

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Junaid Ghaffar.
Mr. Justice Muhammad Humayon Khan.

C.P No. D-2592 of 2015

Imtiaz Ahmed Dev -----Petitioner

Versus

National Accountability Bureau ----- Respondent

C.P No. D-2593 of 2015

Imtiaz Ahmed Dev -----Petitioner

Versus

National Accountability Bureau ----- Respondent

C.P No. D-1531 of 2015

Syed Naeem Akhtar -----Petitioner

Versus

National Accountability Bureau ----- Respondent

C.P No. D-1575 of 2015

Syed Naeem Akhtar -----Petitioner

Versus

National Accountability Bureau ----- Respondent

Dates of hearing: 10.05.2017.

Date of Order: 10.05.2017

**Petitioners: Through Mr. Nisar Ahmed Tarar Advocate
in C. P. No. D-2592 and 2593 of 2015.**

**Through Mr. Shafaat Nabi Khan Sherwani
Advocate in C. P. No. D-1531 and 1575 of
2015.**

**NAB: Mr. Yasir Siddique Spl Prosecutor I.O.
Muhammad Shahzeb Durrani.**

ORDER

Muhammad Junaid Ghaffar, J. These four Petitions have been filed for bail before arrest by the afore-stated two Petitioners in respect of Reference Nos. 11 and 12 of 2015 filed before the Accountability Court at Karachi.

2. Mr. Imtiaz Ahmed Dev, Petitioner in C. P. No. D-2592 and 2593 of 2015, was working as Additional Collector of Sales Tax and Mr. Syed Naeem Akhtar Petitioner in C.P. No. D-1531 and 1575 of 2015 was working as Deputy Collector of Sales Tax at the relevant time. The Precise allegation in Reference No.12 of 2015 against the principal accused Noor Muhammad is that he obtained Sales Tax refunds of Rs. 49.27 millions on the basis of fake invoices, whereas, in Reference No. 11 of 2015 the allegation against the principal accused Imran Ghani is to the effect that he obtained Sales Tax refund of Rs. 48.32 million on the basis of fake Sales Tax invoices. The case against the present Petitioners is to the effect that they processed the refund claim(s) without verifying the genuineness and admissibility of such claims.

3. We have heard both the learned Counsel for Petitioners as well as Special Prosecutor NAB and our observations are as under:-

- a) Insofar Petitioner *Mr. Imtiaz Ahmed Dev (C. P. No. D-2592 and 2593 of 2015)* is concerned, it appears that there are two inquiry reports on record, one dated 8.5.2014 and the other dated 8.12.2014; both duly signed by the Deputy Director NAB Sindh. In the inquiry report dated 8.5.2014 it has been stated “*that in view of the above legal opinion the case against Mr. Imtiaz Ahmed Dev Additional Collector Customs may be approved for closure as there is no direct evidence available against him as opined by learned ADPGA and endorsed by DPGA NAB Sindh*”, whereas, on the basis of second inquiry dated 8.12.2014 he has been implicated in the case and has been shown as an accused in the Reference. This in

our view is enough to treat the case of the Petitioner Imtiaz Ahmed Dev as a case of further inquiry.

- b) The Special Prosecutor NAB present along with Investigating Officer was confronted repeatedly regarding this discrepancy and changed opinion in the two inquiry reports; however, both of them failed to respond, whereas, in the comments also no plausible explanation has been given and a very evasive reply is on record. The case of Imtiaz Ahmed Dev is also to the effect that at the relevant time he was not the concerned sanctioning officer to which the plea taken in the inquiry report is to the effect that at the relevant time he was also looking after Group-VI of the Department as he had sanctioned certain refunds of R. R. Enterprises. On this learned Counsel has placed copy of Reference No.17/2016 filed in respect of alleged claim of refund by R R Enterprises wherein, Mr. Imtiaz Ahmed Dev is not shown as an accused. This also makes it a case of further inquiry as to whether at the relevant time he was a sanctioning officer in respect of these alleged refund claims or not.
- c) Insofar as the case of Syed Naeem Akthar (C.P. No. D-1531 and 1575 of 2015) is concerned, though matter is being proceeded before the NAB Court and evidence has been recorded; however, the star witnesses have not so far implicated the said Petitioner in any manner, whereas, even otherwise, as per case of this Petitioner at the relevant time pursuant to office order No.02 of 2005 dated 16.04.2005, issued by the Collector, the refund claims of Rs. 1.0 million and above was not within his jurisdiction as Deputy Collector, but with the Additional Collector.
- d) Even otherwise, it appears that both P.W-1 & P.W-2 while confronted have confirmed that this Petitioner was not a sanctioning officer. In the circumstances his case also is of further enquiry.
- e) The Special Prosecutor NAB as well as I.O. was confronted as to the status of the adjudication proceedings in this matter to which a very evasive reply was given by them, whereas, the Counsel for Petitioner submits that though certain Show Cause Notices were issued against the main accused for alleged Sales Tax refunds, but they were never adjudicated finally and no liability was determined.

