

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ

Mr. Justice Khilji Arif Hussain

Mr. Justice Tariq Parvez

CMA No.1362 of 2012 AND
Civil Petition No.357 of 2012

Regional Director, Anti Narcotics Force

Petitioner

VERSUS

Rizwan Ahmed Khan & others

Respondents

For the Petitioner : Mr. Muhammad Akram Sheikh, Sr.ASC
Brig. Fahim Ahmed Khan,
Force Commander
Abid Zulfiqar, Dy. Director/IO, ANF

For the respondents : N.R.

Date of Hearing : 10.04.2012

ORDER

This application (**CMA No.1362 of 2012**) has been moved by Mr. Muhammad Akram Sheikh, learned Sr.ASC, on behalf of ANF, in a case, which is already pending before this Court bearing Civil Petition No.357 of 2012. The case relates to FIR No.40 of 2011, dated 10.10.2011, under Sections 9(c), 14, 15 & 16 of Control of Narcotic Substances Act, 1997 registered with Police Station ANF, District Rawalpindi.

2. The facts as mentioned in the FIR as well as noted in the memo of Civil Petition for Leave to Appeal, are reproduced hereinbelow:-

"Today on 10.10.2011, I assistant director enforcement section ANF RD was present at Rawalpindi, Assistant Atif Hayat brought a letter No.9-9/10 police/I dated 19.09.2011 in

reference of letter No.13(302)ANF/LAH/2011 dated 18.08.2011 for registration of a case upon the direction Secretary, Ministry of Narcotics Control issued from Muhammad Hayat Section Officer. According to this letter, on 03.02.2011 during 28th Session of National Assembly in Narcotics Session the Federal Health Minister had stated on the floor that two companies who got illegal permission to export Ephedrine and letter on this Ephedrine was sold out to manufacturers including unknown persons, we have ordered for collection of their registration, issuance of show cause notice for production of all relevant documents and their subsequent seizure. M/s Berlex Lab international Multan had obtained permit on 25.03.2010 for 6000 kg Ephedrine and on 22.09.2010 500 kg Ephedrine for the Ministry of Health and this allocation was for export purpose. Whereas M/s DANAS Pharmaceutical Islamabad has obtained allocation of 1500 kilogram on 15.04.2010 for export purpose Iftikhar Ahmed Khan Babar Chief Executive of M/s Berlex Lab International Multan and Ansar Farooq Ch. Chief Executive of Danas Pharmaceuticals (Pvt) Ltd. Lahooti Group Islamabad had obtained these export allocations for Controlled Chemical Ephedrine by using the influence of high officers. Later on the Ephedrine was sold out to local manufactures and unknown persons in violation of law for ulterior motives. Both these companies/firms had committed offence of criminal negligence/illegal acts using the powers of high officers. In this illegal act and criminal negligence, the then Director General Health of Ministry of Health and other officers of Ministries of Health Government of Pakistan had acted in connivance with them and they allocated the extra ordinary quota for Ephedrine to these firm/companies in abuse of their official position. Therefore, the record was collected for the purpose of registration of a case and sent to Police Station ANF, Rawalpindi through Constable Ghulam Shabbir. Case may be registered and number may be sent. I am busy in investigation. From office of the enforcement Section RD ANF Rawalpindi at 1.30 p.m. and on 10.10.2011. Signed in English by Riaz Ali, Assistant Director Incharge Police Station ANF Rawalpindi. The case has been registered without any delay. The copies of the FIR are distributed according to rule the copy of FIR is attached.

That the proper investigation was conducted by Investigation Team who recorded statements of 70 witnesses, beside other documentary evidence was also taken in custody. Involvement of Pharmaceutical Company's administration and the staff of Ministry of Health in the commission of offences were taken on record. Interim challan has been submitted on 18.02.2012 in CNS Court, Rawalpindi. Some of the accused are hiding and escaped their arrest. Investigation qua highly influential figures of the Country is in progress. Their involvement is mentioned in the statements of co-accused which is being verified by the Investigation Team which is also corroborated by the other evidence collected by Investigation Team."

