

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No.D- 1296 of 2023.
Constitutional Petition No.D- 1297 of 2023.
Constitutional Petition No.D- 1298 of 2023.
Constitutional Petition No.D- 1299 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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- 1.For orders on office objections at flag 'A'
- 2.For hearing of main case

19.11.2024

M/S Mujeeb ur Rehman Soomro, ADPGA and Bahawaluddin Shaikh, Special Prosecutor for State through NAB/petitioner in CPs No.D-1296 to D- 1299 of 2023.

M/S Zubair Ahmed Rajput and Javed Ahmed Soomro, Advocates for the private respondents.

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For the reasons to follow, these petitions are dismissed. Consequently, impugned order dated 10.7.2023 passed by the trial Court is hereby maintained.

Office to place a signed copy of this order in the connected matters.

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.PNo. D - 1296 of 2023

(The State through NAB vs. Muneer Ahmed Sanghroo & another)

C. P No. D - 1297 of 2023

(The State through NAB vs. Khalid Hussain Bughio & another)

C. P No. D - 1298 of 2023

(The State through NAB vs. Gul Muhammad Soomro & another)

C. P No. D - 1299 of 2023

(The State through NAB vs. Manthar Ali Noonari & another)

Before;-

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Zulfiqar Ali Sangi

M/s Mujeeb-ur-Rehman Soomro, ADPGA and Bahawaluddin
Shaikh, Special Prosecutor for NAB/Petitioners

M/s Zubair Ahmed Rajput and Javed Ahmed Soomro,
Advocates for the private respondents/accused

Date of hearing: 19.11.2024

Date of decision: 19.11.2024.

ORDER

ZULFIQAR ALI SANGI,J;- Through these petitions, the petitioner/
Chairman National Accountability Bureau has assailed the impugned
orders dated 10.07.2023 passed by learned Accountability Court-III,
Sukkur in Reference No.19 of 2020 (*Re- The State vs. Rafiq Ahmed
Rajper and others*), whereby the pre-arrest bail applications filed by
the private respondents/accused have been allowed and the interim
pre-arrest bail was confirmed.

2. The allegation against private respondents/accused Muneer
Ahmed Sanghroo, Khalid Hussain Bughio, Gul Muhammad Soomro
and Manthar Ali Noonari is that they being the incharge of PRC
Badeh, PRC Wagan Road-II, PRC Rehmatpur and WPC Naudero
respectively, were entrusted with the Government Wheat stocks and
they were responsible for safety of the stocks, whereas, as per Para
28 of Wheat Policy, 1984, they were responsible for issuing weekly

inspection Report in Form S-I to the District Food Controller / Rationing Controller showing the quantity and condition of the stocks, but they failed to issue such reports. On physical verification of Wheat stocks in PRC Badeh, PRC Wagan Road-II, PRC Rehmatpur and WPC Naudero there was shortage of 70022 PP bags and 7277 Jute bags, 7255 PP bags, 17981 PP bags and 6777 PP bags respectively. The individual liability of the private respondent Muneer Ahmed Sanghroo is Rs.122,401,907/-, Khalid Hussain Bughio is Rs.10,463,208/-, Gul Muhammad Soomro is Rs.19,673,139/- and Manthar Ali Noonari is Rs.9,773,833/-, hence the private respondents/accused have committed the offence of corruption and corrupt practices as defined in Section 9(a)(iii), (iv) & (xii) and Item-5 of Schedule which is punishable under Section 10 of the National Accountability Ordinance, 1999.

3. After usual investigation, the Reference was filed before the concerned Accountability Court, Sukkur. The private respondents/accused filed their pre-arrest bail applications before the trial Court and in the first instance, they were admitted to interim pre-arrest bail subsequently the same were confirmed on same terms and conditions vide separate orders dated 10.07.2023, giving rise to filing of instant Constitutional Petitions for cancellation of bail.

4. It is contended by learned Counsel for the petitioner that the learned trial Court while granting pre-arrest bail to the private respondents/accused has not considered the material available on record, as the allegations mentioned in the Reference are very serious in nature, because the respondents/accused being responsible for safety of the Wheat stocks entrusted to them did not issue S-I report to the District Food Controller/Rationing Controller and on physical verification, there was found a huge shortage of Wheat bags at their respective Centers; that the offence committed by the private respondents/accused is against the society and a heavy financial loss has been caused to the government exchequer; that the grant of pre-arrest bail is an extra ordinary concession, which is only to provide safety to the innocent persons. He lastly, prayed that the pre-arrest bail granted to the respondents/accused may be cancelled.

