

IN THE HIGH COURT OF SINDH AT KARACHI

**C.P Nos. D-3665/12, D-3781/12, D-908/14, D-3791/12,
D-280/15, D-2471/12, D-2567, D-3172/13, D-3634/12,
D-3920/12, D-2454/12, D-4006/12, D-5477/16,
D-3649/12, D-2716/12 & D-3642/12.**

Present:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Muhammad Humayon Khan

17.05.2017

Mr. Muhammad Ashraf Qazi, Advocate for Petitioners in C.P Nos.D-3665/12, D-3781/12, D-3920/12 alongwith Petitioners Mohammad Bilal, Mohammad Akram, Muhammad Ibrahim, Abbas Akber Ali, Badaruddin Akber Ali, Shabbir Badaruddin, Muhammad Sabir, Muhammad Imran

Mr. Abdul Hafeez, Advocate for Petitioners in C.P Nos.D-908/14 alongwith Petitioners Syed Asghar Jamil Rizvi, 2760/2013, D-2761/2013 & D-2752/2013.

M/s. Syed Mahmood Alam Rizvi & Zakir Khaskheli, Advocates for the Petitioners in C.P No.D-3791/12, D-280/15, D-2471/12, D-3634/12, D-4006/12, D-5477/16, D-3649/12, D-2715/12 & D-3642/12 alongwith Petitioners Tariq Irshad, Abdul Razzak, Mansoor Ali, Muhammad Hamid.

Ch. Abdul Rasheed, Advocate for Petitioners in C.P No.D-2567/12 alongwith Petitioners Muhammad Rafiq.

Ms. Farida Mangrio, Advocate for Petitioners in C.P No.D-2454/12

Mr. Munir Ahmed Malik, Advocate for Petitioner in C.P No.D-3172/13 alongwith Petitioner Ahmed Hussain,

Mr. Usman Hadi Shaikh, Advocate.

Yasir Siddique, Special Prosecutor NAB alongwith Hamad Qamar, I.O. NAB.

ORDER

Muhammad Junaid Ghaffar, J. All these petitions have been filed seeking pre-arrest bails in References No.14/2012, 15/2012, 17/2012, 20/2012 and 22/2012 and 8/2016. All these Petitioners were granted such bails through various orders except Petitioners

in C.P No.D-2716 and C.P. No.D-3642/2012, wherein, NAB was directed not to arrest them.

2. Precisely the facts of these cases are that various FIRs were registered by FIA, Crime Circle, Karachi under Section 406,409,109/34 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947 against officers of Pakistan Steel Mills and so also its dealers, commission agents and brokers precisely on the ground that they willfully and in defiance of the rules and regulations sold local as well as imported products of Steel Mill at a low price viz-a-viz the prevailing international prices at the relevant time. Thereafter the Honourable Supreme Court through Order dated 16.05.2012 passed in Suo Muto Case No.15/2009 in respect of corruption in Pakistan Steel Mills transferred these cases to NAB and in terms of Section 16-A of the NAB Ordinance, the matters were transferred from the Trial Court to the Accountability Court and such FIRs were deemed as References. All the Petitioners were either granted bails by the Trial Court or by Single Benches of this Court in respect of the FIRs when the matters were pending before the Anti-Corruption Court. It further appears that subsequently the main accused Mueen Aftab Shaikh, who was the then Chairman of Pakistan Steel Mills was granted post arrest bail in these References vide Order dated 16.12.2013 in Petitions bearing C.P Nos.D-3129, D-3130, D-3131, D-3132 and D-5030 of 2013. Such order was not challenged any further by the NAB Authorities. Similarly, another Petitioner namely Abdul Ghafoor Pathan was also granted bail vide Order dated 29.11.2016 in C.P No.D-3907/2012. Similarly another accused / Director of Pakistan Steel Mills (Sameen Asghar) in a somewhat similar Reference has been granted Pre-arrest Bail vide order dated 9.2.2017 passed in C.P.No.754/2016. Again various Petitioners, who were dealers for Pakistan Steel Mills were also granted bail by a learned Division Bench of this Court through a common order dated 17.01.2017 passed in C.P No.D-3811/2012 and other connected matters. The said Order reads as under:-

“The petitioners used to be registered dealers of the Pakistan Steel Mills (PSM), engaged in purchase of PSM’s products for onward sale to the public and in the above referred petitions have approached this Court for

the confirmation of their ad-interim pre-arrest bail in NAB Reference No.08/2016.

