

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

W.P.No.1264 of 2017

Mrs. Asma Alamgir

Versus.

Federation of Pakistan and others

S. No. of order / Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.04.2017	<b>Barrister Masroor Shah, Advocate for the petitioner. Sardar Muzaffar Ahmed Khan, learned Additional Prosecutor-General, National Accountability Bureau ("N.A.B.")</b>

Through the instant writ petition, the petitioner, Mrs. Asma Alamgir, prays for the following relief:-

- "A. The Respondents may graciously be restrained from harassing the Petitioner;*
- B. Grant the Petitioner anticipatory/protective bail for few days so as to enable her to approach the Court of Competent Jurisdiction/appear before the CIT of Respondent No: 2 and 3;*
- C. The Respondents be restrained from taking any adverse or coercive measures against the Petitioner including interfering with the liberty of the Petitioner or arrest her in any manner whatsoever without the permission of this Honourable Court."*

2. Learned counsel for the petitioner submitted the petitioner is a former Member of the National Assembly of Pakistan; that the petitioner is a vociferous opponent of the present government; that the present government is harassing the petitioner in order to prevent her from playing her role in politics and speaking out for the downtrodden segments of the society; that respondent No.2 (National Accountability Bureau) has initiated an inquiry against the petitioner alleging that she has unlawfully accumulated assets; that on 21.03.2017, a call up notice was issued to the petitioner by respondent No.3; that the petitioner has cooperated in the inquiry

conducted by respondent No.3 (Director, National Accountability Bureau, Peshawar) by answering all the questions posed to her in a questionnaire; and that the petitioner also submitted documents which show that no asset has been acquired by her through unlawful means.

3. It was further submitted that the petitioner has no qualms about coming to Pakistan and appearing before respondents No.2 and 3 in order to record her statement and cooperate in the inquiry; that the petitioner's legal counsel through letter dated 22.03.2017 informed respondent No.3 about the petitioner's intention to cooperate in the ongoing inquiry by appearing before the Inquiry Officer upon her return to Pakistan; that the petitioner learnt through reports on various TV channels that the petitioner would be arrested at the airport upon her return to Pakistan; that in order to enable the petitioner to defend herself, the petitioner ought to be granted transitory bail so as to enable her to come to Pakistan and appear before respondent No.3 without being humiliated and subjected to arrest upon arrival in Pakistan.

4. Learned counsel for the petitioner drew the attention of the Court to the interim order dated 15.03.2017, and judgment dated 20.03.2017 passed by this Court in W.P.No.1005/2017, titled as "Sharjeel Inam Vs. Federation of Pakistan, etc" and contended that this Court had enabled the petitioner in the said case to surrender before this Court in order to seek transitory bail, and that it was also ordered that he would not be arrested until he surrenders before this Court. Learned counsel for the petitioner further submitted that similar relief was granted by the Hon'ble High Court of Sindh in the cases of Javed Iqbal Mirza Vs. National Accountability Bureau (2007 P Cr. L. J

1230), Hasan Sohail Vs. The State, (2006 YLR 3116), Muhammad Jamal Vs. Federation of Pakistan (2012 YLR 167), and Khawaja Muhammad Salman Younis Vs. Federation of Pakistan (PLD 2016 Sindh 547).

5. Learned counsel further submitted that this Court can, in exercise of its inherent jurisdiction, grant transitory bail by dispensing with the requirement of the petitioner's presence before the Court. This Court in the case of Mrs. Ambreen Saleem Khawaja Vs. FOP (2015 P.Cr.L.J 506), has held that the mother of an accused can file a writ petition for the quashment of an FIR. In the case of Sabir Hussain Vs. the State (1999 MLD 2208), it was held that protective bail is granted to an accused to enable him to approach the concerned Court of other province for the purpose of obtaining pre-arrest bail. It was also held that protective bail is granted to encourage an accused to surrender himself to the custody of the Court, and to seek justice on the merits of the case. If protective bail is refused it will force the accused person to become a fugitive from justice, which is not the intention of the law.

