

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MOHAMMAD KARIM KHAN AGHA
MR. JUSTICE SHAMSUDDIN ABBASI.

Constitutional Petition No.4909 of 2018

Petitioner Gulsher Ahmed Chachar son of Muhammad Paryal Chachar through Mr. Amer Raza Naqvi, Advocate.

Respondent National Accountability Bureau through Mr. K.A. Vaswani, Special Prosecutor, NAB.

Constitutional Petition No.3912 of 2018

Petitioner Afaquddin Marwat son of Haji Imam Din Through Mr. Abdul Majeed Khoso, Advocate.

Respondent National Accountability Bureau & another through Mr. K.A. Vaswani, Special Prosecutor, NAB.

Constitutional Petition No.4610 of 2018

Petitioner Inamuddin son of Haji Imam Din through Mr. Abdul Majeed Khoso, Advocate.

Respondent National Accountability Bureau & another through Mr. K.A. Vaswani, Special Prosecutor, NAB.

Dates of hearing 12.11.2018 and 19.11.2018

Date of order 03.12.2018

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ORDER

SHAMSUDDIN ABBASI, J:- Through their respective petitions, petitioners Gulsher Ahmed Chachar and Afaquddin, nominated in the reference as accused No.8 and 3, seek post arrest bail in National Accountability Bureau {NAB} Reference No.22 of 2017 under Section 9(a) of National Accountability Ordinance (NAO), 1999 punishable under Section 10 of the Ordinance and Schedule thereto while petitioner Inamuddin Marwat, nominated in the reference as accused No.2, seeks pre-arrest bail and is on ad-interim pre-arrest bail granted to him by this Court without touching the merits of the case.

2. In essence the allegations against the petitioners as emerged in the reference are that they in connivance with each other misappropriated {imported} urea of NFML and caused loss of Rs.143.296 million to Government exchequer through falsification of record, corruption, misuse of authority and other deceitful means, thereby they have committed offences of corruption and corrupt practices as defined under Section 9(a) of NAO, 1999, punishable under Section 10 of the Ordinance and schedule thereto.

3. During investigation it was found that petitioners Inamuddin Marwat, Afaquddin Marwat, Shaukatullah & co-accused Imamuddin Marwat being owners/directors of M/s Inam & Company masterminded a plan to steal/misappropriate imported urea worth millions of rupees by changing their faces and variant nomenclatures through bogus/unregistered front/dummy firms in various names and availed a contract of Transportation, Tally, Labour and Security of Karachi Godown through its dummy firm M/s Sindh Goods Transport Company in May – June, 2013, and M/s Shahmeer Tally Labour & Security during December, 2013-2014 through fraudulent means in connivance with petitioner Gulsher Ahmed Chachar, Ex-Port Incharge/Regional Manager, National Fertilizer Marketing Limited {NFML} & other co-accused Uzair Abubakar {Ex.AGM/DGM}, Amjad Iqbal {Store Incharge} & Mushtaq A. Qaiser {Deputy Manager} NFML, who by misusing their authority collusively awarded contract to a bogus/dummy firm M/s Inam & Company {M/s Sindh Goods Transport Company}, owned and controlled by petitioners Inamuddin Marwat, Afaquddin Marwat, Shaukatullah & co-accused Imamuddin Marwat, without approval of competent authority and submission of genuine documents or fulfilling requirements of tenders/bids as per rules and regulations of Public Procurement Regulatory Authority Ordinance, 2002. It has also come on record that petitioner Gulsher Ahmed Chachar & co-accused Uzair Abubakar, Amjad Iqbal & Mushtaq A. Qaiser {officials of NFML} abrogated and disregarded all SOPs/manuals and mandatory documentation, allowing petitioners Inamuddin Marwat, Afaquddin, Shaukatullah and co-accused Imamuddin, Abdul Ghaffar and Usman Asghar to violate the essential requirements and conduct their malicious designs of misappropriation, pilferage, quantity lessening {sweep}, dumping and shortage.

