

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

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

CP No. D- 199 of 2016

1. Dr. Mushtaq Ahmed and 03 others ----- Petitioners
Versus
Federation of Pakistan and others ----- Respondents

CP No. D- 255 of 2016

2. Abu Bakar ----- Petitioner
Versus
Federation of Pakistan and others ----- Respondents

CP No. D- 1708 of 2016

3. Muhammad Yousif Khanzada ----- Petitioner
Versus
Federation of Pakistan and others ----- Respondents

CP No. D- 2826 of 2017

4. Mushtaq Ahmed Shaikh ----- Petitioner
Versus
Federation of Pakistan and others ----- Respondents

CP No. D- 3582 of 2016

5. Shafi Muhammad Shah ----- Petitioner
Versus
The State (NAB and others) ----- Respondents

Date of Hearing : 17.1.2019

Date of Announcement : 24.01.2019

Mr. K.B. Lutuf Ali Leghari, advocate for Petitioner in CP No. D- 199 & 1708, 3583 of 2016 and CP No. D- 2826 of 2017

Mr. Imtiaz Ali Abbasi, advocate for Petitioner in CP No. D- 255 of 2016.

Mr. Jangu Khan, Special Prosecutor NAB along with Muhammad Umair
I.O. NAB

Mr. Allah Bachayo Soomro, Addl.A.G.
Mr. Aslam Pervaiz Khan, Asst. Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J.- This Court vide orders dated 29.1.2016 in C.P No.D-199/2016, 11.02.2016 in C.P No.D-255/2016 & 21.12.2016 in C.P No.D-3582/2016 admitted the Petitioners namely Dr. Mushtaque Ahmed Shaikh, Muhammad Ayaz Abro, Ahsanullah Abro, Muhammad Yousif, Abu Bakar and Shafi Muhammad Shah, to ad-interim pre-arrest bail in Reference No. 27 of 2018. It may be noted that the Petitioners Mushtaque Ahmed and Muhammad Yousif have also filed separate petitions bearing C.P No.D-3052/2015 & C.P No.D-1708/2016 for returning of the Voluntarily Return (VR) amount paid by them to the Respondent-NAB, in the investigation of above reference, in pursuance of Section 25(a) of the National Accountability Ordinance, 1999 (NAO-1999), therefore, all the above referred Constitutional Petitions are being disposed of by this single Order.

2. We have noted that petitioners Mushtaque Ahmed Shaikh & Muhammad Yousif who were admitted to ad-interim pre-arrest bail, were subsequently arrested on 22.2.2017 and 10.3.2017 respectively in References No.2/2016 and 11/2017 and are therefore confined in jail custody. Learned counsel for the Petitioners prayed for conversion of their pre-arrest bail into post-arrest bail which was not opposed by learned Special Prosecutor NAB, hence their petitions for pre-arrest bail is converted into post-arrest bail.

3. Brief facts of the case are that NAB Authorities have filed NAB Reference No. 27 of 2018, before the learned Accountability Court at Hyderabad, with the allegations that following GP Fund transactions have been found bogus, which were malafidely processed by the Petitioners namely Shafi Muhammad Shah, Mushtaque Ahmed Shaikh, Ayaz Abro and Ahsanullah Abro:

S.No.	No of transactions	Amount Rs	Period	Cost Center
1	121	45,111,374	2010 to 2012	SSP Office Hyderabad
2	144	32,687,288	2009 to 2012	SRP Office Hyderabad
3	35	7,005,785	2010 to 2011	SRP Office Hyderabad
4	31	11,726,947	2011 to 2012	SRP Office Hyderabad
Total	331	96,531,394		

