

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Shamsuddin Abbasi.

C.P. No.D-5635 of 2020

Petitioner : Saleem Ibrahim Kapoorwala through
M/s. Khalid Mehmood Siddiqui and
Ghulam Rasool Korai, Advocates.

Respondent : Chairman NAB through Mr. Shahbaz
Sahotra, Special Prosecutor NAB a/w
IO Mr. Umesh Kumar.

Date of hearing : 29.4.2021

Date of order : **21.05.2021**

ORDER

Shamsuddin Abbasi, J. Through this petition the petitioner Saleem Ibrahim Kapoorwala seeks post-arrest bail in Reference No.21/2003, pending adjudication before Accountability Court No.I, at Karachi.

2. Facts relevant for the purpose of deciding this petition are that an FIR No.49 of 1997 was registered against Directors of M/s. Tawakkal Limited, Karachi, for offences punishable under sections 420, 406 and 109, PPC read with section 5(2), PCA-II of 1947 at CBC Circle, FIA, Karachi, on the basis of a written complaint filed by Allied Bank of Pakistan, City Circle, Karachi, against Directors of M/s. Tawakkal Limited, Karachi. It was alleged that various Usance LCs on 120 days DA were issued from 29.1.1994 to 28.3.1994 by East Meditererian Trust and Banking Corporation (EMTBC) Turkey in favour of M/s. Tawakkal Limited for import. The LCs were, *prima facie*, opened at the request of Macro Services Limited of Hong Kong purporting to be the importers of the goods. The company dishonestly presented 22 export documents aggregating Rs.67.138 million drawn against Usance LCs of the said EMTBC for negotiation at Merewether Tower Branch, ABL and obtained funds causing a wrongful loss to the Bank. These documents were submitted to the EMTBC for payment, but the EMTBC failed to make payment of the bills amounting to Rs.67.138 million. Thus, the Bank sustained loss of

Rs.96.563 million including mark-up. It was revealed that M/s. EMTBC was not a correspondent Bank of Allied Bank of Pakistan. It was further alleged that the then Provincial Chief of ABL ignoring the repeated apprehensions and warnings of the Audit and Inspection Division and International Division of the Bank regarding the doubtful credentials of the Bank not only confirmed the action of the Branch in negotiating the export documents to the extent of Rs.74,557,438/- vide letter dated 17.6.1993 but also authorized the branch to negotiate export LCs of EMTBC till 31.03.1994.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted in the Court of Special Judge (Offences in Banks), Karachi. An application under Section 16A(a) of NAO, 1999 was moved by the Chairman NAB for transferring the case to NAB Court, which was allowed and the case was transferred to Accountability Court-I, at Karachi {Sindh} on 02.8.2003. Since the Petitioner was shown as absconder in the challan, therefore, he was declared proclaimed offender after initiating relevant proceedings against him. All accused facing trial were acquitted except Abdul Qadir Tawakkal, who was convicted and sentenced to RI for 10 years and to pay a fine of Rs.96.563 million.

4. It is contended on behalf of the Petitioner that he is innocent and has been falsely implicated in this case; that name of Petitioner does not transpire either in the FIR or in the interim challan; that Petitioner left this country in the year 1994 and came back to Pakistan on 03.7.2020, he applied for protective bail and such a relief was extended in his favour vide order dated 16.7.2020; that he was declined bail by this Court vide order dated 25.7.2020; that all the accused were acquitted except Abdul Qadir Tawakkal, who too was acquitted by this Court in Criminal Accountability Appeal No.5/2004 on 06.2.2007; that nothing is available on record showing the involvement of the Petitioner in the alleged offence; that case of Petitioner is identical to the case of co-accused Noor Abdul Qadir and Fareed, who have been acquitted by learned trial Court; that Petitioner is of advanced age and suffering from heart diseases; that case of the Petitioner requires further inquiry; that he is ready to furnish a solvent surety if he is ordered to be released on bail; that

the prosecution has been able to examine only two witnesses, who have not implicated the petitioner in the commission of offence. The learned counsel has lastly submitted that the remaining witnesses are avoiding to appear and record their evidence and case is being adjourned without any progress. Finally, he prayed for grant of post-arrest bail to the petitioner.

