

Bail - NAB Case - Accused not on patently bail  
Not for reporting

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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Mohammed Karim Khan Agha

C.P. No.D-6517 of 2015

Chaudhary Asif Ali Faiz (Asif Ali)  
V.  
National Accountability Bureau (NAB).

Date of hearing:	03.03.2016
Date of Order:	08.04.2016
Petitioner:	Through Mr. Nisar Ahmed Tarar, Advocate for the petitioner.
Respondents:	Through Mr. Noor Muhammad Dayo, ADPGA, NAB along with Hassan Noor, A.D/I.O.

**ORDER**

**Mohammed Karim Khan Agha, J.**- The petitioner through this petition has approached this Court for grant of post arrest bail in National Accountability Bureau (NAB) Reference No. 20 of 2011 State V Syed Sohail Hassan and others, pending before the learned Accountability Court No.I, Karachi.

2. The facts as disclosed in the aforesaid reference are that on receipt of complaint from Mr. Mamoon Rasheed, General Manager, Passenger Sales, Pakistan International Airlines Corporation (PIAC), against their Cargo Agent M/s. Cargo Aids (Pvt.) Ltd for their involvement in corruption and corrupt practices NAB opened an inquiry into the complaint which after inquiry was later converted into an investigation and thereafter a reference was filed on 24-11-11.

3. In a nutshell the material collected by NAB in their view established that M/s Cargo Aids Pvt. Ltd, IATA registered agent for cargo of PIAC, which had been working since 1976 with PIAC through Sohail Hassan (accused No.1) and with other Airlines showed that in the year 2002, new partners namely Kiran Asif Chaudhary (accused No.2) and Asif Ali Chaudhary (accused No.3- the petitioner) joined the firm and remained partners of 50% till the default of Rs.132 million to PIAC in 2007. The default occurred because M/s Cargo Aids Pvt. Ltd failed to pay certain amounts to PIAC which it was obliged to do as cargo agent which caused loss to PIAC. In essence M/s Cargo Aids was required to submit a sales report for period ending on September 15, 2007 alongwith

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due cheques to PIAC. However, the sales report and cheques were not delivered to District Sales Office, Karachi till October 02, 2007 and 4 of these cheques amounting to Rs.46,716,203/- drawn on Allied Bank Ltd, SMS Branch, Karachi were dishonoured. The agent was given notice dated 10.10.2007 for making outstanding payment, but they did not pay and subsequently, the agent was declared a defaulter by PIAC and IATA; the accused No.1, 2 & 3 (petitioner) were also not depositing the amount, which was duly collected by them from the shipper on behalf of PIAC and thereby caused further loss to PIAC in connivance with Aftab Ahmed (accused No.4) and Ibrahim Noor (accused No.5) both employees of PIAC, who failed to perform their duty and by misusing their authority gave monetary gains to the accused Nos. 1, 2 & 3 (the petitioner) at the expense of PIAC. The aggregate amount of loss was calculated by PIAC Management as Rs. 127.845 Million;

4. Thus, as per NAB reference it has been established that the accused Nos. 1, 2 & 3 (the petitioner) did not pay their outstanding liabilities towards PIAC and deposited cheques, which were dishonoured, whereas, the accused Nos. 4 & 5 misused their authority by giving benefit to the accused Nos. 1, 2 & 3 and thereby caused loss to PIAC to the tune of Rs.127.845 million. Thus the accused have committed an offence of corruption and corrupt practices as envisaged under Section 9 (a) of National Accountability Ordinance, 1999 (NAO) and punishable under Section 10 of NAO, 1999 and schedule thereto.