Investigation Report reveals that out of 331 x bogus GP Fund cases, 210 x bogus GP Fund cases were processed during the period 2009 using Cost Center of Sindh Reserve Police Hyderabad which amounts to Rs.51,420,020/-. The aforesaid amount was embezzled by the aforesaid Petitioners in connivance with Ex-Head Constable of Sindh Reserve Police Hyderabad Abu Bakar (Petitioner) during the period July 2009 to February 2012. However, out of said amount, an amount of Rs.12, 876,472/- has already been recovered from the Petitioners /Officials of DAO Hyderabad at the inquiry stage; but an amount of Rs.38, 543,548/- is still pending liability against them. The remaining 121 x bogus GP Fund cases were processed during the period 2010 to 2012 using Cost Center of SSP Office Hyderabad which amounts to Rs.45,111,374/-. The said amount was also embezzled by the aforesaid Petitioners / Officials at DAO Hyderabad in connivance with Ex-Head Constable of SSP Office Hyderabad namely Yousuf Khanzada (Petitioner). The net liability of the subject investigation involving 331 x bogus GP Fund transactions processed at DAO Hyderabad using Cost Center of SSP Office and SRP Office Hyderabad amounts to Rs.83,645,922/- against the Petitioners.

4. Investigation Report further reveals that out of 331 x bogus GP Fund transactions, the original bills (T.R Forms) and authorities of 87 x GP Fund Bills have been found which were processed and endorsed by Shafi Muhammad Shah (Petitioner) in the capacity of ADAO, Mushtaque Ahmed Sheikh (Petitioner) in the capacity of ADAO and Accountant, Ayaz Abro (Petitioner), in the capacity of Accountant and Ahsanullah Abro (Petitioner), in the capacity of Sub-Accountant; that in some available original record GP Fund transactions, the GP Fund Authority falsely bears the name and page No. of GP Fund Ledger i.e. "DPO-1" but said ledger has never been in the custody of current Sub-Accountant at GP Fund Section which shows malafide of concerned Officers / Officials of DAO Hyderabad who had processed the bogus GP Fund transactions; that those 331 x bogus GP Fund transactions were paid to the employees of SRP Office Hyderabad, SSP Office and individuals who were not Government Servants. Those transactions which were paid to employees of SRP Office and SSP Office Hyderabad respectively were neither actually authorized in the three ledgers namely "SRP 01", "SRP A1" and "SRP 2" pertaining to employees of SRP Office Hyderabad nor in 34 x Ledgers pertaining to SSP Office Hyderabad; that the SRP Office and SSP Office Hyderabad have denied the initiation and processing of the said 331 x bogus GP Fund payments office. The said Offices denied having the record and entry in the correspondence register of the said payments. Furthermore, the employees of SRP Office and SSP Office Hyderabad, in respect of whom those GP Fund payments were processed, have also denied through their statements, the initiation of any such request by them; that the available bogus GP Fund Bills bear fake signatures of SSP at SRP Hyderabad and SSP (then District Police Officer) Hyderabad. Some of the said bills bear fake signatures of SSP who were not posted during the process of the said period at respective Office; that the accused persons namely Abu Baker, Ex-Constable at SRP Office Hyderabad and Yousuf Khanzada, Ex-

Constable at SSP Office Hyderabad have malafidely managed to withdraw the GP Fund payments made to employees of SRP Office Hyderabad and SSP Office respectively. The said accused persons used to collect the signed cheques from those employees on different grounds by cheating them and then these accused persons used to withdraw those payments from bank accounts of those employees through their own signed cheques, thereby malafidely showing as if those GP Fund payments have been received and encashed by those employees / personnel themselves; that few Debit Vouchers contain the name of accused Abu Baker as Beneficiary and some also bear his signature at the Back of Debit Vouchers, proving that the said bogus payments have been withdrawn by the Petitioners.

