

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Present:-

Mr. Justice Amjad Ali Sahito

Mr. Justice Khadim Hussain Soomro

Criminal Bail Application No.D-71 of 2024
[Anoop Kumar v. The State & others]

Criminal Bail Application No.D-72 of 2024
[Qadir Bux v. The State]

Criminal Bail Application No.D-73 of 2024
[Muhammad Iqbal & another v. The State]

Criminal Bail Application No.D-74 of 2024
[Muhammad Nazir Bhutto v. NAB]

Criminal Bail Application No.D-75 of 2024
[Imdad Memon v. The State]

Criminal Bail Application No.D-80 of 2024
[Gul Muhammad v. The State]

Applicants:

Anoop Kumar [Criminal Bail Application No.D-71 of 2024], Muhammad Iqbal and Shafi Muhammad Memon [Criminal Bail Application No.D-73 of 2024] through, Mr.Shahnawaz Dahri, Advocate.

Qadir Bux [Criminal Bail Application No.D-72 of 2024] through Mr. Zahid Ali Khoso, Advocate.

Muhammad Nazir Bhutto [Criminal Bail Application No.D-74 of 2024] through Mr.Hameedullah Dahri, Advocate.

Imdad Memon [Criminal Bail Application No.D-75 of 2024] through Mr. Aijaz Ali Lakho, Advocate.

Gul Muhammad [Criminal Bail Application No.D-80 of 2024] through Mr. Masood Rasool Babar Memon, Advocate.

Respondent:

The State/NAB through M/s. Sattar Muhammad Awan D.P.G., Jangu Khan Rajput, Niaz Hussain Mirani Special

Prosecutors NAB along with Mr. Javed Akbar Riaz D.G. NAB Karachi, Irfan D.D., Adnan Hafeez Abbasi, D.D. Kashir Noor Additional Director and Zeeshan Tebani D.D. NAB.

Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan.

Date of hearing: **24.10.2024 & 29.10.2024.**

Date of Order: **29.10.2024.**

ORDER

AMJAD ALI SAHITO, J. Through this common order, we intend to dispose of the above captioned Criminal Bail Applications, whereby the applicants/accused are seeking pre-arrest bail in a Reference bearing No.02 of 2023 [Re-The State v. Mushtaque Ahmed Shaikh & others] filed under section 18[g] read with section 24[b] of NAB Ordinance, 1999, which is pending adjudication before Accountability Court-II, Hyderabad. Earlier, their respective pre-arrest bail applications were dismissed by the learned trial Court.

2. The relevant facts as set out in the aforementioned reference are that an authorized inquiry, on the allegations of misappropriation of pension funds by the officers of District Accounts Office Hyderabad and others, was conducted by the NAB authorities, which later on was converted into investigation. During the investigation, it was discovered that applicant/accused Nazir Bhutto being Additional District Accounts Officer allegedly committed misappropriation of Government funds, criminal breach of trust and money laundering of billions of rupees by sanctioning fake pension bills in connivance with co-accused which included bankers. Subsequently, he deposited such bills in bank accounts specifically opened for this purpose and withdrew the amount in connivance with accused Junejo Bahadur (Bank Manager MCB), bank account holders and Aijaz Dawach. He also illegally

benefited from the amount. Accused Nazir Bhutto joined during the inquiry stage later he absconded at the investigation stage.

3. It was also discovered during investigation that applicant/accused Imdad Memon, misappropriated millions of rupees during his tenure as Director of Agricultural Engineering and Water Management (AE&WM) from 2010 to 2014. He approved fake refund bills totaling Rs. 250 million for private contractors, which were paid using pension funds with the connection of District Accounts Office officers. Most of these funds were deposited into the official AE&WM account, from which Rs. 1.2 billion was withdrawn in cash via cheques signed by Memon. Further, he received millions in his personal bank accounts from these private contractors' accounts.

