

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.4166-2019

Muhammad Bilal Sheikh

Vs.

**National Accountability Bureau through its Chairman, Islamabad &
Another**

Petitioner by : Mirza Mahmood Ahmad, Advocate
Mr. Saad Ullah Tahir, Advocate
Respondents by : Sardar Muzaffar Ahmad Khan, Deputy Prosecutor
General, NAB with Muhammad Gul Afridi,
DD/CO and Mubashir Karim, AD/IO.
Date of hearing : 15.01.2020

AAMER FAROOQ J. The petitioner, Muhammad Bilal Sheikh,
 seeks bail after arrest in NAB Investigation/Case
 No.NABR20190611176281/2019/IW/Inv.

2. The case of prosecution, against the petitioner, is that while serving as President, Sindh Bank Limited and as Executive Director, Board of Directors, Sindh Bank Limited, he sanctioned or influenced the sanctioning body for grant of finance facilities to M/s Rubicon Builders and Developers Pvt. Ltd, M/s Seracom Stock and Capital Pvt. Ltd. and Park View Stock and Capital Pvt. Ltd., whereas the latter two loans/finances are in default and the amount remains outstanding hence the petitioner misused his authority within the meaning of the concept as provided in section 9(a)(vi) of National Accountability Bureau Ordinance, 1999 (the Ordinance). The warrants of arrest of petitioner were sanctioned on 10.07.2019 and he was accordingly arrested; he remained on physical remand from 11.07.2019 to 05.08.2019 and now is on judicial remand. The National Accountability Bureau (NAB) filed Reference against the

petitioner and others with respect to above transaction, however, said Reference was returned due to certain objections regarding the eligibility of documents etc.

3. Learned counsel for the petitioner, *inter alia*, contended that when the loan to M/s Rubicon Builders and Developers Pvt. Ltd was sanctioned in 2015, the petitioner was President of Sindh Bank Limited, however, he was only one of the Members of Credit Committee, which was the sanctioning authority of finance facility. It was submitted that said finance facility has been adjusted and nothing is outstanding. It was further contended that at the time when finance facilities to M/s Seracom Stocks and Capital Pvt. Ltd. and Park View Stock and Capital Pvt. Ltd. were allowed, the petitioner was not the President but the Executive Director of Sindh Bank Limited and had no official role in sanctioning of finance facilities. It was further submitted that though the referred finance facilities are outstanding yet are duly secured as collateral is sufficient. Learned counsel further contended that allegation, against the petitioner, is one under section 9 (a)(vi) of the Ordinance, which has been amended recently through National Accountability (Second Amendment) Ordinance, 2019 as 'explanation' was added to section 9(a)(vi) of the Ordinance, by virtue of which, there has to be corroborative evidence of accumulation of any monetary benefit or asset which is disproportionate to his known sources of income or which cannot be reasonably accounted for. It was submitted that though the amended Ordinance was promulgated on 27.12.2019 yet it covers the case of the petitioner inasmuch as it is trite law that explanatory statutes are retrospective.