5. Learned counsel for the petitioner argued that the petitioner is absolutely innocent and he has not committed any offence within the ambit/purview of NAO, 1999 and thus implication and arrest of the petitioner in the case of alleged default in payment to PIAC by M/s. Cargo Aids (Pvt) Ltd. is malafide, against the law and equity/justice as the petitioner is not an agent of the PIAC and he was not a party to the contract between PIAC and M/s. Cargo Aids (Pvt) Ltd. and thus the petitioner has nothing to do with the default, if any, committed by M/s. Cargo Aids (Pvt) Ltd; the prosecution/respondent has no iota of evidence whatsoever against the petitioner in terms of either committing any act of corruption or of any mens rea on his part. He further contended that the implication of the petitioner in the investigation/case is based on assumptions, presumptions and hypothesis, which are not tenable

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under the law and thus the petitioner is entitled for bail by exercising extra ordinary constitutional jurisdiction by this Court; even otherwise the very document, which has been made basis for implication of the petitioner and his wife in the case is Partnership Deed between Syed Sohail Hassan and Mrs. Kiran Asif Ali (the wife of the petitioner) for business of medicine and the petitioner is not even party to the said document/partnership thus implication of the petitioner in the case is a sheer example of malicious prosecution and violation of his fundamental right of liberty as envisaged and guaranteed in the Constitution of Islamic Republic of Pakistan and as such the petitioner is entitled for grant of bail;

6. Learned ADPGA on behalf of NAB vehemently opposed the grant of bail, while arguing that the petitioner has been given a specific role in the reference and cited a S.161 Statement of Mr. Zaheeruddin Ghori the then manager cargo operations Cargo Aids Pvt Limited to link the petitioner to the offense and that the evidence collected against the petitioner proved beyond a reasonable doubt that the petitioner had committed the offenses for which he had been charged.

7. We have considered the contentions made by learned counsel for the petitioner and ADPGA NAB and perused the record.

8. As per settled law we have only made a tentative assessment of the material placed before us in making this order, which shall not prejudice the case of either party at trial, which shall be decided on merits based on the evidence before it by the trial court.

9. It would appear that much of the wrong doing as alleged in the reference has been made by M/s. Cargo Aids (Pvt) Ltd and the employees of PIAC named in the reference who acted in collusion and connivance with M/s. Cargo Aids (Pvt) Ltd by misusing their authority.

10. Thus, it is important to see who is behind M/s. Cargo Aids (Pvt) Ltd. The Partnership Deed dated 7-5-2002 clearly shows that it has been entered into between Syed Sohail Hassan (accused No 1 in the reference) and Mrs Kiran Arif (accused No.2 in the reference) who is the wife of the petitioner. The Partnership Deed also states that the partnership will start business under the name and style



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of Ms Cargo Aids and shall carry on the business of medicine. The Partnership is on a 50/50 profit and loss sharing basis between the partners (accused No.1 and 2). No where in the Partnership deed is the petitioner mentioned which was duly registered with the Register of Firms Karachi under No.2007-08/0427 on 20-10-07. As such the petitioner is not part of Ms Cargo Aids and cannot have any responsibility for its actions. Furthermore, the four dishonored cheques do not seem to have been signed by the petitioner and no document has been placed on record to show that the petitioner had any role in the partnership e.g. had entered into a contract with it, was an employee of it, had authority to operate its bank accounts etc. The only piece of evidence which the prosecution has relied on to link the petitioner to the company is the S.161 statement of Mr. Zaheeruddin Ghorri the then manager cargo operations Cargo Aids Pvt Limited who states that the petitioner was a partner in Ms Cargo Aids and that he and his wife had full access to the bank accounts of the partnership which they used to invest in vehicles with the knowledge of accused No.1. This statement is clearly contrary to the partnership deed mentioned above in respect of the petitioner.

11. Based on a tentative analysis of the material placed before us we are of the considered view that there are strong reasons to doubt that the applicant is connected to the commission of the offenses alleged in the reference and that this is a case of further inquiry

12. These are the reasons of our short order dated 3.3.2016 whereby the petitioner was granted post arrest bail in the reference subject to his furnishing surety in the sum of RS 500,000 (five lacs) with PR bond in the like amount to the satisfaction of the Nazir of this Court beside depositing his valid original passport with the Nazir of this Court and the Ministry of Interior being directed to place his name on the ECL until conclusion of the trial in the reference.

Dated:- 08.04.2016