5. Upon notice to the respondents, para-wise comments were filed on behalf of Respondent-NAB in CP No. D- 199 of 2016.

6. Mr. K.B. Lutuf Ali Leghari, learned counsel for Petitioners in CP No. D-1708 & 199, 3583 of 2016 and CP No. D- 2826 of 2017 has argued that the Petitioners have been falsely implicated in this case with malafide intention and ulterior motives as otherwise they have nothing to do with the alleged processing of fake GP Fund transactions; that the Petitioners are innocent however, they were pressurized and coerced to enter into policy of VR and as they had returned the full amount of Rs.1,33,395,953 imposed against them through cheques issued by the District Accounts Office Hyderabad in the name of bogus / fake General Provident Fund, non-refundable advance cases, in view of the aforesaid factum on 20.1.2014, the respondent NAB had issued a clearance letter to the Petitioners to the extent of bogus / fake General Provident Fund, non-refundable cases; that the grievance of the Petitioners is that even though NAB has issued clearance letter after payment of entire amount to the satisfaction of NAB still they are being harassed and intimidated by the

NAB without any justification; that the alleged liabilities of the Petitioners have already been shifted by paying the aforesaid amount, therefore, they are no more required for further investigation in the matter; that there is no iota of evidence against the Petitioners to show their involvement in the commission of alleged crime to gain illegal benefits as alleged in the reference; that whiteness examined in the trial court have not supported the case; that the call-up notices were received by the Petitioners, which were duly replied by them; that no direct evidence is available against the Petitioners; that the prosecution has failed to point out any mens rea against the Petitioners; that the investigation has already been completed and reference has been filed in Court and the trial has not been completed.

He next added that so far as the Petitioner No.1 is concerned he was booked by the NAB without any notice, warrant of arrest, inquiry or complaint and the Petitioner was taken away by the NAB authorities, who was kept in illegal confinement with certain allegations leveled against him; that he while posted at DPO Office Hyderabad he had withdrawn the GP Fund amount in the name of employees of Sindh Police in collusion with the officials of District Accounts Office Hyderabad; that the Petitioner was asked by the NAB authorities to voluntarily return the amount so embezzled and was further assured that on completion of inquiry if he found innocent, his paid amount will be returned to him, therefore, under compulsion the Petitioner paid the amount under VR Option whereafter certificate was issued to him by the NAB authorities certifying that there is no outstanding dues / enquiries / draft paras pending against the Petitioner No.1; that subsequently since no reference was filed by the NAB in the above inquiry hence the Petitioner approached the NAB authorities for return of the amount, upon which the NAB authorities became annoyed and involved the Petitioner in the instant reference. The learned

counsel, in support of his submissions, has placed reliance on the unreported order passed by Honorable Supreme Court of Pakistan in Civil Petitions No.1210 of 2017 (Dr. Syed Mahboob Ali Shah v. NAB through its chairman and others) and Civil Petition No. 1211 of 2017 (Faheema Soomro v. NAB through its chairman and others).

7. Mr. Imtiaz Ali Abbasi, learned counsel for the Petitioner in CP No. D-255 of 2016 has adopted the arguments of Mr. K.B. Lutuf Ali Leghari, learned counsel for Petitioners in CP No. D- 199 & 1708, 3583 of 2016 and CP No. D- 2826 of 2017.

8. Mr. Jangu Khan, Special Prosecutor NAB has argued that the Prosecution has collected sufficient incriminating material against the Petitioners. He next contended that there is no malafide on the part of NAB to falsely implicate the Petitioners in the present scam; that the Petitioners are involved in the big racket of embezzlement in the payments made from wage clearing account, pension account, PWD account and GP Fund Account and inquiry was conducted in the aforesaid scam and thereafter investigation was conducted and the Petitioners admitted their liability by way of Voluntarily Return. The competent authority accepted VR offer of the accused persons to the tune of Rs.501,196,755 till May, 2015 and subsequently during such inquiry additional bogus GP Fund payments amounting to Rs.83,654,922/- were also established but the accused illegally denied their liability whereafter investigation was conducted which revealed the involvement of the Petitioners in the aforesaid scam. He in support of his contention, has relied upon the investigation report submitted in this behalf and further relied upon the Reference filed under Section 18-G r/w Section 246 of the National Accountability Ordinance, 1999. Therefore, the Petitioners are not entitled to the concession of extra ordinary relief.

9. Mr. Aslam Pervaiz Khan, Asst. Attorney General adopted the arguments of learned Special Prosecutor NAB.

10. We have heard the learned counsel for the Petitioners and the learned Special Prosecutor NAB as well as perused the entire material brought on record.

