

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.2994-2020

Mst. Rukhsana Bangash

Vs.

Chairman, National Accountability Bureau, Islamabad etc.

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
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| 20.01.2021 | Mr. Farooq H. Naek, Advocate Supreme Court and Mr. Aqeel Akhtar, Advocate for petitioner along with petitioner Sardar Muzaffar Ahmad Abbasi, Additional Deputy Prosecutor General, National Accountability Bureau, Rana Zain Tahir, Special Prosecutor General, National Accountability Bureau, Obaid Ullah Azam, Director, National Accountability Bureau and Mudasir Nayab, Assistant Director/IO, National Accountability Bureau. |
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AAMER FAROOQJ. The petitioner is facing inquiry conducted by National Accountability Bureau; she is aggrieved of call up notices issued by National Accountability Bureau and also seeks bail before arrest in the matter.

2. It is the case of the petitioner that call up notices issued are in violation of law declared in cases reported as ‘Dr. Arsalan Iftikhar Vs. Malik Riaz Hussain and others’ (PLD 2012 Supreme Court 903) and ‘Ghulam Hussain Baloch and another Vs. Chairman, National Accountability Bureau, Islamabad and 2-others’ (PLD 2007 Karachi 469). It was also submitted that it is apprehended that respondents might arrest the petitioner. Learned counsel further pointed out that respondents, with malafide and ulterior motives, are involving the petitioner in the inquiry initiated against her son primarily.

3. At the very outset, learned Deputy Prosecutor General, National Accountability Bureau submitted that at present, neither warrant of arrest has been issued against the petitioner nor any such proposal has been initiated. It was contended that call up notices were against the law declared by the august Apex Court hence amended questionnaire has been issued. This Court was further informed by the learned Additional Deputy Prosecutor General that inquiry, against petitioner's son, was initiated due to a letter from Financial Monitoring Unit with respect to two transactions made by him for purchase of foreign currency in the sum of \$21,000 on the same day in different transactions.

4. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. Under section 19 of National Accountability Ordinance, 1999 (the Ordinance), National Accountability Bureau (NAB) has the power to call for information. In this behalf, for ease of convenience, section 19 of the Ordinance is reproduced below: -

19.Power to call for information:

The Chairman NAB or an officer of the NAB duly authorised by him may, during the course of an inquiry or investigation of an offence under this Ordinance:-

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Ordinance or any rule or order made there-under.
- (b) require any person to produce or deliver any document or thing useful or relevant to the inquiry or investigation;
- (c) examine any person acquainted with the facts and circumstances of the case;

- (d) require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whosoever, including copies of entries made in a bank's or a financial institution's books such as ledgers, day books, cash books and all other books including record of information and transactions saved in electronic or digital form, and the keepers of such books or records shall be obliged to certify the copies in accordance with law ; and
- (e) where there is reasonable suspicion that any person is involved in or is privy to an offence under this Ordinance, the Chairman NAB may, with the prior approval in writing of the High Court concerned, direct that surveillance of that person may be carried out through such means as may be necessary in the facts and circumstances of the case and the Chairman NAB, may in this regard seek the aid and assistance of any Governmental agency and the information so collected may be used as evidence in the trial under this Ordinance:

Provided that the copies obtained or information received or evidence collected under clauses (d) and (e) shall be kept confidential and shall not be used for any purpose other than for legal proceedings under this Ordinance”.

6. The power of NAB to call for information and ask any accused person or the witness to appear before the Investigation Officer was questioned and examined in detail by Hon'ble Sindh High Court in case reported as 'Ghulam Hussain Baloch and another Vs. Chairman, National Accountability Bureau, Islamabad and 2-others' (PLD 2007 Karachi 469). The Hon'ble Sindh High Court observed as follows:-