6. On the other hand, learned Additional Prosecutor-General, N.A.B. vehemently opposed the grant of any relief to the petitioner. He submitted that since the petitioner had not surrendered herself before this Court, she cannot be granted the concession of bail, transitory or otherwise; that under Section 498 Cr.P.C., bail cannot be granted in the absence of the petitioner; and that admittedly, the petitioner is not even present in Pakistan, therefore, she cannot be granted bail.

7. He further submitted that this Court does not have the territorial jurisdiction to adjudicate upon

the petition at hand; that an inquiry against the petitioner is pending before respondent No.3 at Peshawar; that call-up notice dated 21.03.2017, has been issued to the petitioner by respondent No.3; that the petitioner cannot insist on taking a flight from Dubai to Islamabad, when she can easily take a flight to Peshawar; and that given the seriousness of the allegations against the petitioner, respondents No.1 and 2 intend to arrest her upon her arrival. Learned Additional Prosecutor-General, N.A.B. placed reliance on the judgment dated 08.02.2016, passed by this Court in Writ Petition No.1965/2013 titled "Sadaat Anwar Qumbrani Vs. NAB" and judgment dated 24.02.2016, passed by this Court in Writ Petition No.562/2016 titled "Jamshoro Joint Venture Limited Vs. Federation of Pakistan", wherein this Court dismissed writ petitions seeking quashment of call-up notices issued by the offices of National Accountability Bureau beyond the territorial jurisdiction of this Court.

8. Learned Additional Prosecutor-General, N.A.B. also submitted that under the provisions of Section 56(e) of the Specific Relief Act, 1877, this Court cannot stay legal proceedings. He further submitted that this Court cannot pass an order restraining the arrest of the petitioner until she surrenders herself before this Court, because the same would be against the interests of justice. Learned Additional Prosecutor-General, N.A.B. prayed for the writ petition to be dismissed.

9. We have heard the contentions of the learned counsel for the petitioner as well as the learned Additional Prosecutor-General, N.A.B.

10. Before we decide this case, reference to the following case law on the subject would be apposite:-

- (i) In the case of Javed Iqbal Mirza Vs. NAB (supra), the petitioner, who was abroad, had filed a petition under Article 199 of the Constitution seeking protection of the Hon'ble High Court from being arrested upon his arrival in Pakistan so as to enable him to surrender before the Accountability Court where a reference was pending against him. The Hon'ble High Court of Sindh, after considering inter alia the petitioner's intention to surrender before the Accountability Court as early as possible after his arrival in Pakistan, disposed of the petition with the direction that upon his arrival in Pakistan within ten days of the date of order of the Hon'ble High Court, the petitioner will surrender himself before the Accountability Court within 48 hours, and during this time, he was not to be arrested in connection with the reference. This concession was extended to the petitioner on furnishing of surety in the sum of Rs.5,00,000/- and personal bond in the like amount.
- (ii) In the case of Hasan Sohail Vs. the State (supra), the petitioner, who was abroad, had telephonically instructed his counsel to file a bail petition on his behalf. The petitioner was apprehending his arrest upon arrival in Pakistan to face the allegations leveled in the FIR against him. The Hon'ble High Court of Sindh, without going into the merits of the case, granted protective bail for a period of 15 days. The protective bail was come to an end on the date specified in the order or until the petitioner surrendered before the learned Trial Court, whichever was earlier. Protective

bail was granted to the petitioner on furnishing security in the sum of Rs.1,00,000/- with a personal bond in the like amount.