3. After the registration of FIR, one Rizwan Ahmed Khan S/o Muhammad Khan, who is stated to be the Director of Denas Pharmaceuticals Private Limited, Islamabad, instituted a petition for quashment of the FIR, which was dismissed on

26.01.2012 with the observation that "*Secretary, Ministry of Narcotics Control, is under an obligation to decide the same within a reasonable time*". Against this observation of the High Court, a Civil Petition for Leave to Appeal has been filed by Regional Director, ANF, which is pending decision before this Court. On the last date of hearing i.e. **29.03.2012**, a request was made on behalf of the petitioner to withdraw the petition, which was declined for the reasons, mentioned in para 2 of the said order, which read as under :-

"2. In the normal course, such a request is entertained and allowed, but in this case the Registrar of this Court has received a letter through fax. Attention of the learned counsel has been drawn towards the contents of the said letter and is ordered to be kept on record. Although whereabouts of the person, who sent this letter to the Registrar have not been mentioned, but when we have enquired from Brigadier Faheem, Force Commander, Rawalpindi, to highlight about the instant case, he stated that this matter pertains to the grant of quota of Ephedrine to two Companies namely M/s Berlex Lab International, Multan and Danas Pharmaceuticals Private Limited against the rules as both the companies got allotted 6500 KGs and 2500 KGs Ephedrine, respectively, whereas under the rules a quota more than 500 KGs Ephedrine cannot be allocated. Further it has been pointed out that quota can be allotted to those Pharmaceuticals Companies, who are manufacturing the medicines in which Ephedrine as one of ingredients is to be used, but the aforesaid Companies instead have sold Ephedrine, which is also known as *poorman Cocaine*, to the local manufacturers and unknown persons and earned profit. It has been added that investigation was conducted and case has been *challaned* against 10 persons namely M/s Iftikhar Ahmed Khan Babar; Rashid Jumma; Rizwan Ullah Khan; Ehsan-ur-Rehman; Tanvir Hassan Sherazi; Chaudhry Abdul Waheed; Ansar Farooq Chaudhry; Col.(R) Tahir-ul-Wadood Lahoti; Muhammad Hashim Khan; and Tauqir Ali Khan."

4. In view of the facts and circumstances stated before this Court, it was further observed as under:-

"3. According to the Force Commander, there are few other persons, some of them succeeded in getting bail before arrest. It has also been also informed that

in the month of January, 2011 a question in this regard was raised in National Assembly and Makhdoom Shahabuddin, Federal Minister for Health, made a statement for conducting investigation/inquiry and accordingly a committee was constituted, which had submitted its report, but this report has not so far been brought on record of the National Assembly. Meanwhile, Secretary, Narcotics Control, vide letter dated 14.02.2012, concluded that no direct evidence about the misuse of quota by the said Firms have been established/found in the above mentioned reports, which reports according to the Force Commander were fictitious and got prepared by the Health Department, therefore, he did not agree with the same and resisted by sending a letter to the Secretary on 22.02.2012. The Secretary on having seen the reaction from the Force Commander ultimately wrote a letter on 22.03.2012 stating therein that evidence, if any, against the applicant (Tauqir Ali Khan son of Shaukat Ali Khan) or the political figure in the subject matter may be brought into the notice of the Secretary and prior approval of the Secretary may be obtained for further prosecution of the applicant and said political figure.

4. It is to be noted that the Investigating Officer Abid Zulfiqar, Deputy Director, ANF, issued a notice to Ali Musa Gillani on 12.03.2012 for recording of his evidence, as according to him, material has come on record that Touqeer Ali Khan used to claim himself to be the Private Secretary of Ali Musa Gillani. We are of the opinion that reference of the political figure in the letter of the Secretary is of Ali Musa Gillani. However, on having taken into consideration the importance of the case, we are not inclined to grant permission to the learned counsel to withdraw the petition and the petitioner-department is directed to place on record all the relevant documents i.e. copies of the inquiry conducted by a team constituted by the Health Minister; copies of the reports, which were got prepared by the Secretary of Narcotics Control; copies of the *challans* and FIR as well as summons issued; and copies of the letters of the Secretary, dated 14.02.2012; 22.02.2012; and 22.03.2012. The Force Commander, Rawalpindi, is also required to place on record complete history of the case alongwith supporting documents on the next date of hearing. Meanwhile, without prejudice to the petition which has been filed by the ANF, the investigation as well as trial of the accused persons shall continue independently."

However, it seems that as in view of the fact that some influential personalities were being involved in the proceedings, particularly, one Touqeer Ali Khan, who claims himself to be Personal Secretary to Mr. Ali Musa Gillani S/o Syed Yousaf Raza Gillani (Prime Minister of Pakistan) and Mr.

Khushnood Akhtar Lashari, the then Secretary, Ministry of Health, who is presently posted as Principal Secretary to Prime Minister of Pakistan, therefore, notices were issued to both of them to join the investigation, as also evident from the contents of the paras reproduced hereinabove.

