

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Present;
Justice Ms. Rashida Asad.
Justice Mr. Khadim Hussain Soomro

Constitution Petition No.D-1011 of 2023

Petitioner Rafique Ahmed son of Abdul Rehman, Rajper bycaste, Through Mr. Muhammad Zubiar Malik Advocate.

Constitution Petition No.D-1012 of 2023.

Petitioner Muhammad Iqbal Memon son of Muhammad Ihsan Through Mr. Hamayoun Shaikh, advocate.

Respondent: The Chairman National Accountability Bureau, through M/s Mujeeb-ur- Rehman Soomro Special Prosecutor for NAB, Sukkur and Ashfaque Hussain Abro Assistant Attorney General.

Date of hearing : 10-08-2023

Date of Order : 22 -08-2023

ORDER

KHADIM HUSSAIN SOOMRO, J.- Through this order, we intend to dispose of aforesaid petitions filed by the above named petitioners for grant of post arrest bail, in NAB Reference No. 26/2020, pending trial before the Accountability Court, Sukkur.

2. Brief facts of the case are that NAB authorities initiated an inquiry/investigation, against the officer/officials of the Food Department and mill owners, on the allegations of misappropriation/embezzlement of government wheat stock lying at different flour mills, which were declared as PRCs and Government Godowns/warehouse by the Food Department, Government of Sindh. The physical verification of the said government's Wheat stock was carried out in presence of officers/officials of the Food Department and Judicial Magistrate, District Sukkur. During physical verification, 20

PCRs/Flour Mills/Godowns were visited, and it was unearthed that the Government wheat stock amounting to Rs. 62,80,58,795/- was found short at 07 Flour Mills and one Government Godwon. The accused No.1 to 9, shown in reference being officers/officials of the Food Department, District Sukkur, were involved in the misuse of authority, which resulted in the misappropriation of Rs. 62,80,58,295/- in connivance and collaboration with seven flour mills/PCRs lessees who availed the option of plea Bargain (P.B) in instalments. Accused No. 1 to 9 willfully, intentionally and by misusing their respective authorities caused loss to the National Exchequer in connivance and collaboration with Mill owners/lessees who entered into plea bargain (P.B). All the accused persons, in collusion and connivance with each other, misappropriated the Government wheat stock and committed the offence of corruption and corrupt practice. Thus instant reference was filed u/s 9 (a), (iii), (vi), (xii) punishable u/s 10 of NAO 1999 and scheduled thereto against all the accused persons.

3. Learned counsels for the petitioners submit that the petitioners are innocent and have falsely been involved in this case, and they have no connection with the alleged offences; that the petitioners neither misused their authority nor exercised improper jurisdiction and even not gained for themselves or their family members; that the petitioners are in custody from the date of their arrest without progress in the trial; that the Accountability Court has returned the reference, therefore the petitioners are unable to file their bail application before any forum; that according to new amendment in NAB Ordinance, nowhere it is mentioned that in case of returning the reference by the trial Court what would be the fate of arrested persons.

4. On the other hand, learned Special Prosecutors for NAB vehemently opposed to grant of bail to the petitioners;

however, he admits that the reference has been returned to Chairman NAB through Director General, NAB Sukkur vide order dated 08-06-2023 passed by the Judge Accountability Court-III Sukkur.

5. We have heard the learned counsel for the applicant/accused, learned Special Prosecutor for NAB and also gone through the material available on record.

6. A perusal of the record reflects that the learned trial court has returned the subject reference; vide order dated 08-06-2023, on the point of jurisdiction to the Director General Sukkur without discharging or releasing the petitioners. Now it is admitted position that nowhere the trial of petitioners is pending for adjudication. The petitioners have been behind the bar since their arrest, they cannot be left at the mercy of the Director General NAB to rot in jail for an indefinite period of time. In the administration of criminal justice, the victim of a crime is granted certain safeguards, while the accused of any infraction is considered as 'innocent unless proven guilty by the Competent Courts'. This provides reasonable protection for an accused against the incorrect process and severe punishment. The right to a fair trial is a fundamental human right under international treaties and conventions.

7. Depriving the accused of their liberty and freedom, even for a single day, is unconscionable and below human dignity. Article 10 (A) of the Constitution, 1973 Islamic Republic of Pakistan, which includes the right to an expeditious trial, should be meaningful and should be fully applied to protect an under-trial prisoner from prolonged periods of incarceration during his trial due to no fault of his own. The matter in hand is of unique in nature because the trial of petitioners is not pending anywhere.

8. We have noticed that the reference returned order was passed by the learned trial court on 08-06-2023; since then,

the petitioner's case has not been tried in any court of law. In our view, without trial detention, in which an accused person is kept in prison, is a contradiction to the well-established principle of criminal law that an accused person is presumed innocent until proven to be guilty. For this reason, without trial, detention is typically subject to safeguards and restrictions, as the same is tantamount to be against the constitutional rights. In the instant case still, it is uncertain when the matter of the petitioners would be decided by the Director General NAB. Sooner or later, whether the case of the petitioner would be referred to any other forum, the relevant authority would be at liberty to adopt the due course of law. Verily, we cannot abide by the notion of subjecting the petitioners to the whims of any authorities, who would confine them within the walls of a prison for an indeterminate span of time.

9. Therefore in view of the above, the petitioners named above are admitted to bail subject to furnishing a solvent surety in the sum of **Rs.5000,00/- (Five lacs)** each and PR bond in the like amount to the satisfaction of the Additional Registrar of this court. However, before parting, we make it clear that the petitioners are granted bail purely on the single ground that their trial is not being proceeded and without touching the merits of the case. In case the NAB authorities file a fresh reference or transfer the case to any other court, the relevant authorities would be entitled to file cancellation of bail if they desire so. However, if any such application is filed, it would be decided on its own merits

10. Needless to say, any observation made in the preceding paragraphs is of tentative nature and shall not influence the proceedings before NAB or any other forum.

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