

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P.No.D- 2206 of 2015
C.P.No.D- 360 of 2016
C.P.No.D- 591 of 2016
C.P.No.D- 596 of 2016
C.P.No.D- 629 of 2016
C.P.No.D- 740 of 2016
C.P.No.D- 872 of 2016
C.P.No.D- 1069 of 2016
C.P.No.D- 3268 of 2016
C.P.No.D- 3269 of 2016
C.P.No.D- 3278 of 2016
C.P.No.D- 3279 of 2016

Present:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Adnan-ul-Karim Memon.

Date of hearing: 24.01.2019

Date of decision: _____.01.2019

M/s Muhammad Yousuf Laghari, Raja Jawad Ali Sahar, Ishrat Ali Lohar, Waqar Ali Memon and Raza Hussain, Advocates for the petitioners.

Mr. Jangu Khan, Special Prosecutor NAB

ORDER

MUHAMMAD IQBAL KALHORO. J: - This order shall dispose of captioned petitions filed by petitioners for pre-arrest bail in Reference No.14/2014, pending against them before Accountability Court at Hyderabad.

2. Brief facts of the case are that NAB initiated an inquiry on receipt of a complaint about misappropriation of funds granted to Sehwan Development Authority (SDA) by the Sindh Government to the tune of Rs.450 million. The inquiry was converted into investigation and it was found that aforesaid amount was released to SDA during the year 2012 in three instalments. On record SDA paid Rs.432.79 million to various contractors against the works purportedly done by them. However, the alleged works were found incomplete and abandoned. The details of such schemes 20 in number and name of each

contractor along with the amount received by him in the form of cheques have been given in the reference at Page-3. As the works were technical in nature, a report from technical expert of Pak PWD was sought. The expert after verifying the schemes submitted his report mentioning that the work done on the site was substandard and of inferior quality. The loss to national exchequer calculated by him against each scheme has been detailed in a tabular form at page-4 of the reference which amounts to Rs.56,861,395/-.

3. Role of each accused has been specified in the investigation report, which shows that accused No.1 namely Asghar Abbas Shaikh was Director General, SDA and being its head was responsible for transparency, fair award of contracts and completion of work but he chose to receive kickbacks from the contractors and deposited such amount in the Bank account of his son, accused No.2 namely Faisal Abbas. He kept on releasing payments to the contractors without ensuring the quality and quantity of the work in active connivance with accused No.3 namely Iqbal Baloch, who was Deputy Director, Audit and Accounts, SDA and was responsible for managing finances. He released all payments and co-signed all the cheques through which payments were released. He is alleged to be front man of accused No.1 and managed to award contracts illegally; he actually diverted the public funds to the bank accounts of accused No.2 Faisal Abbas.

4. Accused 4 to 11 were either XEN (Executive Engineer) or AEN (Assistant Engineer), they are alleged to be in active connivance with the contractors, and hence deliberately failed to fulfill duty to ensure satisfactory work quality wise and as per measurement book (MB).

5. Against accused No.2 namely Faisal Abbas it is alleged that he was operating two bank accounts in Bank Islami Limited, Phase-IV Branch, Karachi, although he was student at the relevant time and had no financial standing and background of his own. He allowed deposits of huge amount of illegal kickbacks and commissions from the contractors in his own bank account and was actively involved to channelized ill-gotten money in collusion with his father. All the amounts so deposited in his accounts were withdrawn in cash.

6. Accused No.12 namely Manohar Lal, accused No.13 namely Qalander Bux Abro, accused No.14 Khatib Ahmed, accused No.15 Haji Sirajuddin, accused No.16 Akber Shoro and accused No.17 Irfan Ullah Khan were contractors and the allegations against them are that they compromised the work assigned to them and left it incomplete after taking full payment with active connivance of accused No.1 and 3.

7. Accused No. 18 namely Jehangir Ahmed Shaikh is brother of accused No.1. He had opened an account in Bank Alfalah Limited, Johar Chowrangi Branch, Karachi in the name of M/s Ahmed and Co. in which huge amounts of money were deposited from the account of SDA, which was being done in connivance with the accused No.1. He withdrew all the amounts in cash. He in connivance with his brother accused No.1 managed to obtain contracts on the basis of forged and fabricated documents in the name of another company.