“For the purpose of present case, the provisions of section 19(a), (b) & (c) are relevant, therefore, discussion would be in respect of said provisions. A bare reading of the said provisions reveals that if an inquiry or investigation is ordered in respect of offence punishable under the Ordinance by the Chairman NAB then during the course of said inquiry or investigation of such offence the Chairman NAB or any officer duly authorized by him is authorized to call for information from any person for the purpose of satisfying himself whether there has been any contravention of provisions of the Ordinance or any rule or order made thereunder. In this clause, "any person" would mean all persons including witnesses and accused from whom the information is required. The question arises as to

what sort of information the person is required to furnish to the competent authority. The information would be in respect of offence alleged or any matter which can suggest that the provisions of the Ordinance, rule or order made thereunder have been contravened. For that purpose competent authority is required to ask any person from whom such information is required to provide information which has nexus with the above provisions. If a person does not know the point or allegation or offence or fact on which information is to be provide or the person against whom such information is required then how such person would be in a position to help the competent authority, therefore, while calling the information from any person, the person must be informed the fact, point, allegation, offence, name of accused, specified matter, if any, concerning the matters of the provisions in the B notice so that the person can furnish such information. If such specified information is of such a nature which, if furnished through any mode will serve the purpose, then such person should not normally be called to appear in person.

The improvements as pointed out by the learned DPG in the investigation process before the NAB authorities are basically carried out to facilitate all the concerned persons to give them due respect, not to harass them, to provide all reasonable facilities, relieve them within shortest possible time, without detaining them unnecessary or put any hardship to, any person then in all fairness the person at the initial stage should not normally be asked to appear in person and furnish such information, which otherwise, can serve the purpose by furnishing such information through any other manner. This does not mean that the authorities have no power to call such person, but in unavoidable circumstances where the presence of the person is necessary then the person can be called by signing reasons as required under section 24-A of General Clauses Act, which stipulates that where any authority or officer is empowered to make order or give any direction, such power is required to be exercised reasonably, fairly, justly and for the advancement of the purpose of enactment and give reasons for making such order. The copy of such order should find place and be made available in the case diary.

It is pointed out that if a person is called then in the summons or notice the date, time and place of his appearance should be specifically mentioned. After doing the needful an endorsement be made on the notice or summons showing the date, time and place of his appearance and the date, time and departure from the place to which he was summoned, which shall be delivered to the said person. All such orders mentioning such facts and information should

be attached to the case diary. It is also pointed out that no avoidable trouble should be given to any person from whom information is called for or inquiries are made and no person should be unnecessarily detained.

As regards the clause (b) under which the Chairman NAB and an officer duly authorized by him, is authorized to require any person to produce or deliver any document or thing useful or relevant to the inquiry and investigation of the offence: this clause, person can also be asked to produce or deliver the document or thing which will help the Investigating Officer in the inquiry or investigation of the offence. Under this clause, the Investigating Officer is also required to specify the offence, name of the accused person, particulars of the document or thing, if available or any document or thing concerning the offence and accused having nexus with inquiry or investigation, which is required to be produced or delivered in the notice. Under this clause also at the initial stage, normally the person should not be asked to appear in person and to produce such document or thing for the simple reasons that when the document or thing is received by the Investigating Officer it will serve the purpose and if for any reason attendance of such person is required then he can be called by assigning valid and cogent reasons which shall appear in the case diary. The date, time and place of his appearance and production of the document or thing should be mentioned in the notice or summons. After appearance and doing the needful, an endorsement be made on the copy of notice or summons showing the date, time and place of his appearance and the date, time of his production of document or thing and departure from the said place which shall be delivered to the said person and the copy of such order shall be attached with the case diary.

As regards the clause (c), the Chairman NAB or any officer duly authorized by him is empowered to examine any person, who is acquainted with the facts and circumstances of the case having nexus with the inquiry or investigation of offence. Under this clause also, the normal practice is that the Investigating Officer normally records the statements of the witnesses at the place of incident without loss of time by personally going there. In the cases before the NAB authorities, the statements can also be recorded at the place of incident or residence of the person. For any reason, if the Investigating Officer finds that the witness or any person should be examined at certain place then he can issue such summons or notice showing the name of accused and particulars of offence with date, time and place of this appearance. As soon as he appears before him then his statement should be recorded. After doing the needful, an

endorsement be made on the copy of notice or summons, showing the date, time and place of his appearance and the date, time of his departure from the said place, which shall be delivered to the said person and such order should also be filed with the case diary.

It is not out of place to mention here that the concerned officer is authorized to record statements of witnesses, but he cannot force any of the witnesses to make a statement other than one which such witness voluntarily likes to make. The law does not permit such officer to beat the witness or confine him for the purpose or inducing him to make a particular statement. One of the purposes of examination of witness is to obtain evidence preliminary to arrest the accused.