- (iii) In the case of Muhammad Jamal Vs. Federation of Pakistan (supra), the petitioner, who was abroad, apprehended arrest upon his return to Pakistan. The petitioner applied for protective bail, so as to enable him to come to Pakistan and surrender himself before the trial Court where criminal proceedings were pending against him. The Hon'ble High Court of Sindh, without going into the merits of the case, admitted the petitioner to protective bail for a period of 15 days from the date of the order of the High Court, with the direction to the petitioner to surrender before the Trial Court. Bail was granted subject to furnishing solvent surety in the sum of Rs.10,00,000/- with a personal bond of the same amount. The petitioner was cautioned that the concession of the protective bail will not be extended for any reason whatsoever, if he not surrenders before the trial Court during the validity of the protective bail, the surety amount would be forfeited.

11. One of the Hon'ble Judges on each of the Benches that delivered the said judgments rose to grace the Hon'ble Supreme Court of Pakistan. Hence these judgments are to be respected and revered.

12. In the case at hand, the learned counsel for the petitioner has brought on record a copy of the petitioner's air ticket for a flight from Dubai to Islamabad on 15.04.2017, and submits that the petitioner shall take the said flight to Pakistan. He

submits that the reason why the petitioner intends to come to Islamabad is because she has her residence here and wants to seek legal advice prior to appearing before respondent No.3 at Peshawar. Through the call-up notice dated 21.03.2017, the petitioner has also been called upon to appear before respondent No.3. The learned counsel for the petitioner reiterated that the petitioner has not challenged the said call-up notice, and that in response to the said call-up notice, the petitioner wants to appear before respondent No.3 at Peshawar.

13. We appreciate that the inquiry against the petitioner is pending at Peshawar and that the said call-up notice has been issued by the National Accountability Bureau's office at Peshawar, but at this stage, we are concerned only with transitory bail. In the event, the petitioner decides to seek pre-arrest bail under Article 199 of the Constitution, she will have to go before the competent Court having territorial jurisdiction over the matter i.e. the Hon'ble Peshawar High Court.

14. As regards the judgments of this Court passed in Writ Petitions No.1965/2015, and 562/2016, relied upon by the learned Additional Prosecutor-General, N.A.B., the said cases did not concern transitory bail. In Writ Petition No.1965/2015, the petitioner had challenged call-up notices issued by the National Accountability Bureau at Balochistan, whereas in Writ Petition No.562/2016, the petitioners had sought quashment of call-up notices issued by the National Accountability Bureau at Karachi. In the case at hand, the call up notice issued to the petitioner by respondent No.3 has not been challenged. The petitioner has confined her case only to the grant of transitory bail. In the judgment dated 20.03.2017,

passed in Writ Petition No.1005/2017, this Court has held as follows:-

*“It is settled law that protective bail is granted to an accused so as to enable him or her to approach the concerned Court of another province for the purposes of obtaining pre-arrest bail. An order in respect of granting protective bail is for a specified period merely to protect an accused till he or she has approached a competent Court. It is not in the nature of granting an anticipatory or pre-arrest bail under Section 497 of the Criminal Procedure Code, 1898 (hereinafter referred to as the “Cr.P.C.”) nor disentitles him or her to seek a remedy before the concerned competent Court. Moreover, while granting protective bail merits or demerits of the case are not discussed or considered. The practice of allowing protecting bail adopted so as to encourage an accused to surrender himself to the custody of a competent Court for seeking a remedy.”*

15. In view of the above, and in consistency with the law laid down by the Superior Courts in the cases referred to above, we are inclined to grant transitory bail to the petitioner for a period of 15 days only from the date of this order, subject to the furnishing of solvent security in the sum of Rs.1 Million along with personal bond in the same amount to the satisfaction of the learned Additional Registrar (Judicial) of this Court, with the direction that within 48 hours of the petitioner’s arrival in Pakistan, she shall appear before respondent No.3, and cooperate in the inquiry. The period of protective bail shall come to an end on 26.04.2017. This petition stands disposed of in the above terms.

(AAMER FAROOQ)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

**APPROVED FOR REPORTING**

Qamar Khan\*

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