11. The record shows that prosecution has leveled allegations against the Petitioner, as under:-

- i) **MUSTAQUE AHMED SHAIKH, ACCOUNTANT / ADAO (GP FUND SECTION) AT DAO HYDERABAD:-** Prosecution has alleged against him that he was posted as Accountant during the year 2010 and also ADAO during the period 2011 to 2015 in the GP Fund section at DAO Hyderabad. He, in his capacity as Accountant, failed to exercise the appropriate audit measures and malafidely forwarded the fake GP Fund Authorities/ Bills of employees of Sindh Reserve Police and SSP Office Hyderabad after endorsement of the said documents and also forwarded the said payment in the SAP System to ADAO namely Shafi Muhammad Shah. He, in his capacity as ADAO, malafidely approved and forwarded the fake GP Fund Authorities/ Bills of employees of Sind Reserve Police and SSP Office Hyderabad and also forwarded the said payments in the SAP System to Cheque Section for issuance of Cheques. In addition to this, he failed to authorize/ account for those bogus GP Fund payments in the GP Fund Ledgers maintained at DAO Hyderabad and also processed and approved the GP Fund payments of private persons.
- ii) **SYED SHAFI MUHAMMAD SHAH, ADAO (GP FUND SECTION) AT DAO HYDERABAD:-** Prosecution has alleged against him that he was posted as ADAO in the GP Fund section at DAO Hyderabad during the period 2010 to 2011. He failed to exercise the appropriate audit measures and malafidely approved and forwarded the fake GP Fund Authorities/ Bills of employees of Sindh Reserve Police and SSP Office Hyderabad to Cheque Section and also forwarded the said payments in the SAP System for issuance of Cheques. In addition to this, he failed to authorize/ account for those bogus GP Fund payments in the GP Fund Ledgers maintained at DAO Hyderabad and also processed the GP Fund payments of private persons.
- iii) **MUHAMMAD AYAZ ABRO, ACCOUNTANT (GP FUND SECTION) AT DAO HYDERABAD:-** He was posted as Accountant in the GP Fund section at DAO Hyderabad during the year from 2009 to 2015 at different time interval. He failed to exercise the appropriate audit measures and malafidely forwarded the fake GP Fund Authorities/ Bills of employees of Sindh Reserve Police and SSP Office Hyderabad to ADAOs namely Shafi Muhammad Shah and Mushtaq Ahmed Sheikh after endorsement of the said documents. In addition to this, he failed to authorize/ account for those bogs GP Fund payments in the GP Fund Ledger maintained at DAO Hyderabad and also processed the GP Fund

payments of private persons. Moreover, he forwarded the said bogus payments to the said ADAOs in the SAP System.

- iv) **AHSANULLAH ABRO, SUB-ACCOUNTANT (GP FUND SECTION) AT DAO HYDERABAD:-** he was posted as Sub-Accountant in the GP Fund Section of DAO Hyderabad during the period from 2010 to 2011. He malafidely pre-audited and forwarded the fake GP Fund Bills of employees of Sindh Reserve Police and SSP Office Hyderabad to the then Accountants namely Muhammad Ayaz Abro and Mushtaq Ahmed. In addition to this, he failed to authorize/account for those bogus GP Fund payments in the GP Fund Ledgers maintained at DAO Hyderabad and also processed the GP Fund payments of private persons. Moreover, he also initiated, punched (parked) and forwarded the said bogus payments to the said Accountants in the SAP System.
- v) **ABU BAKAR, EX-HEAD CONSTABLE, SINDH RESERVE POLICE, HYDERABAD:-** Prosecution has alleged against him that he had assisted and abetted the Officers/ Officials of DAO Hyderabad in deposit and withdrawal of fake GP Fund payments in the name of the employees of the Sindh Reserve Police Office Hyderabad. Those employees whose bank accounts have been used in the scam have stated that the Petitioner through different fabricated stories cheated them and managed to get signed leaf of their cheque book from their bank accounts. Few debit vouchers contain the name of Petitioner as beneficiary and some also bear his signature at the Back of Debit Vouchers, proving that the said bogus payments have been withdrawn by the Petitioner.
- vi) **YOUSUF KHANZADA EX-HEAD CONSTABLE, SSP OFFICE HYDERABAD:-** Prosecution has alleged against him that he had assisted and abetted the Officers / Officials of DAO Hyderabad in deposit and withdrawal of fake GP Fund payments in the name of employees of the SSP Office Hyderabad. Those employees whose bank accounts have been used in the scam have stated that the accused through different fabricated stories cheated them and managed to get signed leaf of their cheque book from them and malafidely managed to withdraw the amount of bogus GP Fund from their Bank Accounts.