4. After disclosure of shortage of urea in respect of M/s Sindh Goods, petitioner Inamuddin Marwat, Afaquddin, Shaukatullah and co-accused Imamuddin Marwat, Abdul Ghaffar and Usman Asghar launched another dummy firm "M/s Inam & Company namely, Shahmeer Tally, Labour and Security and availed possession of Pakistan Godown, Karachi, through an irregular tender in connivance with petitioner Gulsher Ahmed Chachar and co-accused Uzair Abubakar, Amjad Iqbal and Mushtaq A. Qaiser by way of an agreement between NFML and M/s Shahmeer Tally for 22 days from 09.12.2013 to 31.12.2013, which was extended till 08.01.2014 and 10.02.2014 and finally till the finalization of fresh tender process on various pretexts.

5. A departmental enquiry was also initiated wherein it was established that accused Uzair Abubakar {AGM/DGM} misused his authority in respect of M/s Sindh Goods Transport while in another departmental enquiry it was found that M/s Shahmeer Tally submitted forged and bogus documents in getting the tender. The departmental enquiry committee of NFML ascertained the losses and responsibility of NFML officers and found that 1947.5 M. tons of urea was missing from Rasheed Godown and 700.85 M. tons from Kohinoor Godown, which were handed over without written contract but remained under the management and responsibility of M/s Sindh Goods Transport {dummy of Inam & Company}, which failed to hand over the godowns duly accounted for urea and caused shortage. The committee found that accused Uzair Abubakar abused his position as acting GM to force his subordinates at Karachi to give the contract to M/s Sindh Goods Transport Company despite already quoted lower rates, which seems to have been tampered. The illegal possession of company continued for months but petitioner Gulsher Ahmed Chachar {Port Office Incharge} failed to take any action and kept discharging urea from godowns while accused Uzair Abubakar in collaboration with petitioners Inamuddin Marwat, Afaquddin, Shaukatullah and accused Imamuddin Marwat got initiated the bogus/pseudonymous application apparently signed by a person "Jumair Shah" alongwith his CNIC, who denied any such application or proprietorship, whereas petitioner Gulsher Ahmed Chachar and accused Uzair Abubakar and Amjad Iqbal deliberately allowed a defaulting carriage contractor to appear as new bogus firm namely,

M/s Sindh Goods Transport Company and also accepted their pseudonymous and false documentations without appearance and confirmation of real owner/representative at the time of submission of documents and handing over of urea possession at later stage and petitioner Gulsher Ahmed Chachar and accused Amjad Iqbal issued NOC/recommendation for award of a temporary contract with processing of the blank stamp paper, even bogus authority letters were accepted to further transfer/shift the responsibility on someone else instead of beneficial owners/directors and such process at NFML was completed by accused Uzair Abubakar and Mushtaq A. Qaiser.

6. It was further revealed that petitioners Inamuddin Marwat, Afaquddin, Shaukatullah and accused Imamuddin Marwat orchestrated a process of fraudulent registration in the name of their employees while accused Imamuddin Marwat got registered various other companies and firms for availing contracts in different departments including NLC, TCP, NFC and NFML for which he and his family were beneficial owners. He frequently misappropriated Government properties through contracts in pseudonymous names, printing fake letter heads, making fake/dubious stamps and placing front men to avail contracts and in case of disclosure or blacklisting of said firms, he used to register other firms through misrepresentation of particulars/fraudulent use of identification papers of his employees online NTN's or impersonations of other person ultimately implicating them in an offence actually committed by him. During investigation it was further revealed that shortage of 755,30 M. tons {15,106 urea bags} at Rakesh Godown, Karachi, was established by a Court appointed Commission as such NFML took over the possession on Court directions, which caused a massive loss to the Government exchequer, hence this reference.

