the petitioner is in custody and it further appears that the majority of the evidence has been completed, and therefore, in view of such circumstances, and following the rule of consistency, and in view of the fact that these cases appear to be of further inquiry, on 17.5.2017 by means of a short order the petitioner was admitted to post arrest bail subject to furnishing surety in the sum of Rs.500,000/- and PR bond in the like amount to the satisfaction of Nazir of this Court. The above are the reasons thereof.

Judge

Judge