

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal No. 22/2016

In

Cr. PLA No. 20/2016.

1. National Accountability Bureau through its Chairman Atta Turk Avenue Sector G-5/2, Islamabad **Petitioner.**

Versus

1. Muhammad Ali Yogvi son of Hajji Abdur Rehman, Ex-Secretary Excise and Taxation Gilgit-Baltistan.

2. Zameer Abbas, Ex- Deputy Director, Excise & Taxation, Gilgit-Baltistan. **Respondent.**

PRESENT:-

1. The Additional Prosecution General NAB Islamabad for the petitioner.
2. Mr. Rai Muhammad Nawaz Kharal Advocate for respondent No. 01.
3. Mr. Shoukat Ali Advocate alongwith Mr. Asadullah Khan Advocate and Mr. Muhammad Abbas Advocate-on-Record on behalf of the respondent No. 02.

DATE OF HEARING: - 04.11.2016.

DATE OF DETAIL JUDGMENT:- 05.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition for cancellation of post arrest bail has been directed against the impugned judgment dated 16.05.2016 in Writ Petition No. 167/2015 passed by the learned Gilgit-Baltistan Chief Court whereby the learned Chief Court accepted the Writ Petition filed by the respondents by granting them bail against the surety of Rs. 40,

81,611/- and 66, 00,000/- which the respondents have already deposited before the petitioner/National Accountability Bureau. The petitioner being aggrieved by and dissatisfied with filed this petition for leave to appeal. This court vide order dated 24.06.2016 issued notices to the respondents and the case was heard on 04.11.2016.

2. Briefly facts of the case are that the respondents and some other persons were found involved in alleged misappropriation during procurement of number plats, purchase of arms and some irregular appointments. Consequently, a departmental inquiry was ordered by the competent authorities to probe into the mater. During the course of which the present petitioner i.e. National Accountability Bureau and Federal Investigation Agency (FIA) Gilgit initiated simultaneous investigation against the respondents. On 11.06.2015 the Federal Investigation Agency (FIA) registered two FIRs bearing Nos. 13/2015 and 14/2015 under Section 409 PPC and Section 47 and 5(2) PCA 1947 at Gilgit against the respondents. Whereafter some of the nominated accused were arrested while the respondent No. 01 namely Muhammad Ali Yogvi was granted bail from the Court of special Judge on 03.08.2015. The respondents filed Writ Petition No. 97/2015 before the learned Gilgit-Baltistan Chief Court seeking therein that the petitioner be restrained from issuance of summons and conducting inquiry/investigation thereto. Upon hearing the learned Chief Court granted bail to the respondents by accepting the aforesaid Writ

Petition filed by the respondents vide impugned judgment dated 16.05.2016, hence, this petition for leave to appeal.

3. The learned Additional Prosecutor General submits that both the above named respondents willfully, knowingly and with criminal intention, while misusing their official authority as Secretary and Deputy Director Excise & Taxation Department respectively, committed the offences of corruption and corrupt practices. He also submits that the respondents also gave undue and illegal favour/benefit to the contractors and failed to exercise their authority to prevent the loss to the tune of Rs. 60 million caused to national exchequer. Per learned Additional Prosecutor the contract was given to the contractor in violation of PPRA rules to a category of C-6 contractor who was not eligible to get the contract as per criteria of the category of contractor for supply of vehicle number plates. The respondent also paid 100% advance to the contractor by misusing their official authority without receiving any bank guarantee from the contractor. The contractor in connivance with the respondent supplied 7000 pair of sub-standard number plates which did not commensurate with the specified sample of number plates. The respondent in addition to receiving illegal gratification in cash even received an amount of Rs. 4,90,000/- and Rs. 40,000/00/- through cheques as well. He also submit that the accused person in connivance of each other, dishonestly received of Rs. 3,51,33900/- in their Bank account out

of the embezzled amount and misappropriated the same which was not denied by the present respondent, other accused and the contractor. Forged and fake documents were used in the whole process of so-called tendering and award of contract. Admittedly, 100% advance i.e. 50 Millions were paid to the contractor without any Bank guarantee and security in connivance with each other. So that the advance money may not be recovered at any stage even if the tendered number plates are not be supplied to the department by the contractor. He submits that M/s Saleem & Sons was a category C-6 contractor enlisted with Pakistan Engineering Council, eligible to participate in contracts of worth up to Rs. 15.00 million only. The contract was awarded by the respondent to a contractor who was ineligible, unqualified and having no authorized dealership/experience in supplying of "Retro-Reflective" number plates of ISO certified standards. He also submits that the rate accepted by the respondent and other culprits in connivance of each other @ 3000/- per pair as compared to the rates accepted by the Punjab Government, where German mad high quality number plates were procured at the cost of Rs. 900/- per pair. He also submits that both the respondents, after arrest, were confronted with the record, who admitted their guilt that they had received the bribe, ill-gotten money and expressed their willingness in writing to repay their respective received bribe money through "Voluntary Recovery (VR)". He retrieates that both the accused respondents applied for Voluntary Recovery (VR) vide their applications dated

05.01.2016, 12.01.2016 and 01.02.2016 respectively alongwith pay Orders of respective liability which were processed at an appropriate level but the requests for voluntary recovery were declined by the competent authority.