Learned Counsel for the petitioners have mainly argued that the petitioners have been falsely implicated in this case without substantial evidence against them; that NAB has not been able to collect any incriminating evidence against the petitioners; that NAB reference is based upon hypothesis and surmises; that most of the schemes have been completed or near to completion, however, some schemes which are incomplete are ongoing schemes against which the final payments have not been made; that the work done at the site is more than the payments made to the contractors; that NAB has not specified what benefit the petitioners have gained individually from the alleged offence; that NAB has not been able to show any evidence showing petitioners were in league with each other.

Learned Counsel for the petitioners, who are contractors, argued that their security is still lying with SDA which is more than the amount of loss shown against them individually; that only the allegations against them are that they left the schemes incomplete which was due to failure of SDA to make final payments to the contractors. They submitted that the technical report in respect of the completed work has not been prepared after physical verification of the works; that there is no evidence that the Expert of PWD had ever visited the alleged schemes; that it is not clear that on what basis and by applying what formula the loss has been calculated by the Expert; that no laboratory test of the work done by the petitioner was carried out by the Expert to form an opinion that work was of low quality and substandard.

On the other hand special prosecutor along with I.O. of the case have opposed grant of bail to the petitioners on the ground that sufficient evidence has been collected which connects them with the alleged offence.

We have considered submission of the parties and perused the record. These petitions

Such facts discovered during the investigation led the Investigating Officer to conclude that the accused persons have committed an offence of corruption and corrupt practices as defined under section 9(a) of NAO, 1999. Hence, he filed the aforesaid reference against them.

are that on a source report against the petitioner Muhammad Yousuf, Ex-Head Constable in Police Department, that he had accumulated huge assets through illegal means, an inquiry was authorized by the D.G NAB Karachi, which was subsequently converted into the investigation. In due course after authorization of the inquiry, D.G NAB issued warrants of arrest against petitioner Muhammad Yousuf and his son namely Arif Yousuf, who were arrested on 22.02.2017 and 25.02.2017. During the period of their arrest with the NAB, the said petitioners disclosed about documents of immovable properties, cash and other record of the assets, which they had accumulated through illegal and illicit means. All such record was secured in presence of witnesses and such memos were prepared. Further on the pointation of Muhammad Yousuf following cash, documents and article, etc. were recovered from his houses No.224 and 225, in Tando Mir Ghulam Hussain, Unit No.9, Latifabad, Hyderabad:

(1) Cash: (a) PKR 3.89 million, (b) UAE Dirhams 3405, (c) Saudi Riyals 745 (d) Iranian Rial 20 million, **(2) Pay orders:** 3 x Pay Orders of Rs.12.6 million in favour of Chairman NAB alongwith VR affidavit, **(3) Gold:** 39.4 Tola + Imitation jewelry, **(4) Wrist Watch:** Rado Wrist Watch, **(5) Cars:** 4 x Cars including Prado, Vitz, WagonR and Toyota Avanza, **(6) Motorcycle:** 8 x Motorcycles, **(7) Banking Instruments:** (a) 41 x Cheque Books of various Bank Accounts, (b) 13 x Credit / ATM Cards of various Banks, **(8) Miscellaneous:** (a) 53 x Fake Pension Payment Bills, (b) 15 x Fake GP Fund Payment Bills, (c) 10 x Insurance Policies in the name of his family, (d) Fake Rubber Stamps in the names of Chairman NAB, SSP Sindh Police, Accountant etc, (e) Diaries showing (%age) of distribution of amounts amongst different persons, (f) Cheques of different account (Signed / Unsigned).

In addition to above, 05 vehicles available there were seized, the documents of 08 vehicles in the name of petitioner Muhammad Yousuf and his other family members were secured besides 08 motorcycles and the documents of 45 different immovable properties. Apart from above, 08 saving certificates in the names of family members of petitioner Muhammad Yousuf worth Rs.8,00,000/- were also secured. The search of the said premises further led to discovery of documents about 102 benami accounts of Soneri Bank, Latifabad Branch and 66 benami accounts in the Branches of UBL Hyderabad, which were being used and operated by the petitioners in connivance with the Bank Managers i.e. Petitioners namely Syed Shoaib Hassan, Branch Manager UBL and Salman Ali Askari, Manager, Soneri Bank Latifabad Branch. This facilitating the other petitioners to purchase several properties. The total

