

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.1632/2016

Kamran Saeed

Versus

Chairman National Accountability Bureau, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(11)	20.07.2016	Sardar Asmat Ullah Khan & Raja Aamir Abbas, Advocates for the petitioner alongwith petitioner. Mr. Adnan Tahir, Sr. Prosecutor for NAB. Muhammad Ghufraan I.O. NAB.

MOHSIN AKHTAR KAYANI, J.--- Through the instant writ petition, the petitioner seeks his pre-arrest bail in NAB Reference No.12/2016 offence U/S 9 read with section 10 of National Accountability Ordinance, 1999.

2. As per allegations contained in the Reference, a complaint was received from Uzair Abu Bakr Ex-D.G.M National Fertilizer Marketing Limited (NFML) regarding illegal appointments in NFML and thereafter certain other complaints were received by NFML regarding misappropriation and dumping of imported Urea Fertilizer, allocation of quota to different Carriage Contractors who in connivance with Ex-General Manager (Distribution) (Present Petitioner) and Managing Director caused huge loss to national exchequer. Instant reference pertains to misappropriation of Urea Fertilizer by M/s Bilal Carriage Contractor and officers/officials of National Fertilizer Marketing Limited, Ministry of Industries and Production who are involved in the scam. To the extent of M/s Bilal Carriage Contractor inquiry was entrusted to Ms. Hira Ahmad Junior

Investigation Officer NAB Rawalpindi on 28.11.2014 which was completed and recommended by her for up-gradation to investigation resultantly investigation was entrusted to Muhammad Ghufraan Dy. Assistant Director NAB Rawalpindi on 18.01.2016. As per allegation M/s Bilal Carriage Contractor was awarded contract for transportation of Urea Fertilizer bags from Karachi Port to various Godowns in the country however, 7953.55 Metric Tons of Urea was misappropriated from October 2013 to April 2014 causing loss of Rs.284,100,806/- to the national exchequer with other penalties imposed by NFML. During the course of inquiry it has been proved that present petitioner remained General Manager (Marketing and Distribution) from 24.12.2013 to June 2014 and during the said period 28 vessels containing imported Urea had arrived at Pakistan port and from the said vessels 15909 Metric Ton Urea was allocated to M/S Bilal Carriage Contractor by the present petitioner, the then G.M. (Distribution). As per distribution manual of NFML the petitioner being G.M. (Distribution) had the complete control over the movement of imported Urea from Karachi to entire country. It has also been alleged that the petitioner while misusing his official position allocated extra quota to M/S Bilal Carriage Contractor having the knowledge that M/S Bilal Carriage Contractor has already defaulted in delivery of the Urea but petitioner has not taken any action against the Contractor hence, the petitioner has not performed his duties diligently although, he was main executor of entire operation. Finally the reference was prepared/ filed after investigation.

3. Learned counsel for petitioner contends that petitioner is a CSP officer of Pakistan Railway Group who was transferred to NFML on 12.12.2013 and thereafter, he was promoted as incharge of distribution and subsequently as G.M. (Distribution) however, he was repatriated to Pakistan Railways on 20.07.2014. Learned counsel further contends that the entire loss and misappropriation of urea has been made by officials prior to appointment of petitioner in NFML even the shortage has not been attributed to the petitioner. Learned counsel further contends that NAB has already filed a reference against the Urea dealers, therefore, second reference on other set of co-accused is not permissible. Learned counsel further contends that the petitioner remained behind the bars for 5 months 12 days in earlier reference and was granted bail after arrest by Hon'ble Lahore High Court, hence the present reference is based upon malafide which is apparent from record.

4. Conversely, learned Sr. Prosecutor NAB controverted the said position and states that the petitioner was working as G.M. (Distribution) in the office of NFML and he was responsible for all operational duties including lifting of Urea, allocation of quota, clearance of bills and other administrative work. Learned counsel further contends that from the Station Transfer Notes it has been proved that the carriage contractor has misappropriated a huge quantity of urea and it was the responsibility of the petitioner to have look on each contractor or its trucks as to whether they are performing their duties in accordance with the principles of natural justice or otherwise.

