

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE IJAZ UL AHSAN

Human Rights Case No.39216-G of 2018

*IN THE MATTER OF SLACKNESS IN THE PROGRESS OF
PENDING ENQUIRIES RELATING TO FAKE BANK
ACCOUNTS, ETC.*

In Attendance:

Mr. Anwar Mansoor Khan, Attorney General
for Pakistan

Syed Nayyar Abbas Rizvi, Additional AGP.

Mr. Shehryar Qazi, Addl. A.G.

Ch. Aitzaz Ahsan, Sr. ASC

Mr. Gohar Ali Khan, ASC (For Bahria Town)

Kh. Ahmed Tariq Raheem, Sr. ASC

Mr. Azhar Siddique, ASC (For Zain Malik)

Mr. Farooq H. Naek, Sr. ASC

(For Asif Ali Zardari and Faryal Talpur)

Mr. Shahid Hamid, Sr. ASC

Ms. Ayesha Hamid, ASC

Syed Rafaqat Hussain Shah, AOR

(For Anwar Majeed and Abdul Ghani Majeed)

Mr. Munir Ahmed Bhatti, ASC

(For Kh. Nimar Majeed, Kh. Mustafa

Zulqarnain Majeed and Ali Kamal Majeed)

Kh. Naveed Ahmed, ASC for President

Sindh Bank

Mr. Salman Aslam Butt, Sr. ASC for UBL

Mr. Ibrar Saeed, Legal Advisor

(For SECP)

Mr. Haseeb Jamali, ASC

Mr. M. Qasim Mirjat, AOR

(For Nasir Abdullah Lootha)

Mr. Abid S. Zuberi, ASC

Mr. Tariq Aziz, AOR

(For Summit Bank)

Mr. Shoukat Hayat, ASC

Mr. M. Qasim Mirjat, AOR

(For Hussain Lawai)

Mr. Ahmed Nawaz Chaudhary, AOR
(For Sher Muhammad Mugheri)

Mr. Shahab Sarki, ASC for Shahzad Jatoi
(For A One Group)

For FIA	Mr. Bashir Ahmed Memon, DG FIA Mr. Najaf Quli Mirza, Addl. DG FIA Mr. Monir A. Sheikh, Director FIA, Karachi Mr. Qaiser Masood, Addl. Director, Law FIA Mr. Mohammad Ali Abro, Asst. Director / I.O FIA Karachi. Mr. Tariq Malik, Director Law FIA Mr. I.D Mangi, AIGP (Legal) Sindh Karachi
For NAB	Mr. Imran-ul-Haq, Sp. Prosecutor
For FBR	Mr. Jahanzeb Khan, Chairman FBR Mr. Habibullah, Member I.R Operation FBR
For State Bank	Mr. Tariq Mehmood Bajwa, Governor Mr. Sanaullah Gondal, Director Syed Ansar Hussain, AD Raja Abdul Ghafoor, AOR

Date of Hearing: 05.09.2018

ORDER

This matter arises out of inquiries initiated by Federal Investigation Agency ("**FIA**") regarding fake/*Benami* accounts connected with various individuals and entities including A-One International, Iqbal Metals, Lucky International and Omair Associates. Another inquiry was also initiated on receipt of suspicious transaction reports ("**STRs**") from Financial Monitoring Units ("**FMU**") of State Bank of Pakistan ("**SBP**"). An investigation team headed by Dr. Najaf Quli Mirza, Additional Director General, FIA, was constituted to investigate the matter. Having received information that there was slackness and slow progress in the matter and probe and investigation was being obstructed and hampered, this Court took suo motu notice of the same in exercise of its

powers under Article 184(3) of Constitution of the Islamic Republic of Pakistan, 1973 (***“the Constitution”***). In one of the matters, an FIR was also registered regarding which an interim *challan* has already been submitted in the Special Court (Banking), Karachi. In this regard, some accused persons holding senior positions in Summit Bank were arrested and are presently in Jail. The investigation found 29 suspicious/fake Bank accounts showing transactions in excess of Rupees 35 Billion undertaken through various Banks. The ostensible holders of such accounts denied opening or operating the accounts. There are valid reasons to believe that accounts were opened by misusing National Identity Cards (***“NICs”***) of different unsuspecting persons without their knowledge. This appears to have been done in order to undertake illegal rotation and layering of huge sums of money through the said accounts presumably for money laundering. Interrogation of the arrested suspects and concerned persons led to discovery of further information about the accounts, companies and individuals who had links with deposit of the funds in question. These included Omni Group, its associate Companies and Sugar Mills, Bahria Town, Zardari Group Private Limited, Arif Habib, Nasir Abdullah Loota, H&H Exchange Company, Parthenon Private Limited, Dream Trading & Company, and Ocean Enterprises amongst others, etc. Some of the accused persons were arrested. They are facing investigation. Some of the accused persons got protective bails. A few are absconding.