4. Mirza Mahmood Ahmed, Advocate further contended that case, against the petitioner, falls under section 31-D of the Ordinance, as allegation is of the nature that finance advanced by the Bank is an imprudent loan. It was submitted that where such is the case, the Reference can only be filed by the Governor, State Bank of Pakistan after scrutiny of the case. Learned counsel further submitted that this Court, under Article 199 of the Constitution, has ample power to grant bail, as has been propounded by the superior courts including Supreme Court of Pakistan time and again. In support of contentions, learned counsel placed reliance on cases reported as ‘Kohinoor Sugar Mills Vs. Federation of Pakistan and others’ (2018 PTD 821), ‘The Commissioner of Income Tax, Lahore Vs. Messrs Chaudhry Dairies Ltd.’ (2019 PTD 452), ‘Commissioner Inland Revenue, RTO, Rawalpindi Vs. Messrs Trillium Pakistan Pvt. Ltd. Rawalpindi and others’ (2019 SCMR 1643), ‘M/s Dreamland Cinema, Multan Vs. Commissioner of Income Tax, Lahore’ (PLD 1977 Lahore 292) & ‘Syed Tahir Hussain and others Vs. Chairman, National Accountability Bureau and Another’ (2019 YLR 788), ‘Muhammad Saeed Mehdi Vs. The State and 2-others’ (2002 SCMR 282), ‘Shoaib Warsi and another Vs. Federation of Pakistan and others’ (PLD 2017 Sindh 243), ‘Engineer Raj Qamar-ul-Islam and others Vs. National Accountability Bureau through Chairman and others’ (2019 P Cr. LJ 582), ‘Manzoor and 4-others Vs. The State’ (PLD 1972 Supreme Court 81), ‘Saeed Ahmed Vs. The State’ (1996 SCMR 1132), ‘Islamuddin Shaik Vs. Federation of Pakistan and others’ (PLD 2001 Karachi 419), ‘Messrs Kaloodi International Pvt. Ltd and another Vs. Federation of Pakistan and others’ (PLD 2001 Karachi 311),

‘Kalb-e-Ali and 2-others Vs. Chairman, National Accountability Bureau and 4-others’ (2001 P. Cr. LJ 565), ‘Raheel Rasheed Vs. National Accountability Bureau, Islamabad through Chairman and 2-others’ (PLD 2005 Lahore 692), ‘Doulat Ali and another Vs. The State and another’ (2010 P Cr.LJ 1311), ‘Muhammad Nawaz Vs. The State through Chairman, NAB Islamabad and another’ (PLD 2008 Supreme Court 438), ‘Mansur-ul-Haque Vs. Government of Pakistan’ (PLD 2008 Supreme Court 166), ‘M. Anwar Saifullah Khan Vs. The State’ (PLD 2002 458), ‘Syed Ather Hussain and others Vs. Chairman, National Accountability Bureau and another’ (2019 YLR 788), ‘The State Vs. Anwar Saif Ullah Khan’ (PLD 2016 Supreme Court 276), ‘Khan Asfandiyar Wali and others Vs. Federation of Pakistan through Cabinet Division, Islamabad and others’ (PLD 2001 Supreme Court 607), ‘Himesh Khan Vs. The National Accountability Bureau (NAB), Lahore and others’ (2015 SCMR 1092), ‘Abdul Aziz Khan Niazi Vs. The State through Chairman, NAB, Islamabad’ (PLD 2003 Supreme Court 668), ‘Tallat Ishaq Vs. National Accountability Bureau through Chairman and others’ (PLD 2019 Supreme Court 112), ‘Mian Muhammad Sharif Vs. National Accountability Bureau and others’ (2019 P.Cr.LJ 302), ‘Ahsan Abbasi Vs. Chairman, NAB and 2-others’ (2011 P.Cr.LJ 1724), ‘Javed Khan Vs. Chairman, National Accountability Bureau, Islamabad and another’ (2014 P.Cr.LJ 1100), ‘Zakhim Khan Masood Vs. The State’ (1998 SCMR 1065), ‘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’ (2019 SCMR 332), unreported judgment of Hon’ble Supreme Court of Pakistan in Civil Petitions No.1917-L etc of

2019 in case titled ‘Fawad Hassa Fawad Vs. The Chairman, National Accountability Bureau etc.’, unreported judgment of this Court dated 26.11.2019 passed in W.P. No.3843-2019 in case titled ‘Shiekh Imran Ul Haque Vs. Federation of Pakistan etc.’ and order dated 18.09.2019 passed by Hon’ble Lahore High Court, Lahore in W.P. No.42682-2019 in case titled ‘Muhammad Sabtain Khan Vs. National Accountability Bureau etc.’.

