

JUDGMENT

Before Aamer Farooq and Mohsin Akhtar Kayani, JJ

MUMTAZ ALI MALIK and another---Petitioners

Versus

NATIONAL ACCOUNTABILITY BUREAU (NAB) through Chairman---Respondent

W.P. No.2186 of 2018, decided on 5th July, 2018.

Through this writ petition the petitioners have prayed for grant of post-arrest bail till the conclusion of trial/reference pending before the NAB Court.

2. Brief facts referred in the instant writ petition are that the appellant No.1/Mumtaz Ali Malik, being CEO of the Messrs MAM Securities (Pvt.) Ltd. and petitioner No.2/Muhammad Ali Asghar, being Director of the said firm and son of the petitioner No.1, defrauded investors and embezzled an amount of Rs.131.58 million.

3. Learned counsel for petitioners, inter alia, contends that this is the second writ petition to the extent of petitioner No.1 on the subject for grant of post arrest bail as earlier Writ Petition No.2747/2017 (Mumtaz Ali Malik v. NAB) was dismissed by this Court vide order dated 23.10.2017, whereas this writ petition is the first attempt on the part of petitioner No.2 for grant of post arrest bail; that after dismissal of the first writ petition of the petitioner No.1, he approached the apex Court through C.P. No.4800/2017 whereby the same was dismissed by the apex Court vide order dated 30.01.2018 with the direction to the Accountability Court to conclude the trial within the period of three months, but the trial has not yet been concluded and as such petitioners are entitled for concession of post-arrest bail.

4. Conversely, learned Special Prosecutor NAB contends that despite the direction of the apex Court the delay is attributed to the petitioners side, who are not cooperating in the trial and as such 6 out of 42 PWs have been recorded whereas majority of the adjournments are attributed to the defence side; that petitioner No.2 is equally involved with petitioner No.1 in the alleged crime and the instant writ petition is not competent.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that both the petitioners are accused Reference No.1/2018, which is pending before the learned Accountability Court No.1 and as per the allegation, petitioner No.1 was individual membership of the Islamabad Stock Exchange from 1992 to 2000, who converted his individual membership to cooperate membership under the name and style of M/s MAM Securities (Pvt.) Ltd. duly incorporated on June 09, 2006, which conversion of membership was also approved by the Securities and Exchange Commission of Pakistan (SECP). The firm then primarily engaged in the business of stock trading, brokerage, investment advisory consultancy, portfolio management, secondary capital market operations, and providing

all relative services to the general public to promote investment. The SECP under the Joint Inspection Regulations, 2015 constituted a Joint Inspection Team comprising of Pakistan Stock Exchange (PSX), Central Depository Company (CDC), and National Clearing Company of Pakistan Limited (NCCPL), who visited the office of Messrs MAM Securities (Pvt.) Ltd. in June, 2016 and made 28 observations, which remained unsolved on the part of the Messrs MAM Securities (Pvt.) Ltd. Later on, the SECP issued the order dated 26.01.2017 for Departmental Inspection Team under section 138 of the Securities Act, 2015. The said team inspected the Messrs MAM Securities (Pvt.) Ltd. and observed some illegalities whereby the firm was asked to clarify the same, though the said firm failed to provide any kind of reply required by the Departmental Inspection Team. It has also been observed that initially 33 claimants have forwarded their claims amounting to Rs.166 million, whereafter the NAB authorities started inquiry, which was later on converted into investigation. Finally, a reference was filed against the petitioners, and the charge was framed on 11.01.2018, whereas 6 out of 42 prosecution witnesses have been recorded.

7. Petitioner No.1, being the CEO of Messrs MAM Securities (Pvt.) Ltd., in connivance with the petitioner No.2, opened the bank account in the name of the company and committed financial irregularities by trading the points of client into their own CDC account, which is, prima facie, evident from the trade data provided by the Pakistan Stock Exchange and as such they have deceived the investors and committed the offence of criminal breach of trust against the funds of investors amounting to Rs.131.58 million.

8. The petitioner No.1 had earlier filed the W.P. No.2747/2017 before this Court for grant of post arrest bail, which was dismissed vide order dated 23.10.2017, whereas the said order was upheld by the apex Court vide order dated 30.01.2018 passed in C.P. No.4800/2017 with the direction to the Accountability Court to conclude the case within the period of three months. We have gone through the record as well as order sheets of the learned Trial Court and observed that on the last 23 dates of hearing i.e. starting from the date of framing of charge on 11.01.2018, the prosecution witnesses were present before the Accountability Court on majority of the dates and 5 adjournments are attributed to the defence side, whereas the evidence could not be recorded due to engagement of the NAB Court in dealing with the Panama Case of Mian Muhammad Nawaz Sharif, which was proceeding on daily basis. However, the trial has not yet been concluded and petitioner No.1 is seeking post arrest bail mainly on the ground that directions given by the apex Court have not been complied.

9. In view of said background, this Court is fortified with the view given by the apex Court in PLD 2016 SC 11 (Nisar Ahmad v. The State and others), wherein it has been held as under:--

"4. We have scanned the material placed on record and are unable to subscribe to such submissions of the learned ASC Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C., nor filing of direct complaint will have any bearing as regards earlier bail refusing orders, which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case."

In view of the above position, there is no fresh ground available to the petitioner No.1, who is only

seeking a second post arrest bail through the instant writ petition on the round of noncompliance of direction and as such the non observations of direction is not a valid ground for grant of bail, therefore, the instant writ petition is not competent on this score alone.

10. We have also perused the record to the extent of petitioner No.2, who is the Director of the Messrs MAM Securities (Pvt.) Ltd. and real son of petitioner No.1, who allegedly in connivance with the petitioner No.1 embezzled a huge sum of amount from the invested funds of the public at large and as such the allegations could only be refuted during the course of trial. The involvement of Petitioner No.2, prima facie, is available on record and neither any valid justification was given by petitioner No.2 to prove his innocence nor any ground of further inquiry has been addressed through which one could understand the fact of non-involvement of petitioner No.2 in this scam. Both appellant No.1 and appellant No.2, i.e. father and son, have moved with clear intention to deprive the innocent people from their hard earned money, which resulted into financial loss of Rs.131.58 million, and per se there is no ground for grant of post arrest bail in favour of petitioner No.2 at this stage. He is prima facie connected with this heinous crime and it is trite law that when trial is in progress, bail could not be awarded and direction may be issued for early conclusion of the trial. Reliance is placed upon 2011 SCMR 1332 (Rehmat Ullah v. The State).

11. In view of above background, the instant writ petition is misconceived and the same is hereby **dismissed**. The learned Trial Court seized with the matter is directed to conclude the matter within the period of six months.

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