

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.1545/2019.

Taha Raza Versus The State etc.

W.P No.1546/2019.

Hussain Lawai Versus The State etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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19.06.2019 Syed Hamid Ali Shah and Syed Ishfaq Hussain Naqvi,
Advocates for the petitioners.
Mr. Muhammad Asghar Awan and Mr. Muhammad Irfan
Boola, Special Prosecutors NAB.

MOHSIN AKHTAR KAYANI, J. Through this
single order, we intend to decide the above titled two writ
petitions as the same have arisen out of NAB Reference
No.02/2019.

2. The petitioners have applied for their post arrest bail in
NAB Reference No.02/2019 pending before Accountability
Court-II, Islamabad arising out of FIR No.4/2018, dated
06.07.2018, U/S 419, 420, 468, 471/109 PPC read with section
5(2) PCA 1947 read with sections 3 & 4 Anti Money
Laundering Act, 2010, P.S FIA, State Bank Circle, Karachi,
which was transferred vide order dated 15.03.2019 to
Accountability Court-II, Islamabad U/S 16 of the NAB
Ordinance, 1999.

3. The prosecution case as unfolded from the contents of
FIR No.4/2018 is that during the course of inquiry No.70/2015,
which was further converted into inquiry No.3/2018 upon the
suspicious transaction report regarding 29 accounts, it was
established that one account out of total 29 accounts bearing

No.1-2-28-20620-714-139111 in the title of A-One International (sole proprietorship firm) purportedly in the name of Tariq Sultan was fraudulently opened by using his CNIC and this account was subsequently used for placing illegitimate funds for the purpose of money laundering. Tariq Sultan denied opening of the said account and handwriting expert's opinion was obtained, which confirmed stance of Tariq Sultan that his signatures on the bank record are fake. During the course of inquiry, it also revealed that Kiran Aman, the then Operations Manager, Noreen Sultan the then Relationship Manager and Adeel Shah Rashidi the then Branch Manager opened the account, verified the fake signatures and allowed the change of the signatures other than CNIC and counter signed "know your client" (KYC). On the direction of Hussain Lawai/petitioner in writ petition No.1546/19, who is the corporate head, Taha Raza/petitioner in writ petition No.1545/19, who is unit corporate head referred the documents to the Operations Manager and other officers of the branch with remarks that documents of opening of bank account have been referred by Hussain Lawai. The account belongs to Omni Group and Aslam Masood, CFO, Omni Group provided the account opening form duly signed for opening of forged account and it was found that during 10 months period w.e.f 6.3.2014 to 12.01.2015 a sum of Rs.4.5 Billion was credited and routed through this account. The amount was transferred to different business entities from the said account and 13 beneficiaries used the said account through systematic layering of funds and integration of funds in shape of report of equity of Summit Bank to State Bank of Pakistan. Both the petitioners are from Summit Bank and by using their positions they exerted pressure upon the subordinate

staff for opening fake account of Tariq Sultan with the help of Aslam Masood and Muhammad Arif impersonating as Tariq Sultan and operated the said account in the Summit Bank Kh-e-Tanzeem Branch Karachi.

4. Learned counsel for the petitioners contends that petitioner Hussain Lawai was arrested on 23.06.2018, whereas petitioner Taha Raza was arrested on 06.07.2018; that reference has been filed against the petitioners after completion of the investigation and the petitioners are no more required for the purpose of further investigation; that keeping the petitioner behind the bars would not serve any useful purpose; that entire evidence is with NAB Authorities and there is no apprehension of tampering with prosecution evidence; that it was role of the Branch Manager, Operations Manager and Relationship Manager by virtue of their job description to verify the credentials of individuals for opening of bank account and under Prudential Regulations, the corporate head and the president has no role in such kind of operations of a bank; that Kiren Aman the then Operations Manager, Noreen Sultan the then Relationship Manager and Adeel Shah Rashidi the then Branch Manager approved the account opening form and they are also accused in the reference as such their statements against the petitioners are to be considered as statements of co-accused, which would be appreciated only at the time of trial as to whether any instructions were given by the petitioners to those bank officials for the purpose of opening of fake bank account of A-One International, therefore, case of the petitioners is one of further inquiry in terms of section 497(2) Cr.P.C; that there is no allegation/evidence of offence of money laundering; that the petitioners are suffering from several diseases; that petitioner

Taha Raza suffered an attack and also got fractured leg and is exposed to increase health problems; that petitioner Hussain Lawai is 74 years old and is suffering from serious heart ailment and prostate problems, his health is deteriorating due to non-availability of adequate medical facilities and case of the petitioners falls within category of hardship.