5. Learned Deputy Prosecutor General, NAB *inter alia* contended that during course of investigation, it has been found that petitioner misused his authority in sanctioning finance facilities inasmuch as collateral tendered for finance facilities allowed to M/s Seracom Stocks and Capital Pvt. Ltd. and M/s Park View Stock and Capital Pvt. Ltd. is not adequate and there are not sufficient securities for effecting recovery. It was also submitted that instant case was included in the list of cases, which was investigated by Joint Investigation Team and the matter was referred to NAB, Rawalpindi on the orders of Supreme Court of Pakistan. It was contended that loans/finance facilities allowed to the entities in question were eventually used for raising capital of Summit Bank Limited in violation of Prudential Regulations and the laws of State Bank of Pakistan. It was contended that amendment made in section 9(a)(vi) of the Ordinance by way of ‘explanation’, is of no benefit to the petitioner inasmuch as it is prospective. Learned counsel further contended that under the facts and circumstances, the case against the petitioner, is one of misuse of authority as well as one of fraudulently causing loss to a financial institution under schedule to the Ordinance. Reliance was placed on case reported as ‘Syed Ali Raza and others Vs. Federation of Pakistan through Secretary, Ministry

of Law, Islamabad and others' (2019 YLR 129). Learned counsel further contended that investigation stands concluded and trial shall commence shortly after the Reference is re-filed.

6. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. As noted above, the petitioner was arrested; he was served the grounds of arrest as sanctioned by the Chairman, National Accountability Bureau. The said grounds of arrest read as follows:-

**Government of Pakistan
National Accountability Bureau (Rawalpindi)
Civic Centre, Sector G-6
Islamabad

**GROUND FOR ARREST OF ACCUSED MUHAMMAD BILAL
SHEIKH S/O LATE FAZAL DIN CNIC NO.42301-0741033-7,
DIRECTOR BOD, SINDH BANK LIMITED**

Subject: INVESTIGATION AGAINST THE HOLDERS OF PUBLIC OFFICE, LEGAL PERSONS AND OTHERS INVOLVED IN FAKE BANK ACCOUNTS SCAM REGARDING CORRUPTION AND CORRUPT PRACTICES IN EXTENDING FRAUDULENT LOANS BY SINDH BANK LIMITED TO BENAMI COMPANIES OF OMNI GROUP NAMELY M/S SERACOM STOCK & CAPITAL (PVT) LIMITED, M/S BUILDERS & DEVELOPERS (PVT) LIMITED AND M/S RUBICON BUILDERS AND DEVELOPERS (PVT) LIMITED AND OTHERS AND ITS SUBSEQUENT MISAPPROPRIATION.

1. It is to inform you **Muhammad Bilal Sheikh S/o Hakeem Fazal Din** having CNIC No.**42301-0741033-7, Director BOD, Sindh Bank Limited** R/o **House No.D-22, Navy Housing Society, Zamzama, Clifton, Karachi & House No.17-Z, Phase-III, Defence Housing Authority, Lahore**, that you are alleged to have committed offence of **corruption and corrupt practices** falling u/s 9 of National Accountability Ordinance, 1999 and the offence of Money Laundering as defined u/s 3 of Anti-Money Laundering Act, 2010 and sufficient material/ evidence is available to connect you with the commission of offence aforesaid.
2. You, being President of Sindh Bank Limited/Chairman Credit Committee, in connivance with co-accused Members of the Credit Committee, Sindh Bank Limited, OMNI Group and others, in the year 2014 illegally and dishonestly, by misuse of authority, approved fraudulent finance facility amounting to Rs.1,000

million in the name of a fake/benami company namely M/s Rubicon Builders & Developers (Pvt.) Limited, in violation of Prudential Regulations of State Bank of Pakistan (SBP) as well as credit policy of Sindh Bank Limited. The finance facility was subsequently misappropriated by the accused company and utilized for injection in equity of Summit Bank Limited. In this way, you dishonestly extended pecuniary advantage to the Summit Bank as well as abetted co-accused in commission of money laundering.

