

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-5038 of 2018.

C.P. No.D-6557 of 2018.

Before:-

Mr. Justice Muhammed Iqbal Kalhoro, J.

Mr. Justice Mohammed Karim Khan Agha, J.

Mr. Intiaz Mansoor Solangi, Advocate for the petitioner No.1 Ghulam Raza in C.P. No.D-5038/2018.

Mr. Asif Ali Pirzada, Advocate for the petitioner No.2 Raja Ishtiaq in C.P. No.D-5038/2018.

Mr. Ashiq Hussain, Advocate for the petitioner, Abdul Qadir Kathor in C.P. No.D-6557/2018.

Mr. Khalid Mahmood Awan, Special Prosecutor, NAB.

Date of Hearing: 15-04-2019.

Date of Order: 25-04-2019

ORDER

Mohammed Karim Khan Agha, J. By this order we propose to dispose of the above mentioned petitions filed on behalf of petitioners Ghulam Raza Solangi, Raja Ishtiaq Ahmed and Abdul Qadir Kathor for post arrest bail in National Accountability Bureau (NAB) **Reference No.11 of 2017 State Vs. Ghulam Haider Jamali & others** who are alleged to be involved in corruption and corrupt practices under the National Accountability Ordinance 1999 (NAO). This court had already recalled the petitioners pre arrest bail vide order dated 11-05-2018 where after the petitioners were taken into custody and are now facing trial before the accountability court at Karachi.

2. The brief facts of the case are that that on receipt of complaint regarding illegal recruitment / appointments of Constables in Sindh Police by the Officers/Officials of Sindh Police, an inquiry was authorized on 29.12.2015 by Director General NAB Karachi and subsequently by the Chairman NAB. During the course of inquiry allegations of illegal appointments were substantiated, hence inquiry was converted into investigation.

3. That during the course of investigation it revealed that in the year **2013-14 and 2014-15** illegal recruitment / appointments of Constables, Junior Clerks, Computer Operators, and other menial

staff were made in Sindh Reserve Police Base Hyderabad. **The Hon'ble Supreme Court of Pakistan had also taken notice of the above mentioned illegal recruitment / appointments and constituted a committee comprising of senior police officers, vide order dated 23.12.2015 passed in HRC No. 16082-S of 2015. The said committee submitted its interim report before the Hon'ble Supreme Court of Pakistan and the said report was forwarded by the Hon'ble Supreme Court of Pakistan to NAB for inquiring into the matter.**

4. In essence the allegations against the petitioners who at the time of the commission of the offense were all police officers is that they in connivance with each other misused/failed to exercise their authority in making hundreds of illegal appointments/recruitments in the Sindh Reserve Police (SRP) from constables, clerks, computer operators and other menial staff in the years 2013 to 2014 **and** 2014 to 2015 which illegally favored/benefited those recruited/appointed and caused a colossal loss to the national exchequer through the payments of salaries amounting to RS 504,661,664. Such appointments made by the petitioners were not in accordance with the rules, was managed, was not on merit, without physical test, measurement, written tests, interview, and based on managed lists of applicants in order to favor blue eyed boys.

5. Thus, on account of the above misuse of authority/failure to exercise authority by the petitioners which favored others and caused a colossal loss to the exchequer the aforesaid reference was filed by NAB against the petitioners on 23.3.2017 before the accountability courts in Karachi for acts of corruption and corrupt practices under S.9 NAO.

6. **Learned counsel for Raja Ishtiaq Ahmed** who at the time of the offense was RI SRP Hyderabad admitted that he was a member of the 2014-2015 selection committee and that initially he refused to take part in the selection committee as he knew that it was illegal but he was coerced into doing so by accused Ghulam Nabi Keerio. According to him when he complained about the illegal appointments that were to be made he was issued show cause notices by accused Keerio which led to his dismissal from service thus through coercion he participated in the selection committee

