

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Constitutional Petition No.D-3806 of 2017

PRESENT:

**Mr. Justice Abdul Maalik Gaddi &
Mr. Justice Arshad Hussain Khan**

Date of hearing: 23.01.2018.

Date of decision: 31.01.2018.

Barrister Khawaja Naveed Ahmed, Advocate for petitioner.
Mr. Jangu Khan Rajput, Special Prosecutor NAB.

ORDER

ARSHAD HUSSAIN KHAN, J., By means of this order, we intend to dispose of present petition for grant of bail arising out of National Accountability Bureau (NAB) Reference 11/2017, The State v. Muhammad Yousuf and others which is pending before the Accountability Court No.VI at Hyderabad.

2. The allegations against the petitioner and other accused as per NAB Reference No. 11/2017 are that the accused Muhammad Yousuf (Ex-Head Constable, BPS-7), Arif Yousuf (Police Constable, BPS-5) and Irshad Yousuf (Junior Clerk, BPS-11) in connivance with other co-accused including the present petitioner amassed huge wealth beyond known source of income. As per the inflow/outflow chart, the total assets beyond known sources of income was Rs.196,080,484/- and also accumulated wrongful gains through bogus commutation and gratuity cheques cleared through District Accounts Office, [DAO] Hyderabad. The said cheques were prepared and approved through DAO Hyderabad and further deposited in the benami accounts of UBL and Soneri Bank Hyderabad fraudulently opened/managed by the accused persons in connivance with the accused Salman Askari, (Ex-Branch Manager Soneri Bank Latifabad No.7 Branch, Hyderabad) and the Petitioner namely Syed Shoaib Hassan Zaidi (Ex-Branch Manager UBL, BISE Branch, Hyderabad). Amounts calculated through the bank accounts in

UBL and Soneri Bank to the tune of Rs.64,410235/- and 323,004453/- respectively. It is also the case of the prosecution that the cheque books of benami accounts were kept by the accused persons in their possession which were recovered during the search of house of accused persons. The accounts were maintained and cheques of DAO were passed with the connivance of Branch Managers of the Banks and after realization of cheques, the amount were withdrawn in cash by accused persons and were further invested in the assets.

3. The petitioner in furtherance of his intention managed the benami accounts and the transactions pertaining to bogus pension bills. He facilitated the accused namely Muhammad Yousuf (Ex-Head Constable, BPS-7), Arif Yousuf (Police Constable, BPS-5) and Irshad Yousuf (Junior Clerk, BPS-11) to purchase properties from the fraudulent amounts received in the accounts of the family of accused persons. The accused persons including the present petitioner in connivance with each other and with their common intention acted in such a manner which resulted in huge loss to the National exchequer to the tune of Rs. 545,162,776/- and got the benefit for themselves and as such all the accused persons committed acts of corruption and corrupt practices defined under section 9(a) and punishable under section 10 of National Accountability Ordinance, 1999 (NAO) which lead to NAB filing a reference against them which is now pending before Accountability Court No.VI, at Hyderabad.

4. The case of the petitioner, as averred in the petition, is that he is a banker by profession and in connection with his employment he was posted as Branch Manager in various branches of UBL Hyderabad in the year 2011 to 2013 and lastly, he was posted as Branch Manager in Summit Bank Latifabad No.7, Branch Hyderabad. During the posting in UBL one Muhammad Yousuf was maintaining his accounts in the UBL Unit No.7, Latifabad branch and the petitioner being Branch Manager was duty bound to provide the due facilities to every customers of the Bank which he was providing to all the customers of the Bank including Muhammad Yousuf without knowing his designs and the petitioner is innocent and victim of circumstances. The allegations levelled in the reference are false and further the petitioner is not the beneficiary of subject transaction of the NAB reference. Prior to the present petition,

the petitioner had filed C.P. No.D-630 of 2017 for pre-arrest bail wherein he was granted ad-interim pre-arrest bail however, later on same was not confirmed by this court and the petitioner was taken into custody. The case is proceeding in the trial court and witnesses examined so far, though owned their bank accounts however, disowned the financial transaction made in their accounts. The petitioner filed the present petition for bail after arrest.

