

Form No: HCJD/C
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No.456 of 2022

Saif ur Rehman Khan
Vs.
Special Judge Accountability Court-I etc.

Petitioner by: Mr. Muhammad Ahsan Bhoon,
Advocate.

Respondents by: Sardar Muzaffar Ahmed Khan, Deputy
Prosecutor General NAB.
Syed Jamil ur Rehman, Assistant
Director/I.O. NAB.

Date of Decision: 05.04.2022

AAMER FAROOQ, J.- The petitioner (Saif ur Rehman Khan) seeks bail after arrest in Reference filed against him by National Accountability Bureau (NAB) which has not been numbered yet or taken up for proceedings.

2. The case of NAB against the petitioner is that he floated a Ponzi scheme by way of inviting investors from general public on social media in promise of hefty return and did not pay any profit or the principal investment amount. It is also the allegation that the scheme was floated and being run in violation of various laws of the country.

3. Learned counsel for the petitioner, *inter alia*, contended that the investigation against the petitioner stands concluded and

he is no more required for the same; that filing of the Reference in itself reflects the fact that the investigation stands concluded. It was contended that even otherwise the case against the petitioner is one of further inquiry inasmuch as the allegation is one of cheating public at large and the concept of cheating is defined in Section 415 PPC and in order to establish the same *actus reus and mens rea* is to be proved which is a matter for trial. He placed reliance on the judgment of the Hon'ble Supreme Court of Pakistan to show that in such facts and circumstances the petitioner is entitled to remedy of bail. Reliance was placed on the case titled *Dr. Waqar Hameed v. The State* (2020 SCMR 321) & *Rafiq Haji Usman v. Chairman NAB* (2015 SCMR 1575).

4. Learned Deputy Prosecutor General NAB, *inter alia*, contended that the scam involved sum of Rs.16.9 billion and there are more than 5800 claimants. It was contended that the Reference was sent by Securities and Exchange Commission of Pakistan (SECP) under Section 41B of The Securities and Exchange Commission of Pakistan Act, 1997 (the Act) as well as the Reference from State Bank of Pakistan. It was contended that the petitioner ran Ponzi scheme B4U group and the companies are not registered. It was contended that even otherwise law does not permit running such a scheme by inducing public to invest money for high returns.

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

6. The gist of prosecution's case against the petitioner has been mentioned hereinabove, therefore, need not be reproduced. The case against the petitioner is of Section 9(ix) and (x) of the National Accountability Ordinance, 1999. In case of Section 9(a)(ix) the offence is constituted if a person committed cheating as defined in Section 415 PPC and thereby dishonestly inducing members of the public to deliver any property including money or valuable security to any person and under Section 9(a)(x) *ibid* if commits the offence of criminal breach of trust as defined in Section 405 PPC with regard to any property including money or valuable security entrusted to him by members of the public at large. It is an admitted position that the petitioner invited investors but was also paying the money to his investors albeit it was all illegal. In such eventuality whether he acted dishonestly or had intention of depriving the investors from their principal amount is something to be determined at the stage of trial. Likewise, whether the offence in question constitutes one of breach of trust inasmuch as there was an entrustment by the public at large also needs to be examined during the course of trial. In light of the definition of criminal breach of trust as well as cheating as provided in Sections 405 and 415 PPC the question of dishonesty is to be established through evidence. Learned counsel for the petitioner, during the course of

arguments highlighted, in particular, illustration provided in paragraph (g) to Section 415 *ibid* which reads as follows:

“A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.”

7. Again the perusal of illustration shows that the question whether there was an intention to deprive the person of his property needs to be established through evidence. It was also agitated by the learned counsel for the petitioner that all the properties of the petitioner have been frozen which fact was acknowledged by the learned Deputy Prosecutor General NAB and in this behalf it was contended that 30 properties of the petitioner are available and have been secured including the bank accounts. It was also brought to the knowledge of the Court that the names of the petitioner and his family are on Exit Control List. This Court was apprised that the value of the properties in the name of petitioner including money in bank accounts are sufficient to meet the claims. In this behalf the present claims are

in sum of Rs.4 billion and the conservative value of assets is approximately the same.

8. In view of the above facts and circumstances, it is almost evident that the scheme was being run unlawfully by the petitioner and the alleged scam runs in billions; however, the question of illegality of the scheme is subject matter before the SECP in which the petitioner has already been penalized. As noted above, the investigation stands concluded and the prosecution still has to prove its case against the petitioner establishing the assertion made in the Reference which makes the case against him one of further inquiry. Moreover, the continuous incarceration of the petitioner shall not serve any purpose. It is trite law that the bail should not be refused as a matter of punishment and where a person is entitled to the relief ought to be granted. Reliance is placed on the case titled **Manzoor v. The State (PLD 1972 SC 81)**.

9. For the above reasons, the instant petition is allowed and the petitioner is admitted to bail after arrest subject to furnishing bail bonds in the sum of Rs.1,000,000/- (rupees one million only) with one surety in the like amount to the satisfaction of the learned Trial Court. The petitioner shall also surrender his passport as a condition of bail. In case the NAB further wishes to confront any document to the petitioner in any new complaint or further has to investigate the matter they may summon him for

the said purpose and if he fails to do the needful an appropriate application for cancellation of bail may be agitated.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(AAMER FAROOQ)
JUDGE

M.NAVEED