2. We have been informed by Director General, FIA that as investigation progresses more accounts and information is being discovered by the investigators. This points towards a series of suspicious transactions involving Billions of Rupees spanning various jurisdictions by skillfully structured methods in order to camouflage and avoid detection by the Regulators and Law Enforcement Agencies. He, therefore, maintains that despite *bona fide* efforts on the part of FIA, progress is slow on account of huge quantity of electronic data that requires unravelling and interpretation. For this exercise FIA is facing lack of specialized investigators. In order to conduct effective, in-depth and incisive investigations to discover the truth, cut through multiple layers of transactions, fake accounts, movement of funds, and establish the real identity of persons who are actual but hidden beneficiaries, a broad based, multidimensional and technically skilled team of experts is required which at present is not available with FIA. He also submits that on account of alleged involvement of high profile and powerful political and business figures with the tainted transactions, who have powerful connections within the government, investigation is being seriously hampered and at times willfully obstructed at every stage. Additionally, the investigators feel threatened by the pressure generated due to involvement of high profile persons in the case. Their fear is not without foundation considering the general environment and the law and order situation. He, therefore, prays that this Court may appoint a Joint Investigation Team (JIT) consisting of an Additional Director General of Federal Investigation Agency (FIA); Experts from Federal Board of Revenue (FBR), State Bank of Pakistan (SBP), National Accountability Bureau

(NAB) and Securities & Exchange Commission of Pakistan (SECP) as well as representatives of Inter-Services Intelligence and Military Intelligence.

3. The learned counsel appearing on behalf of Omni Group, M/s Abdul Ghani Majeed, Asif Ali Zardari, Mrs. Fryal Talpur, Zain Malik/Behria Town and others have opposed the formation of aforesaid JIT. They argue that this is not a case of the investigating agency being unwilling to proceeding in the matter. In fact the FIA has already submitted an incomplete *challan* before the concerned Banking Court. It is, therefore, the right of the accused persons that final *challan* should be submitted and trial should commence. It is maintained that since incriminating material or evidence against the accused persons is lacking or is deficient, the matter of submission of final *challan* is being delayed which is violative of the fundamental rights of due process and fair trial guaranteed to the accused persons by the Constitution. It has also been argued by the learned counsel that FIA has sufficient powers under the Federal Investigation Agency Act, 1974 as well as Anti Money Laundering Act, 2010 to constitute JITs (if required). Therefore, there is no need for this Court to appoint a JIT.

4. As far as jurisdiction of this Court is concerned, reference has been made to Imran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265). It has also been argued that M/s Nimar Majeed, Mustafa Majeed and Ali Kamal Majeed are not involved in the matter, however, their names have been placed on the Exit Control List (ECL) which is not justified.

5. Mr. Aitzaz Ahsan, learned Sr.ASC, has *inter alia* contended that this Court is generally slow to appoint JITs in cases where an FIR has been lodged or the matter has been sent for trial to a Court of law. He has further argued that name of Mr. Najaf Quli Mirza, ADG, FIA may not be included in the JIT owing to the fact that one of the accused persons has lodged an FIR against him and the impartiality of the said person has been brought under question. It is argued that JIT can be constituted only where the Head of the concerned investigation agency expressly unwilling to act.

6. We have heard the Director General, FIA as well as learned counsel appearing for some of the accused persons. From the record produced so far, *prima facie* it appears that fake accounts have been opened in various Banks in the names of persons whose NICs have been misused without their consent or knowledge. Many such persons have appeared before us and have categorically stated that they have no knowledge of the accounts in question. Some of them have also complained of systematic harassment and prayed for protection. There is no denial of the fact that huge sums of money running into billions have been deposited in the said accounts by or on behalf of the persons who are under investigation or entities controlled by them. After being deposited in the said accounts, such funds have either been routed to other accounts which are traceable with some due diligence or withdrawn without any ostensible trail available. Evidence of large sum of foreign exchange being routed out of Pakistan through *hawala* transfers by one of the arrested suspects has added an additional dimension to the investigation. Further, we find that specialized knowledge of

