Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(JUDICIAL DEPARTMENT)

Criminal Misc. No. 518-B of 2024

Fawad Ahmed

Versus

National Accountability Bureau and 02 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	01.04.2024	M/s Qaiser Imam Ch., Khan Mulk Tarar and Ali Raza, Advocates for petitioner. Muhammad Rafay Maqsood & Hafiz Ejaz Mehboob, Special Prosecutors, NAB, alongwith Mohsin, D.D / I.O, NAB.

TARIQ MEHMOOD JAHANGIRI, J.-

Through the instant petition, the petitioner, seeks bail after arrest under Section 497 Cr.P.C. read with Section 9(b) of National Accountability Bureau, 1999 in the NAB inquiry, dated 10.11.2023.

02. Brief facts of the case in hand as alleged are that a project of dual carriageway connecting Pind Dadan Khan to Jhelum was approved wherein the petitioner has allegedly used his influence for the purposes of approval of the project

and also benefitted himself by establishment of a fuel pump etc and purchase of the land for his personal use, received illicit gratification from contractor M. Ali and misused authority and influenced to facilitate his relatives and associates in acquiring land alongwith the dual carriageway, resulting in financial losses to the national exchequer, misused the public funds and diverted Rs.7 billion allocation by the Punjab Government.

03. Learned counsel for the petitioner, *inter alia,* contends that the petitioner is an Ex-MNA / Ex-Federal Minister and advocate of Supreme Court of Pakistan; section 9 and other provisions of NAB Ordinance are not attracted against him; this is politically motivated case and has been brought just for victimization; none of the employees / officials of the concerned departments have been arrayed as accused in subject inquiry; continued detention of the petitioner poses a risk of irreparable harm to his reputation,

personal life, and professional standing; he is not connected whatsoever with the commission of any offence and has been involved falsely with ulterior motives and bad intentions, hence is entitled for grant of bail.

04. Conversely, learned Special Prosecutors NAB have controverted the arguments advanced by learned counsel for the petitioner and state that sufficient evidence is available against the petitioner; he has committed a heinous crime; he has caused huge financial loss to the national exchequer, hence is not entitled for grant of bail after arrest.

05. We have heard the arguments advanced by learned counsel for the petitioner / accused, learned special prosecutors NAB and perused the record with their able assistance.

06. Admittedly, PC-1 of Dual Carriageway project titled *"Dualization of*

Lillah Interchange (M-2) via Pind Dadan Khan to Jhelum, Bypasses (02 number), Length: 128 Kilometer, District Jhelum was proposed by the Planning and Development Board, Government of the Punjab, to be executed by the Communication & Works Department, Government of the Punjab. PC-1 was considered / approved by the Central Development Working Party (CDWP) on 29.05.2021, and recommended the project to the Executive Committee of National Economic Council (ECNEC) and after completion of all legal formalities, contract was awarded to M/s Frontier Works Organization on 29.10.2021. Project was approved by ECNEC, advised / consulted by NESPAK, fully funded through Federal Public Sector Development Program and being executed by FWO.

07. It is admitted by the learned Special Prosecutors NAB that no any officials of the aforementioned agencies have been cited

as an accused in the case.

08. Main allegation against the petitioner is that he obtained an amount of Rs.5 million from one Muhammad Ali for the grant of said contract to him. Statement of Muhammad Ali regarding payment of Rs.5 million has been recorded by the NAB authorities, whereby he has stated that he paid an amount of Rs.5 million to the petitioner and his brother Faisal Chaudhary with the assurance that they will award the project of dualization carriageway to him. Subsequently, firm of Muhammad Ali submitted pre-qualification documents but the tender was awarded to FWO.

09. Other allegation against the petitioner is that one Iftikhar Anwar, the then XEN Highway Division, Jhelum has recorded his statement alleging that he informed the petitioner that PD Khan to Jhelum road did not need dualization due to less traffic, however, the petitioner insisted that a feasibility report be

prepared on priority basis. Accordingly feasibility report was prepared and submitted to the competent authority for further studies.

10. The petitioner was arrested in this case on 19.12.2023, and the case is still at inquiry stage. Even it has not been recommended for investigation or for filing the reference.

