

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR**

CIVIL PETITIONS NO. 1128 TO 1135 OF 2020

(On appeal from the judgment/order dated 13.12.2019 of the High Court of Sindh at Karachi passed in CP No. D 2356,2976, 6623,1850,1851,1776,2236,2235/19).

CIVIL PETITION NO. 1920 OF 2020

(On appeal from the judgment/order dated 28.02.2020 of the High Court of Sindh at Karachi passed in CP No.8474/2019).

NAB through its Chairman
(in CP 1128 1135/2020)

Chairman NAB through PG NAB, Islamabad
(in CP 1920/2020)

... Petitioner(s)

VERSUS

Agha Siraj Khan Durrani
(in CP 1128/2020)

Gulzar Ahmed and another
(in CP 1129/2020)

Shakeel Ahmed Soomro and others
(in CP 1130/2020)

Mitha Khan and others
(in CP 1131/2020)

Shamshad Khatoon and others
(in CP 1132/2020)

Tufail Ahmed Shah
(in CP 1133/2020)

Zulfiqar Ali Dahar and others
(in CP 1134/2020)

Aslam Pervaiz Langha and others
(in CP 1135/2020)

Syed Muhammad Shah
(in CP 1920/2020)

...Respondent(s)

For the Petitioner(s):

Mr. Sattar Awan, Spl.
Prosecutor NAB
(video link Karachi)

For the Respondent(s): Mr. Shahab Sarki, ASC
Mr. Altaf Hussain, ASC
Mr. Aftab Alam Yasir, ASC

Date of Hearing: 17.03.2021

ORDER

UMAR ATA BANDIAL, J.- The present connected petitions for leave to appeal impugn two judgments of the Sindh High Court, dated 13.12.2019 and 28.02.2020 ("**impugned judgments**"), in which post-arrest bail was granted to respondent No.1 and interim pre-arrest bail was extended to respondents No.2-9.

2. Briefly the facts of the present case are that an inquiry was launched by the National Accountability Bureau ("**NAB**") in October 2018 against the respondents on the receipt of a complaint that the latter were involved in the commission of the offence of corruption and corrupt practices. As a result, respondent No.1 was arrested in connection with the said complaint on 20.02.2019.

3. Feeling aggrieved by this action of NAB, respondent No.1 filed a writ petition on 08.04.2019 before the learned High Court seeking post-arrest bail. He challenged his arrest and continuous detention for being contrary to the mandatory requirements of law and for being motivated by the mala fides of NAB. Similarly, respondent Nos.2-8 also filed writ petitions (on different dates) claiming pre-arrest bail. The learned High Court accepted these petitions vide judgment dated 13.12.2019. Pursuant to this decision, respondent No.9 also filed a writ petition seeking pre-arrest bail. His prayer

was accepted by the learned High Court on 28.02.2020 on the principle of consistency. At present, it is these two judgments which are challenged before us.

4. The learned Special Prosecutor NAB has assailed the impugned judgments for being contrary to the established law and facts of the case. On the other hand, learned counsel for the respondents have supported the decisions of the learned High Court.

5. We have heard learned counsel for the parties and have also perused the impugned judgments. The matter before us requires consideration of both post and pre-arrest bail. We will first take up the post-arrest bail case of respondent No.1 who is the prime accused in these proceedings. It is by now established in NAB cases that the concession of post-arrest bail can be granted to an accused on the basis of principles applicable to Section 497 Cr.P.C. [ref: **Olas Khan Vs. NAB** (PLD 2018 SC 40)]. Under sub-Section (2) of this provision, an accused can obtain post-arrest bail on a tentative assessment of the available material if he fulfills two criteria: firstly, if he shows that there are no reasonable grounds for believing that he has committed a non-bailable offence; and secondly, if there are sufficient grounds for further inquiry into his guilt

6. However, rather than addressing the said considerations in the present case, the impugned judgment dated 13.12.2019 has instead focused wholly on the alleged procedural and legal lapses committed by NAB in the 'defective and perfunctory investigation' carried out against respondent No.1. For ease of reference, some of the observations are produced below:

"12. ...The learned Special Prosecutor, NAB conceded that little investigation was carried out in order to trace the owners of the said vehicles. It appears that a relatively basic and simple task was ignored by the investigators, which ought to have been carried out at the first instance.