3. *You being President Sindh Bank Limited also misused your authority and favoured above said benami company i.e. M/s Rubicon Builders and Developers (Pvt.) Limited, by not classifying said finance facility despite the company failed to pay the mark up of said fraudulent finance facility on due dates, in gross violation of Prudential Regulations of State Bank of Pakistan and credit policy of Sindh Bank Limited, which was cleared after lapse of considerable time in February, 2018.*
4. *You being President Sind Bank Limited also abetted and aided, Omni Group in placement of laundered amount of Rs.1000 million, which was subsequently received from UAE, through settlement of above said finance facility, without inquiring about the sources of said funds, thereby also aided in the commission of the offence of Money Laundering as defined u/s 3 of Anti-Money Laundering Act, 2010.*
5. *You being Director BoD of Sindh Bank Limited, arranged and convened a meeting in your office on 02.05.2016 with Hussain Lawai, Ex-president Summit Bank Limited in the presence of Tariq Ahsan, the then President Sindh Bank Limited and Syed Nadeem Altaf, the then Head Credit Division wherein it was decided to extend fraudulent finance facility for meeting capital requirements of Summit Bank Limited against issuance of preference shares and accused Hussain Lawai was tasked to arrange party for finance facilities and subsequently, finance facility requests in the names of fake/benami companies namely M/s Seracom Stock & Capital (Pvt.) Limited and M/s Parkview Stock and Capital (Pvt.) Limited were received, processed, approved and disbursed, by misuse of authority, at Sindh Bank Limited.*
6. *You, being Director BoD of Sindh Bank Limited, also connived with accused Tariq Ahsan, the then, President Sindh Bank Limited/Chairman Credit Committee and accused Syed Nadeem Altaf, Head of Credits/Members Credit Committee, Sindh Bank Limited, in approval of fraudulent finance facilities to benami companies of OMNI Group namely M/s Parkview Stock and Capital (Pvt.) Limited and M/s Seracom Stock & Capital (Pvt.) Limited amounting to Rs.140 million and Rs.700 million, respectively, to meet the capital requirements of Summit Bank Limited in the garb of investment in trading of shares, thereby interfered in day to day operations of Sindh Bank Limited. Said finance facilities were also misappropriated and are still outstanding, resulting losses to the bank as well as Govt. exchequer.*
7. *You, being Ex-President and Director BoD, Sindh Bank Limited, knowingly and malafidely, assisted, abetted and conspired with accused persons for illegally extending above said fraudulent finance facilities and facilitated Summit Bank Limited, for meeting its capital requirements, in the names of above said benami companies, in gross violation of bank's credit policy and Prudential Regulation of State Bank of Pakistan, thereby illegally favoured OMNI Group and accused Hussain Lawai through above said benami companies, causing huge loss to the bank by committing the offence of corruption and corrupt practices as defined u/s 9(a)(vi)(xii) of NAO, 1999 and offence at serial 5 of schedule thereto and the offence of Money Laundering as defined u/s 3 of Anti-Money Laundering Act, 2010.*

8. *That apart from above, following grounds are also available to arrest you:-*

- a. *Evidence collected so far, directly connects you with the commission of offence.*
- b. *That there is likelihood of destruction/disappearance of relevant evidence/record at you part.*
- c. *That incriminating evidence/material cannot be collected without your arrest.*
- d. *That there exist strong apprehension of your abscondence. |*

9. *In view of the above and in presence of sufficient grounds and incriminating evidence against you, the Chairman NAB issued Warrant of Arrest No.6(8)/2656/Dir CN Sectt. – NAB /2019 dated 10th July 2019, in compliance of which, you are hereby arrest in accordance with the law.*

