IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-975/2007

Present: Justice Mrs. Qaiser Iqbal
Mr. Justice Syed Mehmood Alam Rizvi

J U D G E M E N T.

Date of hearing: 17-4-2008

Mr. Shafi Muhammadi, Advocate for Petitioner.

Mr. Zafar Iqbal, Advocate.

Mr. Ch. Muhammad Iqbal, A.D.P.G. for NAB.

Mrs. Qaiser Iqbal-J: - This judgement will dispose of C.P.No.975/2007 arising out of Reference No.18/2007.

2. On 16.3.2007 the Chairman NAB filed the following Reference:-

" Reference No.18/2007"
The State
Versus

1. Salahuddin Mughal,
S/o Haji Deen Muhammad,
Former Secretary Sindh,
Workers Welfare Board Karachi
R/o Bungalow No.42, 8th Commercial
Street, Phase-IV, DHA Karachi presently
Posted Deputy Director Labour, Thatta.

2. Syed Muhammad Irfan,
S/o Syed Maqsood Hussain,
Former Welfare Officer, Sindh Workers Welfare Board,
Karachi.

3. Madad Ali Shaikh s/o Dil Murad,
Ex-Manager, UBL Landhi,
Industrial Area Branch, Karachi.

4. Muhammad Shoaib Wasti,
S/o Syed Aftab Wasti,
Clearing Officer, UBL,
Landhi Industrial Area Branch,
Karachi.

5. S. M. Wasim,
S/o Syed Muhammad Saleem,
Computer Operator, UBL,
Landhi Industrial Area Branch,
Karachi.

6. Ghulam Mustafa Shaikh,
S/o Haji Umer Shaikh,
Cashier, Accounts Branch, EPZA,
Karachi, Account Holder
A/c No.101-1180-1 UBL
Landhi Industrial Area Branch,
Karachi.

7. Muhammad Anis,
S/o Mehboob Ali,
Stenographer, EPZA, Karachi
Account Holder A/c No.101-0211-1
UBL.

8. Zafar Iqbal,
R/o H. No.B-53, New Muzafarabad
Colony, Landhi Karachi
Account Holder A/c No.101-1630-1 &
010-2185-4 UBL.

9. Mumtaz Ahmed,
S/o Ali Hassan,
Labour Officer,
M/s. Globe Textile Mils,
(Pvt) Limited.

REFERENCE UNDER SECTION 18(g) READ WITH
SECTION 24(B) OF THE NATIONAL
ACCOUNTABILITY ORDINANCE, 1999.

Respectfully Sheweth:

1. That a complaint was received by Director General, National Accountability Bureau Sindh Karachi on 26th December 2001 against the officials of Sindh Worker Welfare Board Karachi (SWWB) wherein it was alleged that during the year 2000-2001the officials of SWWB had misappropriated funds out of the marriage/Jahaiz grant meant for the needy workers. After conducting the inquiry, investigation was authorized on 08-6-2004 by Director General National Accountability Bureau Sindh. Investigation Officer has submitted his report wherein sufficient evidence has come on record which substantiates the allegation of corruption and corrupt practices against the officials of SWWB and others including Bank officials and officials of different Industries.

2. That during financial year 2000-2001, Salahuddin Mughal (accused No.1) was posted as Secretary SWWB and Syed Muhammad Irfan (accused No.2) was working as Welfare Officer with/under him. SWWB received a sum of Rs.31,500,000/= as grant for "Jahaiz" for workers of Private Industrial Sector at the rate of Rs.20,000/= per worker. Accused No.1 in the capacity of Secretary SWWB invited applications through newspaper "Nawa-e-Waqt" dated 16th September 2000. Accused No.2 was made incharge by accused No.1 to scrutinize the applications of workers for the subject grant as per conditions of admissibility.

3. That the investigation revealed that in response to the said advertisement/publication, 5741 applications were received from 132 Industrial Enterprises which were required to be scrutinized through a four member committee constituted by the Board. However, the preliminary scrutiny was carried out by accused No.2 and a note was placed by him to the Secretary (accused No.1) for fixing the date of meeting of Scrutiny Committee. Accordingly, committee held its first meeting on 9th April 2001 which was attended by all the members and it was decided to get applications verified from the concerned Industrial Enterprises. All the applications were sent for scrutiny to various Industries and confirmation letters or otherwise were received.

4. That the second meeting of the Committee was held on 7th May, 2001 wherein the Committee observed that a total of 4694 applications were valid against 1575 available grant cheques of Rs.20,000/= each. Therefore, it was decided to hold the ballot through Computer. Accordingly, the computers ballot was held on 13th June 2001, and names of successful candidates were declared. Cheque Distribution Ceremony was held on 30th June 2001 where 200 cheques were distributed amongst the successful workers in the presence of representative of Factories and Worker Unions. The other cheques were distributed subsequently during the month of July and August 2001. During investigation, it has been found that out of 1575 applications from various factories 288 employees were not genuine workers, however, cheques were distributed in their names. The amount of 288 bogus/ghost employee comes to Rs.57,60,000/= which was misappropriated by all the accused. Investigation further reveals that the Scrutiny Committee did not scrutinize the credentials of applications appropriately but due to their gross negligence, 288 cheques were not delivered to the entitled bona fide workers instead

these cheques were deposited in the account No.010-2185-1, 101-1630-1, 101-1180-1 & 101-0211-1, 101-1630-1, operated by accused No.6 to 8. As per rules and procedures these cheques could not have been deposited in the accounts of accused No.6, 7 & 8. However, with the active connivance accused Nos.3, 4 & 5, these cheques were deposited in the said accounts. A sum of Rs.29,40,000/= was drawn by the accused No.6, 7 & 8 from these accounts, on various dates during July to September 2001.

