

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

C.P. No. D - 2979 of 2016

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DATE

ORDER WITH SIGNATURE OF SD/-JUDGE

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28.12.2016

1. Forkatchapeshi
2. For hearing of MA 23880/16

M/s. Salahuddin Ahmed & MansoorulHaq Ansari, Advocate for petitioner.

Mr. FazalHussainJamali, Standing Counsel

Mr. Abdul WaheedBijarani, Special Prosecutor NAB

Through instant petition, petitioner seeks post arrest bail in Reference No. 25 of 2016 (Re-Shafiq Ahmed Khan and others v. NAB).

2. At the outset, learned counsel for the petitioner has emphasized paragraph- 5 of the Reference which is as under:-

“That the investigation further revealed that accused No.2, Anwar Ahmed Zai the then Chairman of the BISE, Mirpurkhas during his tenure from 11.09.2004 to 20.06.2007 in connivance with accused No.6 appointed 4 persons namely Mashkooor Ahmed Zai (his real younger brother) as Caretaker (BPS-16), Abdul Haseeb Qureshi as Librarian (BPS-16), Muhammad Hassan as Research Associate (BPS-16) and Zulfiqar Ali as Assistant Controller of Examination (BPS-17) illegally and without any advertisement. Further, the accused No.2 in connivance with accused No.6,7,8 and deceased accused Muhammad Ramzan also appointed 3 persons namely Muhammad Imran Khan as Deputy Secretary (BPS-18), Abdul Hafeez as Secretary (BPS-17) and Barkat Ali Qureshi as Deputy Director Research (BPS-17) illegally and without adhering to the required qualification and experience.

He further contends that there is no allegation of any illegal gratification received by the petitioner; petitioner is not beneficiary; as per Reference the persons who were appointed illegally are yet working in the department; they have not been arraigned as well. There is no speck of evidence that the petitioner has any nexus with them.

3. In contra, learned Special Prosecutor NAB contends that by appointments made against the sanctioned posts, petitioner has given loss to the public exchequer.

4. Heard and perused the record.

5. Perusal of paragraph-5 of Reference shows that the petitioner has been implicated in instant Reference on the ground that he appointed four persons namely Mashkoor Ahmed Zai (his real younger brother) as Caretaker, Abdul Haseeb Qureshi as Librarian, Muhammad Hassan as Research Associate and Zulfiqar Ali as Assistant Controller of Examination *illegally* and without any *advertisement*. Whether making appointments in deviation to set rules and procedure would fall within meaning of any of schedule Offences or it is a mere *irregularity*, as pleaded by accused? is a *prima facie* question on which *whole* prosecution charge against the applicant/accused hinges. The prosecution case since makes charge against applicant/accused open to further probe therefore, it would not be just and proper to keep the applicant/accused deprived of his *guaranteed* liberty when it is well established principle of law that bail cannot be withheld as conviction. Instant case is based on documents and veracity of those documents is yet to be seen. Complete record is available with NAB hence there is no chance of tampering with those documents. Besides yet the trial Court has to adjudicate upon the merits of the case and see the veracity of the inquiry reports hence in our view this is a case of further probe.

6. Accordingly the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs. 10,00,000/- (One million) and PR bond in the like amount to the satisfaction of Trial Court. The petitioner is directed to surrender his passport before the trial Court and would not be competent to travel abroad except with the permission of trial Court.

JUDGE

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