

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Qazi Muhammad Amin Ahmed  
Mr. Justice Amin-ud-Din Khan

**Civil Petition Nos.4029, 4070, 4092, 4110, 4111, 4112 & 4131 of 2019**

(Against order dated 5.11.2019 passed by High Court of Sindh at Sakhar in C.Ps. Nos.D-364/2019, D-365/2019, D-1408/2016, D-837/2016,D-892/2016,-D1905/2016,D-1825/2016,D-241/2015 & D-2088/2014, respectively)

***Mir Muhammad & another***

*(in C.P. No.4029 of 2019)*

***Tariq Hussain***

*(in C.P. No.4070 of 2019)*

***Sher Muhammad***

*(in C.P. No. 4092 of 2019)*

***Ayaz Ahmed Soomro***

*(in C.P. No. 4110 of 2019)*

***Ali Gul Phull***

*(in C.P. No. 4111 of 2019)*

***Ghulam Nabi***

*(in C.P. No. 4112 of 2019)*

***Ghulam Sarwar***

*(in C.P. No. 4131 of 2019)*

...Petitioner(s)

**Versus**

***NAB through its chairman & others***

*(in all cases)*

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Munir Paracha, ASC  
Syed Rifaqat Hussain Shah, AOR  
(In C.P. No.4029/2019)  
Mr. Shahab Sarki, ASC  
Mr. M.S. Khattak, AOR  
(In C.P. No.4070, 4131/2019)  
Mr. Aftab Alam Yasir, ASC  
(In C.P. No.4131/2019)  
Mr. Qasim Mir Jat, ASC/AOR  
(In C.P. No.4092/2019)  
Syed Qalb-i-Hussain, ASC  
Mr. M.S. Khattak, AOR  
(In C.P. No.4110-4112/2019)

For the NAB:

Syed Nayyar Abbas Rizvi, Prosecutor General  
NAB. (in all cases)

Date of hearing:

26.11.2019

## ORDER

**Qazi Muhammad Amin Ahmed, J.** Declined by the High Court of Sindh, the petitioners seek bail in anticipation to their arrest in NAB Reference No.1 of 2019, filed in pursuance to direction dated 20-1-2016 by the High Court of Sindh to initiate an inquiry/probe into the alleged misappropriation of funds in execution of Annual Development Plan of Irrigation (E&W) Khairpur for the years 2013-14, 2014-15. It turned out that except for some partial work, no work was executed at all; loss to the exchequer was calculated as Rs.8,93,03,470.

2. Sher Muhammad, Ayyaz Ahmed Somro, Ali Gul Phull and Ghulam Nabi are officials of the Irrigation Department whereas Meer Muhammad, Sodoro, Ghulam Sarwar and Tariq Hussain, being contractors, have been arrayed for their connivance in the scam to defeat the exchequer.

3. Learned counsel for the petitioners are in a unison; their arguments include execution/completion of projects as per codal requirements; according to them, it is evident from the survey/inspection report itself. The bottom line is that the projects were executed in the year 2014 and, thus, there was no occasion down the road in the year 2018, that too, in the month of August when the canal ran in full swing, to physically detect any flaw/deficiency in the executed work. Mr. Muhammad Munir Paracha, ASC went a step further to argue that his client never applied for the project and was instead unsuspectingly impersonated by someone else; according to him, no amount ever landed in his account and was, thus, blameless; *malafide* is lurking behind the intended arrest, concluded the learned counsel with one voice. The learned Law Officer has faithfully contested the pleas by arguing that there was ample technical and documentary evidence to inescapably frame the petitioners with the charge; he has prayed for dismissal of the petitions.

4. Heard. Record perused.

5. It was on a complaint alleging violation of rules as well as embezzlement in the project that the High Court of Sindh directed a probe, on the basis whereof, physical verification by the experts found non-execution of various planks of the project as well as partial completion of the work, found much less than the required

standards. In this backdrop, *malafide* cannot be conceivably attributed to the initiation of proceedings against the petitioners, in absence whereof, they cannot claim judicial protection in a prosecution that otherwise sans relief of bail. While refusing bail to the petitioners, the learned High Court has directed the Accountability Court to conclude the trial within a period of three months requiring the accused to cooperate in the conclusion thereof, an option to conveniently vindicate their position sooner rather than later.

Grant of pre-arrest bail is an extraordinary remedy, essentially rooted into equity, a judicial power to be cautiously exercised with a view to protect the innocent from the horrors of abuse of process of law, in prosecutions initiated by considerations and for purposes stained with the taints of *malafide*; this judicial protection is not to be extended in every run of the mill criminal case, with pleas structured on bald denials and parallel stories. View taken by the learned High Court being well within the remit of law does not call for interference. Petitions fail. Dismissed. Leave refused.

**Judge**

**Judge**

**Judge**

Islamabad

26<sup>th</sup> November, 2019

Azmat/-