7. Before arguing his petition on merits, Mr. Amer Raza Naqvi, learned counsel appearing on behalf of petitioner Gulsher Ahmed Chachar, submits that CMA No.21609 of 2018 was filed seeking direction to the respondent to place on record all correspondences made between petitioners and respondents, all proceedings conducted by the respondent at the Godowns of NFML with inspection memos and statements of persons recorded therewith, all proceedings of shifting of material from one Godown to

the other and sale of such material, sale proceed and the relevant orders if any passed by respondent or any official of respondent including Chairman in this regard as necessary for arriving at a fair and just decision in the matter. Learned Special Prosecutor NAB submits that all relevant documents are available in the form of folders alongwith reference and the same were supplied to petitioner under the provision of Section 265-C, Cr.P.C. The charge has already been framed and some of the PWs have been examined by the learned trial Court, therefore, instant application is not maintainable. It is next submitted that similar application was filed before the trial Court, which is still pending. Since the petitioner has availed remedy and moved application before the learned trial Court, which is still pending, therefore, we deem it appropriate not to interfere with the subject issue and direct the trial Court to decide such application expeditiously in accordance with law. However, in case the petitioner has not sought such kind of prayer before the trial Court then law provides opportunity to him to seek remedy in accordance with law. Here we are dealing with the matter of bail, hence we are inclined not to decide such kind of prayer while deciding the petition for bail, which should be decided at first instance by the trial Court.

8. While arguing the petition on merits, Mr. Amer Raza Naqvi, learned counsel appearing on behalf of petitioner Gulsher Ahmed Chachar, submits that the petitioner has been falsely implicated in this case with malafide intention and ulterior motives; that at the time of commission of offence he was Port Incharge/Regional Manager, NFML Godowns, Karachi, and to ensure the swift moving of urea from Port to the Godowns after termination of the labour, security and tally contract of M/s Afzal Enterprises, the petitioner recommended three companies and their bids for Tally contract, labour and security guards to his high-ups but his recommendations were not considered and he was directed to award contract to M/s Sindh Goods Transport Company and on the directions of his superiors he awarded verbal contract to M/s Sindh Goods Transport Company; that neither he has caused any loss to the national exchequer nor it is alleged in the reference that he is one of the beneficiary or gained monetary benefits and no money trail was discovered during entire investigation; that the petitioner being an honest and responsible officer performed his duties properly and

timely informed the entire situation and all affairs of the company but his high-up were reluctant to take any action against the defaulter companies; that the petitioner performed his duties honestly and diligently and during entire investigation no iota of evidence has been collected against him to justify his involvement in the present case. Learned counsel lastly submits that in view of his submissions the case of the petitioner requires further inquiry. He has relied upon case law reported as 2000 MLD 1735.

9. Mr. Abdul Majeed Khoso, learned counsel for petitioner Afaquddin, submits that the petitioner is son of Imamuddin Marwat {accused No.1}, who established a company in the name of M/s Inam & Company when the petitioner was about 8/10 years of age and had nothing to do with the affairs of his father. It is next submitted that the petitioner has been shown as Director of M/s Inam & Company, dealing with the labours, otherwise the petitioner has no nexus with M/s Shahmeer & Company & M/s Sindh Goods Transport Company; that at the time of alleged incident the petitioner was not in Pakistan and studying in London; that the bank accounts that have been relied on by the NAB do not pertain to petitioner even he has not signed any document in respect of opening of bank account as well as affairs of NFML and no documentary evidence has been collected against him during entire investigation to show his involvement in the commission of any offence and he has been dragged in this case just for the reason that he is son of Imamuddin Marwat {accused No.1}, that the petitioner was arrested from Airport when he returned to Pakistan after completion of his studies at London; that the petitioner tendered his resignation from the post of Director of M/s Inam & Company on 01.08.2013 and there was a private family settlement between petitioner and his father Imamuddin {accused No.1} since 2013, even he was not business partner of his father and had nothing to do with the affairs of M/s Inam & Company; that the petitioner neither has caused any loss to the Government exchequer nor gained any benefit. Learned counsel has referred to various documents pertaining to FBR, which show that his name was discharged from the array of directors of M/s Inam & Company and prayed for grant of bail.

