

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D-546 of 2016	CP No. D-1674 of 2016
CP No. D-625 of 2017	CP No. D-2032 of 2016
CP No. D-2875 of 2015	CP No. D-470 of 2016
CP No. D-559 of 2016	CP No. D-650 of 2016
CP No. D-961 of 2016	CP No. D-1515 of 2016
CP No. D-1627 of 2016	CP No. D-1630 of 2016
CP No. D-1633 of 2016	CP No. D-1638 of 2016
CP No. D-1660 of 2016	CP No. D-1662 of 2016
CP No. D-1663 of 2016	CP No. D-1670 of 2016
CP No. D-1704 of 2016	CP No. D-1736 of 2016
CP No. D-1863 of 2016	CP No. D-1943 of 2016
CP No. D-2890 of 2016	CP No. D-3124 of 2016
CP No. D-3287 of 2016	CP No. D-3459 of 2016
CP No. D-3460 of 2016	CP No. D-3461 of 2016
CP No. D-3462 of 2016	CP No. D-3464 of 2016
CP No. D-764 of 2016	CP No. D-772 of 2017

Date of hearing: 12.09.2017.

Date of order:

Petitioners Abdul Hafeez Leghari, Abdul Wahid, Sanaullah Junejo, Mahboob Ali Buriro, Sham Ahmed Sohu, Abdul Waheed, Muhammad Ramzan, Farrukh Munir, Syed Mehdi Ali Shah, Shahzad Bhutto, Abdul Latif Qureshi, Muhammad Atif, Muhammad Ishaque, Muhammad Jameel, Muhammad Waleed, Javed Ahmed Shaikh, Liaquat Ali Sher Baloch, Jahanzaib Babar, Taj Muhammad, Sh. Qadir, Mahrab Imtiaz, Harish Kumar, Atique Abdul Hameed, Sh. Muhammad, Ishaque, Faique Ali, Abbas Hussain, Saiful Malook Samaro, Muhammad Imran, Muhammad Murad, Asadullah Solangi, Ghulam Muhammad Memon and Abdul Raheem Burfat are present on bail.

Mr. Ishrat Ali Lohar, Advocate for petitioner.

Mr. Riazat Ali Sahar, Advocate for petitioner.

Mr. Jangu Khan, Special Prosecutor NAB alongwith Mr. Sarwan Ahmed A.D. / I.O NAB (K).

ORDER

FAHEEM AHMED SIDDIQUI, J: This single judgement will dispose of the captioned constitutional petitions filed by the petitioners

above named, who are seeking pre-arrest bail in respect of the call up notices, issued to them by NAB Authorities, in connection with the Reference No.23 of 2016 filed by NAB authorities against the petitioners.

2. As per the aforesaid reference, it is revealed after investigation that the relevant record of TMA Sindhri was purposefully concealed by accused persons, pertaining to period of accused No. 07 Mehboob Hussain Buriro, ex-Town Officer as they prepared bogus bills and issued cheques to various contractors who did not perform any work. Concealment of record was a general practice by accused government officials because they prepared bogus documents. The record has been intentionally and with ulterior motive misplaced by accused persons/government officials. Ground check was conducted to verify the execution of the work, but no work was carried out that could be verified. It is explicitly under dispute that work was not executed; however, funds were continuously transferred from TMA accounts to private beneficiary persons by the accused persons.

It is also mentioned in the aforesaid reference that series of letters were written individually as well as through the Secretary, Local Government Department, Government of Sindh to appear along with the relevant record but no record was produced. The purpose of concealment is very clear that they prepared bogus bills without preparation of relevant record and just issued cheques in order to misappropriate TMA Sindhri Funds. In order to ascertain facts, through bank record, beneficiaries (private persons) were identified. With the help of cleared cheques and assistance of concern officers of banks, details of accounts were traced

out. None of the accused beneficiaries had any work order or prepared to justify as to against which work they received payments. The *modus operandi* used by accused persons was that they issued cheques of bogus payments in the names of private beneficiary persons, who then deposited the same into their accounts and withdrew the amount on the same day or next few days in cash.

3. It is also revealed through investigation that six tenders were published for execution of different works by TMA (Defunct) Sindhri during the period from 1 August 2013 to 30 April 2015 but no tender was cleared by Sindh Public Procurement Regulatory Authority (SPPRA). The record has revealed that TMA (Defunct) Sindhri maintained three bank accounts i.e. Account No. 04323-1 in NBP Mirpurkhas branch, Account No. 0404-045884-1000 in Sindh Bank Mirpurkhas branch; Account No. 0413-045884-1000 in Sindh Bank Sanghar branch respectively. The cheques were issued from said accounts to 29 private accused persons and as such a loss to the public exchequer was caused to a tune of Rs. 109,865,018/-.

