

IN THE HIGH COURT OF SINDH, KARACHI

C.P No. D 6400 of 2022

C.P No. D 6870 of 2022

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner in CP No. D-6400/2022: Aamir Hussain,
Through Mr. Muhammad Rahib Lakho
Mehmood Ahmed, Advocates.

Petitioner in CP No. D-6870/2022: Saqib Ashraf,
Through Mr. Sardar Sheraz Anjum,
Advocate.

Respondent No.1: The Accountability Court-VI, at
Karachi, through M/s. Muhammad
Zahid Baladi along with Dr. Raja
Muhammad Ali, Special Prosecutors
NAB.

Respondents No. 2 to 4: Through Mr. Ali Safdar Debar, A.A.G
along with Maqsood Ahmed Memon,
Deputy Superintendent and Sarang
Jatoi, Assistant Superintendent

Date of hearing: 14.11.2022.

Date of Order: 14.11.2022.

ORDER

Muhammad Junaid Ghaffar, J.- Through both these Petitions, the Petitioners have sought post arrest bail in respect of Reference No. 06 of 2021, then pending before the Accountability Court No.VI at Karachi. Learned Counsel for the Petitioners submit that the Reference was pending before the Accountability Court and some evidence was also recorded; however, pursuant to amendment in the NAB Ordinance, 1999 dated 22.06.2022 and 16.08.2022, whereby Section 5(s) now defines "Public at large" means at least one hundred persons, the learned Accountability Court transferred the Reference to District & Sessions Judge East, whereas, the custody of the Petitioners was remanded to Central Prison with further directions to produce them before the Court of

District & Sessions Judge, East Karachi. He submits that thereafter District & Sessions Judge East has refused to entertain the Reference due to lack of territorial jurisdiction as the matter pertains to District Judge South; whereas, now he has approached the Registrar of this Court for an appropriate order. According to them, as of today the custody of the petitioners is illegal and without any remand or directions of a competent Court; hence, they may be enlarged on bail, pending any final decision as to which Court has the appropriate jurisdiction in the matter.

2. On the other hand, learned Special Prosecutor NAB submits that the order of the NAB Court dated 23.08.2022 was though not impugned as the competent authority pursuant to its letter dated 05.10.2022, directed not to file any Constitution petition against the said Order; however, the matter be sent to the Accountability Court to review its order.

3. We have heard the Petitioners' Counsel as well as learned Special Prosecutor NAB and have perused the record. It appears to be an admitted position that though Reference No.06 of 2021 was pending before the Accountability Court No.VI at Karachi; whereas, even earlier some Petition was also filed before this Court; however, the same was dismissed as withdrawn with directions to the Trial Court to proceed expeditiously in deciding the matter. Thereafter the trial Court has passed order dated 23.08.2022 on some transfer application of the accused and the relevant portion of the Order reads as under: -

“17. Needless to mention here, this Court after framing of charge recorded the evidence of 4 PWs and as per the evidence of PW1 he paid extortion money to the accused Saqib Ashraf inform of Kala Pull and Sea Breeze Hospital respectively and both above places falls within the local limits of District East, Karachi therefore in such a situation application is allowed and subject reference is transferred to the Court of District and Sessions East Karachi for its disposal according to law.

18. Let R&Ps be sent to District & Sessions Judge East Karachi. The accused persons are in custody therefore they are remanded back to the Central Prison with direction to the Jail Superintendent to produce them on 03.09.2022 before the said Court.

19. The office is directed to transmit the record and proceed the case to the office of District & Sessions Court East Karachi immediately.”

4. Subsequently, the learned District & Session Judge East Karachi on account of lack of territorial jurisdiction pursuant to reports from concerned Police Stations reflecting that the matter pertains to District & Sessions Judge, South, tried to refer the matter back to the Accountability court thrice; however, the same was refused, and his office was informed that the R&P's be returned to the High Court. It is further informed that a letter dated 14.9.2022 has also been addressed to the Registrar of this Court; however, apparently no orders have been passed by his office. This appears to be a very sad state of affairs insofar as the sub-ordinate Courts are concerned, and it is not clear as to how the Accountability Court could have exercised any jurisdiction to transfer the case to another Court including the Court of District & Session Judge, East. Insofar as the very Order dated 23.08.2022 is concerned, admittedly the same has not been impugned in any manner on behalf of the prosecution; however, it is very clear that insofar as the amending Act of 2022 is concerned, it does not provide for any authority upon the Accountability Court to transfer a matter to any other Court, whereas, the only exception to this effect is in respect of cases pertaining to Section 4(2)(a)¹ pursuant to Sub-section (3)² thereof. The present case apparently does not fall into this class of cases. The conduct of the Accountability Court in question is apparently not appreciable and the learned Registrar is directed to take up these type of matters on the Administrative Side of the Court (**more so when a letter dated 14.9.2022 was already addressed to this office**) so as to avoid burdening this Court with these kind of petitions. In our considered view the Accountability Court ought not to have transferred the matter to another

¹ "4. Application. -(1) This Ordinance extends to the whole of Pakistan and shall apply to all persons, including those persons who are or have been in the service of Pakistan, except persons and transactions specified in subsections (2).

(2) The provisions of this Ordinance shall not be applicable to the following persons or transactions, namely:

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(a) all matters pertaining to Federal, Provincial or Local taxation, other levies or imposts, including refunds, or loss of exchequer pertaining to taxation;

² (3) Upon the National Accountability (Amendment) Act 2022, coming into force, all pending inquiries, investigations, trials or proceedings under this Ordinance, relating to persons or transactions mentioned in clause (a) of sub-section (2), shall stand transferred to the concerned authorities, departments and Courts under the respective laws."

Court on its own; and instead either it could have been returned to the Prosecution; or at best guidance could have been sought from the Administrative Judge of the Accountability Courts at Karachi or from the Registrar of this Court.

5. Nonetheless, in view of such position, it appears to be a case, wherein, apparently, the Petitioners are in illegal custody and so also unable to seek bail from any Court, whereas, the petitioners cannot be kept in jail custody for an unlimited period without even providing them any remedy in law; therefore, we in our constitutional jurisdiction, are inclined to admit the petitioners on bail.

6. Accordingly, under these facts and circumstances and the peculiarity of the petitioner's case, the Petitioners namely **Aamir Hussain S/o Khalid Hussain** and **Saqib Ashraf S/o Muhammad Ashraf** (presently in custody in Reference No.06 of 2021) are granted post arrest bail subject to furnishing surety in the sum of Rs. 100,000/- each 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 petitioners.

7. In view of the above, both these petitions have served its purpose and are 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 and a decision on merits in accordance with law.

8. Copy be issued to all concerned including the office of the Registrar of this Court for appropriate action.

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