

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

MR. JUSTICE MUHAMMAD IQBAL KALHORO

MR. JUSTICE SHAMSUDDIN ABBASI.

Constitutional Petition No.3436 of 2019

Petitioner Imran Afzal son of Afzal Hussain
through Mr. Khawaja Shamsul Islam,
Advocate.

Respondent National Accountability Bureau
through Mr. Riaz Alam Khan, Special
Prosecutor NAB a/w I.O. Irfan Ali.

Dates of hearing 02.09.2019, 16.09.2019 and 23.09.2019

Date of order **26.09.2019**

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ORDER

SHAMSUDDIN ABBASI, J:- By means of instant constitutional petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, the petitioner seeks post-arrest bail in Reference No.2 of 2018, pending adjudication before Accountability Court No.I, Karachi, against 13 accused persons including the present petitioner, whose name is appearing at serial No.6 of the Reference, leveling different acts of corruption and corrupt practices under National Accountability Ordinance, 1999 {NAO, 1999} in Fisherman's Cooperative Society {FCS} between 2014 and 2015, which led to illegal appointments, illegal award of contracts and embezzlement of funds by misuse of power/failure to exercise authority, thereby caused a massive loss to the FCS and illegally benefited/favoured other persons.

2. In essence the allegation ascribed to the petitioner in the Reference is that he was the front man of co-accused Nisar Morai, Ex-Chairman of FCS and most of the contracts of FCS were awarded to him illegally in the capacity of a private contractor against fake and forged documents in the names of two construction companies namely, M/s Bright Associates, which was awarded a contract worth Rs.22.35M and M/s Pak Corporation, which was awarded a contract worth 16.23M and FCS paid both companies without any

construction being carried out for it. He also forged quotations for contracts in the names of M/s Sohail Enterprises, M/s R.B. Constructions Company and M/s Venus Enterprises and, thus, was the main beneficiary of such contracts awarded against fake and bogus companies, which did not carry out the work as per the contracts. All contracts were awarded to the petitioner in violation of rules and regulations and without advertisement in any Newspaper and all payments in respect of contracts were made to the petitioner through open cheques in sheer violation of Government financial laws and rules, which were withdrawn by him. It has also been averred in the Reference that the petitioner was a close aide of co-accused Nisar Morai, Ex-Chairman of FCS, and at the same time of awarding contracts against fake and forged documents he was working as an employee of FCS. He was appointed by co-accused Nisar Morai against a newly created post of Special Task Officer and was awarded with various contracts against fake documentations as well furnished fake quotations in the names of different companies, whose owners showed their ignorance of awarding contracts to them by FCS and also denied to have submitted any quotation for any contract in FCS. Thus, the petitioner has committed offences of corruption and corrupt practices as defined under Section 9(a) of NAO, 1999.

3. It is contended on behalf of petitioner that he has been falsely implicated in the case with malafide intention and ulterior motives as otherwise he has nothing to do with the allegations leveled against him in the Reference; that the petitioner is unaware of the owners of the companies in whose accounts the cheques were deposited or cleared; that the payment vouchers are to be signed by Manager Audit, Manager FCS and Manager Maintenance; that the work orders are to be published in Newspapers by Manager FCS; that all the cheques were issued by competent authority and none of them is in the name of the petitioner or any one of them is withdrawn by the petitioner or any of his relatives; that there is no report of handwriting expert and forensic laboratory to ascertain signatures of the petitioner on any documents submitted for contracts and quotation as well; that the petitioner is an uneducated person and employed in FCS as a Security Guard for a period of one year at a monthly salary of Rs.30,000/- and all the contracts were awarded to

different companies during his tenure as contract employee; that the case is at the stage of evidence and yet five PWs have been examined by the prosecution but none of them have deposed against the petitioner; that filing of the Reference is against the provision of Article 19-A of the Constitution as well in sheer violation of the fundamental rights of the petitioner guaranteed to him under Articles 3, 4, 8, 9, 10, 10A, 12, 13, 14, 18, 19A 23 and 24 of the Constitution and he is languishing in jail for more than 16 months and there is no likelihood of the trial being concluded in near future as such the petitioner deserves concession of bail on merits as well on the ground of hardship and prayed accordingly. In support of his submissions, the learned counsel for the petitioner has placed reliance on the cases of *Muhammad Hanif and others v Chairman National Accountability Bureau through Director General Sindh* {2019 P.Cr.L.J. 1277}, *Syed Manzar Abbas v National Accountability Bureau through Director General* {2019 MLD 581}, *Shahid Umar v Chairman NAB and 2 others* {2019 P.Cr.L.J. 370}, *Sharjeel Inam Memon v National Accountability Bureau* {SBLR 2019 Sindh 1499}, *Tariq Bashir and 5 others v The State* {PLD 1995 Supreme Court 34}, *Syed Athar Hussain and others v Chairman, National Accountability Bureau and another* {2019 YLR 788}, *Abid Wali Khoso and others v National Accountability Bureau through DG NAB, Sindh and others* {2018 P.Cr.L.J. 1607}, *Ali Sher Mirani v Federation of Pakistan & another* {SBLR 2019 Sindh 550} and *Mian Muhammad Sharif v National Accountability Bureau and others* {2019 P.Cr.L.J. 302}.