10. Learned counsel for petitioner Inamuddin Marwat has contended that he has been falsely implicated in this case with malafide intention and ulterior motives which is evident from the record that the whole family has been dragged by leveling false allegations without any documentary proof; that the petitioner is son of co-accused Imamuddin and brother of co-accused Afaquddin; that the petitioner is student of M. Phil and has nothing to do with the allegations leveled in the reference; that NFML made contract for transportation of imported urea with M/s Sindh Goods Transport Company and M/s Shahmeer Tally Labour & Security with which the petitioner had no nexus as neither he was Director of the said companies nor a beneficiary nor has caused any loss to the exchequer and if any loss is caused to the national exchequer the said companies and the officials of NFML are solely responsible and the petitioner has nothing to do with it; that no documentary evidence has been collected to show the link of the petitioner with the aforesaid two companies; that the father of the petitioner was owner/sole proprietor of M/s Inam & Company since 1996 and at that time the petitioner was student and even at the time of signing of contract with NFML he was student of M.S. and never remained involved in the affairs of business; that the petitioner has nothing to do with the accounts of M/s Inam & Company and he did not sign any document in respect of opening of bank account; that the petitioner has not signed any agreement with Government in respect of any contract, therefore, question of causing loss to the national exchequer does not arise; that he is neither a beneficiary nor any money trail has been connected with him; that he is a law abiding citizen and never remained fugitive of law and as soon as he came to know about filing of reference against him he surrendered himself before this Court and never misused the concession of ad-interim pre-arrest bail.

11. In contra, learned Special Prosecutor NAB has strongly opposed both pleas of grant of post arrest and pre-arrest bail to the petitioners on the ground that this Court as well as Hon'ble Supreme Court have already declined concession of bail on merits and the present petitions for grant of post arrest and pre-arrest bail have been filed without furnishing fresh ground; that accused No.1 to 6 are private persons and accused No.7 to 10 are officials of NFML and

they in connivance with each other caused loss to national exchequer; that M/s Inam & Company became a defaulter and thereafter private accused in connivance with officials of NFML established fake and dummy companies in the name and style "M/s Sindh Goods Transport Company and M/s Shahmeer Tally Labour and Security Company and in connivance with each other and in violation of PEPRA Rules got the contracts awarded to these fake and dummy companies, which caused heavy loss to national exchequer; that the modes operandi of private accused was that after becoming defaulter they used to establish fake and dummy companies and during investigation 39 companies were discovered having seals and letterheads etc. and having same address; that sufficient documentary evidence and other material is available on record against the petitioners, which *prima facie* connect them with the commission of offence. During investigation I.O. has recorded statements of Jumair Shah and other witnesses wherein they have fully implicated the accused nominated in the reference. No enmity in terms of malafide or ulterior motive has been alleged by the petitioners which might have actuated the prosecution to falsely implicate the petitioners.

12. We have given anxious consideration to the submissions of learned counsel for the petitioners and the learned Special Prosecutor NAB as well as perused the record with their able assistance.

13. Record reflects that vide letter dated 13.05.2013 petitioner Gulsher Ahmed Chachar, who was Port Incharge/Regional Manager, NFML, placed quotations of three companies namely, Ittehad Enterprises, Ahmed Enterprises and Mashallah Enterprises, for Tally labour and security guards showing the lowest rate of M/s Irfan Enterprises but without receiving any response thereto, he received a letter dated 14.05.2013 from co-accused Uzair Abubakar {acting General Manager, NFLM}. A bare perusal of the letter reveals that services of M/s Afzal Enterprises were dispensed with due to inefficiency and to meet issue of stop gap measures forwarding the name of M/s Sindh Goods Transport Company for the forthcoming shipment though no forthcoming shipment was scheduled on record and it seems that crime starts from this particular point. In fact

accused {officials of NFML} tried to justify themselves to award contract to M/s Sindh Goods Transport Company by disclosing the reason that they had a need for a stop gap arrangement for forthcoming shipment. The contract was awarded to M/s Sindh Goods Transport Company on temporary basis by Gulsher Ahmed Chachar in connivance with co-accused Mushtaq A. Qaiser, Manager {Distribution}, NFML and other officials of NFML were also on board and petitioner Gulsher Ahmed Chachar had actively participated in the commission of offence in order to facilitate M/s Sindh Goods Transport Company. Besides, he failed to enter into any formal agreement with M/s Sindh Goods Transport Company and allowed it to operate on verbal basis and failed to discharge his liability of proper checking on the Godowns where the urea was being stolen from. Record also reflects that NFML ordered an inquiry in the matter of shortage of urea wherein he was found guilty of the charges leveled against him.