5. Arguments heard, record perused.

6. From the tentative assessment of record it transpires that initially a complaint was filed against M/s Bilal Carriage Contractor who was awarded contract for transportation of Urea bags from Karachi port to various Godowns of Pakistan by NFML however, 7953.55 metric tons Urea was misappropriated from October 2013 to April 2014 causing a loss of Rs.284,100,806/- with other penalties imposed by the NFML. During the course of inquiry and subsequently in investigation, it revealed that petitioner remained appointed on different positions whereas he belongs to Pakistan Railways Group and transferred to NFML on deputation as Senior Manager. On 12.12.2013 he was further promoted to the post of incharge distribution on 24.12.2013 and thereafter, he was promoted as G.M. distribution on 09.01.2014 he remained G.M. (Distribution) till 20.07.2014, thereafter, he was repatriated to his parent department Pakistan Railways.

7. While taking bird's eye view, it reveals from the record that, petitioner remained as G.M. (Distribution) and by virtue of his official position he was incharge to supervise the lifting of Urea from the port and allocate the same to different carriage contractors and distribute the same to the Urea dealers in Pakistan. cursory glimpse of material available on records reveals that 15909 Metric Tons Urea quota was allocated to M/s Bilal carriage contractor from 28.07.2013 to 27.05.2014 whereas 7953.55 metric tons Urea was found missing which was allocated to M/S Bilal carriage contractor. The petitioner being G.M. (Distribution) had allocated quota

to six different carriage contractors including M/S Bilal carriage contractor in his period of posting whereas, the petitioner has issued a letter dated 11.01.2014 to M/s Bilal for his outstanding Station Transfer Notes. In the said detailed letter he has specifically written to the co-accused M/S Bilal carriage contractor to provide the details of his Station Transfer Notes and ask him to confirm the delivery of the said Urea which is in transit hence, it is apparent from record that he was very well aware that co-accused M/S Bilal Carriage Contractor are defaulter of their contractual obligations and have failed to deliver the huge volume of Urea but even after knowing these facts the petitioner allocated Urea of huge volume to M/s Bilal Carriage Contractor and had not imposed any ban on their dispatches, it was duty of the petitioner to stop further allocation to M/s Bilal carriage contractor but he allocated 15909 Metric Tons Urea to M/S Bilal Carriage Contractor hence, it is clear that he has extended undue favour to the said company and on the reconciliation statement on 15.01.2014 the pending/outstanding Urea of M/s Bilal carriage contractor has risen to 7699.75 Metric Tons but even then the petitioner further allocated 1568 Metric Ton Urea on 17.01.2014 and 1554 Metric Tons Urea on 20.01.2014 to the said contractor. After the inquiry, matter has been converted into investigation and finally Reference No.12/2016 has been filed on 12.05.2016 by the NAB authorities before the Accountability Court Islamabad and the petitioner has been nominated as accused No.4 in the said reference.

8. It has also been observed that the petitioner being G.M (Distribution) has issued a first letter to declare M/S Bilal carriage contractor as defaulter and stopped his dispatches vide letter dated 25.04.2014, however, the major loss had already been cause to national exchequer, as per his own letter dated 25.04.2014, 146 STNS were in transit means not reached to their destination nor any confirmation was received rather the said trucks were misappropriated and the total quantity of misappropriated Urea is 7699.75 Metric Tons which is missing. As per recorded data dated 17.04.2014 the approximate value of the said misappropriated Urea is 280 Million whereas M/S Bilal Carriage Contractor has entered into a VR and has deposited Rs.67,400,000/-.