- f) Insofar as Special Prosecutor NAB's objection that bail of main accused No.1 Noor Muhammad has been dismissed vide order dated 24.8.2016 in C.P. No. D-2876/2015 is concerned, we may observe that in that Petition the only ground taken on behalf of the Petitioner was on account of statutory delay and not on merits, whereas, even otherwise, the role assigned to the main accused is materially different to the present Petitioners and therefore, the same is not relevant.
- g) It further appears to be an admitted position that at the relevant time when the sales tax refunds were claimed by the principal accused in both references a system known as **STARR** (Sales Tax Automated Refund Repository System) initiated by FBR was operative and under this system the officer was required not to raise petty objections and let the process of refund go through expeditiously on the basis of input already recorded in the data through the STARR system. The said system was introduced so as to curtail the discretion being exercised by the officers while objecting to the refunds at the behest and persistent demands of the business community. Ordinarily no officer was required to raise frivolous and minor objections and scrutinize what the STARR system had passed, processed and sanctioned.
- h) Insofar as the data which was fed in the **STARR** system is concerned, there is no allegation in the Reference to that effect nor any such data processing and feeding officer has been implicated.
- i) The only allegation against the present Petitioners is to the effect that they deliberately and illegally failed to exercise their authority to prevent the grant of such refund and therefore, misused their authority and processed / recommended for sanction of illegal sales tax refund causing loss to the National Exchequer. However, it is a matter of record that their duty, when analyzed vis-à-vis. the **STARR** system; we are of the considered view that case of both the petitioners is of further inquiry as to whether they were really involved in the alleged illegal refund of sales tax. Moreover, we do not see any specific role assigned to them which again makes their case of further inquiry.
- j) All evidence so far recorded clearly makes out a case of both Petitioners as a case of further enquiry, whereas, even otherwise, the entire case is dependent on documents, which are already in possession of the prosecution, whereas, they are not required for any further

investigation, and therefore, no fruitful purpose would be served, if these Petitions are dismissed.

- k) It is also important to note that these alleged bogus claims pertain to the year 2005, whereas, the Reference has been filed in the year 2015.
- l) In more or less similar circumstances in respect of alleged involvement of Sales Tax Officers and refund claimant, in the case reported as **2016 P.Cr.L.J 79** (*Sarfraz Ahmed and another v. The Chairman National Accountability Bureau (NAB) through Chairman and others*, the Court has granted bail on the principle of further enquiry, and for the reason that NAB had failed to collect any incriminating material regarding any unlawful gain or gratification for the alleged act of the officers. All this makes it a case of further enquiry.
- m) Reliance may also be placed on the case of *Syed Amir Hashmi and another v. The State* (**PLD 2004 Karachi 617**), and *Muhammad Asif v. The State & Others* (**2016 SCMR 1540**).

4. In view of hereinabove facts and circumstances of the case, Ad-interim pre arrest bails granted to the Petitioner **Mr. Imtiaz Ahmed Dev** in C.P.Nos D-2592 & 2593 of 2015 vide Order dated 12.5.2015, and to petitioner **Mr. Syed Naeem Akhtar** in C.P.Nos. D-1531 & 1575 of 2015 vide orders dated 25.3.2015 and 26.3.2015 respectively are confirmed on the same terms and conditions. However, the aforesaid observations, needless to state are on a tentative assessment of the evidence so far recorded, and shall not be taken as a final pronouncement by this Court, in any manner, and the trial Court while finally deciding the case shall not be influenced by any of such observation(s) hereinabove.

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