amount allegedly drawn from the bogus pension bills by the petitioners----? amounted to Rs.323,004,453/- and Rs.64,410,235/-, the details of which have been given by the Investigating Officer in his investigation report. During investigation, the cheque books of benami accounts were also recovered from the house of the petitioner Muhammad Yousuf. The petitioner namely Muhammad Yousuf and his sons namely Petitioners Arif Yousuf and Irshad Yousuf are alleged to have accumulated wealth to the tune of Rs.196,080,484/-. During investigation, it was found that the said Bank Managers were living beyond their known sources of income and leading a luxurious life. Their houses were well furnished and decorated with expensive articles available in every hook and corner of their houses. The petitioners are alleged to have caused a loss of Rs.545,162,776/- to the national exchequer with the connivance of each other.

3. When these petitions were filed, the subject reference was not yet filed against the petitioners, therefore, the petitioners have made multiple prayers calling into question the inquiry and the detention of petitioners namely Muhammad Yousuf, Arif Yousuf and Salman Ali Askari. However, after filing of the reference the petitioners have narrowed down their prayers limited to grant of bail.

4. Mr. Ishrat Ali Lohar who is representing petitioners Muhammad Yousuf, Arif Yousuf and Irshad Yousuf, has mainly contended that the petitioners have been falsely implicated in this case and entire recovery has been foisted on them; that no faire investigation has been conducted as on 22.02.2017, the inquiry started and thereafter within two days on 25.02.2017 the Investigating Officer raided the house of the petitioners and arrested petitioners Muhammad Yousuf and his son Arif Yousuf; that the entire record consisting of various documents, which can be cited by the petitioners in defense, has been seized by the NAB, therefore, the petitioners have been rendered defenseless and cannot contest the case on merits; that several properties shown in the reference have no nexus with the petitioners and some of which are either in the names of some other persons or merely booking. The petitioners are shown to have made some properties. Learned Counsel during the course of his arguments has drawn our attention to the statement dated 20.09.2017 and the photostat copies of the annexures filed to emphasize that the petitioner Irshad Yousuf was a State Agent and in that capacity he had sold and purchased various properties, the record of which has been made part of reference and shown against the petitioners. He has further argued that although it is alleged that the benami accounts were being maintained and cheques issued with the connivance of District Accounts Office, Hyderabad but none from the said office has been made accused. Learned Counsel in

support of his arguments has relied upon the case law reported as (1) 2014 P.Cr.L.J 1378, (2) 2008 YLR 816, and (3) 2007 P.Cr.L.J 1957

5. -----? Mr. Muhammad Zahid Chohan, learned counsel for petitioner namely Syed Shoaib Hassan has contended that no specific role has been assigned to the petitioner and during investigation no property on his name was found; that he is residing in a rented house; that no vehicle is shown to have been purchased by him and there is nothing on record connecting the said petitioner with any offence; that he has not caused any wrongful loss to the national exchequer or gained monetary benefits; that only 7/8 alleged benami accounts were opened with the signatures of said petitioner.

6. -----?Mr. Muhammad Aleem Arain learned Counsel for the petitioner namely Salman Ali Askari has contended that appellant was arrested on 24.05.2017 although there was no evidence against him; that he is a disabled person and is suffering from polio; that in the investigation nothing was secured from him and he is not shown to have gained any monetary benefits or accumulated any assets in the commission of alleged offence. Learned Counsel in support of his arguments has relied upon the case law reported as (1) 2017 P.Cr.L.J 674, and (2) 2017 P.Cr.L.J 147.