The case of the prosecution, as summarized in Para 96 of the said Reference is based on the following assertions:

“96. That in view of the above facts and the evidence collected, it has been established that the accused No.1 to 3 being officials of PSM misused their authority and provided unlawful gain to the accused No.4 to 65 as beneficiaries and caused huge loss to PSM of Rs.378.197 Million. Thus the accused No.1 to 3 in connivance with accused No.4 to 65 have misused their authority for rendering illegal benefit to consumer / trade dealers and thereby committed offence Under Section 9 (a) (vi) of National Accountability Ordinance 1999 and punishable u/s 10 and Schedule thereof.”

Learned counsels appearing for the petitioners in above referred petitions, have unanimously submitted that the petitions had purchased the products from the PSM during 2008 and 2009 when there was slump in the international market compounded with the corrupt practices of the management of PSM. It seems that a Price Fixing Committee was formed at PSM which comprised of Chairman, PSM, Director (Commercial), Director (Billets & Finance) and D.G.M (Marketing), which in its absolute discretion fixed price of Billets, HR, CR and Galvanized products, on which prices these goods were purchased by the Petitioners from time to time. However, it was later found out that these prices were quite lower than the then prevailing market prices which resulted in huge losses to PSM. The case of the prosecution is that there was connivance between the Members of the Price Fixation Committee and these dealers and a plan was hatched to defraud PSM and accordingly the national exchequer. When these acts surfaced, the new management of PSM lodged F.I.R. with F.I.A. against the Members of the Price Fixation Committee, as well as, against the Members of the Price Fixation Committee, as well as, against these petitioners, as it was alleged that these petitioners got illegal benefits from the acts of the Price Fixation Committee. The said F.I.R. subsequently resulted in the instant Reference. It was further submitted that in the Accountability Court not only the charge has been framed, but number of witnesses have also been examined and nothing has come on the record to show the connivance as alleged between the petitioners and the Price Fixing Committee. Per counsels, the petitioners are simply the purchaser of various steel products manufactured by PSM on a price notified by the Price Fixing Committee and that they had no role in said fixation. Per counsel even otherwise the connivance cannot be proved unless unshakable evidence is adduced.

Special Prosecutor appearing for the NAB along with Investigating Officer though opposed to the confirmation of pre-arrest bail, but was not in a position to produce any material cogent to show the nexus between the petitioners with the commission of crime and has frankly conceded that the connivance has yet to be proved by adducing evidence.

In the circumstance, in our opinion it is a case further inquiry and, therefore, fit for confirmation of pre-arrest bail, therefore, we confirm ad-interim pre-arrest bail granted to the petitioners vide different orders on the same terms and conditions.”

3. Learned Special Prosecutor NAB has though made a feeble attempt to oppose these Bail Petitions; however, when confronted as to whether the earlier bail granting orders of the main accused

as well as other private persons were challenged, neither he nor could the Investigation Officer satisfactorily respond. Whereas, all these Petitions are pending since 2012 and the Petitioners are on ad-interim pre-arrest bail and it is not the case of NAB that they have misused the concession of bail. It further appears that the majority of the evidence has been completed, and therefore, in view of such circumstances, and following the rule of consistency, and in view of the fact that these cases appear to be of further inquiry, the Ad-interim Pre-arrest Bail granted to the Petitioners in the above petitions are confirmed on the same terms. Whereas, Petitioners in C.P Nos.D-2716/2012 and D-3642/2012 namely Mrs. Naseem Akhtar, Waseem Manzoor, Illyas Ahmed, Muhammad Nasrullah and Mian Farooq Ahmed are directed to furnish solvent sureties in the sum of Rs.500,000/- each and PR bond in the like amount to the satisfaction of Nazir of this Court.

All the aforesaid Petitions are disposed of in the above terms.

Judge

Judge