5. Upon notice of the present case, the learned Special Prosecutor, NAB, filed para-wise comments on behalf of the NAB, wherein while raising preliminary legal objection in respect of the maintainability of the present petition, it has been stated that the petitioner is fully involved in the crime and his role is specific in the reference as he opened different benami accounts in UBL in order to receive bogus pension bills in the said accounts and the account of his family members and he used to get 15% as commission on every transaction of bogus pension bill. It is also stated that the petitioner is not entitled for any relief in the present petition and the petition is liable to be dismissed.

6. Learned counsel for the petitioner during the course of his arguments while reiterating the contents of the petition has argued that the petitioner is innocent and has been falsely implicated in the case and the charges against the petitioner are motivated with mala fide intention of the NAB authorities. It is also argued that the petitioner, being the bank manager, was under pressure to get maximum accounts and as such the accounts were opened with bona fide intention in order to promote the bank's business. There is no *mensrea* can be attributed towards the petitioner as during the investigation nothing has been recovered which could reflect that the petitioner either accumulated wealth and/or gained any monetary benefit for the subject transaction and/or was leading lavish life as alleged. It is also argued that the petitioner does not have any property in his name nor in the name of his family members. Conversely, he and his family members are facing financial hardship due to his imprisonment. It is also argued that the parameters for pre-arrest bail are different from the parameters of bail after arrest. The provisions of bail after arrest are fully attracted to the petitioner as none of the PWs, so far examined in the case, deposed against the petitioner. Lastly, argued that all the allegations against the

petitioner in the NAB Reference are without substance, and there is no likelihood that he would get any conviction in the case as such the petitioner has a fit case for grant of bail after arrest in the present case.

7. Conversely, the learned Special Prosecutor, NAB argued that there is sufficient evidence against all the accused persons including the petitioner to prove that they have committed the offence for which they have been charged in NAB Reference beyond a reasonable doubt and furthermore, this court has already dismissed pre-arrest bail of the petitioner on merit vide order dated 05.12.2017. Furthermore, PWs so far examined before the NAB Court have fully supported the case of prosecution and as such the petitioner is also not entitled to post arrest bail.

8. We have considered the contentions raised by the learned counsel for the petitioner, perused the record as well as the law on the point.

9. It is now well settled that the NAB cases being white collar crime are generally of an intricate and complex nature and the whole transaction and each component part of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offence. However, notwithstanding this observation it is settled law that in cases of bail each of the accused needs in some way to be connected with the alleged offence and in the case of nonailable offences such as the present case there are reasonable grounds for believing that the accused is connected with the offence charged. Reliance in this regard can be placed on the case of MOHAMMAD AZAM BROHI and others v. The STATE through Chairman, National Accountability Bureau and others 2016 P Cr. L J 1417[Sindh].

10. From the perusal of the NAB Reference 11 of 2017, it appears that the present petitioner has been given specific role. The relevant portion of the NAB Reference showing role of the petitioner, for the sake of ready reference is reproduced as under:

“5. That the investigation further revealed that accused No.4 Salman Askari (Ex-Branch Manager Soneri Bank Latifabad No.7

Branch,) and accused No.5 Shoaib Hassan Zaidi (Ex-Branch Manager, UBL BISE Branch) managed the Benami accounts and the transactions pertaining to bogus pension bills. They facilitated the accused No.1 to 3 to purchase properties from the fraudulent amounts received in the accounts of the family of the accused persons and the Benami accounts.

6. That the investigation further revealed that the accused No.1 to 3 accumulated wealth beyond known sources of income through bogus commutation and gratuity cheques cleared through DAO Hyderabad. The said cheques were prepared and approved through DAO Hyderabad and further deposited in the benami accounts of UBL and Soneri Bank Latifabad Branch Hyderabad. The cheque books of benami accounts were kept by the accused persons in their possession. The accounts were maintained and the cheques of DAO were passed with the connivance of accused No.4 and 5 and after realization of the cheques, the amounts were withdrawn in cash by the accused persons and were further invested in the assets. The accused persons in connivance with each other caused huge loss to the National exchequer to the tune of Rs.545162776 disproportionate to their known source of income. Which they could not reasonably account for.

