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[High Court of Balochistan (Quetta)]

*Present: Mr. Justice Naeem Akhtar Afghan
& Mr. Justice Zaheer Uddin Kakar*

Haji Abu Bakar & another---Petitioners

versus

Federation of Pakistan & others---Respondents

C. P No. D-755 of 2020 decided on 25th May, 2021

A) **National Accountability Ordinance, 1999** (hereinafter "the Ordinance")---Confirmation of pre-arrest bail---Commission of non-bailable offences---Reports of revenue officers, the case against the petitioner Nos. 1 & 2 falls within the ambit of further inquiry---Record transpires that investigation to the extent of co-accused including revenue staff is still in progress. The specimen signatures/thumb impressions of number of co-accused have been obtained and some have been sent with disputed revenue record to the handwriting expert and reports of handwriting expert are still awaited---Due to voluminous and complicated revenue record, there is no likelihood of early conclusion of the inquiry/investigation and filing of reference in near future---The investigation to the extent of petitioners has already been completed. The allegations leveled against the petitioners are yet to be proved by the NAB at the trial by producing evidence---Despite rendering assistance to the NAB during inquiry/investigation and providing all the relevant details/documents, the petitioner Nos. 1 & 2 apprehending their arrest by the NAB causing humiliation and harassment. [P-15]A

B) **National Accountability Ordinance, 1999** (hereinafter "the Ordinance")---The scope of pre-arrest bail---Hon'ble Supreme Court reiterated the principles for grant of pre-arrest bail and also held that the grant or refusal of bail in criminal cases

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primarily depends upon the facts and circumstances of each case and no hard and fast rule can be laid down in this regard---As a result; the constitution petition to the extent of petitioner Nos. 1 & 2 is accepted and the ad-interim pre-arrest bail granted to the petitioner Nos.1 & 2 is hereby confirmed. [P-16]B

Jamal-ud-Din v. State, 1985 SCMR, 1949, cited

M/s Shehzad Qamar Abbas Advocate a/w petitioner Nos. 1 & 2 (present on ad-interim pre-arrest bail).

Mr. Tahir Ali Baloch, Advocate for the Petitioner No.2.

Mr. Jaffar Raza, Special Prosecutor NAB assisted by Mr. Sarfraz Nawab Assistant Director NAB.

Date of hearing: 24th May, 2021

ORDER

NAEEM AKHTAR AFGHAN, J. In the instant constitution petition, the petitioner Nos.1 & 2 have prayed as follows:

"In view of the above facts and circumstances it is humbly prayed by the petitioner above named that this Honorable Court may be pleased to pass judgment to the following effect:-

- a. *The proceedings/any prosecution of the petitioners above named by the respondent No.1 to 3 and or anybody acting on their behalf is arbitrary, illegal, mala fide and without jurisdiction or any lawful basis, grounds or justification whatsoever.*
- b. *Quash the proceeding s/reference, if any filed against the petitioners by the respondent No.3.*
- c. *Prohibit and or restrain the respondent No. 1 to 3 from taking any action against the petitioners including arrest and grant the bail before arrest to the petitioners and filing of any reference.*
- d. *Restrain the respondents or anybody acting on their behalf from taking any coercive action*

including initiation and or determination of any civil or criminal liability and creating hurdle in the smooth running business of the petitioners.

- e. Pass any other orders deemed just and proper in the circumstances of the case.*
- f. Grant costs of the petition.*

2. The petitioner Nos. 1 & 2 were granted ad-interim pre-arrest bail by this Court vide order dated 17.08.2020.

3. The petition has been contested by the NAB by filing parawise comments. Learned Special Prosecutor NAB has strongly opposed the confirmation of pre-arrest bail of the petitioner Nos. 1 & 2 on the ground that sufficient incriminating material has come on record against the petitioners connecting them with the commission of non-bailable offences under the provisions of the National Accountability Ordinance, 1999 (hereinafter "**the Ordinance**") causing loss to the public exchequer worth billions by making illegal transaction of state land.

4. After hearing learned counsel for petitioner Nos. 1 & 2 and learned Special Prosecutor NAB, we have perused the available record which reveals that petitioners have cooperated with the NAB during inquiry/ investigation and have provided all the relevant details/documents to the NAB. Report of handwriting expert to the extent of petitioner Nos. 1 & 2 has been received to the NAB.

5. Record transpires that investigation to the extent of co-accused including revenue staff is still in progress. The specimen signatures/thumb impressions of number of co-accused have been obtained and some have been sent with disputed revenue record to the handwriting expert and reports of handwriting expert are still awaited.

6. Due to voluminous and complicated revenue record, there is no likelihood of early conclusion of the inquiry/investigation and filing of reference in near future. ^A

The investigation to the extent of petitioners has already been completed. The allegations leveled against the petitioners are yet to be proved by the NAB at the trial by producing evidence.

7. Despite rendering assistance to the NAB during inquiry/investigation and providing all the relevant details/documents, the petitioner Nos. 1 & 2 apprehending their arrest by the NAB causing humiliation and harassment.

8. In view of the judgment dated 05.09.2007 passed by this Court in Regular Second Appeal No.02/2003 filed by petitioner Nos. 1 & 2 & others against Deputy Commissioner Gwadar & others and in view of the minutes of the meeting dated 01.11.2016 of Deputy Commissioner Gwadar, inquiry report dated 07.12.2015 submitted by DC Gwadar to Senior Member Board of Revenue and reports of revenue officers, the case against the petitioner Nos. 1 & 2 falls within the ambit of further inquiry.

9. The scope of pre-arrest bail was widened in the case of *Jamal-ud-Din v. State*, 1985 SCMR, 1949, wherein Hon'ble Supreme Court reiterated the principles for grant of pre-arrest bail and also held that the grant or refusal of bail in criminal cases primarily depends upon the facts and circumstances of each case and no hard and fast rule can be laid down in this regard.

Similarly, in the case of *Meeran Bux v. State*, PLD 1999 Supreme Court 347, the cancellation of pre-arrest bail of the appellant by the High Court was set aside and the order passed by learned Sessions Judge granting pre-arrest bail to the appellant on the ground of further inquiry was restored by the Hon'ble Supreme Court.

For the above reasons, the constitution petition to the extent of petitioner Nos. 1 & 2 is accepted and the ad-interim pre-arrest bail granted to the petitioner Nos.1 & 2 by this Court vide order dated 17.08.2020 in case/inquiry No.139590-Blt. is hereby confirmed.

The observations made hereinabove are tentative in nature and same shall not influence merits of the case at the trial.

Bail confirmed