

## Order sheet

**IN THE HIGH COURT OF SINDH, KARACHI.**

Present:- Mr. Justice Muhammad Iqbal Kalhoro.  
Mr. Justice Shamsuddin Abbasi

**Constitutional Petition No.D-3405 of 2021**

Manzoor Hussain Abbasi

Vs.

NAB

**Constitutional Petition No.D-3579 of 2021**

Rehmatullah Sheikh

Vs.

The State &amp; others

**02.09.2021**

Mr.Farooq H. Naek, Advocate for petitioner in C.P. No.D-3579/2021.  
Mr.Ahmed Ali Ghumro, Advocate for petitioner in C.P. No.D-3405/2021.  
Mr.Irfan Memon, DAG.  
Mr.Shahbaz Sahotra, Spl. Prosecutor NAB a/w IO Ramesh Kumar.

**ORDER**

**Muhammad Iqbal Kalhoro, J:-** Petitioners, having worked as Municipal Commissioner, District Municipal Corporation Malir at different points in time, were arrested by NAB on 02.10.2020 and 04.10.2020 respectively in an investigation, against them and other officials of said DMC, relating to allegations of embezzlement of funds respecting POL charges from the year 2013 to 2017. They filed petitions for post arrest bail, which were dismissed by a common order dated 25.02.2021. One of petitioners, Manzoor Hussain Abbasi, then approached the Honorable Supreme Court for the same relief in Civil Petition 465-K/2021, which he however later on, on account of filing of reference against him and others meanwhile, withdrew under a dispensation permitting him to file a fresh petition for bail before this court. It is in such context, they have filed these petitions for post arrest bail in the reference No.02/2021.

2. Allegations against the petitioners, set out in Para No.6 of the reference, are of misusing their authority in recommending for approvals inflated/fraudulent POL bills beyond actual consumption, first against non-functional/off-road vehicles and second showing use of vehicles in night shifts. Along-side their respective incumbency in the office, their recommendations and resultant different payments in favour of co-accused Shafqt Mumtaz, the contractor and proprietor of M/s Noor Petroleum Services, Ltd. to earn personal gain have also been highlighted. In the

end, it is stated that all accused including the petitioners in collusion with each other have caused a loss of Rs.276,439,623/- to public exchequer.

3. Learned defense counsel in arguments first disputed office-tenure of the petitioners as shown in the reference and said that they their time in the office was different and to a great extent does relate to the subject period; no witness from M/s. Noor Petroleum Services Ltd, has been examined and instead an unrelated person claiming to be Manager/Partner of M/s. Elize Petroleum Service has been introduced as a witness over the issue without any explanation and proof. They have submitted that no proof of collusion among the accused and further no evidence strengthening allegation of personal gain by the petitioners has been collected in the investigation. Stressing the ground of pick and choose, they stated that the petitioners were not the final or competent authority to approve such bills and it was the Chairman/Administrator, yet only few of them have been arraigned leaving a vast gamut of Deputy Commissioners, who, in lieu of their office, had acted so in the relevant period. Besides highlighting merits, they pointed out that petitioners are in jail for about one year, yet no tangible progress in the trial has been achieved. Not even, all the papers in terms of section 265-C CrPC have been provided to the accused. There are 33 PWs and keeping in view such pace it is not hard to extrapolate the time the trial is likely to take to end.

4. Against it, learned Special Prosecutor, NAB duly assisted by IO has opposed these petitions. He has submitted that sufficient documentary evidence connecting petitioners with the alleged offence has been collected and they are not entitled to bail. Learned Assistant Attorney General has sided with him in opposition and has submitted that contentions raised by defense counsel require deeper appreciation, which is not to be undertaken at bail stage. He has relied upon the case reported in PLD 2021 SC 796 in support of his arguments.

5. We have heard the parties and perused the record. The allegation against the petitioners is of misusing authority and making recommendation for approval of POL bills in excess of actual consumption against either non-functional vehicles or use of vehicles in night shifts. It is not disputed that petitioners were only recommendees and the Chairman/Administrator was the competent authority to grant a final nod to payments. Their liability in that capacity, required to be determined, has neither been highlighted separately in the reference nor a reference to relevant rules and regulations identifying their obligation in the context has been made to understand lapse, if any, on their part. In our view, role of an official, who is recommending a note initiated by the account section of the office for approval,

cannot be equated with the authority actually granting such approval. His role needs to be fixed for the purpose of underlining its relevancy with the allegation against him. Failure to do so in the investigation, and making generic quantification of his liability with those who appear to be directly involved in commission of the offence, which *prima facie* appears to be the case here against the petitioners, will yield to a questions requiring further enquiry against them.

6. Next, although there are allegation of personal gain by the petitioners, nevertheless, *prima facie*, no evidence having nexus with it is available on record. The IO however during hearing, by referring to the statement of PW Muhammad Shahzeb, Assistant Director NAB, made an attempt to dispel such impression and stressed that from him, he had collected counter foils of cheques of accounts of M/s Noor Petroleum Services (which he i.e. Assistant Director NAB, had collected as IO in some other enquiry) containing names of officials and DMCs whom commission was paid by him. But when we asked him to show us the counter foils, he instead produced a computer generated statement, which *prima facie* neither serves the purpose as being explored here nor the details therein commensurate with the figure of amounts alleged against the petitioners. In any case, when we asked him whether, in view of allegation of personal gain by the petitioners by receiving cash from co accused Shafqat Mumtaz, proprietor of M/s Noor Petroleum Services, he traced money trail and determined living standard of the petitioners as relevant evidence to support his case on this point, he replied in negative. We therefore of the view the case on this point as well against the petitioners needs further enquiry.

7. Consequently, these petitions are allowed and the petitioners are granted bail subject to their furnishing two solvent sureties in the sum of Rs.1 Million each and P.R. bond in the like amount to the satisfaction of Nazir of this Court. Further, they are directed to cooperate in the proceedings of trial and the trial court, if finds the petitioners causing any delay in the trial or attempting to tamper with the prosecution evidence, shall file a reference before this court for recalling the concession granted to them by means of this order.

8. The petitions stand disposed of in the above terms. The observations made hereinabove are tentative in nature and shall not prejudice case of either party at trial on merits.

JUDGE

JUDGE

A.K