4. During the investigation, it was discovered that applicant/accused Anoop Kumar, the applicant/accused, operated three fake companies and submitted 41 bills totaling Rs. 62.83 million, but he did not participate in the investigation. His brother, Annad Saroop, another accused, claimed Anoop was unable to move due to heart issues and provided medical reports. Annad Saroop himself operated one fake company and submitted three bills totaling Rs. 3.9 million. While applicant/accused Shafi Muhammad of having one fake company and claimed 4 bills amounting to Rs.4 Million. However, applicant/accused Muhammad Iqbal could not justify the payments received into his account in respect of the alleged supply of spare parts to the Agriculture Department. Applicants/accused Qadir Bux and Gul Muhammad are Ex-Cashiers in the MCB Nausheroferoz Branch. Applicant/accused Qadir Bux during the investigation could not justify the allegation for misusing of his ID and that co-accused Junejo Bahadur Ali and Siraj Ali Mastoi were involved in the pension payments in the account of untraceable sugarcane payment without any instrument. Similarly, the applicant/accused Gul Muhammad, failed to justify the allegations of misusing his ID and that co-accused Junejo Bahadur Ali and Siraj Ali Mastoi were implicated in pension

payments related to untraceable sugarcane payments, which were made without any supporting documents.

5. Mr. Hameedullah Dahri, counsel for applicant Muhammad Nazir Bhutto, argued that the applicant/accused is innocent and has falsely been implicated with *mala fide* intention in this case to disrepute him. The allegations are based on assumptions and that the investigation has been dishonest, with key facts suppressed. The Investigating Officer failed to gather evidence showing that applicant Muhammad Nazir Bhutto received any financial benefit or illicit funds in his account. He pointed out that the allegedly fake bills were recovered from the house of co-accused Mushtaque, which means they cannot be used against Bhutto, who has no connection to them. The alleged bills, which are claimed to have been signed by applicant Bhutto, were not verified by the Investigating Officer against specimen signatures, as such, this inaction prevented to a just and fair conclusion. In support of his contention, learned counsel has relied upon the case of Syed AKHTAR HUSSAIN SHAH v. NATIONAL ACCOUNTABILITY BUREAU through Chairman, Islamabad and 3 others [2021 MLD 783], SAAD SUMAIR v. NATIONAL ACCOUNTABILITY BUREAU (NAB) through Chairman and 2 others [PLD 2022 Islamabad 371] and MUHAMMAD SAFDAR v. CHAIRMAN NAB and 3 others [2022 P Cr. L J 101].

6. Mr. Aijaz Ali Lakho, learned counsel for applicant/accused Imdad Memon, argued that Imdad Memon, a Grade-20 officer serving as D.G. of the Agriculture Engineering Department in Sindh, has properly sanctioned the refund bills following SPPRA Rules 2010, utilizing emergency provisions for repairs to bulldozers during a flood emergency. He argued that the Secretary of the Agriculture Department approved the repairs, as funds were lacking in the designated budget due to outstanding dues. The work was conducted with prior approval from the Secretary and adhered to procurement rules by sourcing spare parts from various firms. He contended that the Investigating Officer failed to adequately investigate and

incorporate relevant materials into the case record, asserting that applicant Imdad Memon had no involvement in any embezzlement and acted lawfully under the guidance of his superiors.

7. M/s. Masood Rasool Babar Memon and Zahid Ali Khoso advocates on behalf of applicants Qadir Bux and Gul Muhammad argued that there is no connection between them and the alleged funds withdrawn from the pension refund voucher. They emphasized the lack of evidence for illegal gain and that undue favor does not constitute an offence of corruption. There are no allegations of personal gain or asset accumulation beyond known income sources, suggesting no misuse of authority or involvement in corrupt practices.

8. Mr. Shahnawaz Dahri, learned counsel representing applicants/accused Anoop Kumar, Muhammad Iqbal, and Shafi Muhammad Memon, argued that they are contractors and that the Investigating Officer exceeded his authority by investigating matters related to the Agriculture Department, which was outside the scope of his mandate regarding pension refunds. He emphasized that this renders the investigation invalid and grounds for bail. Learned counsel has highlighted that there were no complaints about the applicants' work on machinery repairs or the procurement of spare parts during the emergency. The Agriculture Department has not contested the work performed, and any irregularities by District Accounts officials are not the responsibility of the applicants. Payments were made based on vouchers prepared from sanctioned orders approved by Director Imdad Memon.