14. The object of pre arrest bail is to save innocent persons from being unnecessarily harassed due to their arrest in the cases instituted against them with malafide intention and ulterior motives. For grant of pre-arrest bail there must be some essential element about malafide on the part of complainant or the investigating agency and accused has to satisfy the Court on the point of malafide. The Hon'ble Supreme Court has settled the principle in the cases of *Rana Muhammad Arshad v Muhammad Rafique* {PLD 2009 SC 427}, *Mukhtar Ahmed v The State and others* {2016 SCMR 2064} and *Khalil Ahmed Soomro & others v The State* {unreported dated 28.07.2017}. In the case in hand, no evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the NAB to falsely implicate petitioner Inamuddin Marwat in this case, even his counsel has failed to satisfy us on the point of malafide, ill-will, malice and/or ulterior motives, which is pre-requisite for pre-arrest bail.

15. Turning to the case of petitioners Inamuddin Marwat and Afaquddin on merits, who at the relevant time were the Directors of Inam & Company, and have been attributed specific role with regard to creation of fake and bogus companies, after Inam & Company was blacklisted, just to steal urea. Record reflects that co-accused

Shaukatullah was operating four bank accounts on behalf of petitioners Inamuddin Marwat and Afaquddin, which were used in this scam and approximately one billion rupees was moved by him between the various accounts of petitioners Inamuddin Marwat and Afaquddin and their companies and even used his own account to route some of these monies just to hide the source of funds and at the time of raid cheque books in the name of Inam & Company containing blank cheques, duly signed, were recovered.

16. We have carefully gone through the investigation report available before us. PW J. Parkash, owner of brokerage firm "Anmole Enterprises", dealing with the business of urea, and his firm had a business transaction with Haji Imamuddin, owner of Inam & Company, for about 2/3 years. Haji Imamuddin sold them urea and sometimes Inam & Company delivered them the consignment directly from the ship at port and sometimes supplied urea from the Godowns of NFML and he used to make payment through online transactions and sometimes through cheques and accused Imamuddin and Shaukatullah used to enter into the deals with him. This witness has further stated that he visited the office of NFML for dealership and met with petitioner Gulsher Chachar who demanded commission for grant of dealership, however, he has fully implicated petitioners Gulsher Ahmed Chachar, Imamuddin and accused Haji Imamuddin and Shaukatullah in the commission of offence not only in his statement under Section 161, Cr.P.C. but also in his deposition recorded before the trial Court. PW Matloob Ahmed, who is banking expert, pointed out various transactions between fake and dummy companies with private accused. He had collected complete money trail of the amounts channeled from one account to other account and directly involved petitioners Inamuddin, Afaquddin and accused Haji Imamuddin and Shaukatullah as beneficiaries of such accounts. PW Jumair Shah in his statement under Section 161, Cr.P.C. has stated that he worked as driver with M/s Inam & Company for three months and owner of company Imamuddin wrongly used his CNIC as well as cell number and committed huge fraud in connivance with officials of NFML. He further stated that Mr. Shaukatullah, Manager of M/s Inam & Company, was dealing with the affairs of company and he got no other benefit except that of his salary amounting to Rs.10,000/- only for three months and later on he came to know that

Imamuddin had committed fraud on his name by registering company "M/s Sindh Goods Transport Company and he had not signed any document. It is manifest from the record that the private accused persons in connivance with officials of NFML got registered different companies viz M/s Inam & Company, M/s Inam & Company {Pvt} Limited, M/s Afzal Enterprises, M/s Sindh Goods Transport Company, M/s Shahmeer Tally Labour and Security Company and petitioners Inamuddin and Afaquddin being Directors are responsible for all acts of the company. It is also a matter of record that accused persons got registered another firm in the name and style "M/s Global Gas International {Pvt} Limited" and petitioner Afaquddin was appointed as Director on 31.10.2013 while petitioner Inamuddin was Secretary as well as Director and co-accused Imamuddin was Chief Executive as well as Director. The point which is to be noted is that address of all the companies, where petitioners Inamuddin, Afaquddin and co-accused Imamuddin were the directors/partners, is same and all the documents and correspondences disclose the same address. This shows their *modus operandi* to cheat the system by making/registering new dummy firms just to continue their fraudulent acts and looting national exchequer.