12. There is no cavil to the fact that the Petitioners are holder of public office except Petitioner Abu Bakar Ex- Head Constable & Muhammad Yousif Khanzada Retired Head Constable of Sindh Police. The allegations leveled against them are very serious in nature and the same have an adverse effect on public at large. These allegations are supported by documentary evidence which prima facie connects the petitioners with the commission of alleged offence. It is apparent that the Petitioners have misused their public authority by committing embezzlement in GP Fund transaction by making multiple payments of GP Fund to the same vendor

/ employees of SSP Office (the then District Police Officer) Hyderabad and Sindh Reserve Police Hyderabad, causing a loss of Rs.83,654,922/- to the National exchequer. Sufficient incriminating material has been collected by the NAB authorities in the shape of relevant documents viz. GP Fund Bills, GP Fund payments in the GP Fund Ledgers, Cheques, and Debit Vouchers which bear signature of the petitioners connecting them with the alleged white color crime. The admission of the Petitioners that they voluntarily returned the embezzled amount of fake GP Fund transactions to the tune of Rupees 504,196,755/-, at the inquiry stage is also an additional incriminating piece of evidence against the petitioners which at the stage of bail cannot be ignored. The record reflects that later on the amount paid by them in VR was found short of the returned amount, through VR, as such the petitioners were asked to make good of the loss and upon their failure, the instant reference was filed based on documentary evidence. Per learned Special Prosecutor, the bail of Petitioner Muhammad Yousif Khanzada in Reference No.11/2017 has already been dismissed by the Honorable Supreme Court vide order dated 17.4.2018, in Civil Petition No.259 of 2018.

13. We have noted that there is nothing on record which could suggest or indicate false implication of the Petitioners in the present case. Besides, Petitioners have also failed to point out any malafide or ulterior motive on the part of NAB.

14. From tentative assessment of material available on record sufficient incriminating material and reasonable grounds exist to believe that the Petitioners are connected with the charges leveled in the reference, hence they do not deserve concession of pre-arrest / post arrest bail.

15. As regards the case law cited by the learned counsel for the Petitioners, in support of their submissions, the facts and circumstances of the said case are quite different from the case in hand.

16. In view of the above facts and circumstances, we are of the opinion that the Petitioners namely Muhammad Ayaz Abro, Ahsanullah Abro, Abu Bakar, Shafi Muhammad have not made out a case for grant of pre-arrest bail. Hence, Interim Pre-arrest Bail granted to the above Petitioners vide orders dated 29.1.2016, 11.02.2016 & 21.12.2016 are hereby recalled, whereas the petitions of Mushtaque Ahmed Shaikh and Muhammad Yousif Khanzada converted into post-arrest bail are also declined for the reasons cited in the preceding paragraphs.

17. Now in view of the aforesaid facts of the case, we believe that the Petition bearing C.P No.D-1708/2016 filed by Petitioner Muhammad Yousif Khanzada and Petition bearing C.P No.D- 2826/2017 filed by Mushtaque Ahmed Shaikh against alleged harassment by NAB have become infructuous for the simple reason that the subject reference has been filed against them which is a due process of law.

18. The above findings are tentative in nature which shall not prejudice the case of either party at the trial.

19. All the captioned petitions are disposed of in the above terms.

JUDGE

JUDGE