7. On the other hand, Mr. Jango Khan, Special Prosecutor NAB with the assistance of Investigating Officer of the case has argued that on the pointation of petitioners Muhammad Yousuf and his son huge cash, documents, etc., and other worth known of rupees were recovered for which they have no explanation; that there is prima facie material against the petitioners in the shape of oral as well as documentary evidence; that all related documents of the said benami bank accounts were recovered from the house of petitioners Muhammad Yousuf and his sons; that all the benami account holders were examined during the investigation, who have denied to have received any amount. In respect of the Bank Managers namely Syed Shoaib Hassan and Salman Ali Askari, they have contended that petitioner Syed Shoaib Hassan, was operating a bank account of his wife namely Mehak Zehra, where he used to deposit the gains received from the benami bank accounts and during investigation such bank statements of accounts of his wife have been secured and submitted in the court. According to them, petitioner Salman Ali Askari used to maintain and operate accounts of his father namely Syed Rashid Ali Askari and his brother Syed Haroon Ali Askari where he used to deposit the cash received by him as commission on benami accounts; that during investigation the statements of his father and brother were recorded, who have wholly denied having accounts in the bank. Learned Special Prosecutor NAB has contended that a separate reference bearing

No.12 of 2017 has been filed against the District Accounts Officer in respect of allegations of sanctioning the bills pertaining to benami accounts and he is facing the trial therefore it is not correct that from District Accounts Office no one has been arraigned as an accused.

8. We have considered the submissions of the parties and have perused the material available on record. Petitioner Muhammad Yousuf is the Ex-Head Constable and petitioner Arif Yousuf is the Constable in Police Department, whereas the petitioner Irshad Yousuf is a clerk in Revenue Department. During the investigation not only huge cash of Pakistani currency but of foreign currency was recovered on the pointation of petitioners Muhammad Yousuf and Arif Yousuf, who were arrested on 25.02.2017. In addition to above, the documents of multiple moveable and immovable properties, vehicles, pay orders, motorcycles and banking instruments were recovered on the pointation of the said petitioners from their residential house No.224 and 225, Tando Mir Ghulam Hussain, Unit No.9, Latifabad, Hyderabad. Apart from above, 102 benami accounts in Soneri Bank, Latifabad Branch, Hyderabad and 66 benami accounts in UBL Hyderabad of different persons were identified to have been used by the petitioners fraudulently with the connivance of the Bank Managers of the respective Banks. It is alleged that an amount of Rs.323,004,453/- and Rs.64,410,235/- were deposited in the said Bank accounts, which were withdrawn by the petitioners. During investigation, the 45 persons on whose names the benami accounts were being run by the petitioners were examined who have categorically stated that they were told by petitioners Muhammad Yousuf and Salman Ali Askari to open account in Soneri Bank, as Salman Ali Askari needed credit for opening new accounts for his promotion. And after opening of such accounts they were made to sign cheque books. The record reflects that during the investigation, the I.O has been able to collect the record of foreign trips of the family members of petitioner Muhammad Yousuf. The documentary and oral evidence, prima facie, connecting the petitioners with the alleged offence. We are of the view that the petitioners Muhammad Yousuf, Arif Yousuf and Salman Ali Askari have not been able to make out a case for bail.

9. As to the case of petitioners Irshad Yousuf and Syed Shoaib Hassan Zaidi, who are seeking pre-arrest bail, suffice it to say that the record does not reveal that the said petitioners have been falsely implicated in this case or the charges against them are motivated by any mala fides on the part of NAB authorities. Petitioner Irshad Yousuf is the son of petitioner Muhammad Yousuf and is working as Junior Clerk in Revenue Department but on his name several immovable properties have been found, which, prima facie, do not tally with his source of income. Learned Counsel for the petitioners during his arguments emphasized that the said petitioner was running a State Agency

and thus, he was regularly selling and purchasing the immovable properties which have been mentioned in the reference. This argument, however, at the stage of pre-arrest bail cannot be appreciated since it requires deeper appreciation of evidence.

10. During the course of arguments, learned Special Prosecutor NAB and the Investigating Officer of the case have pointed out that Syed Shoaib Hassan Zaidi, Ex-Branch Manager, was maintaining an account on the name of his wife namely Mehak Zehra where pension bills of benami account holders would be deposited although his wife has never remained in any government job. It was further informed that such documents have already been submitted in the trial court and a copy supplied to the said petitioner, which his learned defense counsel could not deny. Moreover, said petitioner namely Syed Shoaib Hassan Zaidi has not been able to show that the charges against him have been trumped up or are the result of some mala fide on the part of NAB. This being the case, we are of the view that the petitioners Irshad Yousuf and Syed Shoaib Hassan Zaidi are not entitled to the extra ordinary relief of pre-arrest bail.

JUDGE

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