

Form No: HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

W.P No. 1585 of 2021

Taha Raza

Versus

The State & others

W.P No. 1584 of 2021

Hussain Lawai

Versus

The State & others

W.P No. 1553 of 2021

Muhammad Umair

Versus

NAB, etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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08.06.2021

Syed Hamid Ali Shah, Advocate for the
petitioners / accused in W.P 1585/2021 &
W.P 1584/2021

Barrister Umer Aslam Khan, Advocate for
the petitioner / accused in W.P 1553/2021.

Barrister Rizwan Ahmed, learned Special
Prosecutor NAB.

TARIQ MEHMOOD JAHANGIRI, J.-

Through this single order, we intend to decide
the above three writ petitions as the same
have arisen out of NAB Reference No.02/2019.

2. The petitioners Taha Raza and Hussain
Lawai applied for their post arrest bail in this

Court vide Writ Petition No. 1545 of 2019, which was dismissed on 19.06.2019.

3. The petitioner Muhammad Umair filed writ petition No. 2162/2019 in this Court for bail after arrest, which was dismissed on 25.06.2019.

4. That all the three petitioners filed CPLAs for their bail after arrest in the Hon'ble Supreme Court of Pakistan, which were disposed of by the Hon'ble Supreme Court of Pakistan vide order dated 12.04.2021, which is reproduced as under:

"We noted that sufficient time has been lapsed since the arrest of the accused, it is expected that the learned High Court shall consider the cases of the petitioners on all grounds available to them under the law, including the grounds of hardship and medical, and shall proceed with the matter to decide the same expeditiously but not more than three months from date of filing of such applications/petitions.

These petitions are disposed of in the terms noted above."

5. 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 out of total 29 accounts, one account bearing No. 1-2-28-20620-714-139111 in the title of A-One International (sole proprietorship firm) reportedly 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 the opening of said account and handwriting expert's opinion was obtained, which confirmed the stance of Tariq Sultan that his signatures on the bank record were 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 change of the signatures other than CNIC and counter signed "know your client" (KYC). On the direction of Hussain Lawai/petitioner, who was the corporate head, Taha

Raza/petitioner, who was unit corporate head referred the documents to the Operations Manager and other officers of the branch with the remarks that documents of opening of bank account have been referred by the Petitioner/Hussain Lawai. The account belonged 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 06.03.2014 to 12.01.2015, an amount 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, 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.

6. It was also found that 15 different parties had paid huge amount including M/s Umair Associates, who has allegedly transacted Rs.58,12,00,000/- and the same was further transferred to different entities comprising of 13 different beneficiaries including M/s Umair Associates who received Rs.80,10,00,000/- being beneficiary.

7. Learned counsel for the petitioners contends that the petitioner Hussain lawai was arrested on 23.06.2018; Petitioner Taha Raza was arrested on 06.7.2018 and petitioner Muhammad Umair was arrested on 05.04.2019; the reference was filed against the petitioners after completion of investigation; the petitioners are no more required for the purpose of investigation; that incarcerating any petitioner behind the bars would not serve any useful purpose; the entire evidence is available with NAB authorities and there is no apprehension of tampering with the 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 accounts and under Prudential Regulations, the corporate head and the president have 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 76 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 the category of hardship. Whereas, the petitioner Muhammad Umair is innocent and has falsely been implicated in this case; he is just an office boy in M/s Umair Associates with reference to Omni Group managed by Younis Kidwai; that neither he has any relationship with the account referred by NAB, nor has ever gained any benefit from the said account and he was working in UAE having no nexus with the said account; that the petitioner is victim in this case and his name has been used by the Omni Group. Hence, the petitioners are entitled for grant of bail after arrest.

8. Conversely, learned Special Prosecutor, NAB contends that 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 have 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.

9. We have heard the arguments advanced by learned counsel for the petitioners, learned Special Prosecutor for NAB and perused the record with their able assistance.

10. Initially, the case was pending in the learned Special Court (offences in banks) Sindh, Karachi on 15.3.2019, the same was transferred to NAB Court and was treated as interim reference and numbered as Reference No.02/2019. Thereafter, the NAB filed a supplementary reference on 18.11.2019; there are 69 witnesses and the reference comprises of 72 volumes; statements of only three

witnesses have been recorded and there is no chance of conclusion of trial in the near future.

11. As far as petitioner/accused Taha Raza is concerned, he is behind the bars for the last about 03 years; he had a history of head on fall in Landhi jail. He fractured his shoulder and left knee appalled fracture during second week of October, 2018. He underwent surgery and surgical procedure was conducted. The petitioner was advised for continuation of treatment at Karachi but the same was denied despite the observation of the medical specialist of central Government Polyclinic Islamabad.

