

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Aga Faisal.

Cr. B.A. No.763 of 2022
Noor Muhammad Leghari
Versus
NAB & another

For date of hearing
& order

: **13.05.2022**

M. Raj Ali Wahid Kunwar, advocate for applicant
Mr. Shahbaz Sahotra, Special Prosecutor, NAB
Mr. Irfan Ahmed Memon, DAG

ORDER

Muhammad Iqbal Kalhoro, J:- Applicant is standing a trial in Reference No.19/2020 before the learned Accountability Court at Karachi has filed this application for post-arrest bail. Previously, he had filed a C.P. No.D-1867/2019 for pre-arrest bail, dismissed vide order dated 26.02.2021 along with other petitions filed by co-accused and petitioner was taken into custody. Afterwards, he filed C.P.No.D-4351/2021 & C.P. No.D-1752/2021 challenging his custody and seeking bail on the grounds, among others, that against him no warrants were issued. Both the petitions were dismissed vide order dated 04.10.2021. Petitioner, however, filed a review application urging that he had not argued his case for bail, which was wrongly dismissed; and since meanwhile through 2nd Amendment & 3rd Amendment, 2021 in the NAB law the trial court was conferred with the jurisdiction to entertain bail application, he may be allowed to file application for bail before the trial court, which application was allowed accordingly. Consequently, he filed application before the trial court for bail has been dismissed through impugned order, hence this application for post arrest bail.

2. In brief, allegation against the petitioner, who was Secretary, Special Education Department during relevant time, is that he along with co-accused appointed 294 people illegally against various posts (BS-01 to BS-16) in Special Education Department.

3. Learned counsel has argued that petitioner is in jail for the last more than one year, but only 04 witnesses out of 38 have been examined;

petitioner was posted in his office from 06.11.2012 to 17.12.2012 only for one month. In the meeting on 14.12.2012, when summary for appointment was placed before him, he had taken exception to the procedure of appointment, etc., which is duly endorsed on the note sheet. 14.12.2012, was Friday and on 17.12.2012, Monday, he was transferred. The offer letters to some of the candidates in his name were issued afterwards illegally with the signature of the Section Officer on 18.12.2012 onwards when he was admittedly not posted in the office. Citing all these grounds, he has prayed for post arrest bail.

4. Learned Special Prosecutor, NAB and learned DAG have opposed bail stating that all these grounds available to the applicant previously, have been considered, and his bail has been rejected, no fresh ground is introduced to maintain this application for post-arrest bail.

5. We have considered submissions of the parties and perused material available on record. Earlier, it was his pre-arrest bail application that was dismissed mainly on the ground of lack of malafide on the part of the prosecution to book him in the present case. Dismissal of his post arrest bail was on account of his failure to establish that his custody was illegal. His application for post arrest bail has been dismissed by the trial court simply on the ground that his applications for pre-arrest bail and post arrest have already been dismissed by this court. However, after the order passed by this court on review application, the trial court was required to appreciate allegations against the applicant on its own merits, of course tentatively and independently. It has not been apparently done.

6. Applicant was posted in the office as Special Secretary only for one month does not appear to be disputed by other side. His objection on relevant summary for appointment is a recorded fact. Learned Special Prosecutor, NAB has raised objection that this defence is an afterthought, was not cited by him before IO. Be that as it may, this is an official document and its authenticity is not under cloud. Besides, the applicant is in jail for more than one year but prosecution has not been able to even bring the case halfway as out of 38 witnesses only 04 witnesses have been examined. Looking at this pace, it is not hard to see that trial is likely to take a long time to conclude. In such circumstances, incarceration of the applicant in the jail is not going to serve any purpose nor add to merits to

benefit the prosecution. When we take a holistic view, of course tentative, of all these facts and circumstances, are of an opinion that applicant has been able to make out a case for bail. Accordingly, application is allowed and applicant is granted bail subject to his furnishing a solvent surety in the sum of Rs.500,000/- (Rupees five hundred thousand only) and P.R bond in the like amount to the satisfaction of Nazir of this court.

7. The bail application is disposed of in the above terms; the findings made hereinabove are tentative in nature and would not prejudice case of either party at trial. The applicant is further directed to coordinate in the trial and shall not cause delay.

JUDGE
JUDGE

Rafiq/P.A.