7. That in view of the above facts and evidence collected, it has been established that the accused No. 1 to 3 have amassed wealth beyond known pecuniary source of income in connivance with accused 4 and 5. Investigation with regard to accumulation of assets is still under progress. Additional tangible evidence collected for remaining undisclosed assets may be submitted by way supplementary Reference. Thus the accused persons have committed the offence of corruption and corrupt practices as envisaged in Section 9(a) of the National Accountability Ordinance, 1999 punishable under Section 10 of the Ordinance and schedule thereto.”

[underlining is to add emphasis]

11. From the perusal of the Reference, it is clear that the role of petitioner was in essence to facilitate the other co-accused in committing crime, which caused a huge loss to the National exchequer. He was a part of the joint criminal enterprise with all the other petitioners all of whose active participation was necessary in order for the offence mentioned in the charge. Thus, in our view there is also sufficient material before us to conclude that there are reasonable grounds to connect the petitioner to the offence for which he has been charged along with the other co-accused in the NAB Reference of corruption under section 9(a), NAO, punishable under section 10, NAO.

12. Before going into further discussion, it is imperative to mention here that this court through a common order dated 05.12.2017 passed in

different Constitutional petitions, bearing Nos. CP No.D-630, 2185, 2243 and 2244 of 2017, filed by the accused persons including the present petitioner, involved in the NAB Reference 11 of 2017, dismissed the post arrest bail of the accused namely Salman Askari having similar nature of charges as that of petitioner, and other co-accused. Relevant portion of the said order, for the sake of ready reference, is reproduced as under:

“..... The documentary and oral evidence, prima facie, available on record does not tally with the known source of income of the petitioners and it rather seems to connect the petitioner with the alleged offence. Therefore, we are of the view that the petitioners Muhammad Yousuf, Arif Yousuf and Salman Ali Askari have not been able to make out a case for post arrest bail.”

[underlining is to add emphasis]

13. From perusal of the above order, whereby the pre-arrest bail of the present petitioner was dismissed, it also transpires that this court while deciding the pre-arrest bail of the petitioner on merits has observed as under:

“11. During the course of arguments, learned Special Prosecutor NAB and the investigating Officer of the case have disclosed that Syed Shoaib Hassan Zaidi, Ex-Branch Manager, was maintaining an account on the name of his wife namely Mehak Zehra where pension bills of benami account holders would be deposited although his wife has never remained in any government service. It was further informed that such documents have already been submitted in the trial court and a copy supplied to the said petitioner. Learned defense counsel could not deny such accusations. Moreover, said petitioner namely Syed Shoaib Hassan Zaidi has not been able to show that the charges against him have been trumped up or are the result of some mala fide on the part of NAB. This being case we are of the view that the petitioners Irshad Yousuf and Syed Shaoib Hassan Zaidi are not entitled to the extra ordinary relief of pre-arrest bail.”

[underlining is to add emphasis]

14. It is also settled that this Court has the jurisdiction to grant the bail to the petitioners while exercising constitutional jurisdiction but while doing so we cannot stretch the provisions of Criminal Procedure Code just to facilitate the petitioners to get themselves released on bail as the provisions of the said Code have specifically been ousted in the

NAB Ordinance. Even otherwise, the provisions of a special law override the general law.

15. As a necessary corollary to the discussion made in the foregoing paragraphs, we are of the view that there is sufficient material before us to conclude that there are reasonable grounds to connect the petitioner with the offence for which he has been charged and he is involved in the commission of the fraud alongwith other co-accused, which ultimately deprived the National exchequer from millions of rupees. Further the petitioner has miserably failed to establish that his case falls within the ambit of further inquiry justifying exercise of constitutional jurisdiction by this Court for grant of post arrest bail to the petitioner. Consequently, we see no merits in this petition, which is hereby dismissed.

16. In order to prevent any undue delay in the trial as per the dictum laid down in the case of *MUHAMMAD JAHANGIR BADAR v. The STATE and others* (PLD 2003 Supreme Court 525), the Accountability Court hearing this matter is directed to hear and decide the same within 03 months from the date of this order. The office is directed to send a copy of this order to the Accountability Court hearing the reference, for compliance which shall also submit fortnightly progress reports to this Court through Additional Registrar of this court.

17. Before parting with this order we would like to make it clear that our findings are based only on a tentative review of the material before us and shall not prejudice the case of either party at trial which will be decided by the Accountability Court on merits based on the evidence before it.

JUDGE

JUDGE

Hyderabad
Dated: 31.01.2018.