financial transactions and expertise in identifying and tracing movement of funds through banking channels and otherwise is required, in order to conduct a proper probe and investigation in the matter. Expertise in working of Companies, banking transactions, electronic transactions and cyber activities relating to money transfers is needed. Knowledge of reporting requirements and monitoring regime put in place by the State Bank of Pakistan, modes of discovering and tracing suspicious transactions and modes utilized for unlawful circulation and movement of money within the country and abroad is required. Such specialized expertise is not presently available within the FIA. Further, in view of the fact that this Court has taken Suo Motu notice of this matter and considering the request made by the Director General, FIA and the difficulties expressed by him, we are convinced that it is in the interest of justice and to ensure that national resources and national wealth which belong to people of Pakistan is not looted, plundered or misappropriated, a high powered and highly skilled JIT is required to be set up.

7. Learned counsel for some of the accused persons while making their submissions have frankly conceded that this Court has ample powers and jurisdiction in terms of Article 184(3) of the Constitution to appoint and nominate such JITs. The concession by the learned counsel for the suspects that a JIT can be constituted by the investigating agency under the Anti Money Laundering Act, 2010 renders their objection to such action by the Court to be academic. In fact an order passed by the Court in this behalf is a valid exercise of jurisdiction in aid of a lawful object. We are of the

view that in appropriate cases, technical inability to undertake a complicated modern day investigation furnishes a reasonable basis and justification to constitute a JIT. We are in no manner of doubt that in the present case formation of a JIT is imperative and necessary.

8. Accordingly, we constitute the following JIT for the purpose of conducting a thorough, in depth and incisive investigation and probe into the matter of fake bank accounts subject matter of these proceedings to get to the truth, uncover the persons involved and collect all material evidence for the purpose of ensuring that in case an offence is made out, the persons involved therein are properly prosecuted:-

1. Mr. Ahsan Sadiq, Additional Director General (Economic Crime Wing), FIA Headquarters, Islamabad;
2. Mr. Imran Latif Minhas, Commissioner-IR (Corporate Zone), Regional Tax Office, Islamabad;
3. Mr. Majid Hussain, Joint Director BID-I, State Bank of Pakistan, Islamabad;
4. Mr. Noman Aslam, Director, National Accountability Bureau, Islamabad;
5. Mr. Muhammad Afzal, Director, Specialized Companies Division, Securities & Exchange Commission of Pakistan, Islamabad; and
6. Brigadier Shahid Parvez of Inter-Services Intelligence.

9. We also direct as follows:-

- i) The JIT shall set up its Secretariat at a place convenient to it;
- ii) The JIT shall have all powers relating to inquiries and investigations including those available in the Code of Criminal Procedure, 1908; National Accountability Ordinance,

1999; Federal Investigation Agency Act, 1974 and the Anti Corruption Laws, etc;

- iii) All executive authorities or agencies in the country shall render assistance and provide support to the JIT in its working, if required;
- iv) The JIT shall submit periodic reports before this Court qua the progress made in the investigation on fortnightly basis under sealed cover for our examination;
- v) The Additional Director General, FIA, who shall head the JIT may co-opt any other expert who may in his opinion be necessary to complete the investigation in an effective and timely manner; and
- vi) First Report of the JIT shall be filed within a period of 15 days from today.

10. In order to ensure that the investigation is conducted in a professional, transparent and effective manner, neither the JIT nor FIA nor any of the Members of the JIT shall issue press releases or provide information relating to the investigation to the media.

11. Further, owing to the apprehensions about the safety of the investigators expressed by DG, FIA, in the first instance, we direct Pakistan Rangers to provide adequate and effective security to the investigators and to ensure that they perform their functions without any fear to their life or liberty or that of their families. Such protection shall also upon request be provided to the witnesses.

12. The request of the Director General, FIA that investigation may be transferred to and conducted in Islamabad is for the time being declined. However, in case, any material, ground or information comes before this Court

showing interference in the investigation or an attempt to hamper, delay or obstruct investigation or creating an environment of fear and pressure for the investigators, the said request will be re-examined at that stage for passing appropriate orders.

13. Let this matter be listed for hearing on **24.09.2018.**

Chief Justice

Judge

Judge

ISLAMABAD, THE

5th of September, 2018

Not Approved For Reporting

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