5. Conversely, learned Special Prosecutor, NAB contends that both the petitioners played key role in the opening of fake account of A-One International as they exerted pressure upon the then Relationship Manager, Branch Manager and Operations Manager of Summit Bank Kh-e-Tanzeem Branch Karachi and the account was operated by the officials of Omni Group for the purpose of layering, in which Rs.4.5 Billion has been routed through the said fake account to different individuals; that interim reference has been filed, nine accused have been arrested and NAB authorities are still investigating the matter.

6. We have heard the arguments and perused the record.

7. From tentative assessment of record, it reveals that the petitioners have been charged in case FIR No.4/2018, dated 06.07.2018, U/S 419, 420, 468, 471/109 PPC read with section 5(2) PCA 1947 read with sections 3 & 4 Anti Money Laundering Act, 2010, P.S FIA, State Bank Circle, Karachi and the said case was transferred from Special Court (Offences In Respect of Banks) Sindh At Karachi to Accountability Court-II, Islamabad and the challan submitted by FIA Authorities has been treated as reference No.2/2019, whereas NAB Authorities are investigating the crime.

8. The precise allegations against the petitioners are that bank account in the name and style of A-One International (sole proprietorship firm) purportedly in the name of Tariq Sultan was

fraudulently opened by using his CNIC and the account was subsequently used for illegitimate funds for the purpose of money laundering, whereas Tariq Sultan denied opening of the said bank account. His signatures were verified by handwriting expert vide report dated 17.11.2015, which confirms the version of Tariq Sultan. The account was opened in Summit Bank Kh-e-Tanzeem Branch, Karachi, whereas Kiran Aman, the then Operations Manager, Noreen Sultan Relationship Manager and Adeel Shah Rashidi Branch Manager played basic role for opening the account, however, all the three officials in their statements before the NAB Authorities and FIA at the initial stage confirmed that the documents of account opening of A-One International were referred by petitioner Taha Raza Unit Corporate Head, who also exerted pressure on the direction of petitioner Hussain Lawai, the President of the Bank for opening of fake account upon the bank officials.

9. During the course of investigation, it transpired that approval of documents relating to “know your client” (KYC) was also given where signatures of Tariq Sultan were changed and he was impersonated by Aslam Masood and Muhammad Arif of the Omni Group. The then Branch Manager, Relationship Manager and Operations Manager verified all those documents on the direction of the present petitioners. The investigation further reveals that this single account of A-One International transacted amount of Rs.4.5 Billion in short span of 10 months w.e.f 6.3.2014 to 12.01.2015 and illegitimate funds from this account were transferred in different accounts for layering of funds and integration of funds in shape of reporting of equity of Summit Bank to State Bank of Pakistan. Both the petitioners were Corporate Head and President of the Bank at the time of alleged

incident and played key role in opening of the fake account. One of the accused Adeel Shah Rashidi, the then Branch Manger disclosed that account opening documents were sent to Corporate Department for approval/consent of petitioner Taha Raza Unit Corporate Head, who sent the documents with remarks **“referred by Hussain Lawai directed you to open the account”**. All these facts prima facie connect the petitioners with the offences, through which huge sum of money has been transmitted to different individuals including five companies and other beneficiaries.

10. Both the sides have argued their case with reference to corruption and corrupt practices and there is no denial that corruption is spreading like cancer in the society and if it is not catered with iron hand, it would surely ruin the country. Even corruption is termed as Royal Thievery, which does not only affect an individual rather destroys the economy and cultural heritage. The Apex Court rendered its view on the corruption and corrupt practices in the judgment reported as **2016 SCMR 1965 (Imran Mohsin vs. The State)**, wherein it was held that:-