5. The learned Special Prosecutor NAB while opposing the grant of bail to the petitioner has submitted that the Petitioner being one of the Directors of M/s. Tawakkal Group of Companies committed a fraud in connivance with ABL officials causing a loss of Rs.67.00 million; that the ocular accounts furnished by the prosecution were supported by documentary evidence. He has placed on record Special Power of Attorney executed by Petitioner for establishing a fake Bank in Cyprus, Turkey, which furnished fake guarantees in ABL and caused it colossal loss.

6. Admittedly, there is no denial on the part of the Petitioner that he has never served in M/s. Tawakkal Group from 1991 to 1994. The prosecution has claimed that during the period from 29.1.1994 to 28.3.1994 various Usance Letter of Credits on 120 days DA were issued by East Meditererian Trust and Banking Corporation (EMTBC) Turkey in favour of M/s. Tawakkal Limited and the Company dishonestly presented 22 export documents aggregating Rs.67.138 million drawn against Usance LCs of the said EMTBC for negotiation at Meriwether Tower Branch of ABL and obtained funds illegally and unlawfully causing a loss to the Bank. These LCs were issued by a fake Bank established by Petitioner in Cyprus, Turkey. The learned Special Prosecutor NAB during his arguments has placed on record certified copy of Special Power of Attorney, duly signed by the Petitioner as Director of EMTBC, and based on such Special Power of Attorney a fake bank was established. It is further the case of the prosecution that the accused persons in connivance with each other committed fraud and misappropriated an amount of Rs.67.138 million of ABL. A keen look of the record reveals that this Court while allowing Accountability Appeal, filed by Abdul Qadir Tawakkal, held that Special Power of Attorney was executed by present Petitioner and absconding accused Muhammad Ashraf Popatiya and based on

such observation acquitted the appellant of the charge by extending him the benefit of doubt.

7. As to the contention that the two witnesses examined by the prosecution have not supported the case of the prosecution and implicated the petitioner with the commission of offence is concerned, suffice to say that an exercise to appreciate evidence would amount to deeper examination of the material, which in a petition for bail cannot be undertaken in view of well settled proposition of law that while deciding bail matters the merits of the case are not to be touched deeply. The Hon'ble Superior Courts have taken a note that deep appreciation of evidence and drawing of conclusion therefrom is the exclusive function of the trial Court and the Superior Courts should not anticipate it while dealing with bail matters. Reliance may well be placed to the case of *Chiragh Din v The State* {PLD 1967 Supreme Court 340}, wherein it has been observed as under:-

"The appreciation of evidence and the drawing of conclusion therefrom in relation to all the circumstances is the function exclusively of the trial Court. It cannot be anticipated by a Superior Court dealing with an ancillary matter, e.g. the grant of bail, pending trial."

8. The rule that the Superior Courts rarely enter into the merits of the case for the purposes of granting or refusing bail seems to be quite sound because the appreciation of the evidence is the exclusive function of the trial Court. We honour this rule and would avoid going into deep appreciation of evidence because the deep appreciation of facts, while deciding a petition for bail, in matter of detention too, is not a requirement of law, but the material which is available on the surface of record of this case shows that the petitioner is, *prima facie*, involved and well connected with the commission of offence charged with.

9. The cases of 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 non bailable offences such as this one where reasonable grounds exist to believe that the accused in some way or the other are connected with the offence charged with, the question of grant of bail in such like cases does not arise because now-a-days financial corruption and commission of white collar crime is a big issue being faced by our country and is liable to be curbed with iron hands. Even otherwise, the apex Court in recent judgment imposed special duty upon the Courts to perform their duties actively, diligently to eliminate such kind of 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.

10. For the foregoing reasons, we are of the view that the petitioner is not entitled for grant of bail. Accordingly, this petition is dismissed. However, in order to avoid delay in the trial and taking into account the right of the petitioner to an expeditious trial, we would direct the learned Accountability Court to expedite the matter and dispose it of at an earliest preferably within a period of three months, failing which the Petitioner shall be free to file fresh petition for seeking bail. Needless to mention that the observations recorded 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 trial.

JUDGE

JUDGE