5. It is to be noted that under Anti Narcotics Force Act, 1997, since its promulgation, the posts of Director General and Field Directors are normally held by the serving Defence Personnel of the ranks of Major General and Brigadiers, respectively, but surprisingly Establishment Division, Cabinet Secretariat, Government of Pakistan, Islamabad, by means of notifications dated 06.04.2012 repatriated Major General Syed Shakeel Hussain, the then Director General, ANF and in his place allowed Mr. Zafar Abbas, Acting Secretary, Ministry of Narcotics Control, (BS-21) to hold the additional charge of the post of Director General, ANF. The said notifications read as under:-

NOTIFICATION

The Secondment of Major General Syed Shakeel Hussain – PA-17141, presently serving as Director General, Anti-Narcotics Force (ANF), under Ministry of Narcotics Control, is repatriated to Pakistan Army with immediate effect.

Sd/-
(Abdul Latif)
Deputy Secretary to the
Government of Pakistan"

.....

NOTIFICATION

Mr. Zafar Abbas, a BS-21 officer of Police Service of Pakistan, presently posted as Acting Secretary, Ministry of Narcotics Control is allowed to hold the additional charge of the post of Director General, Anti-Narcotics Control (ANF), in addition

to his own duties, with immediate effect and until further orders.

*Sd/-
(Abdul Latif)
Deputy Secretary to the
Government of Pakistan"*

6. As it has been noted in order of this Court dated 29.03.2012 that in pursuance of a question raised in the National Assembly, the then Federal Minister for Health Makhdoom Shahabuddin ordered for an inquiry and thereafter the then Secretary ANF, Mr. Sohail Ahmed, vide his letter dated 19.09.2011, addressed to the Director General, ANF, Rawalpindi, advised the ANF to proceed with the investigation in the subject case by exercising the powers as mandated/provided to the ANF by CNS Act, 1997. However, after the registration of the case reportedly Mr. Sohail Ahmed was transferred and acting charge was given to Mr. Zafar Abbas, inasmuch as, it has been pointed out that after passing of order by this Court, dated 29.03.2012, when the directions were given to the ANF to proceed with the matter SRO No.282(1)/2012 was issued with back date i.e. 21.03.2012 in pursuance whereof an amendment was made in earlier notification No.SRO.594(1)/1997 dated 07.07.1997 to the effect that in place of "Director General, Anti Narcotics" the words and comma "Secretary, Narcotics Control Division" shall be substituted. *Prima facie*, it requires to be noted that under Section 3 read with Section 4 of ANF Act, 1997 the force is to be headed by the Director General and not the Secretary.

7. Be that as it may, at this stage, it is not necessary to discuss this issue because so far we have not issued notice of this

application and the facts are being noted herein just to understand the controversy between the parties.

8. It seems that after passing the order dated 29.03.2012, transfer order of Major General Syed Shakeel Hussain has been issued, for which listed CMA has been moved and despite it the ANF authorities continued probing into the matter and issued summons in the name of Mr. Khushnood Akhtar Lashari, Principal Secretary to Prime Minister of Pakistan as well as for Mr. Ali Musa Gillani, enabling them to appear for recording of their statements.

9. Brig. Fahim Ahmed Khan has stated that he was called by the Principal Secretary, who persuaded him to have a one-on-one meeting in his office, which according to him, he reluctantly accepted and during this meeting the investigation of the case was discussed and Mr. Khushnood Akhtar Lashari conveyed him six concerns but he has not agreed to any of the same, as a result whereof, he was also transferred on 09.04.2012 alongwith Deputy Director Mr. Abid Zulfiqar, vide notification of even date, which are reproduced hereinbelow.

"Following posting/transfer are made with immediate effect and until further orders:-

<i>S.No.</i>	<i>Name of officer</i>	<i>From</i>	<i>To</i>
1.	Brig. Fahim Ahmad Khan	RD ANF Rawalpindi	Director (DAPRC) ANF HQ Rwp.

Mr. Abid Zulfiqar, Deputy Director, RD ANF Rawalpindi, is directed to report to ANF Hqs for further posting.

Note: Previous orders may please be treated as cancelled.