9. Learned counsel for the applicants/accused claimed innocence of the applicants and their false implication with *mala fide* intention in this case to disrepute them. They claimed that the allegations were based on assumptions and that the investigation had been dishonest, with key facts suppressed. The evidence is solely documentary and is held by the Investigating Officer, eliminating any concerns about tampering. There are about 103 prosecution witnesses, as such, their examination will

take sufficient time in the conclusion of the trial. They lastly submitted that if the ad-interim pre-arrest bail of the applicants/accused is not confirmed, they will be humiliated, disgraced, harassed and tortured at the hands of respondents, hence, prayed for confirmation of bail.

10. Conversely, learned Special Prosecutors, NAB, have vehemently opposed the grant of bail to the applicants/accused on the ground that there is sufficient evidence against them to prove that they have committed the offence with which they are charged in NAB Reference beyond a reasonable doubt. The officers of District Accounts Office Hyderabad in connivance with other co-accused, who are government servants, employees of private banks and private persons, are involved in the offence of illegal gratification, misappropriation of government pension funds, misuse of authority, criminal breach of trust and money laundering. They have given **a loss of Rs.3.2 billion** to the public at large. They lastly contended that no *malafide* on the part of NAB authorities or Investigating Officer has been pointed out, hence, the applicants/accused are not entitled for the concession of pre-arrest bail.

11. Heard and perused.

12. The record reflects that as per the statement of allegations, officials of the District Accounts Office, Hyderabad signed and processed the fake bills in respect of pension and refund but the same were not processed as per the Accounting Policies and Procedures Manual (APPM) issued by Government of Pakistan, which is applicable on the Federal as well as Provincial Governments. Applicant Muhammad Nazir Bhutto as per allegations is a signatory of 850 bills for amounting to Rs.610,664,440 and the amount was posted in the fake bank accounts with the collusion of bank employees applicants Qadir Bux and Gul Muhammad and other co-accused, such fake accounts are stated to be in the names of various individuals who never remained in government job and misappropriated the said amount. 5433x pension bills and 130x refund bills were

recovered during the house search of co-accused Mushtaque Ahmed Shaikh investigation and for investigation only 1756 x pension bills/vouchers out of 5433x were sorted out which pertain to MCB Bank and the applicant Muhammad Nazir Bhutto, co-accused Mushtaq Ahmed Shaikh and Allah Bachayo Jatoi signed and processed the same at the relevant time of their incumbencies. During the investigation, it surfaced that 130 Bulldozers were repaired by the Agricultural Department and payment was made from pensioner's accounts. Applicant Imdad Memon, who was posted as Director, AE&WM, approved the fake refund bills/vouchers in favour of dummy companies allegedly owned by the contractors, who are the applicants namely, Anoop Kumar, Muhammad Iqbal and Shafi Muhammad and other co-accused.

13. The record shows that numerous pension and refund bills were signed and processed improperly, violating the Accounting Policies and Procedures Manual (APPM) issued by the Government of Pakistan. The documentary evidence linking the applicants to these fraudulent activities is substantial. The allegations suggest collusion between the applicants and bank employees to create fake accounts for illicit transactions. This demonstrates a coordinated effort to engage in fraudulent activities. The investigation has revealed a vast number of fraudulent transactions, including 5433 pension bills and 130 refund bills, with a significant portion being directly linked to the applicants. This quantity indicates a systematic approach to fraud rather than isolated incidents. During the investigation, a significant quantity of pension bills/vouchers was recovered from the house of co-accused Mushtaque Ahmed Shaikh. This evidence reinforces the connections between the applicants and the alleged fraudulent activities. The nature of the allegations and the potential impact on public confidence in government institutions warrant a cautious approach. The applicants have not provided sufficient evidence to counter the serious allegations against them or to demonstrate their innocence and negate the version of NAB authorities.

14. As per the investigation, with approval from the SBP, fake pension bills were deposited into accounts not associated with the names on the bills, violating banking rules. Bank officials and other accused individuals facilitated these deposits into unrelated accounts. However, none of the related accused denied such transactions into fake accounts in respect of pension and refund bills except the mere plea of their innocence and denial of the signatures by applicant Muhammad Nazir Bhutto on the bills.