"یہاں یہ تجویز کرنا بھی ضروری ہو گیا ہے کہ چونکہ احتساب کے قانون کی مختلف شقوں کی بناء پر اس نوع کے جرائم میں بارثبوت بابت بے گناہی ملزمان پہ عائد کی گئی ہے۔ لہذا خصوصی عدالتیں اور اپیل کی عدالتیں ملک کے مخصوص کے پیش نظر ان قانونی شقوں کا باریک بینی سے جائزہ لے کر ملک، اداروں اور معاشرے کو بدعنوانی کے ناسور سے پاک کرنے کے لئے انتہائی متحرک اور فعال کردار ادا کرے۔ کیونکہ بدعنوانی ہر سطح پر جس تیزی سے ملک اور معاشرے میں پھیل رہی ہے اگر اس کا فوری سببب نہ کیا گیا تو یہ دیمک کی طرح ملک اور اداروں کی اقتصادی، مالی اور معاشی بنیادوں کو کھوکھلا کر کے ریاست کو انجام سے دو چار کر گی جس کا بعد میں سببب کرنا نہ صرف مشکل بلکہ نا ممکن ہوگا۔ چونکہ ارض پاک خود مختار ریاست کی صورت میں ہمیں کسی نے تحفہ میں نہیں دیا بلکہ اس کے لئے لاکھوں جانوں کی قربانیاں دی گئیں۔ اگرچہ مسلمہ قانون اور انصاف کے اصولوں کی یکسر نظر انداز نہیں کیا جا سکتا لیکن حالات کیس سنگینی اور متوقع سنگین نتائج سے بچنے کے لئے یہ ہمارا فرض بنتا ہے کہ اعلیٰ عدلیہ اور خصوصی عدالتیں اس سلسلے میں محتاط، متحرک اور فعال کردار ادا کرے تاکہ اس نوع کے جرائم کی مکمل بیخ کنی کی جا سکے۔ یہاں پر اس بات کو بھی نظر انداز نہیں کیا جا سکتا کہ معاشرے کے ہر طبقے کے افراد بد عنوانی کے خلاف زوردار طریقے سے آواز اٹھانے میں

پیش پیش ہوتے ہیں لیکن بدقسمتی سے ان میں سے اکثریت خود
احتسابی کے اصول پہ عمل درآمد کرنے کرانے سے گریزاں
نظر آتے ہیں جو کہ قومی المیے سے کم نہیں ہے۔"

11. There is no denial to the proposition that corruption is spoiling economy of the country at a large scale in a every organized manner and it has become free for all, then it has become the primary and foremost obligation of the Court to curb this evil monster which would ultimately be a threat not to latter alone but to the very survival of the State. Due to massive corruption the poor among poorer are not getting even safe drinking water and other facilities to live a honourable life as envisaged in the provisions of the Constitution of Islamic Republic of Pakistan, 1973. Reliance is placed upon **2017 SCMR 669 (Sohrab Khan Marri Khuda Bakhsh vs. The State)**. The Apex Court also laid down criteria for decision of each bail in the judgment reported as **2017 SCMR 1152 (Rai Muhammad Khan vs. NAB through Chairman and others)**, which is reproduced as under:-

"7. Under the principle of law and justice, each bail petition is to be decided on its own merits and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well being of the poor people, is consistently embezzled/misappropriated at a large scale and why the majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. It has become the foremost obligation of each and every institution, including the Judicator, to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply the Anti- Corruption laws somewhat rigidly, once on fact the case is made out, at bail stage, against the accused person. Distinction, however, is to be drawn between the ordinary

criminal cases and is of corruption on the above analysis and grounds, while dealing with bail matter to an accused person, charged for such like crimes and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence.”

12. In cases of mega corruption, the Apex Court has fixed the standard while dealing with the bail applications, wherein it has been held that in cases under NAO, 1999 bail may be granted through exercise of Constitutional jurisdiction of a High Court only in extra ordinary circumstances and case of extreme hardship. Reliance is placed upon PLD 219 SC 445 (Chairman NAB vs. Mian Muhammad Nawaz Sharif and two others). Similarly, in PLD 2019 SC 112 (Tallat Ishaq vs. NAB through Chairman and others), it has been held that:-

“Constitutional jurisdiction of High Court was, however, an extra ordinary jurisdiction, meant to be exercised in extra ordinary circumstances and not in run of the mill cases or a matter of Course.”

13. Keeping in view the above background, prima facie the petitioners are well connected with the scam of fake bank account of A-One International and upon their insistence and instructions the said bank account was opened and verified and same has been used for the purpose of layering of amount of Rs.4.5 Billions and as such the offence with which petitioners have been charged falls within the prohibitory clause of Section 497 Cr.P.C. No ground of further inquiry exists on record. Even interim challan has been submitted in the Court, therefore, petitioners are not entitled for concession of post-arrest bail, who have been charged with the offence of corruption and corrupt practices as well as offence of money laundering.

14. Both the petitioners have enjoyed highest positions in

the Summit Bank Ltd. being Unit Corporate Head as well as President of the Bank. The additional ground of medical for grant of bail is also not made out as no serious ailment has been referred in the record. Even otherwise, jail authorities are fully responsible to provide due medical attention as and when required to any of the under trial prisoner under jail manual.

15. For what has been discussed above, both the titled petitions for post arrest bail are hereby **dismissed**.

(AAMIR FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

APPROVED FOR REPORTING.

R.Anjam

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