Dated _____

Mubashir Karim
AD/Investigation Officer
IW, NAB Rawalpindi

8. In the Reference filed by the respondents, which has been returned, the role of petitioner is quite the same as mentioned in grounds of arrest. As is borne out from the arguments by learned counsel for the parties and the grounds of arrest, the case against the petitioner, is that while serving as President and Executive Director, Sindh Bank Pvt. Ltd., he sanctioned or influenced the sanctioning of finance facilities to M/s Rubicon Builders and Developers Pvt. Ltd., M/s Seracom Stocks and Capital Pvt. Ltd. and M/s Park View Stock and Capital Pvt. Ltd. The petitioner remained the President of Sindh Bank Limited from 2010 to 2015 and was serving as Executive Director since 2016 till time of arrest. As submitted by learned counsel for the petitioner and conceded by learned Additional Deputy Prosecutor General, NAB, the loan qua M/s Rubicon Builders and Developers Pvt. Ltd. stands adjusted and nothing is outstanding. In so far as finance facility to M/s Seracom Stocks and Capital Pvt. Ltd. is

concerned, the same was in the sum of Rs.700 million and approximately Rs.835 million is outstanding; the finance facility to M/s Park View Stock and Capital Pvt. Ltd. was in the sum of Rs.140 million while Rs.160 million is still outstanding.

9. One of the contentions of learned Deputy Prosecutor General, NAB was that finance facilities requested and sanctioned were used for raising capital of Summit Bank Limited. It is pertinent to observe that examination of Memorandum of Approval of Credit Committee dated 29.07.2016 shows it is specifically provided in the same that finance facility to M/s Seracom Stock and Capital Pvt. Ltd. was Rs.700 million and was for one year for the purchase of shares of Summit Bank Limited along with shares of other listed companies; no concealment was made in the facts and circumstances. Likewise, in the Memorandum of Approval of Credit Committee dated 28.11.2016 it is provided finance to M/s Park View Stock and Capital Pvt. Ltd., mentioned that finance is for purchase of shares of Summit Bank Limited along with other listed companies. In the said position, it cannot be said that any concealment of fact regarding utilization of finance was made by the borrowers.

10. It was contended during course of arguments that collateral is of less value and it does not cover the finance facility. It was also contended that valuator, who did valuation of mortgaged property, is also one of the accused and the collateral i.e. land mortgaged with the bank, for both the facilities, is of less value. Even, regarding utilization of finance facilities, it was argued is fraudulent as was used for raising capital of Summit Bank Limited. The facts and circumstances of the case are such that allegations

leveled by NAB tantamount the Finance to be Imprudent. Under section 31-D of the Ordinance, no investigation, inquiry or proceedings in respect of imprudent loans, defaulted loans or rescheduled loans shall be initiated or conducted by NAB against any person, company or financial institution without approval of Governor, State Bank of Pakistan. As noted above, two of the finance facilities mentioned above are in default, hence the case is one of defaulted loan and even imprudent loan, as the case of the prosecution is that collateral is not sufficient. In such circumstances, prima facie section 31-D of the Ordinance is attracted in the present case. There is no provision in the Ordinance which makes imprudent loan or defaulted loan as an offence, however, there is only an offence regarding willful default for which also the procedure is provided for initiation of inquiry/investigation. Section 31-D is a procedural provision and the only purpose for which it is present in the statute is that since the subject of grant of finance and default is highly specialized and technical, the regulator should be involved directly.

11. The fact that investigation/inquiry and even filing of Reference has not been routed through Governor, State Bank of Pakistan and section 31-D of the Ordinance has not been complied with, which prima facie should not have been done hence there is a procedural irregularity on part of respondents. The provision of section 31-D *ibid* is mandatory. Reliance is placed on a case reported as ‘Messrs Kaloodi International Pvt. Ltd and another Vs. Federation of Pakistan and others’ (PLD 2001 Karachi 311).