5. That it has been confirmed from the factories that 288 persons were not employees of any factory, however cheques were issued in their names out of 288, 11 such fictitious forms were prepared y accused No.9 Labour Officer for M/s. Globe Textile Mills (Pvt.) Limited Landhi Karachi. He also signed false verification letters on behalf of management and signed cheques distribution register. The accused No.9 also received 46 cheques on various dates during June & July 2001 from the management of Worker Welfare Fund and instead handing over to the concerned workers deposited the same in the account of accused No.6, 7 & 8.

6. That the accused No.1 to 5 in connivance with accused No.6 to 9 misappropriated the sum of Rs.57,60,000/= of Workers Welfare Fund. Accused No.2 prior to authorization of investigation submitted application u/s 25-A for voluntary Return out of misappropriated amount to the tune of Rs.14,40,000/= the application is under consideration after deducting the amount of voluntary return the total outstanding amount would be Rs.43,20,000/=.

7. That the evidence collected during investigation establishes that accused in connivance and collaboration with each other fraudulently or dishonestly misappropriated an amount of Rs.57,60,000/= from Workers Welfare Fund by processing fake claims and misusing crossed cheques and thus by corrupt, dishonest or illegal means obtained for themselves pecuniary advantage. Further, the accused No.1 & 2 misused their authority to gain benefit for themselves and other accused and willfully failed to exercise their authority to prevent the grant of undue benefit. The accused thereby committed the offence of corruption and corrupt practices as defined in clauses (iii), (iv), (vi) & (vii) of sections 9(a) of National Accountability Ordinance, 1999 and Schedule thereto.

8. That on the appraisal of material and evidence placed before me, I am of the opinion that it is just and proper to proceed further as there is

sufficient incriminating material to justify the filling of this reference. The matter is referred to the Hon'ble Court within the meaning of section 16© National Accountability Ordinance, 1999.

It is, therefore, prayed that the accused may be tried and punished by the Hon'ble Court in accordance with law. List of witnesses, report of investigation andn documents as per list are attached herewith.

Sd/-
Lieutenant General (R)
Chairman,
(Shahid Aziz)

National Accountability Bureau,
Islamabad,
Dated 16th March 2007"

We have heard the advocate for the petitioner, A.D.P.G for N.A.B and perused the record of the case carefully.

The petitioner was carrying a business in Muzafarabad Colony, under the name and style of "Mehboob General Store" commonly known in the community, he was connected in the commission of the offence. During the course of business certain cheques were deposited in his account by Accused No.6 to 8 with active connivance of Accused Nos.3, 4 and 5, the written statement of the witnesses have been filed alongwith the comments filed in the petition. The statement of one set of the witnesses disclosed that few employees certificates were fake, whereas another set of witnessed disclosed that the representative of workers federation had verified the workers and then cheques were issued, meaning thereby both the sets of witnesses are to be examined before the trial court. They are conscious of their fact that deeper appreciation of the evidence is not permissible at the bail stage, on tentative assessment, we are of the view, it is yet to be determined as to whether workers were fake or were verified by respected workers of Union of employees.

As regards the case of the applicant is concerned, it would be covered alongwith the case of Bank employees, the prosecution has relied upon the statement of four witnesses Mubeenul Moin, Farooq Mehmood, Muhammad akram and Syed Habibul Hassan. PW Mubeen-ul-Moin and Farooq Mehmood had conducted

departmental inquiry added that employees were negligent to perform their duties and fixed the responsibility of 05 bank officials in the inquiry report, which is an opinion of based upon the witnesses unless such material is produced before the trial court, the same cannot be appreciated and is not binding upon the court. As regards the case of Zafar Iqbal is concerned, the prosecution alleged that 288 cheques were deposited in his account as per rule these cheques could not be deposited in the applicant's accounts. It is urged that with the active connivance the applicant alongwith the co-accused deposited some of the cheques in his accounts and substantial amount was drawn on various dates. The applicant Zafar Iqbal having General Store in Landhi had opened an account in UBL, the prosecution alleged that being an account holder in bank the cheques were deposited, which were specifically denied by the petitioner.

From the evidence produced by the prosecution alongwith their comments against the petitioner, it is clear that the allegation would not be determined without deeper appreciation of the evidence. From the tentative assessment, we are of the view that the allegation by themselves would not constitute bar for grant of bail in the peculiar circumstances of the case without touching the merits of the allegations levelled against the petitioner, we are also conscious of the fact that in similar circumstances co-accused in C.P.Nos. D-568/2007, D-880/2007, D-993/2007, D-994/2007, D-995/2007, D-1432/2007 and D-1003/2007 were admitted on bail in the similar circumstances, since the case of the applicant is on similar footing. The case of the petitioner is at par to the co-accused already admitted on bail, therefore, on the basis of the consistency, bail is granted to petitioner Zafar Iqbal, is hereby confirmed on same terms and conditions, whereas bail was granted to him on the same terms and conditions as were contained in the interim pre-arrest bail order dated 09-7-2007.

JUDGE

JUDGE