15. We are surprised at the admission made by the learned Special Prosecutor, which was confirmed by the investigating officer, that not once did the investigating officer visit the localities where the assets of the Durrani family were located and what income they generated... This omission is more surprising in light of the fact that NAB even has a Regional Office in Sukkur, which is relatively close to where Mr. Durrani's assets are held and is suggestive of the investigation being carried out in a very casual manner, to say the least.

20. There is a manner that is prescribed in law for a law enforcement agency to search a home of a person. Most regrettably, it appears, that the search conducted by NAB of Durrani's house was conducted in a crude and unprofessional manner without following the procedure laid down in section 103, Cr.P.C."

The learned High Court ought to have perused the incriminating material, if any, on the record to evaluate whether the two-fold test for grant of post-arrest bail, mentioned in para-5, was satisfied. However, while allowing the prayer of respondent No.1 the learned High Court failed to apply its judicial mind to the applicable criteria and the relevant material thereby committing a serious error. As a result, the impugned judgment dated 13.12.2019 is wrong in law and cannot be sustained.

7. With regard to respondents No.2-9 who have been granted interim pre-arrest bail by the learned High Court, it is

noted at the outset that the impugned judgments dated 13.12.2019 and 28.02.2020 barely touch upon the case against the said respondents. Indeed, relief of anticipatory bail was predominantly granted to these respondents because they were treated as the front men of respondent No.1, who had already been extended bail. However, confirming the extraordinary relief of pre-arrest bail to respondent Nos.2-9 on a cursory basis contravenes the settled principles laid down by the Superior Courts. Reference is made to the decision in **The State Vs. Haji Kabeer Khan** (PLD 2005 SC 364), which was later affirmed in **NAB Vs. Murad Arshad** (PLD 2019 SC 250), where this Court categorically held that in NAB cases an accused can only be granted pre-arrest bail if he demonstrates that his arrest is being sought for mala fide purposes for example to humiliate him. Nevertheless, the impugned judgments have failed to examine the critical element of NAB's mala fide whilst granting the benefit of interim pre-arrest bail to respondent Nos.2-9. In this respect then the impugned judgments have committed an omission that renders them devoid of lawful basis.

8. In the light of the above discussion, these petitions are converted into appeal and allowed. The impugned judgments dated 13.12.2019 and 28.02.2020 are set aside, and the matter is remanded to the learned High Court for a fresh decision in accordance with the settled law of bail. The needful should be done expeditiously, preferably within two months from the date of this order.

9. Before parting with this judgment, we would like to emphasize that offences under the NAB Ordinance, 1999 fall within the ambit of serious crimes for which the law does not allow bail as of right (ref: Section 9(b) NAB Ordinance, 1999). Therefore, considering the gravity and seriousness of such offences, we consider that it will be appropriate if bail petitions in respect of these offences are heard by Division Benches comprised of senior Judges.

10. These then are the detailed reasons for our short order of even date:

"For reasons to be recorded later, the impugned judgments dated 13.12.2019 and 28.02.2020 are set aside. The petitions are converted into appeals, allowed and the matter is remanded to the learned High Court for decision in respect of bail on its merits. It is also observed that in NAB's matters the bail petitions should be heard and decided by senior Division Benches of the learned High Court. In the meanwhile, the respondents shall remain on bail. However, the learned High Court shall endeavour to decide the bail petitions within two months from the date of this order."

Sd/- J
Sd/- J
Sd/- J

Islamabad
17.03.2021
Nascer/Meher LC

Sd/- J

NOT APPROVED FOR REPORTING.