

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-354 of 2017

Date	Order with signature(s) of Judge(s)
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Present:
Muhammad Ali Mazhar, J.
Abdul Maalik Gaddi, J.

Abdul Rehman.....Petitioner

Versus

The Chairman
National Accountability Bureau
& others.....Respondents

20th February, 2017.

Mr. Akbar Zameen Khattak, Advocate along with petitioner.

Mr. Akram Jawed, Special Prosecutor, NAB.

Mr. Ahmed Bin Zahid, I.O, NAB.

Mr. Asim Mansoor Khan, DAG.

Muhammad Ali Mazhar, J. The petitioner has applied for pre-arrest bail in NAB. Reference No.9/2014. Initially, the petitioner was not nominated in the reference however by means of supplementary reference he has been implicated as accused No.12. The petitioner was granted interim pre-arrest bail by this court on 06.02.2017 subject to furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs) with P.R. bond in the like amount to the satisfaction of the Nazir of this court.

2. In paragraph 11 of the NAB Reference, the role of the present petitioner has been highlighted as under:-

“That the investigation also revealed that Abdul Rehman (accused No.12) also found involved in this modarba scam as he induced general public to deposit and invest in the business for which he issued modarba agreements and cheques signed by Muhammad Talha (accused No.3)”.

3. The learned counsel for the petitioner argued that the petitioner has been falsely implicated by the NAB. No specific role has been assigned against him except a sweeping statement in the reference. The alleged involvement of the petitioner is highly doubtful and matter is required for further inquiry. On perusal of the supplementary reference, it appears that NAB has miserably failed to disclose any account of the petitioner in which the amount has been credited or transferred in any other account. The matter requires further inquiry to prove the guilt of the petitioner. No transaction has been pointed out to demonstrate that any amount was credited in the account of petitioner or he misappropriated any amount for his own consumption. This is not suffice to prove the guilt that the petitioner allegedly issued modarba agreements and cheques signed by Muhammad Talha. It was further contended that no complaint against the present petitioner was received by the Investigating Officer.

4. The learned Special Prosecutor NAB argued that the petitioner is nominated accused in NAB Supplementary Reference No.09/2014 wherein his role is narrated in the said reference for an offence as defined under Section 9 (a) and punishable under Section 10 of NAO, 1999. Hundreds

of complaints were received against the accused persons namely Shafiq-ur-Rehman, Muhammad Inam, Muhammad Talha and others. It was stated in these complaints that the accused persons were receiving huge amount on the pretext of modarba business (Islamic Mode of financing). The accused persons promised to pay huge profits to the investors. The petitioner Abdul Rehman (accused No.12) was also found involved in this modarba scam as he induced general public to deposit and invest in the business for which he issued modarba agreements and cheques signed by Muhammad Talha (accused No.3). He pointed out paragraph No.40 of investigation report in which it is stated that the petitioner was teacher at Jamia Madressa Zia-ul-Quran, Rawalpindi and he used to take deposits from claimants and further used to issue Modarba agreements signed by Muhammad Talha. In paragraph No.41 of the investigation report it is stated that various call-up notices were issued to summon the petitioner but he avoided to appear before the Investigating Officer. In paragraph No.42, it is further stated that sufficient documentary as well as oral evidence is available on record, which establish the involvement of co-accused in commission of offence of cheating public at large and in criminal breach of trust under NAO, 1999.

5. Heard the arguments and perused the record. What we have noticed that in the Reference as well as investigation report and the comments, no specific allegations have been leveled against the present petitioner that some amount was landed in his account. Main allegation against him is that he induced public at large to invest their savings in the Modarba business. Whether the petitioner induced general public against some consideration or he is also equally

involved in the offence of cheating general public require evidence. On one hand, the Investigating Officer informed us that some more evidence is to be collected by him but on the other hand the investigation report and comments do not show anything beyond the role assigned to the petitioner in the reference. The I.O also failed to demonstrate as to whether any complaint was received against the accused or he was beneficiary of any amount. Whether he induced the general public or not this crucial aspect requires further inquiry which is required to be considered by the trial court.

6. In the **C.P. No.D-4162 of 2016** while granting bail to the co-accused Moulana Mufti Saifullah Jameel in the same reference, we held that whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail and in such a situation it would be better to keep him on bail than in the jail during the trial. Prosecution in order to make out a case for refusal of bail to an accused is primarily supposed to place on record material on basis of which he is believed to be involved in a non-bailable offence, but in absence of such material the court for the purpose of releasing the accused on bail, instead of dilating upon the facts of the case in details, can dispose of the matter by holding that his detention is unjustified or unreasonable. Reference can be made to **PLD 1996 S.C. 241 & PLD 2002 S.C. 572**. In the bail order authored by one of us (Muhammad Ali Mazhar-J) in the case of co-accused **Shafiq-ur-Rahman (CP.No-D-3294/29014)** the court held that further inquiry is a question which must

have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that deeper appreciation of evidence is not permissible at bail stage simultaneously it is also well settled that object of trial is to make an accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Accused is entitled to expeditious access to justice, which includes a right to fair and expeditious trial without any unreasonable and inordinate delay. The intention of law is that the criminal case must be disposed of without unnecessary delay it is not difficult to comprehend that inordinate delay in imparting justice is likely to cause erosion of public confidence in the judicial system on one hand and on the other hand it is bound to create a sense of helplessness, despair feeling of frustration and anguish apart from adding to their woes and miseries. Reference: **Ali Anwar Ruk, Abdul Jabbar, Syed Mansoor Ali and Sardar Amin Farooqui reported in 2014 SBLR 766, PLJ 2014 Karachi 251=2014 CrLJ 777, PLJ 2014 Karachi 254=2014 UC 784 and PLJ 2014 Karachi 268.**

7. As a result of above discussion, interim pre-arrest bail granted to the petitioner on 6.2.2017 in NAB Reference No.9/2014 is confirmed on the same terms and conditions. The above findings are tentative in nature and shall not prejudice the case of either party. In addition, the petitioner is also directed to deposit his original valid passport with the Nazir of this court. The I.O informed us that he has

already sent a request to the Ministry of Interior for placing the name of petitioner on ECL. The petitioner shall regularly attend the trial court and in the event of default, the learned trial court may forward the reference to this court immediately for further proceedings. The petition is disposed of.

Judge

Judge