The words "any person" appearing in the clause include the accused person also. The Constitution gives guarantee to the citizen under Article 4 that they will be treated according to law. Under Article 13 protection has been given to the accused of an offence that he will not be compelled to be a witness against himself. It is also against the natural justice and principles of Criminal Law to compel a person to give evidence against himself in the offence instituted against him and then base the charge on such evidence. During the interrogation, the accused can refuse to answer only those questions which are incriminatory, but he is required to answer all other questions. The protection against self incrimination is available to accused not only in respect of his words, but also on the use of documents, books, papers etc. Forcing a person to produce, deliver or turnover incriminating written materials is in effect requiring him to testify against himself. Reference is invited to 116 US 616 (1886) as reported at page 96 of Constitution of Pakistan, 1973 by Shaukat Mahmood. It is also against the guarantee provided under Article 13 of the Constitution.

In the last half of the Seventeen Century privilege against self-incrimination was well-established in England: The adoption of privilege marked a great advance over earlier practices when suspects were not only required to give testimony against themselves, but were tortured to force them to do so. The privilege has been incorporated in the Criminal Procedure Code. It has been regarded as one of the great landmark in man's struggle to make himself civilized and assuming that a man is presumed to be innocent until proved guilty. All the other protection facilities as discussed under clause (a) should also be provided to the persons in respect of clauses (b) and (c) of section 19 of the Ordinance".

7. The observations of Hon'ble Sindh High Court were approved by the august Apex Court in case reported as 'Dr. Arsalan Iftikhar Vs. Malik Riaz Hussain and others' (PLD 2012 Supreme Court 903).

8. Likewise, the Hon'ble Sindh High Court again approved the referred principles in case reported as 'M/s Memon Motors Pvt. Ltd. through General Manager Vs. National Accountability Bureau through Chairman and 2-others' (2014 P.Cr.LJ 1378).

9. On the touchstone of interpretation of section 19 of the Ordinance, when notice dated 26.08.2020 is examined, the same does not comply the legal requirements. Likewise, notice dated 10.11.2020, which was produced in the Court, is also in violation of the observations made hereinabove. It is observed that call up notices, issued in the instant case, are in violation of law declared by superior courts of the country. Decision to call someone, in an inquiry or investigation by NAB, is an executive decision however the person, who is being called either as witness or accused, is entitled to know the reasons/details for which he is called. In this behalf, it is appropriate that in light of dicta mentioned above, a call up notice should contain the following information:-

- i) If notice is issued to a person, who is a suspect in inquiry or investigation, the nature of allegations against him
- ii) The name and identity of complainant; if NAB has initiated inquiry/investigation, then it should be stated so in notice.

- iii) Documents, if any, sought from person called as suspect or witness
- iv) If person is called as a witness, it should be so stated in call up notice.
- v) If custodian of any material document or record is called for examination of same, the call up notice should state so and the details of documents and record.
- vi) Date, time and place, where person called, is to appear.
- vii) Any other relevant information.

10. In so far as bail before arrest is concerned, learned Deputy Prosecutor General, NAB contended that petitioner is neither required for arrest at the moment nor there is any proposal and the matter is still at an inquiry stage. Learned counsel for the petitioner apprehends that NAB may arrest the petitioner. In support of his claim, he placed reliance on order of this Court dated 17.12.2020 passed in case titled 'Ghulam Qadir Mari Vs. Chairman, National Accountability Bureau, etc.'" (W.P. No.282-2020).

11. In so far as arrest of the petitioner is concerned, since a specific statement has been made by learned Deputy Prosecutor General, NAB that they have no intention to arrest the petitioner at the moment, no order, to the effect, confirming bail, can be passed. However, it is expected that if and when any such action is proposed by NAB, it will take into account the observations made in judgment dated 18.12.2019 passed by this Court in case titled 'Amjad Mustafa Malik Vs. Director General, National Accountability Bureau & 4-others' (W.P.No.769-2019).

12. For what has been stated above, impugned call up notices, being in violation of law, are set aside. The prayer to the effect of bail before arrest is disposed of on the basis of above statement of learned Deputy Prosecutor General, NAB.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(AAMER FAROOQ)
JUDGE

Approved for reporting

Zawar

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