

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja

Mr. Justice Khilji Arif Hussain

CMA No.3325/2012 in C.R.P. 270/2011 in Const. Petition No.42/2011

(Progress report by NAB in OGRA Case)

CrI.M.A.547/2012 & CrI.M.A.565/12 in CrI.O.P.63/2012

(Show Cause Notice to Mr. Arshad Ali Chaudhry, AOR in accordance with this Court's order dated 13.9.2012)

C.R.P. No.9/2013 in CMA-3325/2012 in C.R.P.270/2011

NAB Versus Muhammad Yaseen, Registrar OGRA, etc.

Khawaja Haris Ahmed, Sr. ASC (Amicus Curiae)

For NAB: Mr. K. K. Agha, Prosecutor General, NAB
Rana Zahid Mehmood, Addl. P.G. NAB
Mr. Mehmood Raza, Addl. P.G. NAB
Mr. Mazhar Ali Chaudhry, DPG, NAB
Mr. Akbar Tarar, Addl. P.G. NAB
Mr. Mehmood A. Sheikh, AOR
Mr. Waqas Ahmed Khan, Dy. Director/I.O.

In Attendance: Mian Abdul Rauf, ASC
Rana Shahid Parvaiz, S.P.

For FIA: Mr. Muhammad Azam Khan, Director (Law)

For Motorway Police: Mr. Arshad Ali Chaudhry, AOR

For the respondents
(in review petitions): Kh. Azhar Rasheed, ASC

Date of Hearing: 11.2.2013

ORDER

Jawwad S. Khawaja, J.- This matter has been heard extensively today following from our orders of 24.1.2013 and 31.1.2013. We have also been ably assisted by Khwaja Haris Ahmed, learned Sr. ASC as *amicus curiae*.

2. Based on the hearing, documents and considerations discussed below it does *prima facie*, appear that diligent efforts need to be made to bring back the absconder Tauqeer Sadiq from U.A.E. Learned *amicus curiae* has referred to a number of legal provisions in the law of the United Arab Emirates (UAE) as notified by the General Directorate of Naturalization and Residence. The law is formally known as the Federal Law No.6 of 1973. The entire law is relevant but, of particular importance in the context of the present case, are Articles 2, 8, 11, 12, 15, 20 (as amended in 1996) and Article 23 of

the said Federal Law of the UAE. From a reading of these provisions it does appear, *prima facie*, that if a diligent effort is made, the absconder can be deported from U.A.E. At present, there is nothing on record to indicate that any request at an official level through the right official quarters has been made by the Government of Pakistan to the Government of UAE seeking the deportation of the absconder. The learned Prosecutor General NAB is directed to submit in Court a report with necessary documents/correspondence showing the efforts made since 1st January, 2013 to show the efforts made so far in apprehending the absconding accused. This should be done before the next date of hearing.

3. We have also gone through the various texts including '*Jones on Extradition*' by Alun Jones, '*International Extradition*' by M. Cherif Bassiouni and '*Extradition in International Law*' by Ivan Anthony Shearer. From an examination of these texts it is apparent that deportation may be the preferred mode for bringing the absconder to justice in Pakistan and may also be more expeditious than proceedings for the extradition of the accused. Presently, however, in view of what has been noted above, we would direct the FIA, the Ministry of Interior and NAB as the prosecuting agency, to make sure that proceedings are initiated to bring back the accused from the UAE expeditiously. We are concerned that presently there are documents on record which show that the expeditious route seeking deportation has not been pursued and instead the government authorities are contemplating extradition which could be a lengthy and time-consuming process. A legal opinion on UAE laws also has not been obtained from local counsel in UAE. We may emphasize at this point that, *prima facie*, the right law and the right approach with the right authorities may not have been pursued by NAB and other concerned Pakistani authorities. This needs to be done immediately because a letter dated 5.2.2013 has been placed on record which has been issued by the Immigration Wing, Embassy of Pakistan, Muscat stating that "*Tauqir Sadiq is detained in Al Wathba Prison Abu Dhabi for a period of 15 days ending on 14th February 2013(extendable to 30 days)*". It would create a lot of difficulty if immediate efforts are not made to ensure either that on 14th February, 2013 Tauqeer Sadiq is deported to Pakistan or if that is not possible forthwith, then an extension of the detention period to 30 days is sought to