4. Conversely, the learned Special Prosecutor NAB has vehemently opposed the grant of bail on the ground that petition for grant of pre-arrest bail of the petitioner as well other petitions of co-accused seeking pre-arrest and post-arrest bail, have already been declined by this Court on merits and the present petition has been filed without furnishing any fresh ground; that the case pertains to corruption and corrupt practices and misuse of authority whereby the accused persons nominated in the Reference in connivance with each other have illegally awarded various contracts against submission of forged documents in the names of fake companies and caused a colossal loss to FCS; that the petitioner managed fake letter-heads of different companies and earned contracts worth millions of rupees and the owners of such companies have denied of

awarding contracts to them by FCS as well submission of any quotation; that sufficient documentary evidence coupled with ocular evidence in shape of statements of witnesses under Section 161, Cr.P.C. is available on record, which substantiated the allegations leveled against the petitioner in the Reference; that the petitioner is nominated in the Reference attributing specific role for committing offence corruption and corrupt practices. Lastly submitted that the charge has already been framed and the case is ripe for evidence and there is every possibility that the trial would be concluded soon as such the petitioner does not deserve concession of bail at this stage.

5. We have given anxious consideration to the submissions of both the sides and perused the entire material available before us and the relevant law with their able assistance.

6. Record reflects that the petitioner was a private contractor and at the same time he was also in employment of FCS holding a position of Special Task Officer in security department, which had been illegally created for him, otherwise no such post existed in the recruitment rules. It has also come on record that the petitioner had set-up fake companies through forged documents and got contracts illegally and also received cash from banks against open cheques. The witnesses in their statements under Section 161, Cr.P.C. have implicated the petitioner with the allegations leveled against him in the Reference and the owners of the companies too have supported the case of the prosecution that the petitioner has misused their names for acquiring contracts from FCS by preparing fake letter-heads and furnishing forged documents for quotations.

7. At the stage of bail deeper appreciation is not permissible, the evidence which is on the surface of record of this case shows that the petitioner is, *prima facie*, connected with the allegations leveled against him in the Reference. No evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the NAB authorities to falsely implicate the petitioner; thus, the petitioner is, *prima facie*, involved and is well connected with the commission of offence and the question of grant of bail in such like cases does not arise. The concept of criminal misconduct which led to such kind of corruption has been defined in

the case of *Abdul Sattar and another v. The State* {2016 P.Cr.LJ. 396} as follows:-

"High Court observed that 'corruption' in a civilized society is like a disease like cancer, which, if not detected in time, is surely to malign the polity of country leading to disastrous consequences---'Corruption' is now termed as 'Royal thievery, which affects not only an individual', but also the economy, and the same destroys cultural heritage---Crime of 'corruption' is to be considered as one of the serious problems and threats posed to stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and rule of law--- One must keep distinction between an act of receiving money as 'consideration' for doing an illegal or legal act and the act which falls within meaning of corruption qualifying the term 'misappropriation'."

Even otherwise, the apex court in recent past has imposed special duty upon the Courts to perform their duties actively, diligently to eliminate corruption and corrupt practices. It is high time that standards are set and system put in place to develop a culture of accountability at all level in order to cleanse over system and institutions from the evil of corruption, loot and plunder of national resources by a few irrespective of their status in the system.

8. Insofar as the ground of hardship is concerned, we would like to make it clear that the provisions of Section 497, Cr.P.C. are not applicable for the purpose of grant of bail to an accused facing charges under NAO, 1999. However, in appropriate cases, the question of delay in the conclusion of trial, depending upon the facts and circumstances of each case on its own merit, has been considered by the superior Courts on the yardstick of hardship viz-a-viz scheme of Articles 4 and 15 of the Constitution. Thus, ipso facto, application of principles for grant of bail embedded in Section 497, Cr.P.C, including the provision of statutory delay, is devoid of any legal force based on the current law and the particular facts and circumstances of this case. Besides, petition for grant of pre-arrest bail of petitioner as well other petitions of co-accused, nominated in the Reference, seeking pre-arrest and post-arrest bail, have already been declined by this Court on merits and the present petition has been filed without furnishing any fresh ground. Bail, whether it should be a post arrest bail or pre-arrest bail, had long been the subject of Judicial experimentation, Judicial labour and toil,

undertaken by many erudite Judges not only ornamented this recipe of criminal law, but also made it yielding enough to cater for the changing dynamics both law and society, yet there exists leeway for further continuation to be made to make this provision all the more apt and in line with the intention of legislature. A post arrest bail only requires, the matter to be of further inquiry, but in a pre-arrest bail, the duty of Judge becomes more tough. Since the plea of seeking pre-arrest bail of the petitioner has already been declined by this Court on merits in Constitutional Petition No.D-4860 of 2017 vide order dated 13.04.2019, which has not been assailed before Hon'ble Supreme Court, and the petitioner has again knocked the door of this Court through instant petition for seeking post-arrest bail, which too without furnishing any fresh ground, is devoid of any merit. As to the case law cited by the learned counsel for the petitioner, in support of his submissions, in our humble view, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the petitioner. In the mentioned circumstances, we are of the considered view that the petitioner is not entitled to the relief(s) claimed in the petition including concession of post-arrest bail. Accordingly, this petition is dismissed. Needless to say that the observations, made herein above, are purely tentative in nature and the same are only meant for the purpose of bail and would have no impact or effect on any party during the trial. Since the case is ripe of evidence, therefore, we are optimistic that the trial Court would conclude the trial at an earliest.

JUDGE

JUDGE