

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL.

CIVIL PETITIONS NO. 258, 260, 268 AND 457 OF 2017.

(On appeal against the order dt. 31.01.2017 passed by the High Court of Sindh at Karachi in CPs. No. D-4960, D-4549, D-6889 and D-6887 of 2016).

Faqir Dad Khan Khoso and others.	(in CP. 258/17)
Sohail Akbar Shah.	(in CP. 260/17)
Abdul Rasheed Solangi.	(in CP. 268/17)
Goharullah.	(in CP. 457/17)
	...Petitioner(s)

Versus

NAB thr. Its Chairman and others.
NAB thr. Its D. G. and another.
NAB thr. Its D. G. and another.
Federation of Pakistan thr. Secy., M/o Interior and others.

...Respondent(s)

For the petitioner(s):

Sardar M. Latif Khan Khosa, Sr. ASC.
Ch. Akhtar Ali, AOR.
Faqir Dad Khan Khoso.
Shakil Ahmed Khan.
Haji Abdul Razziq.
Hafeez-ur-Rehman.
(in CP. 258/17).

Raja M. Ibrahim Satti, Sr. ASC.
Syed Rifaqat Hussain Shah, AOR.
Sohail Akbar Shah.
(in CP. 260/17)

Mr. Farooq H. Naek, Sr. ASC.
Syed Rifaqat Hussain Shah, AOR.
Mr. Abdul Rasheed Solangi.
(in CP. 268/17)

Mr. M. Ahsan Bhoom, ASC.
Ms. Tasneem Ameen, AOR (Absent).
(in CP. 475/17).

For the NAB :

Mr. Nasir Mehmood Mughal,
Spl. Prosecutor NAB.

Date of Hearing:

29.03.2017.

ORDER

EJAZ AFZAL KHAN, J.- These petitions for leave to appeal have arisen out of the judgment dated 31.1.2017 of a Division Bench of the High Court of Sindh, Karachi whereby Petitions of the petitioners in Civil

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Petitions No. 258, 260 and 268 of 2017 for pre-arrest bail and petition of the petitioner in CP No.457/17 for post arrest bail were dismissed.

2. Learned Sr. ASCs, ASC appearing on behalf of the petitioners in CPs. No. 258, 260 and 268 of 2017 contended that where the petitioners despite having been at large associated with the investigation throughout, and even attended the Court they could not have been declined pre-arrest bail for being arrested for the heck of it. They next contended that where there is nothing on the record to show that the petitioners colluded at any stage with the main accused or gained out of any act or omission of the principle accused their case becomes arguable for the purpose of bail and thus calls for further inquiry. Learned ASC appearing on behalf of the petitioner in CP-457 of 2017 contended that if at any stage petitioner has violated any of the memos of understanding or the terms of agreement, it at its worst would beget a civil liability, therefore, his case is also arguable for the purpose of bail and thus calls for further inquiry.

3. Learned Special Prosecutor appearing on behalf of the respondents contended that all the petitioners are prima facie connected with the crime they are charged with and that since the crime of this nature could not be committed without the collusion of the officials of the department, the High Court did not violate any of the principles laid down by this Court regulating the grant and refusal of bail, by declining the pre-arrest and post arrest bail to the petitioners.

4. We have gone through the record carefully and considered the submissions of the learned Sr. ASCs and ASC for the petitioners as well as the learned Special Prosecutor NAB.

5. The record reveals that petitioner in CP. No. 457 of 2017 has been charged not only for violating the memos of understanding but also the agreements entered into in this behalf. The project launched under the aegis of the Government was supposed to be fruit-bearing but unfortunately it was waylaid by many factors including the acts and omissions of the petitioners. Role of the petitioners in CPs. No. 258, 260 and

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268 of 2017 against this backdrop may not be as pardonable as it has been portrayed by the learned Sr. ASC and ASCs for the petitioners, but when many others whose role is prima facie worse than the petitioners, have not even been arrested, the petitioners could not be treated differently. Why this pick and choose and what underlies this duality is not intelligible. We looked around and even inquired from the learned Special Prosecutor NAB to find an intelligible differentia justifying the classification in between the arrested and those left at large but we could not find any satisfactory answer. Yes, the role of the petitioners prima facie appears to be culpable and they must have their nemesis for what they have done but not at this stage when many others similarly placed are at large. We while exercising our discretionary jurisdiction would not like to pass an order perpetuating a classification which prima facie does not appear to have been based on an intelligible differentia notwithstanding the provision contained in Section 24(a) of the NAB Ordinance.

6. In view of the foregoing discussion, we convert these petitions into appeal, allow them, confirm the ad-interim bail granted to the petitioners in Civil Petitions No. 258, 260 and 268 of 2017 and grant post-arrest-bail to the petitioner in Civil Petition No. 457 of 2017 on furnishing bail bonds in the sum of Rs.2,00,00,000/- (rupees twenty million) to the satisfaction of the Trial Court.

sd/- J
sd/- J

ISLAMABAD.

29.03.2017.

M. Azhar Malik