

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

C.P. No.D-2440 of 2020

Waseem Ahmed V/s. the Director General, Accountability Bureau,
Sindh and another

C.P. No.D-2713 of 2020

Javed Iqbal V/s. the Chairman, National Accountability Bureau, and
04 others

Date of hearing: 05.08.2020

Date of order: 13.08.2020

Mr. Irshad Ahmed Jatoy, Advocate for the petitioner in C.P.No.D-2440 of 2020.

Mr. Muhammad Rehman Ghous, Advocate for the petitioner in C.P.No.D-2713 of 2020.

Mr. Abdul Sattar Awan, Special Prosecutor, NAB along with Mr. Muhammad Kamran, I.O./Assistant Director.

ORDER

Zulfiqar Ali Sangi, J.- These two petitions are disposed of by this single order as both pertain to same reference bearing No.10 of 2019 pending adjudication before Accountability Court Karachi.

2. The petitioner Waseem Ahmed S/o Fateh Muhammad seeks his post arrest bail in C.P. No.D-2440 of 2020, whereas petitioner Javed Iqbal S/o Ahsan Ghani challenged the pardon order dated 30th April, 2020 granted to Waseem Ahmed by the Director General, NAB.

3. The facts of the case are that the NAB received various complaints about the illegal allotments of land for the project M/s. Ruffi Pearl City and inquiry was authorized, which subsequently was converted into investigation. During the investigation petitioner Waseem Ahmed came forward and applied for tender of Pardon, consequent thereto, Waseem Ahmed was brought before the Magistrate where his statement under Section 164 Cr.P.C. was recorded and he disclosed the true facts with regard to the malpractice; on the basis of result of the investigation NAB

filed a reference before the Administrative Judge, Accountability Court Karachi, wherein the petitioner Waseem Ahmed was shown as accused No.3 and witness No.1. Later on letter dated 30th April, 2020 was issued and he was granted conditional pardon by the chairman NAB.

4. Learned counsel for the petitioner in C.P.No.D-2440 of 2020 contended that the petitioner has already complied with the condition imposed in the Pardon granted to him and he is ready for his evidence before the learned trial Court. He further submits that main accused Javed Iqbal and other co-accused nominated in the reference are on bail, whereas according to him only petitioner is behind the bar, lastly, he prayed for release of petitioner Waseem Ahmed on bail.

5. Learned counsel for the petitioner in C.P. No.D-2713 of 2020 submits that Pardon order dated 30th April, 2020 is illegal, unlawful and ultravires of Section 26-A of NAO of 1999. He further submits that S. 164 Cr.P.C. statement of Waseem Ahmed was recorded on 04.03.2019 much prior to pardon order and after the impugned order he was not examined a fresh, therefore, the pardon order is against the mechanism provided under Section 26-A of NAO, 1999. Lastly, he prayed that the impugned pardon order may be set-aside.

6. Learned Special Prosecutor, NAB, contended that Petitioner Waseem Ahmed applied for pardon and his statement under Section 164 Cr.P.C. was recorded and thereafter proper order was passed, whereby pardon was granted to him. He further submits that there is no need of any fresh statement under Section 164 Cr.P.C. in such respect as he was made witness No.1 in the reference and his evidence is yet to be recorded. He supports the pardon order, while arguing in C.P. No.D-2440 of 2020. In respect of bail petition of Waseem Ahmed, he opposed for grant of bail. However, he admitted that co-accused including the main accused are on bail.

7. We have heard learned counsel for the parties and have gone through the material available on record so also the law cited at the bar with the able assistance of counsel.

8. We have observed that alleged entries in the revenue record were made in the year 1992 on the basis of the order dated 06.08.1964 of the

Deputy Commissioner and on such entry subsequent transactions were made which resulted in misappropriation as alleged in the reference and the inquiry was authorized vide order No.NABK20180319118973/IW-I/CO-B/NAB (K)/2018/3187 dated 31.05.2018 and same was converted into investigation vide order No.NABK2019020610458/IW/CO-B/NAB (K)/2019/1026 dated 01.02.2019. Petitioner Waseem Ahmed was arrested on 31-01-2019 and he moved an application for tender of pardon on 20-02-2019, whereas his statement under Section 164 Cr.P.C. was recorded on 04-03-2019 before Incharge IIIrd Civil Judge & judicial magistrate Karachi South. After due process, pardon order was passed on 30th April, 2020. This Court specifically asked question from the Special Prosecutor, NAB, as to whether petitioner Waseem Ahmed fulfilled the condition mentioned in the pardon order dated 30th April, 2020 and as to whether his fresh statement under Section 164 Cr.P.C is required to be recorded, he categorically stated that petitioner Waseem Ahmed gave full details of the scam in his statement under Section 164 Cr.P.C and no fresh statement under Section 164 Cr.P.C is required to be recorded and further states that since the reference has been filed before the Accountability Court which has taken cognizance, therefore, only evidence of petitioner is required to be recorded which stage has not come yet.

9. As per Section 26 of NAO, 1999 the Chairman can grant pardon to an accused on condition as imposed by Section 26, which reads as under:-

"26.Tender of pardon 1[...]:

(a) Notwithstanding anything contained in the Code, at any stage of 2[inquiry, investigation or trial], the Chairman 3[NAB] may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any offence, tender a full or conditional pardon to such a person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the said offence including the names of the persons involved therein whether as principals or abettors or otherwise.

(b) Every person accepting a tender of pardon under sub-section (a) shall be examined 4[by a Magistrate and shall also be examined] as a witness in the subsequent trial.

(c) Subject to sub-section (d), the person to whom pardon has been granted under this section shall not -

(i) in the case of a full pardon be tried for the offence in respect of which the pardon was granted; and

(ii) in the case of conditional pardon be awarded a punishment or penalty higher or other than that specified in the grant of pardon notwithstanding the punishment or penalty authorized by law.

(d) Where the Chairman NAB certifies that in his opinion, any person who has accepted such tender has, either by willfully concealing anything essential or by giving false evidence through willful or reckless mis-statement, not complied with the condition

on which the tender ⁵[of pardon] was made, such a person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the said matter including the offence of giving false evidence, which he knows or ought to know is false.

(e) Any statement made before ⁶[a Magistrate] by a person who has accepted a tender of pardon may be given in evidence against him at ⁷[the] trial."

10. The above provision of law empowered the chairman NAB to grant a pardon to an accused subject to certain terms and conditions. On careful scrutiny of pardon order dated 30th April, 2020 we have found the same to be in accordance with law, therefore, C.P.No.D-2713 of 2020 filed by Javed Iqbal is dismissed.

11. Turning to the case of petitioner Waseem Ahmed in C.P.No.D-2440 of 2020, he was granted pardon and was made witness No.1 in the reference filed by NAB. Petitioner Waseem Ahmed is behind the bars, and per learned counsel charge has not been framed yet. He was examined under Section 164 Cr.P.C and gave full particulars of the scam and other co-accused including the main accused Javed Iqbal, who is the beneficiary of scam are on bail and the petitioner is not beneficiary of the scam, further he has already been made witness No:1 by the NAB in the reference and his evidence is yet to be recorded.

12. In view thereof, the petitioner has made out his case for grant of bail, under these circumstances, C.P.No.D-2440 of 2020 is allowed. Petitioner is directed to be released on bail subject to furnishing his solvent surety in the sum of Rs.500000/- (Rupees Five Lacs) and P.R. bond in the like amount to the satisfaction of the Nazir of this Court. However, the Ministry of Interior is directed to put the name of petitioner on the ECL. A copy of this order be sent to the Secretary, Ministry of Interior Government of Pakistan for compliance.

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

JUDGE

JUDGE