12. During the course of investigation, NAB has not collected any independent evidence. Against Taha Raza/petitioner there is statement of co-accused only and such statement is inadmissible under Article 38 of Qanun-e-Shahadat Order, 1984.

13. As far as petitioner/accused Hussain Lawai is concerned, it is an admitted fact that petitioner/accused is 76 years of age; he is behind the bars for the last about 03 years;

Reference No.13/2019 was filed on 13.07.2019 and the charge was framed on 10.08.2020 i.e after about one (01) year of the filing of reference; the petitioner/accused is suffering from multiple health issues; his X-ray & MRI reports show that he had vertebral body fracture with retropulsion of vertebral body into spinal cord, CT scan of chest, abdomen and pelvis show compression fracture of T 12 vertebral body.

14. The petitioner/accused had a fall in first week of March, suffered from acute pain and agony; learned Accountability Court passed orders to take the petitioner/accused to hospital, so he was taken to Pakistan Institute of Medical Sciences (PIMS) on 02.04.2021, where he was examined and the X-ray report shows that he has Orthopedic Fracture in the Spinal Cord.

15. The facility of MRI was not available in PIMS. Application was again filed before the learned Accountability Court for treatment in a private hospital where required facilities were available. The prayer was allowed and the petitioner/accused was taken to Shifa

International Hospital where the prognosis report revealed that petitioner required surgery (Decompression and spinal fixing). The X-ray and MRI reports show that the petitioner/accused had vertebral body fracture with retropulsion of vertebral body into spinal cord. CT Scan of chest, abdomen and pelvis show compression fracture of T-12 Vertebral body.

16. As far as petitioner/accused Muhammad Umair is concerned, he is behind the bars for last more than two years; prima facie no incriminating evidence is collected by the NAB against him; allegedly he was an office boy and someone has misused his credentials and opened an account in his name and all the allegations will be examined by the trial Court during the course of trial.

17. All the accused arrested in the case have been released on bail after arrest, hence the petitioners/accused are also entitled for grant of bail after arrest on the principle of consistency.

18. It is admitted at all ends that the co-accused placed at higher rung has been

released on bail, hence the present petitioners/accused are also entitled for grant of bail on the principle of consistency. Reliance is placed on a case titled as "**Ghulab Khan V. Chairman N.A.B and another**" (**2020 SCMR 285**). The same principle has been laid down in cases titled as "***Muhammad Daud and another V. The State and another***" (***2008 SCMR 173***), "***Sheraz V. The State***" (***2021 MLD 292***) and "***Muhammad Azam V. The State***" (***2008 SCMR 249***).

19. It has been held by the Hon'ble Supreme Court of Pakistan in case titled as "***Khawaja Anwer Majid Vs. National Accountability Bureau through Chairman NAB and another***" (**PLD 2020 SC 635**) that:

"Condition of the Petitioner, ever since the rejection of the previous bail application, has deteriorated alarmingly. Cardiac physicians have suggested surgery involving intensive procedure. Such procedure needs to be undertaken free from custodial stresses. Concession of bail was extended."

Reliance is also placed on cases **2017 SCMR 1194, 2002 SCMR 282** and **2016 SCMR 1225**.

20. As the entire case depends on documentary evidence, which has been collected by the NAB / Investigating Agency, in this regard guidance be taken from a case *titled as "Saeed Ahmed VS. The State" (1996 SCMR 1132)* that:

"The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. It has further been held that as there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution".

Reliance is also placed upon a case titled as *"Muhammad Shabbir V. The State and others"* (2020 YLR Note 22).

21. While allowing the bail after arrest of the accused facing trial in the NAB, Hon'ble Supreme Court of Pakistan in a recent judgment titled as ***"DINSHAW HOSHANG ANKLESARIA Vs. NATIONAL ACCOUNTABILITY BUREAU (NAB) THROUGH CHAIRMAN and others"*** **(2021 SCMR 699)** has held that:

"It has been brought to our notice that the petitioner was taken into custody on 23.04.2019 and since then he is behind the bars. Though Reference has been filed but there are 86 witnesses whose testimony is to be recorded before the Trial Court. Rest of the evidence is in the possession of the prosecution, which is in the documentary form and there is no likelihood of any tampering or manipulation. The petitioner has already suffered 20 months of incarceration without even commencement of trial, which clearly reflects that the conclusion of the same is not in sight in near future. Even otherwise, it has been informed that there are 27 accused in all and the majority of the same including the co-accused are enjoying liberty and free life."

22. It has been held by the Hon'ble Supreme Court of Pakistan in a judgment reported as **PLD 2019 SC 11** (***Talat Ishaq***

Vs. NAB) that:

(d) In an appropriate case through exercise of its jurisdiction under Article 199 of the Constitution a High Court may grant bail to an accused person arrested in connection with an offence under the National Accountability Ordinance, 1999 and section 9(b) of the said Ordinance does not affect the jurisdiction of a High Court conferred upon it by the Constitution. The constitutional jurisdiction of a High Court is, however, an extraordinary jurisdiction meant to be

exercised in extraordinary circumstances and not in run of the mill cases or as a matter of course.

