

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4199 of 2013

Tauqeer Sadiq

Vs

The State, etc.

DATE OF HEARING: 12-3-2014.

PETITIONER BY: Sardar Asmat Ullah Khan Advocate.

RESPONDENTS BY: Barrister Saeed-ur-Rehman ADPG NAB.
Mr Rizwan Ibrahim Satti SPG NAB.
Mr Mustansar Hussain, I.O.

RIAZ AHMAD KHAN, J.- This judgment is directed to
dispose of W.P. No. 4199 of 2013.

2. Brief facts of the case are that petitioner Tauqeer Sadiq was Chairman OGRA. One Muhammad Yaseen filed Civil Petition No. 42 of 2011 before the Hon'ble Supreme Court of Pakistan against Tauqeer Sadiq and others. The Hon'ble Supreme Court of Pakistan ordered the NAB authorities to investigate the matter. The matter was investigated by the NAB authorities and finally reference was filed against Tauqeer Sadiq and three others. Further investigation revealed that certain other persons were also involved and therefore a final reference was filed, wherein eleven other persons alongwith the petitioner, were charged. Prior to filing of the final reference, the petitioner absconded and the NAB authorities had to approach the Interpol for arrest of the accused/petitioner. He was finally arrested on 28-1-2013 at UAE. He was extradited to Pakistan. The NAB authorities got custody of the accused from the Court on 07-12-2013. He remained with the

NAB authorities on physical remand for 67-days and thereafter was sent to Judicial-Lock-Up. In the reference filed against the petitioner/accused, the allegations are to the following effect:

“That during interrogation accused Tauqir Sadiq made numerous revelations regarding hidden facts about illegal raise in UFG from 5% to 7%, re-sitation/extension in provisional CNG licenses, commission/ kickbacks which he received along with others, names of benami beneficiaries and many other allied matters. Many other facts were discovered during interrogation from the accused and numbers of illegalities on the part of Gas Utility Companies i.e. SNGPL and SSGC were also un-earthed. The course of investigation transpired that numerous meetings were held among accused persons Tauqir Sadiq, Mirza Mehmood Ahmed, Mansoor Muzafar Ali with other accused persons in which a conspiracy was prepared to increase the UFG benchmark to raise the price of shares of SSGC and SNGPL to benefit the accused Aqeel Karim Dhedhi etc. which additionally proved as one of the main reasons of illegal raise in UFG benchmark by the accused Tauqir Sadiq in connivance with some of the senior members of the management of the gas utility companies.”

Among the other accused Jawad Jameel was arrested, but he was granted bail by the Hon’ble Lahore High Court, Rawalpindi Bench. Similarly, another accused Mansoor Muzafar Ali was granted bail by the Hon’ble Lahore High Court, Rawalpindi Bench. Whereas, Mir Kamal Fareed Bijrani Murree was granted bail by the Hon’ble Supreme Court of Pakistan. There are eight other accused; however, the NAB authorities did not deem it proper to arrest them. The accused/petitioner filed the present writ petition for release on bail. On

notice of the petition, Addl. Deputy Prosecutor General NAB appeared and contested the petition.

3. Learned counsel for the petitioner submitted that there is no case against the petitioner/accused. Similarly placed other accused have already been released on bail and on the basis of rule of consistency, the petitioner is also entitled to the concession of bail. It has further been submitted that the NAB authorities do not intend to even arrest the other co-accused, which clearly shows discrimination on the part of NAB authorities. According to learned counsel for the petitioner there are 88-witnesses in the case and there is no likelihood of early conclusion of the trial. The petitioner is already behind the bars for the last more than one year and his further incarceration would not serve any useful purpose. Therefore, the petitioner is entitled to the concession of bail.

4. On the other hand, learned Addl. Deputy Prosecutor General NAB submitted that the petitioner was the master mind of the corruption case. He being Chairman OGRA had raised UFG from 5% to 7%. In addition to that he had been receiving kickbacks and commissions; so, in such a way his case is distinguishable from the case of other co-accused. It is further submitted that it is discretion of the NAB authorities to arrest an accused or to let him free to face the trial, without taking him into custody. The learned ADPG further submitted that the present petitioner was arrested on direction of the Hon'ble Supreme Court of Pakistan; he had absconded and a huge amount of government exchequer was spent on his arrest. He had been extradited from UAE and even on this score, the petitioner is not entitled to the concession of bail.

5. We have heard learned counsel for the parties and have also perused the record.

6. The main allegation against the petitioner/accused is that he had raised UFG (Unaccounted for Natural Gas) from 5% to 7%. Infact, UFG means *in respect of a financial year the difference between the total volume of metered gas received by a licensee during that financial year and the volume of natural gas metered as having been delivered by the licensee to its consumers excluding there from metered natural gas used for self consumption by the licensee for the purpose of its regulated activity; and such other quantity as may be allowed by the authority for use by the licensee in the operation and maintenance of its regulated activity*. Earlier this UFG was 5% and allegation against the petitioner is that he raised it from 5% to 7% and in such a way caused huge loss to the government exchequer. According to the record in the year 2010-2011 SNGPL and SSGC, the gas distribution companies, made a complaint that due to theft and leakage of gas the amount of UFG may be increased from 5% to 7%. The petitioner was then Chairman of OGRA and the said increase was allowed; however, the case of the petitioner is that he alone was not responsible for the increase, rather it was decided by the Board and that too was in accordance with law. The said Board refused to extend the increase in the next year. The companies approached the Hon'ble Lahore High Court and under the orders of the High Court further extension was granted. Without stepping into merits of the case, it is yet to be determined as to whether the increase was made with malafide intention and after getting any illegal gratification or not. For this purpose, further evidence would be required. As far as remaining allegations are concerned, those appear to be vague allegations and would require further evidence. Other members of the Board have already been granted bail by the Hon'ble Supreme Court of Pakistan and the Hon'ble Lahore High Court, Rawalpindi Bench. The remaining accused have not been arrested, as the NAB authorities do not wish to arrest them. This attitude also amounts to

discrimination. Case of the prosecution is entirely resting upon the documentary evidence, which has already been seized by the prosecution. The petitioner/accused is behind the bars for the last one year and conclusion of the trial is not foreseeable in near future. Further incarceration of the petitioner/accused would not serve any useful purpose. The principles of Section 497 Cr.P.C. are also applicable while granting bail U/A 199 of the constitution of the Islamic Republic of Pakistan, 1973.

7. As far as abscondance is concerned, the petitioner/accused had been convicted in absentia and that conviction has been set aside. Furthermore abscondance under the NAB Law is an offence and required to be proved through evidence; but it is yet to be proved alongwith the main allegations levelled against the petitioner/accused. So, at present the bail can not be withheld simply for the reason that the petitioner had absconded. Though it is yet to be proved as to whether absence of the petitioner amounted to abscondance or not. We are therefore, of the opinion that the petitioner is entitled to the concession of bail.

8. In the circumstances, this petition is accepted. The petitioner/accused be released on bail, provided he furnishes bail bonds in the sum of Rs.10,00000/- (rupees ten lac) with two sureties each in the like amount to the satisfaction of the learned trial Court.

(RIAZ AHMAD KHAN)
JUDGE

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Approved for reporting.

Tanveer Ahmed.