9. Section 9 (a) (vi) of NAB Ordinance, 1999 read as follows:

***"9. Corruption and corrupt practices: (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices-
(vi) misuses his authority so as to gain any benefit or favour for himself or any other person, or to render or attempt to do so."***

The above referred State of affairs, prima facie, demonstrate that the petitioner being G.M. (Distribution) has to perform his duties to prevent the loss to the national exchequer even though the contract between the NFML and M/s Bilal carriage contractor clearly reflects the conditions in which carriage contractor is under obligation to transport the fertilizer to designated destination ordered by the company, the three provisions were:-

**"CARTAGE CONTRACTOR TO DELIVER FERTILIZER
WITHIN TIME TO CONSIGNEE (S)"**

10. The Cartage Contractor shall transport the fertilizer to the designated destination(s) and effect delivery to the consignee(s) ordered by the Company within the hereinafter mentioned maximum periods calculated from the time loaded trucks leave the Gwadar Port. Where distance of destination (from Gwadar Port) upto 1000 kms, the maximum period during which delivery must be made shall be 4 days, where the distance is from 1001 kms to 1500 kms, this period must be 6 days and where the distance is beyond 1500 kms the delivery must be made within 8 days. The product unloaded at Karachi / Hub Godown for trans-shipment purpose will be allowed additional margin of 5 days over and above the mentioned distance time brackets. However NFML will be in its right to extend this time under special circumstances. In case the Cartage Contractor fails to deliver the fertilizer within the specified time, he will be liable to pay damages at the rate of Rs.400.00 per ten metric ton, for each day of delay.

CARTAGE CONTRACTOR TO OBTAIN SIGNATURES ETC. FROM CONSIGNEE UPON DELIVERY.

11. The Cartage Contractor shall deliver the product to the consignee at the destination designated by the Company and obtain signatures alongwith delivery date and stamp from the consignee for the receipt thereof on the Supply Order/ Stock Transfer Note form. In case it is found that forged signatures/stamp are appended/affixed on any Supply Order/ Stock Transfer Note, the Cartage Contractor shall be liable to pay damages @ Rs.10,000.00 per Supply Order/ Stock Transfer Note.

NON-DELIVERY OF CONSIGNMENT AT DESIGNATED DESTINATION/DUMPING

12. In case the Cartage contractor in connivance with the consignee delivers/unloads/dumps the consignment at a place other than the designated destination, the Cartage Contractor shall be liable to pay to the Company the full value of the consignment at TCP Import price plus damages amounting to Rs.40,000.00 per Supply Order/Stock Transfer Note. Besides, no freight charges shall, in such cases, be payable to the Cartage Contractor. In addition the Company will be within its right to terminate the Agreement, forthwith."

Hence, from the plain reading of above clauses of the contract it was the duty of the petitioner to look after the affairs of distribution of Urea specially when the carriage contractor fails to deliver the consignment within the prescribed period of 6 to 8 days and an additional margin of 5 days could be extended to the said carriage contractor

even the delivery reports to the consignee was to be considered on serious basis but despite clear terms of contract as well as the job description the petitioner himself wrote a letter to M/s Bilal carriage contractor whereby he had pointed out the non-delivery of Urea in the month of January but subsequently allocated further quota to M/s Bilal carriage contractor even without considering his own observation which is available in his own official record, hence, this demonstrates that petitioner prima facie is guilty of misusing his authority and extending benefits to co-accused Imran Mohsin whose bail has already been dismissed by this Court vide order dated 14.01.2016 in W.P. No.2988/2015 and the same has been upheld by the Apex Court in CPLA No.272/2016 vide order dated 17.06.2016.

