

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No. D- 2412 of 2022

Date	Order with signature of Judge
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1. For orders on CMA No. 16166/22 (U/A)
2. For hearing of main case.

13.06.2022.

Mr. Raj Ali Wahid Kunwar, Advocate for the Petitioner.
Mr. Khaleeq Ahmed, DAG.
Mr. Shahbaz Sahotra, Spl. Prosecutor NAB.

1. Urgency granted.
2. Through this petition, the Petitioner has sought the following prayers:-

- i. Declare that the Petitioner is illegally arrested and confined in jail.*
- ii. Release the Petitioner immediately from the illegal detention of Respondent No.1.*
- iii. Any other relief this Hon'ble Court may deem, fit and proper under the circumstances of the case.*

Learned Counsel for the Petitioner submits that a Reference bearing No.06 of 2019 was filed by NAB before the Accountability Court at Karachi and the Petitioner was arrested on 07.01.2022. He submits that thereafter pursuant to an Amendment Ordinance, dated 7.10.2021 & 1.7.2021, (Section 4 thereof) the matters pertaining to sales tax were excluded from the purview of the NAB Ordinance, and the Accountability Court passed an Order on 10.01.2022, and forwarded R &Ps and Supplementary Reference to the Special Judge (Customs, Taxation and Anti-Smuggling), Karachi. On 26.05.2022, this Court was informed that now the Director Intelligence and Investigation has assumed jurisdiction and the Petitioner's Counsel was directed to file appropriate application before the Special Judge (Customs, Taxation and Anti-Smuggling), Karachi for seeking bail; however, it appears that the Directorate of Intelligence has never approached the Special Judge (Customs, Taxation and Anti-Smuggling), Karachi with any Challan or Final report. In fact, even before passing of order dated 26.5.2022, by this Court, apparently on 10.05.2022, R.& Ps were sent back to the Accountability Court-III, Karachi by the Special

Judge (Customs, Taxation and Anti-Smuggling), Karachi, as none had prosecuted the case before it. Learned Counsel further submits that that since then the matter is pending, whereas, the Petitioner is in jail custody, as of today no court has taken cognizance in respect of the Reference in question; hence, the petitioner is in wrongful confinement, and therefore, this Court may enlarge him on bail.

Learned DAG has candidly conceded to this legal proposition; whereas, the prosecutor NAB has though made an attempt to oppose this legal position; however, while confronted, he has not been able to assist us as to how and under what law a person can be detained indefinitely.

In view of such position, it appears to be case, wherein, apparently, the Petitioner is in illegal custody and so also unable to seek bail from any Court, whereas, notwithstanding, the fact that the Amendment Ordinance in question has expired; but through a Joint Session of the Parliament a new Bill has been passed, wherein, once again same provisions of Section 4 has been incorporated; whereas, the petitioner cannot be kept in jail custody for an unlimited period without even providing him any remedy in law, therefore, we in our constitutional jurisdiction, are inclined to admit the petitioner on bail.

Accordingly, under these facts and circumstances and the peculiarity of the petitioners case, the Petitioner namely **Anees S/o Zakaria (presently in custody in Reference No.06 of 2019)** is granted post arrest bail subject to furnishing surety in the sum of Rs.100,000/- with PR bond in the like amount to the satisfaction of Nazir of this Court. After submission of surety, office is directed to issue release order in favour of the petitioner.

In view of above, this petition has served its purpose and is accordingly disposed of; however, as and when any Court assumes jurisdiction, the prosecution, is at liberty, and can always approach the said Court for cancellation of bail in accordance with law.

Judge

Judge

Ayaz P.S.