17. Insofar as the contention of learned counsel for petitioner Afaquddin that at the time of occurrence petitioner was out of country is concerned, we have gone through the investigation report which reveals that at the relevant time when the occurrence of M/s Sindh Goods Transport Company and M/s Shahmeer Tally Labour and Security were taken place the petitioner was in Pakistan. Besides, the documents with which Bank Account No.58702024032101 was opened in the name of Inam & Company and bank transactions show signatures of petitioners Inamuddin and Afaquddin, which prima facie established their active participation in the affairs of M/s Inam & Company as well as beneficiaries of transactions in their favour. Apart from this various telephone bills are available on record in the name of M/s Inam & Company. During investigation the I.O. prepared seizure memo in presence of mashirs under which different letter pads, seals, cheque books, cash books and other documents were seized, which show that private accused persons were indulged in illegal business via fake and dummy companies.

18. We have noticed that the white collar crimes are generally of an intricate and complex nature and the whole transaction and each component part of the scam needs proper adjudication. A case of further inquiry would only be made out when data collected by the prosecution was not sufficient to provide reasonable grounds for believing that a *prima facie* case does not exist against an accused. A person employed in Government department is paid to serve the State/Province out of taxpayer's money and has a special fiduciary duty to protect and safeguard Government property and to ensure that taxpayer's money and property is well spent and not squandered needlessly or misappropriated through corruption in performing their duties and functions. In the recent past the Hon'ble Supreme Court in a case of *Rai Mohammad Khan v NAB {2017 SCMR 1152}* emphasized that grant of bail in white collar crimes must be construed strictly and rigidly even if, as in that case referred to above, the amount involved was on the lesser side being only approx. Rs.12 million {as opposed to over Rs.100 million in this case} and as such we have adopted the said approach.

19. From the facts and circumstances of the case and available material it can be assumed that all the petitioners had the requisite *mens rea* to commit the offence charged with through their acts, conduct, failure to exercise authority, misuse of authority and deliberately violating the rules. It is however finally upto the trial Court to decide the *mens rea* of accused petitioners after recording the evidence in the matter.

20. At the stage of bail the detailed discussion is not necessary but as far as the evidence which is on the surface of record of this case shows that petitioners are *prima facie* involved in the commission of offence. They are nominated in the reference and attributed a specific role. No evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the prosecution to falsely implicate the petitioners. Needless to mention that petitions for pre-arrest bail of petitioner Gulsher Ahmed Chachar, and post arrest bail of petitioner Shaukatullah, on the same sets of grounds, have already been declined by this Court on merits by order dated 28.03.2018 and the Hon'ble Supreme Court too

dismissed the petition for pre-arrest bail of Gulsher Ahmed Chachar on merits by order dated 06.04.2018. Thus, we are of the considered view that the petitioners do not deserve concession of bail at this stage. Consequently, the petitions of Gulsher Ahmed Chachar and Afaquddin for post arrest bail are dismissed. The petition of Inamuddin Marwat for pre-arrest bail is also dismissed simultaneously recalling the earlier order of granting ad-interim pre-arrest bail with immediate effect. We may add here that the matter is ripe for evidence and upto 23.10.2018 three witnesses have been examined as informed by the trial Court. The object of criminal trial is to make an accused to face the trial and not to punish an under trial prisoner for the offence alleged against him and accused is entitled to expeditious excess to justice which includes a right to fair and expeditious trial without any unreasonable delay, therefore, we are optimistic that the trial Court would expedite the matter and complete the trial preferably within a period of four {04} months under intimation to this Court through M.I.T-II. Office shall provide a copy of this order to the concerned Accountability Court for compliance.

21. Before parting with the order, it needs no clarification that the observations recorded herein above are tentative in nature and relevant for the purpose of the instant Petitions, therefore, the trial Court shall not be influenced in any manner whatsoever while deciding the case on merits.

22. The petitions stand disposed of in the above terms.

JUDGE

JUDGE

Naeem