

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**Civil Petition Nos.3031/2021, 1183/2021,
1184/2021 and 1290/2021**

(Against the order dated 17.03.2021 in Const. P.D-665/2019, 469/2020, 358/2020 and order dated 10.3.2021 in Const. P. No.D-598/2019 passed by the High Court of Sindh)

Maqbool Ahmed Mahessar & 2 others

(in C.P.3031/2021)

Hafiz Suhail Ahmed & 3 others

(in C.P.1183/2021)

Muhammad Pariyal Solangi

(in C.P.1184/2021)

Nasrullah

(in C.P.1290/2021)

...Petitioner(s)

Versus

NAB through its Chairman and others

(in all cases)

...Respondent(s)

For the Petitioner(s):

Mr. Mohammad Kassim Mirjat,
ASC/AOR

(In CP.3031/2021)

Mr. Zulfiqar Khalid Maluka, ASC
(In CP.1183, 1184, 1290/2021)

For the NAB:

Abdus Sattar Awan,
Special Prosecutor, NAB.
(in all cases)

Date of hearing:

04.05.2021

ORDER

Qazi Muhammad Amin Ahmed, J.- Issue raised in the captioned petitions is identical with the one earlier attended and disposed of by this Court in a good number of cases, vide order dated 14.04.2021 whereby bail petitions both pre as well as post arrest, in different NAB references, allowed by a learned Division Bench of High Court of Sindh at Sukkur Bench, in lieu of deposit of amounts allegedly embezzled by the accused named therein, were remitted for decision afresh in accord with the law declared by this Court in the case of Talat Ishaq Vs. National Accountability Bureau (PLD 2019 Supreme Court 12).

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From amongst the petitioners, Hafiz Sohail (C.P.1183/2021), Muhammad Pariyal Solangi (C.P.1184/2021) and Nasrullah (C.P. 1290/2021) are not in attendance, statedly, on account of Covid restrictions, standing in impediment to their journey to the Court; their attendance is dispensed with; they, along with co-accused, present before the Court, by impugned orders, each structured on consent, have been admitted to pre-arrest bails in different NAB references with a direction to furnish deposits equivalent to the amounts allegedly embezzled by them at the cost of public exchequer. Such directions for release of an accused on bail have since been held by this Court as *ultra vires* in judgments more than one. An accused seeking bail desires transfer of his custody from Superintendent of the Jail, where he is confined, to his surety who undertakes his production as and when required by the Court and for that he has to make out a case in accordance with the law applicable thereto; he cannot be allowed or required to barter his freedom. In the *supra* case considerations for grant of post arrest bail to an accused confronting charge under the NAB Ordinance have clearly been illustrated, therefore, an accused facing indictment in a NAB reference has to qualify the parameters set down in the *supra* case; there is no other way out. Similarly, grant of pre-arrest bail in a cognizable/non-bailable offence is a remedy, most extraordinary in the nature of judicial protection, extended by diverting usual course of law for the sole purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique; the protection is based upon equity and cannot be extended in every run of the mill criminal case *prima facie* founded upon incriminatory evidence, warranting custody for investigative purposes. The protection was devised in Hidayat Ullah Khan's case (PLD 1949 Lahore 1) and the principles laid down therein are being faithfully followed till date; impugned orders being inconsistent therewith cannot sustain. Petitions are converted into appeals and allowed; orders impugned are set aside. Bail petitions filed by the appellants before the High Court of Sindh shall be deemed as pending for decisions afresh; they shall remain on ad-interim bail upon furnishing bonds in the sum of Rs.500,000/- with one surety each in the like amount to the satisfaction of Deputy Registrar

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(Judicial) of Sukkur Bench before fall of 3rd week of the month; they shall appear in person before the Court on a date notified by the office. It is expected that the petitions shall be decided/disposed of with all convenient dispatch on their own merits having regard to the law declared by this Court.

Judge

Judge

Judge

Islamabad
4th May, 2021
Azmat/*