(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.

23. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as ***"Muhammad Jahangir Badar Vs. The State and others"*** (PLD 2003 SC 525) that:

"There is no cavil with the proposition that the State machinery has a right- to arrest the culprits and put them to trial, for the purpose of establishing guilt against them but it has not been bestowed with an authority to play with the liberty and life of an accused under detention because no one can be allowed to remain in custody for an indefinite period without trial as it is a fundamental right of an accused that his case should be concluded as early as could be possible particularly in those cases where law has prescribed a period for the completion of the trial. As in the instant

case under section 16(a) of the Ordinance the Court is bound to dispose of the case within 30 days. It may be noted that inordinate delay in the prosecution case if not explained, can be considered a ground for bailing out an accused person depending on the nature and circumstances on account of which delay has been caused."

24. In the above case, the august Supreme Court after examining the earlier judgments held as follows:

"In the above noted case bail was granted to Zulfiqar Ali petitioner because he remained in custody for 27 months and the delay in the conclusion of trial was attributed to both the parties. Against the above prevailing consistent view only one exceptional principle can be pressed into service namely that if the trial of the case has commenced then instead of releasing the accused on bail direction should be made for expeditious disposal of the case by adopting certain modalities to ensure that the accused, is not detained further for an indefinite period. Reference in this behalf is made to the case of (i) Allah Ditta and others v. The State (1990 SCMR 307) and (ii) Iftikhar Ahmad v. The State (1990 SCMR 607)."

25. It has been held by the Hon'ble Supreme Court of Pakistan in a reported

judgment **2015 SCMR 1092** titled as ***"Himesh Khan Vs. The National Accountability Bureau (NAB), Lahore and others"*** that:

"The Court cannot ignore shocking delay in conclusion of the trial. In such circumstances, the accused cannot be left at the mercy of the prosecution to rot in jail. As the real beneficiaries were granted bail, it makes it a fit case for grant of bail to the Petitioner."

26. The Hon'ble Supreme Court of Pakistan has granted bails to the accused facing investigation / trial of NAB in the cases titled as ***"Muhammad Saeed Mehdi Vs. The State and 2 others"*** (2002 SCMR 282), ***"Himesh Khan Vs. The National Accountability Bureau (NAB), Lahore and others"*** (2015 SCMR 1092), ***"Ghulab Khan Vs. Chairman N.A.B and another"*** (2020 SCMR 285), ***"Khawaja Salman Rafique and another Vs. National Accountability Bureau through Chairman and others"*** (PLD 2020 SC 456), ***"Nazir Ahmed Shaikh and others Vs. National Accountability Bureau and others"*** (2020

SCMR 297), and "**Muhammad Jawed Hanif Khan and anothers Vs. National Accountability Bureau Sindh and others**" (2020 SCMR 185).

27. In the light of above law enunciated by the august Supreme Court of Pakistan, we are of the opinion that the petitioners are entitled to the relief, particularly in view of the principles and law laid down in the cases of **DINSHAW HOSHANG ANKLESARIA Vs. NATIONAL ACCOUNTABILITY BUREAU (NAB) THROUGH CHAIRMAN and others**" and "**Muhammad Jehangir Badar V. The State and others**" supra. The prosecution has not been able to satisfy us that the inordinate delay in conclusion of trial is not partly attributed to it.

28. It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds exist to disclose their complicity. The ultimate conviction and incarceration of a

guilty person can repair the wrong caused by a mistaken relief of bail after arrest 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. Reliance is placed on a case reported as **"Manzoor and 4 others Vs. The State" (PLD 1972 SC 81)"**.

29. It has been held in a case titled as **"Zaigham Ashraf v. The State and others" (2016 SCMR 18)** that:

"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy or causal manner as that will defeat the ends of justice because if the accused charge, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in jail without just cause and reasonable ground."

30. For what has been discussed above, all the three writ petitions are hereby **allowed** and the petitioners/accused are admitted to post arrest bail subject to furnishing of bail bonds in the sum of Rs. 10,00,000/- (Rupees One Million only) each with one surety each in the like amount to the satisfaction of the learned trial Court.

31. The above detailed reasons be read as part and parcel of our short orders of even date in all the three writ petitions, which is reproduced hereunder:

"For the reasons to be recorded later, the instant writ petition is allowed and the petitioner is enlarged on bail in Reference No. 2/2019 subject to furnishing bail bonds in the sum of Rs. 10,00,000/- (Rupees one million only) with one surety in the like amount to the satisfaction of the learned trial Court."

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE