

## **ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P No.1038/2020.**

**Abdul Rehman Ghazi**

***Versus***

**NAB through its Chairman.**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	27.04.2020	Syed Shajjar Abbas Hamdani, Advocate for the petitioner. Barrister Rizwan Ahmed, Special Prosecutor NAB. Jahanzaib Mirza, Dy. Assistant Director/I.O, NAB.

**MOHSIN AKHTAR KAYANI, J.** Through

this writ petition, the petitioner has prayed for post-arrest bail in Reference No.06/2019, pending with the Accountability Court No.II, Islamabad.

2. Brief facts referred in the instant writ petition are that the petitioner was arrested by the police on 21.03.2018 in FIR registered on the complaint of different individuals regarding dishonestly issuance of cheque U/S 489-F PPC, however, a complaint dated 06.04.2018 was received at NAB, Rawalpindi from complainant Syed Jawad Khalid and 06 others in which it was alleged that the petitioner Abdul Rehman Ghazi alongwith his brother Muhammad Mazhar Sultan and his brother-in-law Muhammad Musa are involved in cheating public at large and inducing the public through fake

cars import business, hence, deprived them of their hard earned money. Inquiry was authorized on 21.06.2018, reference No.06/2019 was filed, pending with NAB Court No.II, Islamabad and charge has been framed, even one prosecution witness has recorded his evidence.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case; that he has business dispute with different individuals which has been converted into reference despite the fact that NAB has no jurisdiction in this regard; that petitioner was arrested on 18.12.2018 but trial has not yet been concluded, only one prosecution witness has been recorded and approximately 130 PWs are yet to be recorded; that petitioner is cardiac patient and also suffering from diabetes; that he also suffered from stroke and paralyzed; that other two co-accused of petitioner are absconders and I.O has not yet concluded the investigation to the extent of defense given by the petitioner and as such case of petitioner falls within the concept of further inquiry; that case of petitioner falls within the ambit of cheating with public at large and it has yet to be determined at trial. Learned counsel for the petitioner has relied upon cases reported as 2019 SCMR 1730 (Hashmat Ullah Vs. The State and others) and PLD 2006 SC 109 (Zahid Imran and others Vs. The State and others).

4. Conversely, learned Special Prosecutor NAB alongwith I.O contends that amount which was received by the petitioner alongwith his two co-accused is Rs.936.33 Million and he induced different individuals for business investment and received the amount but not a single vehicle was imported from Japan; that petitioner is the CEO of company known as EZ Automobile Pvt. Ltd. but the same is not registered with SECP and he induced different individuals and received their hard earned money; that petitioner has also been convicted and sentenced by different criminal Courts in cases U/S 489-F PPC and presently serving said sentence in District Jail Rawalpindi; that petitioner is not entitled for concession of post-arrest bail and it would be appropriate that a direction is issued to the learned trial Court for early conclusion of the trial.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner started business in year 2013 with his brother Muhammad Mazhar Sultan (P.O) and his brother-in-law Muhammad Musa (P.O) of importing cars from Japan. He delivered cars to his clients at 10% discount rate from market after purchasing cars from local car dealers. While doing the said business he gained trust of investors and convinced different individuals for investment in his business. He used

to acknowledge the complainants after receiving the amount through e-mails and Whatsapp and failed to deliver the vehicle as per undertaking. He also issued different post-dated cheques as guarantee which were dishonoured on their presentation.

7. NAB authorities arrested the petitioner on 21.03.2017 and during the course of inquiry and investigation reference No.06/2019 has been filed before the NAB Court No.II, Islamabad, wherein role of the petitioner has been highlighted in the following manner:-

- i. *Accused Abdul Rehman Ghazi fraudulently and dishonestly induced general public through co-accused Muhammad Musa and Muzhar Sultan and also by making Whatsapp Group. Accused Abdul Rehman Ghazi with malafide intention portrayed himself CEO of EZ Automobiles Company that does not exist according to record of SECP.*
- ii. *The accused signed agreements for investment on stamp papers with his clients and Muhammad Mazhar Sultan is witness of some of these agreements.*
- iii. *The accused Abdur Rehman Ghazi fraudulently and dishonestly took 280x Kanal land from Mehmood ur Rehman and did not pay due amount which is 135 million according to agreement of transfer of land.*
- iv. *The accused Abdur Rehman Ghazi has committed the offence of cheating as defined in Section 415 of the Pakistan Penal Code, 1860, and thereby dishonestly induced members of the public at large in name of fake business of car import.*
- v. *The accused Abdur Rehman Ghazi dishonestly*

*and fraudulently has misappropriated and converted for his own use the collected money to tune of Rs.936,330,750.*

8. While considering the above background, it has been observed from the tentative assessment of record that petitioner represented himself being CEO of company namely EZ Automobile (Pvt) Ltd., which was not found registered in SECP record and petitioner in collusion with other co-accused (brother/P.O Muhammad Mazhar Sultan) and (brother-in-law/P.O Muhammad Musa) cheated approximately 125 individuals with the commitment that he will deliver them vehicles/cars with 10% discount rate from market but such cars were neither imported nor any record has been produced in his defense by the petitioner.

