

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.

Mr. Justice Agha Faisal J.

C.P.No.D-2084 of 2022

C.P.No.D-2085 of 2022

C.P.No.D-2086 of 2022

Saleem Ibrahim Kapoorwala ----- Applicant

Versus

The State & others ----- Respondents

Mr. Khalid Mehmood Siddiqui, advocate for petitioner.

Mr. Shahbaz Sahotra, Special Prosecutor NAB

Mr. Irfan Ahmed Memon, DAG

17.05.2022

ORDER

MUHAMMAD IQBAL KALHORO J: Petitioner is confined in Central Prison, Karachi atleast in four NAB cases pending before learned Accountability Court No.1, Sindh at Karachi. In all the cases, he has been granted bail by this Court, has furnished required surety in all except reference No.21/2003 which is why, he has not been released. He has filed these petitions for seeking protective bail in NAB References No.21/2003, 23/2003 and 24/2003 arising out of FIRs No.14/97 and 32/97 of P.S. FIA CBC, Lahore pending before learned Accountability Courts at Lahore. His counsel has stated that during captivity in the jail, petitioner has learnt that Accountability Courts, Lahore have issued NBWs against him in the said references and forwarded it to Central Prison, Karachi for execution. Hence he has deliberately not furnished surety in the last case i.e. reference No.21/2003 apprehending his imminent arrest in the cases pending at Lahore and transfer to Lahore Jail. With this background, learned counsel has pleaded for protective bail and has cited case law reported in 1993 P Cr. L J 738, 2022 MLD 448 and 2021 SCMR 1166 in support of his arguments.

2. Learned DAG and Learned Special Prosecutor NAB have opposed these petitions for the relief as above and have relied upon case law reported in PLD 2021 SC 886.

3. We have considered submissions of both the parties. In our view, the stance of learned counsel for State that protective bail to an accused in custody in a case pending in the Court situated in a different province etc. cannot be granted. For, firstly, he is in custody, cannot be extended

relief of pre arrest bail as protective bail is in nature of pre-arrest bail has to be extended to a person in extra ordinary circumstances to protect him by diverting usual course of law entailing his arrest, being sought on prima facie incriminating evidence against him, for investigation purpose.

4. Secondly, the procedure for forwarding an arrested accused to a Court which has issued NBWs against him is provided u/s 86 CrPC. This provision stipulates that when a person is arrested in execution of warrant, and brought before the Magistrate, he shall at the first instance issue directions for removal of his custody to the relevant Court. But if offence is bailable and direction has been endorsed on the warrant u/s 76 Cr.P.C, shall take bail bond from him and forward the same to the Court which issued the warrant. However, if offence is not bailable and no direction has been endorsed u/s 76 Cr.P.C on the warrant, the Sessions Judge in whose jurisdiction such person has been arrested may subject to provision of section 497 Cr.P.C and for sufficient reasons, release the person on ad-interim bail on such bond or security as he thinks fit and direct person to appear by a specific date to the Court which issued warrant and forward the bond to that Court.

5. By virtue of recent second and third amendment in NAB law, the Accountability Courts have been conferred with the powers to grant bail in terms of section 497 and 498 CrPC. Therefore, in the light thereof, if section 86 CrPC is read with section 17 of National Accountability Ordinance, 1999:___ provisions of the Code to apply___ it would be clear that relevant Accountability Court at Karachi has jurisdiction to decide the issue by either shifting custody of the petitioner to the relevant court at Lahore or grant him ad interim bail for this purpose. The petitioner has not adopted such recourse and has filed these petitions for protective bail directly which in view of aforesaid discussion are not maintainable. The remedy is available to the petitioner. This being the legal position, we find no merits in these petitions and dismissed the same leaving the petitioner however to approach proper forum if so advised for redressal of his grievance if any.

JUDGE

JUDGE

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