10. The petitioner is prima facie involved and is well connected with the commission of offence and the question of grant of pre-arrest bail in such like cases does not arise. Even otherwise, concept of criminal misconduct which lead to such kind of corruption has been defined in **2016 P.Cr.LJ. 396 "Abdul Sattar and another versus The State"**:-

"High Court observed that 'corruption' in a civilized society is like a disease like cancer, which, if not detected in time, is surely to malign the polity of country leading to disastrous consequences--- 'Corruption' is now termed as 'Royal thievery', which affects not only an individual, but also the economy, and the same destroys cultural heritage---Crime of 'corruption' is to be considered as one of the serious problems and threats posed to stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and rule of law---One must keep distinction between an act of receiving money as 'consideration' for doing an illegal or legal act and the act which falls within meaning of corruption qualifying the term 'misappropriation'."

Even otherwise NAO, 1999 provides a mechanism to eliminate the abuse of powers or authority, default in repayment of amounts to financial institutions, banks, government and others agencies, urgent needs of recovery of state money and other assets and to deal with the people who are misappropriating the assets and their corruption and corrupt practices by misusing their powers and authority the right of bail is not available under the NAO, 1999 and in our estimation following kind of officials are not entitled for any concession of pre-arrest bail and even for post arrest bail.

- a. The persons of authority in Government office, state owned organizations who are responsible to prevent the loss of national exchequer but involved in crime and caused loss to exchequer.*
- b. The persons of authority of any designation who are under the obligation and custodian of any asset of state and being in service of federation or attached with the affairs of the state are bound to perform their specific duties to prevent the loss, recover the due amounts, to perform such statutory duties which are required under the law as guardian, protector and to prevent or on behalf of state but did not perform their duties.*
- c. Any person having the authority or sitting on position of authority has not performed his duties by way of negligence, compromise, connivance with the others to cause loss to the national exchequer.*
- d. Any person of authority who could not prevent or raise objection on any corruption or corrupt practices by his senior authority rather kept silent and overlooked illegal actions of superior which resulted into loss to assets of the state or loss to the national exchequer.*
- e. Any individual officer who compromised the command of his superior knowingly that the same is illegal, contrary to law and is an offence which resulted into loss and established financial corruption.*
- f. Any individual who has received any illegal benefit due to his official position.*
- g. Any public officer who has not received any benefit for himself but received any benefit indirectly through his family on the basis of his official position and did not allows any other person under his control from performing their lawful duties to prevent loss to the national assets and public exchequer.*

h. Even those officers who though themselves are not directly involved rather facilitated the corrupt practices in their office and official duties.

11. Hence, above mentioned categories of officers are not entitled for any such concession of bail who have not performed their duties in accordance with minimum required standards to protect the assets of state and Government of Pakistan which is a sacred trust under their command and control as the same amounts to corruption and corrupt practices. Even the apex court in recent judgment imposed special duty upon the courts to perform their duties actively, diligently to eliminate such kind of corrupt practices and corruption. In **CPLA No.272/2016 titled as "Imran**

Mohsin versus the State, etc" has held as under:-

"تمام احتسابی اداروں جو کہ بدعنوانی کے سبب کے لئے بنائے گئے ہیں ان میں قابل اور بدعنوانی سے پاک دیانتدار افسروں کو سامنے لانا ہوگا اور ان کی مکمل اور جامع طریقے سے فنی اور تکنیکی تربیت اعلیٰ سطح پر کرنا بہت اہم اور لازمی ہو گیا ہے۔ ان اداروں کے سربراہان کا فرض بنتا ہے کہ وہ تفتیشی اداروں اور استغاثہ کے وکلاء کے فرائض کی انجام دہی اور جملہ افعال کو نہایت قریب سے زیرِ نظر رکھ کر اس میں مکمل نظم و ضبط لائے، بصورتِ دیگر وہ خود ہی اپنے فرائض کی انجام دہی میں کوتاہی کے مرتکب سمجھے جائیں گے۔ چونکہ اس قسم کے جرائم میں خورد بُورد کی مجموعی رقم یا شرح لاکھوں کروڑوں روپے میں ہوتی ہے لہذا ایسے اثر و رسوخ اور بدعنوانی سے دولت کمانے والے ملزموں کے لئے یہ کوئی مشکل بات نہیں کہ لوٹ کھسوٹ اور خورد بُورد کے پیسے سے حاصل کردہ دولت سے کچھ حصہ خرچ کر کے تحقیقی و تفتیشی افسران اور دیگران کی فرض شناسی اور وفاداری کو خرید لے۔ عدالت کی نظر میں یہ جرم اصل مجرم کے جرم بدعنوانی سے زیادہ سنگین ہے اور اصل جرم پر پردہ ڈالنا اور اپنے فرائض میں دانستہ کوتاہی برتنے کے مترادف ہے۔ لہذا ان اداروں کے سربراہان کو، مملکتِ خداداد کی وفاداری کا بھرم بھرتے ہوئے پُر آسائش اور ٹھنڈے کمروں سے نکل کر، اہم نوع کے مقدمات کی نگرانی کرنے والی جماعتوں کی خود بھی نگرانی کرنی چاہیئے۔"