15. During the course of the investigation into pension matters, it was surfaced that millions of rupees had been embezzled by the officers of the Agriculture Department in the name of repairing of 130 Bulldozers, as such inquiry was initiated and the Investigating Officer recorded the statement in terms of section 161 Cr.P.C. of different witnesses including Mr. Farrukh Rasheed Ansari, D.G. Agriculture Engineering, Government of Sindh, who **stated that repair of near about 130 bulldozers was made with the million of rupees but as per the statement of Mr. Ansari that generally Field Engineers of the concerned field submit their demands for the spare parts as and when required but the record provided to NAB does not have any demand from concerned officers. As such, no demand was made from the Engineers of Agriculture Department, hence, prima facie, it appears that the fake bills were prepared in respect of repairs of the bulldozers.** When we confronted the Investigating Officer of the case about whether you have obtained details of equipment used in the agriculture field along with the lock book, to which, he has relied upon certain documents which were collected by him during the investigation; however, learned counsel for the applicants also produced copies that the same were purchased following the law but when it was confronted that how they have used the Bulldozers after repair, they replied that during the flood of 2009-2010, the Bulldozers were utilized but no such record was produced to believe that the Bulldozers were shifted from any

office of the Agricultural Department to concerned site even the officers failed to produce any lock book, vouchers of purchasing diesel and any demand made by the Government of Sindh to believe that after repair of the Bulldozers, they were utilized/used at the sites. Even they failed to produce documentary evidence or any statement of the truck driver through whom they/accused shifted the Bulldozers at the site.

16. During the course of Investigation, the statement was prepared by the Investigating Officer of the case, which reveals that apart from co-accused, applicant Anoop Kumar benefited with amount of Rs.62,830,940/-for the fake Companies i.e. All Enterprises, Anand & Company and Global Enterprises, applicant Muhammad Iqbal with amount of Rs.75,031,497/- for Ramzeez Brothers Company and applicant Shafi Muhammad with amount of Rs.7,059,969/- for Shafi & Sons Company. The actions of the Agriculture Department officials in preparing fake bills have resulted in a loss of millions of rupees to the government.

17. So far the applicant Muhammad Nazir Bhutto claimed he did not sign any documents/bills or vouchers, as during the road incident his right hand was not working and he used to sign through his left hand. However, the Investigating Officer has relied on the documents/bills or vouchers collected by him during the investigation and as an example he presented evidence showing that he signed a bill for Rs.794,000 in the name of Mr. Shahid Hussain, which was mentioned in the Daily Invoice of Pension at serial No.362 and referred to the State Bank of Pakistan. Despite being prepared in Shahid Hussain's name, the amount was deposited in an account under the name of Miss Sheeza at MCB Bank Limited, Station Road Dadu Branch, with the apparent collusion of bank employees.

18. We feel that corruption has infiltrated nearly every aspect of our lives. These corrupt elements effectively be defeated and the courts must adopt a more practical and dynamic approach to deal with such cases, particularly during the bail

process. Instead of showing leniency towards the accused, the judiciary must focus and protecting the economy of the country, especially in cases where strong incriminating evidence is present. By taking this stand, the courts can play an essential role in restoring justice and bolstering the integrity of our financial systems. Such a commitment not only protects the interests of those wronged but also reinforces public trust in the judicial process and promotes accountability among those who engage in corrupt practices. We are of the view that the evidence and the material on the record, *prima facie*, connect the applicants/accused with the alleged offence, In this regard, we are fortified with the case-law of Hon'ble Supreme Court of Pakistan ***RANA ABDUL KHALIQ vs. The State (2019 SCMR 1129)*** wherein the Hon'ble Supreme Court of Pakistan has held as under;-

"Grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation----the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law."

19. At the bail stage, only tentative assessment is to be made and nothing has been brought on record by the learned counsel for the applicants to show any ill-will or *mala fide* on the part of the complainant/I.O. of the case which is the requirement for grant of pre-arrest bail. There is sufficient material collected by the Investigating Officer in the shape of bills, vouchers and other documents which shows the District Account officer in

connivance with other government officers/servants, employees of private bank and private persons are involved in the alleged offence and **given loss to the government exchequers in the tune of Rs. 3.2 billion.**

20. The upshot of the above discussion is that the applicants/accused have failed to establish the case for confirmation of their ad-interim pre-arrest bail already granted to them by this Court through respective orders. Consequently, the bail plea of the applicants/accused is **dismissed** and respective interim orders passed earlier in these bail applications are hereby recalled. These are the reasons for our short order dated **29.10.2024.**

JUDGE

JUDGE

Abdullah Channa/PS

Hyderabad

Dated: 31.10.2024