enable any missing documentation to be completed for ensuring his presence in Pakistan. In addition NAB being the prosecutor, shall take immediate steps to obtain such warrants/orders from the competent Court as may be required for the purpose of bringing back Tauqeer Sadiq. Learned *amicus curiae* submitted that the warrants when obtained from the Accountability Court can be served on the absconder in the UAE, and the service of such warrants will have its own legal consequences.

4. During the course of this hearing a letter dated 11th January, 2013 has been brought to our notice. This letter which has been issued by the Cabinet Division, Govt. of Pakistan is most alarming because it *prima facie*, shows interference in the functioning and status of NAB as an independent investigator and prosecutor. In view of the importance of this letter it is reproduced herein below *in extenso*:-

"Most Immediate

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
(CABINET DIVISION)

No.5/3/2009-RA-II/OGRA

Islamabad, the 11th January, 2013

From: Deputy Secretary (RA)
Ph: 9201247

To: The Chairman,
National Accountability Bureau (NAB)
Islamabad.

**Subject:- INQUIRY AGAISNT MR. TAUQIR SADIQ, FORMER
CHAIRMAN OGRA**

The Prime Minister has been pleased to desire that NAB may kept Cabinet and Establishment Division(s) updated by submitting fortnightly progress reports about the developments of the case and further directions of the Apex Court till the closure of the case.

2. Above in view, NAB is requested to furnish a fortnightly report on the subject to Cabinet and Establishment Division(s).

Sd/-
(Muhammad Ashfaq)
Deputy Secretary (RA)".

5. What is of serious concern to us is that the said letter appears to have been received one month ago by the Chairman, NAB whose initials appear on the letter but thereafter, as stated by Mr. K. K. Agha, Prosecutor General NAB, the letter was never marked or even shown to him and he was totally unaware of the existence of the said

letter until it was referred to in Court by the learned *amicus curiae*. A copy of the letter has been placed on record. The very fact that the Prime Minister has desired that NAB “*may keep Cabinet and Establishment Division(s) updated ... about development of the case and the further directions of the Apex Court till the closure of the case*”, *prima facie*, amounts to interference in the independent working of NAB. This is particularly so, considering that the Prime Minister may himself be *prima facie*, implicated in the unlawful appointment of Tauqir Sadiq as Chairman, OGRA. We are also somewhat surprised that this letter has not been responded to as yet and nor has the Cabinet Secretariat been informed of the independent status of NAB as an investigating agency. We have already noted in our judgment dated 30.8.2012 passed in CRP 167 of 2012 that NAB is designed by law to be an independent agency and is to function without being influenced from outside quarters. In the said judgment we “[*found*] it odd that the Attorney General adopted a position and used words in his letter which should have been objectionable to a truly independent investigator but have, to date, remained unanswered and unattended ... the National Accountability Ordinance (NAO) has also attempted to insulate NAB from external influence in an attempt to ensure its impartiality and professionalism. This has been done *inter alia*, by providing security of tenure to the Chairman and Prosecutor General of NAB”.

6. We, therefore, direct for the present that FIA, Ministry of Interior, Ministry of Foreign Affairs and all other authorities of the government and/or their subordinate divisions and offices whether within Pakistan or abroad shall render full and prompt assistance to NAB in diligently pursuing the absconding accused and to bring him back to Pakistan. NAB must act with alacrity and independently of Government, the Cabinet Division or the Prime Minister.

7. To come up on 18.2.2013.

Judge

Judge

Islamabad, the
11th February, 2013
Not approved for reporting.