5. Learned counsel for the private respondents opposed the instant Constitutional Petitions and prayed for its dismissal by

contending that the learned trial Court while considering the material available on record has granted pre-arrest bail to the respondents/accused; that the learned trial Court while granting bail to the private respondents/accused has discussed each aspect of the case and has committed no illegality.

6. Heard learned counsel for the respective parties and perused the material available on record with their able assistance.

7. The allegations against the accused/respondents are that they were entrusted with the responsibility of safeguarding the Government's wheat stocks at their designated center. Under the Wheat Policy of 1984, vide Paragraph 28, they were obligated to submit a weekly inspection report in Form S-1 to the District Food Controller/Rationing Controller, detailing both the quantity and condition of the stock. However, it is alleged that they failed to issue these reports as required. Consequently, the respondents are charged with the offence of corruption and corrupt practices, as defined under Section 9(a)(iii), (iv), and (xii) and item No.5 Schedule which is punishable under Section 10 of National Accountability Ordinance (NAO) 1999. It is the responsibility of the prosecution to substantiate the allegations of corruption and misuse of authority through credible and substantial evidence. At this stage, there is a lack of evidence to demonstrate the acquisition of any monetary benefits by the accused or the party allegedly benefitting from the misuse of authority. As such, the case against the accused/respondents requires further enquiry. Despite the serious nature of the charges, it is undisputed that the accused have complied with the conditions of their bail, attending every Court hearing without misuse of the concession granted to them. The mere gravity of the offence does not, in itself, justify the deprivation of personal liberty, particularly for an indefinite period. The object of bail is to secure the appearance of an accused at his trial by a reasonable amount of bail, it is neither punitive nor preventive, and therefore, deprivation of liberty must be considered as punishment, unless it may be required to ensure the presence of the accused during trial. The Punishment begins after conviction and not before it, therefore, if a person even is wrongly released on bail then such wrong can be repaired after the conclusion of the trial (if he is found guilty after trial) by putting him again in jail but the incarceration wrongly caused to or faced

by an accused during the trial and after the conclusion of the trial, if he is found innocent then the moments/days spent by him under incarceration cannot be repaired. Every accused will be presumed to be the blue-eyed boy of the law until and unless he may be found guilty of the alleged charge and the law cannot be stretched upon in favour of the prosecution, particularly at the bail stage. A mere huge quantity or gravity of the offence may not disentitle the applicant from concession of bail as bail cannot be withheld as an advanced punishment and he could not be kept behind bars for an indefinite period as was held by the Supreme Court of Pakistan in the case of **Wajid Ali vs. The State and another (2017 SCMR 116)**.

8. It is now established without any hesitation that considerations for the grant of bail and cancellation whereof are entirely on different footings. Generally speaking, the Courts are reluctant to interfere in the order of grant of bail and even in cases where it is apparently found that the bail granting order is not sustainable in the eyes of the law, the Courts restrain to interfere in such matters if it is found that there was nothing to show that the accused has misused the concession of bail. Reliance is placed on the case of **Shahid Arshad Vs. Muhammad Naqi Butt (1976 SCMR 360)**. The Supreme Court of Pakistan in the case of **Samiullah Vs. Laiq Zada (2020 SCMR 1115)**, which was further followed in Criminal Petition Nos. 1459/2020, 1523/2020, 970 to 976/2021 & Criminal Petition No. 1145-L of 2020, held that for the purpose of cancellation of bail, the following considerations are to be satisfied:-

- i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.
- ii) That the accused has misused the concession of bail in any manner.
- iii) That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.
- iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.
- v) That the accused has attempted to interfere with the smooth course of investigation.
- vi) That accused misused his liberty while indulging into similar offence.

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5/1/2025.

- vii) That some fresh facts and material has been collected during the course of investigation with tends to establish guilt of the accused.”

9. When we confronted learned counsel for the petitioner with the above-said guidelines, he could not point out from the record as to whether the respondents have violated any of the afore-referred conditions, which could become the basis for cancellation of bail granted to them. The accumulative effect of the reasons given above is that the order impugned before us is in accordance with law and learned counsel for the petitioner has failed to justify that the trial Court has erred in deciding the matter, which by any stretch of the imagination could be termed as perverse, arbitrary and fanciful.

10. For what has been discussed above, we do not find any merit in these petitions, which are accordingly dismissed.

11. These are the reasons for our short order dated 19.11.2024 whereby these petitions were dismissed while maintaining the impugned order dated 10.7.2023 passed by the trial Court.