*Sd/-
Zafar Abbas, PSP*

Director General, ANF
09.04.2012

Director (Hq) ANF"

Mr. Khushnood Akhtar Lashari had a conversation with Brig. Fahim Ahmed Khan and what has been discussed and transpired between them, the latter has reduced the same into an affidavit, which under his own signatures and duly attested has been placed on record; contents whereof are reproduced hereinbelow:-

"AFFIDAVIT

I, Brigadier Fahim Ahmed Khan S/O Muhammad Yasin Khan Sherwani, force Commander, Anti Narcotics Force, Regional Directorate, Rawalpindi, do hereby solemnly affirm on oath that;

1. ANF has registered FIR No. 40/2011 dated 10.10.2011 in PS ANF Rawalpindi.
2. IO of the afore-mentioned case has sent notices and letters to Mr. Khushnood Akhtar Lashari (Ex Secretary Health) presently working as Principal Secretary to Prime Minister Mr. Yousaf Raza Gillani/Secretary Establishment Division, for recording of his statement.
3. In response to the afore-mentioned notices, I along with Lt. Col Syed Touqir Abbas Zaidi (Joint Director ANF) and IO Abid Zulfiqar (Deputy Director ANF) went to the office of Mr. Khushnood Akhtar Lashari, in PM House on 24th March, 2010 and, on the desire of Mr. Khushnood Akhtar Lashari and his assurance to bring the real facts to light, I had a separate meeting with him in his office, where he discussed/conveyed the following to me in a maligning and threatening manner, because he being one of the Prime (abettor/associate/facilitator) in the case wanted to make full use of his present appointment/office to suppress/distort/misdirect investigation against himself and Ali Musa Gillani:-
 - Mr. Khushnood Akhtar Lashari said that father of Ali Musa Gillani is very upset and worried due to the summon issued to him.
 - He said that if ANF focuses on two Pharmaceutical companies only and spare others, ANF will be fully supported; Both companies will be ruined and State Machinery will be with you.....
 - He said that, you know, civil military relates have recently improved.....
 - H said that all depends on you (Brigadier Fahim) you can only save from chaos and upheavals.....
 - He further said in a sarcastic manner and meaningful expression that ANF is being commanded and controlled by army officers.....

- *He asked to spare Ali Musa Gillani, his () will be done. This is a matter of National Interest.*

4. *In this regard, since then, many prejudiced, unfair and unwarranted actions have been taken by different state departments which confirms the practical manifestation of above mentioned threats and his heinous/malicious design to sabotage the investigation by one way or the other.*

Whatever I have stated above is true to the best of my knowledge and belief and nothing has been concealed therein.

*Sd/-
Deponent
Brigadier Fahim Ahmed Khan
09.4.2012"*

We would not like to comment in depth on the conduct and reaction either of the personalities or functionaries unless they are not heard except observing that commission of the crime, as it has been disclosed in the FIR, is of serious nature notwithstanding that whosoever is involved and what is his status, however, *prima facie* it has got its own repercussions independent with criminal proceedings and also in respect of the alleged favour by Ministry of Health, particularly, to Berlex Lab International, Multan and Danas Pharmaceuticals Private Limited by extending them quotas of Ephedrine, which is a chemical used in methamphetamine and the same is also used for the purpose of addiction, may be within the country and outside the country. Detail discussion, however, shall be made subsequently, but we may observe that if the allegation as leveled is there, the concerned authorities should have allowed a transparent inquiry and investigation instead of causing obstructions and hampering the same for one or the other reason.

10. At this stage, we are not concerned as to whether what should be the punishment and what should be the result because interim challan has already been submitted and the matter is under probe and some of the accused persons have approached Islamabad High Court, Islamabad, for grant of bail, and their cases are also pending, which are required to be decided in accordance with law, but after having taken into consideration the above facts and circumstances of the case, *prima facie* we are of the opinion that transfer/posting of Major General Syed Shakeel Hussain, Director General, ANF; Brigadier Fahim Ahmed Khan, Regional Director, ANF; and Mr. Abid Zulfiqar, Deputy Director, ANF, in colorable exercise of powers, is not free from extraneous consideration.

11. Be that as it may, we direct that notice of this application be issued by names to the Acting Secretary, Ministry of Narcotics Control; Major General Syed Shakeel Hussain; Brigadier Fahim Ahmed Khan; Mr. Ali Musa Gillani; the present Secretary, Ministry of Health; and the Directors of the aforementioned Companies. Meanwhile, the Regional Director Brig. Fahim Ahmed Khan and Deputy Director Abid Zulfiqar are directed not to relinquish the charge and should continue with the investigation of the case without being influenced in any manner from any one. However, if in the meantime Mr. Khushnood Akhtar Lashari, Principal Secretary to the Prime Minister and Mr. Ali Musa Gillani or anybody else appears to

record his statement, he should be examined by providing fair opportunity and in accordance with law.

12. The case is adjourned to **20.04.2012**. Meanwhile, anti status-quo shall be maintained and no order shall be passed without the concurrence of the Court pending decision of the case. Notice to the learned Attorney General for Pakistan be also issued for the next date of hearing.

Chief Justice

Judge

Judge

ISLAMABAD

10.04.2012

Zubair