4. He maintains that the National Accountability Bureau (NAB) authorities has got ample jurisdiction to arrest the respondents and got transfer of the case from the Special Tribunal or court to the Accountability Court. It law does not preclude the petitioner from carrying out further investigation including arrest of the respondents. The learned counsel for the petitioner also submits that in case transfer of a case from a Tribunal court to a National Accountability Bureau (NAB) Court, the petitioner had all the powers to investigate the matter afresh and to file a reference thereto under Section 18(g) of The National Accountability Bureau Ordinance, 1999 which is reproduced as under:-

16-A Transfer of case. (a) Notwithstanding anything contain in any other law for the time being in force, the Chairmen NAB may apply to any Court of law or Tribunal that any case involving 2[any] offence under this Ordinance pending before such Court or Tribunal shall be transferred to a Court established under this Ordinance, then such other Court or Tribunal shall transfer the said case to any Court established under this Ordinance and it shall 3[be deemed to be a necessary reference under section 18 of the Ordinance, and it shall] not be necessary for the Court to recall any witness or again to record any evidence that may have been recorded.

18. Cognizance of Offences. (a) The Court shall not take cognizance of any offence under this Ordinances except on a reference made by 5[the Chairman NAB or an Officer of the NAB duly authorized by him].

- b).....
- c).....
- d).....
- e).....
- f)

(g). The Chairman NAB, 1[or any officer of the NAB duly authorized 2[.....] shall appraise the material and the evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed 3[and there is sufficient material to justify filing of a reference], he shall refer the matter to a Court.

5. He finally submits that the learned Chief Court fell in error while accepting the Writ Petition of the respondents by granting them post arrest bail when a reasonable grounds exists of their involvement in commission of the offence of Corruption and Corrupt practice. He prays that in presence of sufficient material available on record against the respondent the bail granted to them be recalled and the impugned judgment be set aside.

6. On the other hand, the learned counsels for the respondents contend that the arrest of their clients is based on malafidy, illegal, unwarranted and unlawful on the part of the National Accountability Bureau/petitioner. They also contend that there is nothing on record against the respondents which connect them with corruption and corrupt practices. They further contend

that the petitioner as well as the Federal Investigation Agency (FIA) have started investigation against the respondents simultaneously which is illegal and unlawful. They further contend that the arrest of the respondents and their subsequent detention by the National Accountability Bureau authorities is illegal and the same is violation of the fundamental rights of the respondents guaranteed by the Constitution of Pakistan 1973 as well as by the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. They also contend that one of the employees of Excise & Taxation Department Gilgit-Baltistan namely Mir Intikhab Alam got two cheques from the respondent No. 01 on the pretext of an emergency which he later on deposited in the account of Mir-e-Karwan. Subsequently the said person deposited the same amount in the account of the respondents; hence, it was an act of deceitful way by the said individual. They reiterate that in view of the above this case has become a case of further inquiry. They finally contend that despite lapse of considerable time, the petitioner could not substantiate the case of corruption and corrupt practices against the respondents. They contend that the learned Gilgit-Baltistan Chief Court has rightly granted the post arrest bail to the respondents by accepting their Writ Petition vide impugned judgment dated 16.05.2016 in Writ Petition No. 167/2015. They pray that the said impugned judgment may pleased be maintained being well reasonal and has been passed in accordance with law.

7. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 16.05.2016, we are in agreement with the learned counsel for the petitioner that prima facie, the National Accountability Bureau authorities have made out a case of corruption and corrupt practices against the respondents as sufficient material is on record and reasonable ground exist to believe of their involvement in commission of alleged offence which disentitled them for concession of bail.

8. It is not disputed that the High Court or Chief Court in exercise of its jurisdiction under article 199 of The Constitution of Islamic Republic of Pakistan, 1973 or under the provisions of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 empowered to grant a bail to a person under The National Accountability Bureau Ordinance, 1999 as all the grounds which are relevant for grant of bail under the ordinary law can generally be considered in constitutional jurisdiction. The provision of section 497 Cr.P.C. are not punitive in nature as there is no concept of punishment before judgment. The question of grant/refusal of bail is to be determined judiciously leaving regard to the facts and circumstances of each case. Where the prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime falling in prohibitory clause of section 497 Cr.P.C. the Court must refuse bail. On the other hand

where the accused satisfies the Court that there are no reasonable grounds to believe that he is guilty of such offence, then the Court must release him on bail. For arriving at the conclusion as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, the Court will not conduct a preliminary trial/inquiry but will only make a tentative assessment, i.e., will look at the material collected by the police for and against the accused and prima facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So, the Court will not minutely examine the merits of the case or plea of defence at bail stage.

9. In view of the above discussions, we allowed the above appeal vide our short order dated 04.11.2016 consequent thereto the impugned judgment dated 16.05.2016 in Writ Petition No. 167/2015 passed by the learned Gilgit-Baltistan Chief Court was set aside. The bail granted to the respondent No. 01 & 02 namely Muhammad Ali Yogvi son of Abdur-ur-Rehman, Ex- Secretary Excise and Taxation Gilgit-Baltistan and Zameer Abbas Ex- Deputy Director, Excise and Taxation Gilgit was cancelled. These were the reasons for the said short order. The learned trial court is directed to expeditiously conclude the trial of the case in accordance with

law without influencing any of the observation(s) made either by this court or the learned Chief Court.

10. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?