9. We have given an ample opportunity to the petitioner to show his bonafide by way of depositing certain amount in the Court account but learned counsel for the petitioner after seeking instruction from his client/petitioner contends that not a single penny is available with the petitioner to show his bonafide rather he referred the entire fraud to co-accused, who are absconders in this case. The record further reflects that charge was framed on 17.02.2020 in terms of Section 9(a)(iii)(ix)(xiii) of NAO, 1999, which is punishable U/S 10 of NAO, 1999, whereas petitioner convinced public at large to invest in his business for attractive

profit and delivery of cars but he later on stopped the profit as well as did not deliver the imported cars. The total amount as per reference which was received by the petitioner in this business is Rs.936,330,750/-.

10. Learned counsel for the petitioner contends that prosecution has failed to justify the lack of entrustment of property which requires adjudication by the trial Court and has heavily relied upon as 2019 SCMR 1730 (Hashmat Ullah Vs. The State and others) but the facts and circumstances of the referred case are different whereby accused Hashmat Ullah in that case was convicted by the trial Court and question of investment was adjudicated by the trial Court, whereas in this case the issues have yet to be decided by recording of evidence. However, this Court is bound to confine itself to the extent of post-arrest bail and could not enter into deep merits of the case.

11. While considering the background of this case, the Courts in such matters of bail has to make distinction into offence which is committed against an individual and any offence which is against the society as a whole alongwith punishment provided for the offence which itself falls within the non-prohibitory clause and as such offence with which petitioner has been charged and circumstances

highlighted and exist on record, no exceptional circumstance has been highlighted which is a key factor for grant of post-arrest bail. Reliance is placed upon PLD 1997 SC 545 (Imtiaz Ahmed Vs. The State). This Court is only allowed to assess the facts and circumstances tentatively for the purpose of disposal of bail whereas the white collar crime is a different crime which has to be looked into with the perspective of forgery for the purpose of cheating public at large as the petitioner being CEO of company, not registered with SECP, *prima-facie* cheated the public at large and dishonestly induced them for investment, even no malice or malafide has been attributed to the complainant for false implication of the petitioner, bail was refused accordingly. Reliance is placed upon 2017 SCMR 616 (Haji Shahid Hussain Vs. The State).

12. The case law cited by the petitioner in the bail matters are of no help as it varies from case to case and Court has to examine as to whether accused has made his case of further inquiry and as such no ground of further inquiry is visible from record. The charge has already been framed and one prosecution witness has recorded his testimony, therefore, in such type of situation a proper direction is required to be issued to the trial Court on the touch stone of case reported as PLD 2019 SC 112 (Talat Ishaq Vs. NAB), whereby following

directions were issued:-

*(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay.*

*(g) Before admitting an accused person to bail on the ground of hardship caused by a shocking, unconscionable or inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him.*

*(h) Even in cases of delay ordinarily bail is not granted straightaway and a direction is issued to the trial court in the first instance to conclude the trial within a period fixed for the purpose by the Court itself (as opposed to the time fixed by section 16(a) of the National Accountability Ordinance, 1999 which has already expired). In a case where the Court fixes a time for conclusion of the trial sometimes the Court also observes that in case of non-compliance of the Court's direction the accused person would automatically stand admitted to bail and on other occasions the Court observes that in case of non-compliance of the Court's direction the accused person may approach the High Court again for his bail.*

13. The other ground argued by learned counsel for the petitioner is regarding medical condition of



the petitioner but not a single report has been appended with record, nor any such disease has been highlighted in which surgery is required in the hospital, although there is no bar that Jail authorities can transfer/shift the accused persons requiring medical assistance for any of his disease, even the petitioner allegedly suffering from disease is relating to hyper tension and diabetes which are easily manageable by the Jail authorities through oral medication.

14. It has also been observed from record that petitioner has been convicted in other cases i.e. FIR Nos.149/2018, 150/2018 & 154/2018, U/S 489-F PPC, P.S. Margalla, Islamabad and even his appeal against conviction was dismissed and 08 other cases of similar nature are also pending before different Courts.

15. Keeping in view the above position, instant writ petition is hereby dismissed with direction to the learned trial Court seized with matter to conclude the trial within period of 08 months.

(LUBNA SALEEM PERVEZ)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid