

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

Civil Petition Nos.302, 579 & 580 of 2019

(Against order dated 14.12.2018 passed by High Court of Sindh at Karachi in C.Ps. Nos.D-5118 of 2018, D-4279 of 2018 & D-2569 of 2016)

Muhammad Jawed Hanif Khan

(in C.P. No.302 of 2019)

Chairman NAB

(in C.P. No.579 & 580 of 2019)

...Petitioner(s)

Versus

NAB Sindh & another

(in C.P. No. 302 of 2019)

Ameer Ali Brohi & another

(in C.P. No. 579 of 2019)

Muhammad Iqbal & another

(in C.P. No. 580 of 2019)

...Respondent(s)

For the Petitioner(s):

Mr. Munir A. Malik, Sr. ASC
Mr. Muhammad Kassim Mirjat, AOR
(in C.P. No.302/2019)
Mr. Sittar Sahil, Special Prosecutor NAB
Mr. Ausaf Talpur, Deputy Director NAB
(in C.P. Nos.379 & 580 of 2019)

For the Respondent(s):

Mr. Sittar Sahil, Special Prosecutor NAB
Mr. Ausaf Talpur, Deputy Director NAB
(in C.P. No.302 of 2019)

For Respondent No.1

Mr. Khaleeq Ahmad, ASC
(in C.P. No.579 of 2019)

For Respondent No.1

Mr. S.M. Iqbal, ASC
(in C.P. No.580 of 2019)

Date of hearing:

27.11.2019

ORDER

Qazi Muhammad Amin Ahmed, J. Behind bars since 30-7-2018, Muhammad Jawed Hanif Khan, petitioner herein, seeks admission to bail; he is amongst the array of accused in NAB Reference No.22 of 2018. It is alleged that being at the helm as Chairman Karachi Port Trust from 30-7-2012 to 2-9-2013, he instrumented regular appointment of 940 stipend employees in derogation of the rules, costing public exchequer a sum of Rs.2,855,917,894/-. Principal accused Babar Khan Ghouri, the then

Federal Minister for Ports and Shipping, Govt. of Pakistan is still away from the law. Alongside the petitioner, Muhammad Sparas, Deputy Secretary/Ex-Director Gawadar Port and Rauf Akhtar, Ex-General Manager, Karachi Port Trust are behind the bars whereas Muhammad Iqbal and Ali Brohi, Managers Human Resource Karachi Port Trust were admitted to bail in anticipation to their arrest vide the impugned order dated 14.12.2018.

Impugned appointments were purportedly made pursuant to directive dated 20-12-2012 issued by Babar Khan Ghouri co-accused in pursuance to an announcement statedly made by the then Prime Minister calling for regularization of all temporary employees, working in the ministry, PQA & KPT, etc. with immediate effect; it is numbered as PMDIR/2255/DS(Imp)PAW/12 dated 10.12.2012. In this backdrop, it is mainly argued that the petitioner unsuspectingly complied with the command issued by the highest authority in the realm, conveyed to him through ministerial channel and, thus, without an axe to grind, he delegated the task to his subordinates to carry out the exercise and, thus, in the absence of *mens rea*, the petitioner cannot be saddled with the criminality of the transaction, more so in the absence of any evidence to even obliquely suggest receipt of any financial benefit therefrom. Petitioner's subsequent contest for a seat of Provincial Assembly on the party ticket of *Muthida Qoumi Movement* has been cited as a motive behind his prosecution by the learned counsel while concluding his submissions. The learned Law Officer has faithfully contested the plea for bail; while referring to petitioner's subsequent electoral pursuit, he has attempted to demonstrate a subsisting nexus between the petitioner and the absconding former Federal Minister; the bottom line is that the petitioner being a conscious privy in the crime and in the absence of any circumstance suggestive of hardship, he cannot be enlarged on bail in a trial, otherwise likely to conclude soon in view of short number of witnesses, arrayed to drive home the charge.

3. Heard. Record perused.

4. Compliance by a Civil Servant with void or illegal orders/directions, issued by his superiors, cannot be received as a valid defence nor such a plea can absolve him from the fall out of consequences of an illegal act; his primary responsibility is to the Republic and not to his superiors or political masters of the time; he is viably entrenched by statutory protections and, thus, is required by law to maintain his independence as well as subservience to the

law. However, in order to ensure a fair deal, we will not comment upon petitioner's role in the impugned transaction, an issue to be essentially settled by the learned Accountability Court on the strength of evidence alone. The learned High Court allowed bail to Muhammad Iqbal and Ameer Ali Barohi in anticipation to their arrest, an extraordinary protection, on the ground that they, being at a lower rung, haplessly followed Ministerial directions passed on through proper channel and as such determination of their culpability was consequent upon recording of evidence, reasons that fail to commend approval. Preponderance of the charge notwithstanding, it would be rather out of place to *inter se* quantify the endurance level of the accused, each placed in a subordinate position, though differently, to resist the Ministerial pressure in terms of suggested quantification of culpability. National Accountability Bureau has sought cancellation of bails granted to Ameer Ali Brohi and Muhammad Iqbal vide two separate petitions i.e. CPLA No.579 and 580 of 2019, former barred by seven days, for reasons far from being acceptable, therefore, partial interference being most anomalous, status quo of equality is the only expedient option, benefit whereof cannot be denied to the petitioner as well. *Sauce for the goose is sauce for the gander.*

Civil Petition No.302 of 2019 is converted into appeal and allowed. The petitioner is admitted to bail subject to his furnishing solvent surety in the sum of rupees one million with two sureties each in the like amount to the satisfaction of the learned trial Court alongside his passport. The learned trial Court is directed to conclude the trial with all convenient dispatch, in the fullness of time, sooner rather than later.

Civil Petition Nos.579 and 580 of 2019 are dismissed.

Judge

Judge

Judge

Islamabad

27th November, 2019

Not approved for reporting

Azmat/-