4. We have heard the learned advocates appearing for the petitioners as well as the learned Special Prosecutor NAB.

5. It is contended on behalf of the petitioners that the petitioners belong to respectable families and they never indulged in such type of practice. The petitioners are involved in this case due to ulterior motives and on the ground of political rivalries. The petitioners are enjoying a modest life and their income and living standards are not disproportionate. It is also contended on behalf of the petitioner that the trial is being

carried out and the petitioners are regularly attending the trial court and the case against the petitioners is almost at the verge of completion, at this stage recalling of the interim order of pre-arrest bail will not be justified.

6. The learned and Special Prosecutor of NAB, while opposing the bail plea, raised on behalf of the petitioners, submits that a huge amount has been misappropriated by the petitioners. The funds of TMA Sindhri were for the betterment of the locality but no work was carried out and bogus bills were prepared and on the basis of those bogus bills, huge amount was withdrawn and misappropriated by the officials and private accused persons in connivance with each-others. According to him, the cheques were issued and deposited in the account of the private respondents and case amount was either withdrawn on the same day or within a few days, which indicates that the amount was misappropriated.

7. In the instant case, a good number of accused persons have been involved and after getting pre-arrest bail, they are attending this court as well as trial court on nearly each date of hearing. In response to a query on a previous date of hearing, the learned Special Prosecutor NAB informed that about 4/5 material witnesses are yet to be examined while the contention of the Consul for the petitioner was that 07 witnesses have been examined out of 24 witnesses, shown in the calendar. If, we take the contention of the learned Special Prosecutor regarding remaining of 4/5 witnesses *only* in completion of case, then it may be taken that the case against the petitioners is at the verge of completion.

Some of the petitioners succeeded in getting interim relief of pre-arrest bail in the year 2015 i.e. even before filing of the Reference before

the NAB Court. Since then, they are attending this court and it appears from the record that all the petitioners are regularly attending this Court as well as the trial Court. There is no complaint from the prosecution side that during the pendency of these petitions, any of the accused persons have ever misused the concession of interim pre-arrest bail granted to him. The evidence against the accused persons depends on documentary evidences, the relevant record and documents are in custody of the prosecution, and as such there is no apprehension of the tampering with the prosecution evidence.

8. At this juncture, it is important to point out that we are cognizant of the rule laid down by the honourable Supreme Court in the case of Rana Muhammad Arshad v. Muhammad Rafique and others (PLD 2009 Supreme Court 427), where the rules for grant of pre-arrest bail have been specified. The accused persons are on interim pre-arrest bail since a long time and after filing of reference, the trial has been initiated as such the accused persons are no more required for the purpose of investigation. It is established law that an accused of a criminal case is not to be kept behind the bar solely on the ground that he is facing investigation or being tried in a Court, which actually amounts to punishment in advance. The accused may be kept in custody and bail may be declined where there is apprehension tampering with the prosecution evidence by the accused; where there are chances of repetition of offence, if the accused is released on bail and where the accused is a previous convict. Reference in this regard is made to the case of Tariq Bashir and 5 others v. The State (PLD 1995 Supreme Court 34). However, we need it to insist that grant of pre-

arrest bail cannot be with-held on the ground of commencement of *trial* or likely of its being concluded in *near* future if *otherwise* accused has made out a case for grant of bail within meaning of Section 497 (ii) Cr.PC because the *law* does not provide any compensatory mechanism for *unjustified* detention of one day *even*. Reference may be made to the case of Syed Khalid Hussain Shah 2014 SCMR 12 wherein it is held as:

‘7. ..Commencement of trial, too, cannot come in the way of grant of bail, if in the opinion of the Court, a case for further inquiry is made out.’

However, there is an *exception* while entertaining an application for cancellation of bail or one for confirmation or *otherwise* of a pre-arrest bail. The *exception* appears to be for *simple* reason that when *determination* of innocence or guilt is within sight then it would always be *safe* to let the *interim* liberty of accused continue as final determination in either way shall serve its purpose i.e guarantee *liberty* of an innocence as well giving due to a *convict*. In this respect reference is made to the case of Rehmatullah v. The State (2011 SCMR 1332).

9. The upshot of the above discussion is that the interim relief of pre-arrest bail granted to the accused persons is hereby confirmed on the same terms and conditions. However, the Accountability Court is directed to pace up the trial and dispose of the case preferably within a period of 3 months.

JUDGE

JUDGE