and followed the illegal orders of his superior on the committee namely accused Ghulam Nabi Keerio and recommended the illegal appointments contrary to the rules. His main contention was that he acted under duress and that since accused Syed Fida Hussain Shah had been granted bail by the Hon'ble Supreme court vide order dated 11-09-2018 and as his case was on a better footing he was also entitled to bail based on the rule of consistency. Furthermore, he had not benefited personally and he had also agreed to become an approver but the NAB had turned down his request and he had also been in custody for almost a year and as such he was entitled to the concession of post arrest bail. Learned counsel for **Ghulam Raza Solangi** who at the time of the offense was Line officer SRP Hyderabad and **Abdul Qadir Kathor** who at the time of the offense was MTO SRP Hyderabad admitted that although they were a part of both selection committees (2013-2014 and 2014-2015) like petitioner **Raja Ishtiaq Ahmed** they were coerced by petitioner Keerio into making the illegal appointments contrary to the rules. In essence they adopted the same arguments as petitioner **Raja Ishtiaq Ahmed** mentioned above. In particular they placed reliance on an **unreported judgment of the Supreme court dated 11-09-2018 in civil Petition No.2636 of 2018** where their co-accused Fida Hussain Shah had been granted post arrest bail by the supreme court of Pakistan and the cases of **Syed Khalid Hussain Shah V State** (2014 SCMR 12), **Warid Telecom (Pvt) Ltd V PTA** (2015 SCMR 338) and **Tariq Bashir V State** (PLD 1995 SC 34) and as such they were also entitled to be granted post arrest bail.

7. Learned special prosecutor NAB vehemently opposed the grant of post arrest bail to each of the petitioners. In support of his contentions he contended that all the petitioners had fully admitted their guilt in connection with their role in the illegal appointments and that they had raised only one new ground namely that the rule of consistency applied to them based on **Fida Hussain Shah's** case (Supra) but in any event that case was not applicable to the petitioners as their roles were much different to that of Fida Hussain Shah. He also contended that at trial PW AIGP Mohammed Naeem had fully implicated the petitioners and if granted post arrest bail the petitioners would almost certainly abscond in order to avoid their conviction and thus for all the

above reasons their petitions for post arrest bail should be dismissed.

8. We have heard the parties and have carefully gone through the record and considered the relevant law and case law cited by them.

9. We would also like to make it clear that the findings in this order are only based on a tentative assessment of the material available on record and not a deep appreciation of such material and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

10. For offenses of corruption charged under the NAO (white collar crimes) the Hon'ble Supreme Court in the case of **Rai Mohammed Khan V NAB** (2017 SCMR P.1152) has emphasized that the **grant of bail in such cases must be construed strictly and rigidly** even if, as in that case referred to above, the amount involved was on the lesser side being only approx RS 12M (**as opposed to over RS 500M as in this case**) and as such we have followed this approach.

11. With regard to petitioners Ghulam Raza, Abdul Qadir Kathor and Raja Istiaq Ahmed through their own admissions they were fully involved in and fully aware of this illegal recruitment of police constables. The fact that they tried to avoid the situation and were merely following the illegal orders of their superiors under pressure is no defense under the law as was held in the cases of **Muhammed Asghar Khan's case** (2013 PLD SC 1) and **Syed Mahmood Akhtar Rizvi vs. Federation of Pakistan** (PLD 2013 SC 195) In any event this was a ground previously urged by them at their pre arrest bail hearing and is **not** a new ground.

12. With regard to the rule of the consistency the case of the petitioners is on a completely different footing to that of Syed Fida Hussain Shah their co-accused whose post arrest bail was allowed by the Supreme court. This is because co-accused Syed Fida Hussain Shah only authorised the payment of the illegally recruited police officers. However the petitioner's role was much **more direct** in that they were fully aware of and were fully involved in the illegal recruitment of the police officers by their own admission as they sat of the committees which selected the illegally

recruited police officers under a sham recruitment process orchestrated by their co-accused **Ghulam Nabi Keerio** who at the time of the offense was SP SRP Hyderabad. The fact that the petitioners may not have personally benefited is in our view not particularly relevant based on the particular facts and circumstances of the case as it was their deliberate and intentional misuse of authority which lead directly to the illegal recruitment of hundreds of policemen without merit which caused a colossal loss to the exchequer through the payment of their salaries. We find that the other authorities relied upon by the petitioners are of no assistance to them based on the particular facts and circumstances of the case. We are however of the view that if some of the petitioners have offered to become approvers then NAB should seriously consider such offer as it is likely to lead to a more expeditious completion of the trial as per the requirements of the NAO.

13. Thus, for the above reasons the petitioners have been unable to make out a case for post arrest bail and all their petitions are hereby dismissed.

14. The trial court is **directed** to hold the trial on a **day to day basis** and not allow any adjournment on any flimsy ground (and in the case of an adjournment clearly write in the diary which defense counsel or, as the case may be, special prosecutor NAB is responsible for such adjournment and why the adjournment was granted) and complete the trial **within 4 months** of the date of this order. The office shall transmit a copy of this order to the concerned accountability court for compliance which shall submit a weekly progress report to the concerned High Court accountability court monitoring Judge through MIT II .

15. All the petitions stand disposed of in the above terms.