12. Learned Deputy Prosecutor General NAB placed reliance on a judgment of Hon’ble Sindh High Court reported as ‘Syed Ali Raza and

others Vs. Federation of Pakistan through Secretary, Ministry of Law, Islamabad and others' (2019 YLR 129), wherein in similar facts and circumstances, it was observed that case is one of misuse of authority. We do not concur with the reasoning of Hon'ble Sindh High Court as mentioned hereinabove, as there is no independent offence of imprudent loan or even a defaulted loan but it is only a procedural section; hence it is to be seen even where offence is under section 9 of the Ordinance, it could still attract section 31-D *ibid*, if circumstances so warrant.

13. It is stance of the petitioner that explanation added to section 9(a)(vi) of the Ordinance is attracted in the facts and circumstances of instant case as referred amendment takes effect retrospectively. To substantiate the referred argument, Mirza Mahmood Ahmad, Advocate Supreme Court placed reliance on cases reported as 'Kohinoor Sugar Mills Vs. Federation of Pakistan and others' (2018 PTD 821), 'The Commissioner of Income Tax, Lahore Vs. Messrs Chaudhry Dairies Ltd.' (2019 PTD 452), 'Commissioner Inland Revenue, RTO, Rawalpindi Vs. Messrs Trillium Pakistan Pvt. Ltd. Rawalpindi and others' (2019 SCMR 1643), 'M/s Dreamland Cinema, Multan Vs. Commissioner of Income Tax, Lahore' (PLD 1977 Lahore 292) & 'Syed Tahir Hussain and others Vs. Chairman, National Accountability Bureau and Another' (2019 YLR 788). The ratio of referred judgments is instructive, as it has been categorically held that where any explanation added is for clarification of the provision and shall take effect retrospectively. Even in the instant case, no new offence has been created but only misuse of authority has been explained in the following terms:-

“Explanation:- For the purposes of this clause nothing shall be construed as misuse of authority by a holder of public office unless there is corroborative evidence of accumulation of any monetary benefit or asset which is disproportionate to his known sources of income or which cannot be reasonably accounted for;”

The prosecution has not made out a case for disproportionate assets or accumulation of any monetary benefit in the Reference. Nowhere in the Reference, it has been mentioned that the authority was exercised for any monetary benefit or was done so to grant monetary benefit to another with the intention of doing so and in an unprofessional manner. Since nothing is on record regarding accumulation of monetary benefit on part of petitioner or his assets are disproportionate to his known sources of income or that cannot be reasonably accounted for, the case against the petitioner, is one of further inquiry.

14. In view of above discussion of law and facts, NAB failed to adhere to the provision of section 31-D of the Ordinance which are mandatory in nature as held in a case reported as ‘Qaloodi International Pvt. Ltd. Vs. Federation of Pakistan’ (PLD 2001 Karachi 311) supra and also no allegation has been leveled against him regarding obtaining any monetary benefit or accumulation of wealth disproportionate to his known sources of income.

15. The allegation, that offence at Sr. No.5 of the Schedule to the Ordinance, is not correct, as the said allegation is dependent on the principal offence provided in section 9 *ibid*. The Reference contains no such allegation as to attract the offence under section 10(b) of the Ordinance. Under the Ordinance, principal offences are provided in

section 9 of the Ordinance, whereas offences in the Schedule are ancillary and dependent on the principal offences.

16. The investigation stands concluded and further incarceration of petitioner is of no use. The trial is yet to commence and the conclusion of the same is a far cry. The Hon'ble Supreme Court of Pakistan, in a case reported as 'Manzoor and 4-others Vs. The State' (PLD 1972 Supreme Court 81), observed as follows: -

“It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run”.

17. For the above reasons, instant petition is allowed and the petitioner is admitted to bail after arrest, subject to furnishing bail bonds in the sum of Rupees ten million with one surety in the like amount to the satisfaction of Deputy Registrar (Judl.) of this Court. The petitioner shall also surrender his passport to the Deputy Registrar (Judl.) of this Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on _____

JUDGE

JUDGE

Approved for reporting

Zawar