یہاں یہ تجویز کرنا بھی ضروری ہو گیا ہے کہ چونکہ احتساب کے قانون کی مختلف شقوں کی بناء پر اس نوع کے جرائم میں بارثبوت بابت بے گناہی ملزمان پہ عائد کی گئی ہے۔ لہذا خصوصی عدالتیں اور اپیل کی عدالتیں ملک کے مخصوص کے پیش نظر ان قانونی شقوں کا باریک بینی سے جائزہ لے کر ملک، اداروں اور معاشرے کو بدعنوانی کے ناسور سے پاک کرنے کے لئے انتہائی متحرک اور فعال کردار ادا کرے۔ کیونکہ بدعنوانی ہر سطح پر جس تیزی سے ملک اور معاشرے میں پھیل رہی ہے اگر اس کا فوری سبب نہ کیا گیا تو یہ دیمک کی طرح ملک اور اداروں کی اقتصادی، مالی اور معاشی بنیادوں کو کھوکھلا کر کے ریاست کو انجام سے دو چار کر گی جس کا بعد میں سبب کرنا نہ صرف مشکل بلکہ نا ممکن ہوگا۔ چونکہ ارضِ پاک خود مختار ریاست کی صورت میں ہمیں کسی نے تحفہ میں نہیں دیا بلکہ اس کے لئے لاکھوں جانوں کی قربانیاں دی گئیں۔ اگرچہ مسلمہ

قانون اور انصاف کے اصولوں کی یکسر نظر انداز نہیں کیا جا سکتا لیکن حالات کیس سنگینی اور متوقع سنگین نتائج سے بچنے کے لئے یہ ہمارا فرض بنتا ہے کہ اعلیٰ عدلیہ اور خصوصی عدالتیں اس سلسلے میں محتاط، متحرک اور فعال کردار ادا کرے تاکہ اس نوع کے جرائم کی مکمل بیخ کنی کی جا سکے۔ یہاں پر اس بات کو بھی نظر انداز نہیں کیا جا سکتا کہ معاشرے کے ہر طبقے کے افراد بد عنوانی کے خلاف زوردار طریقے سے آواز اٹھانے میں پیش پیش ہوتے ہیں لیکن بدقسمتی سے ان میں سے اکثریت خود احتسابی کے اصول پہ عمل درآمد کرنے کرانے سے گریزاں نظر آتے ہیں جو کہ قومی المیے سے کم نہیں ہے۔

12. In view of above, the petitioner is prima facie connected with the commission of offence and has failed to demonstrate that he has performed his duties honestly, diligently in a carefully manner rather he prime facie, was instrumental in causing loss to national exchequer, even there is no malafide on the part of NAB authorities against petitioner apparent on record nor petitioner demonstrated through any material that he is not connected with the said offence of corruption and corrupt practices, therefore, the instant writ petition is devoid of merits and is hereby dismissed. The pre-arrest bail granting order dated 03.05.2016 is hereby recalled.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Irfan Ali

Approved for reporting.