11. According to the National Accountability (Amendment) Act, 2022, (Act No.XI of 2022), Section 4(2) and 4(2)(b) of National Accountability Ordinance, 1999 provide that:

> "***4(2).*** *The provisions of this Ordinance shall not be applicable to the following persons or transactions, namely:*
>
> > ***4(2)(b)*** *decisions of Federal or Provincial Cabinet, their Committees or Sub-Committees Council of Common Interests (CCI), National Economic Council (NEC), National Finance Commission (NFC), Executive Committee of the National Economic Council (ECNEC), Central Development Working Party (CDWP), Provincial Development Working Party (PDWP), Departmental Development Working Party (DDWP),[Board of Directors of State Owned Enterprises (SOEs) and Board of Trustees/Directors of all Statutory Bodies,] the State Bank of*

> *Pakistan and such other bodies except where the holder of the public office has received a monetary gain as a result of such decision;*

12. According to National Accountability (Second Amendment) Act, 2022, (Act No.XVI of 2022), Section 5(o) of National Accountability Ordinance, 1999 provides that:

> *"Offence" means the offences of corruption and corrupt practices and other offences as defined in this Ordinance [of the value not less than five hundred million rupees] and includes the offences specified in the Schedule to this Ordinance;"*

13. As the project has been approved by the CDWP and ECNEC, after completion of all legal and codal formalities, the contract has been awarded to M/s Frontier Works Organization, so in the light of Section 4(2)(b) of the National Accountability Ordinance, 1999, the matter of the petitioner does not fall within the ambit of National Accountability Bureau.

14. Learned Special Prosecutors NAB have admitted that there is no other evidence

available against the petitioner except the above mentioned two statements.

15. Reliance in this regard is placed on the following judgments, whereby the accused of National Accountability Bureau were granted bail after arrest:

i. ***"Muhammad Saeed Mehdi Vs. The State and 2 others"*** (2002 SCMR 282)

ii. *"Muhammad Jahangir Badar Vs. The State and others"* **(PLD 2003 SC 525)**

iii. ***"Himesh Khan Vs. The National Accountability Bureau (NAB), Lahore and others"*** (2015 SCMR 1092)

iv. "*Talat Ishaq Vs. NAB*"**, (PLD 2019 SC 11)**

v. ***"Muhammad Jawed Hanif Khan and anothers Vs. National Accountability Bureau Sindh and others"*** *(2020 SCMR 185).*

vi. ***"Ghulab Khan Vs. Chairman N.A.B and another"*** *(2020 SCMR 285)*

vii. ***"Nazir Ahmed Shaikh and others Vs. National Accountability Bureau and others"*** *(2020 SCMR 297)*

viii. ***"Khawaja Salman Rafique and another Vs. National Accountability Bureau through Chairman and others"*** *(PLD 2020 SC 456)*

ix. *"DINSHAW HOSHANG ANKLESARIA Vs. NATIONAL ACCOUNTABILITY BUREAU (NAB) THROUGH CHAIRMAN and others"* ***(2021 SCMR 699)***

x. *"Hussain Lawai vs. The State and 2 others",* ***(2022 MLD 405 [Islamabad) (Division Bench of this Court)***

xi. *"Taha Raza and others vs. The State and others",* ***(2022 PCr.LJ 838) (Division Bench of this Court)***

16. As far as contention of the learned counsel that case of the petitioner squarely falls within the ambit of section 497(2), Cr.P.C. is concerned, the same is reproduced as under:-

> **497. When bail may be taken in cases of non-bailable offence.**
>
> ***(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.***

Perusal of the aforesaid provision reveals that intent of the legislature disclosing pre-condition to establish the word "guilt"

against whom accusation is levelled has to be established on the basis of reasonable ground, however, if there exists any possibility to have a second view of the material available on the record then the case advanced against whom allegation is levelled is entitled for the relief in the spirit of section 497(2), Cr.P.C. Reliance in this regard is placed on a case titled as "*Jahanzeb and others vs. State through A.G. Khyber Pakhtunkhwa Peshawar and another*" ***(2021 SCMR 63).***

17. As the entire case depends on documentary evidence, which has been collected by the NAB / Investigating Agency, in this regard guidance be taken from a case *titled as* "**Saeed Ahmed VS. The State" (1996 SCMR 1132)** that:

> *"The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. It has further been held that as there is no possibility of tampering with the evidence, which is entirely documentary*

in nature and in possession of the prosecution". Reliance is also placed upon a case titled as *"Muhammad Shabbir V. The State and others"* (2020 YLR Note 22).

18. It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail after arrest granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run. Reliance is placed on a case reported as ***"Manzoor and 4 others Vs. The State" (PLD 1972 SC 81)"***.

19. It has been held in a case titled as

"Zaigham Ashraf v. The State and others" **(2016 SCMR 18)** that:

> *"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy or causal manner as that will defeat the ends of justice because if the accused charge, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in jail without just cause and reasonable ground."*

20. In view of above discussion and law laid down by the Honb'le Supreme Court of Pakistan, instant bail petition is hereby **allowed** and the petitioner/accused is admitted to post arrest bail subject to furnishing of bail bonds in the sum of **Rs. 10,00,000**/- (**Rupees One Million only**) with one surety in the like amount to the satisfaction of the learned trial Court.

21. Needless to mention that, this is a

tentative assessment which shall not affect the trial of case in any manner.

(CHIEF JUSTICE) (TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh

Approved for Reporting