

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 180/2022

Adam Amin Choudhry

Versus

Judge, Accountability Court No.III, etc.

Petitioners by : Mr Imran Shafiq, Advocate.
Mr Zahid Aman Khan, Advocate.
Mr Quasain Faisal Mufti, Advocate.
Mr Zahid Tanveer, Advocate.
Mr Waseem Bahadur Advocate.
Mr Majid Rashid Khan, Advocate.

Respondents by : Mr Irfan Boola, Special Prosecutor, NAB.
Mr Qazi Atif Basir, A.D/I.O, NAB.

Date of Hearing : 02-03-2022

Athar Minallah, C.J.- Through this order, we will decide the instant petition alongwith W.P.No.238/2022. Through these petitions, the petitioners seek post arrest bail.

2. Adam Amin Chaudhry son of Dr. Muhammad Amin (hereinafter referred to as "**Petitioner no.1**") and Faisal Ayub Khan (hereinafter referred to as "**Petitioner no.2**") (collectively they will be referred to as the "**Petitioners**") have invoked the jurisdiction of the Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"). They have challenged their arrest and

incarceration in accordance with the principles and law highlighted by the august Supreme Court in the case titled "*Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others*" [PLD 2001 SC 607].

3. It has been asserted that All Pakistan Projects (*hereinafter referred to as the "Firm"*) is a juridical person duly registered as a partnership entity under the Partnership Act, 1932. Petitioner no.1 is the Chief Executive Officer while Petitioner no.2 is one of the partners. According to the written report submitted on behalf of the National Accountability Bureau (*hereinafter referred to as the "Bureau"*), a reference under Section 41 (B) of the Securities and Exchange Commission of Pakistan Act, 1997 (*hereinafter referred to as the "Act of 1997"*) was received from the Securities and Exchange Commission of Pakistan (*hereinafter referred to as the "Commission"*) regarding alleged involvement of the Firm in illegal activities amounting to cheating public at large. The Bureau initiated inquiry under the National Accountability Ordinance, 1999 (*hereinafter referred to as the "Ordinance of 1999"*) and pursuant thereto the Petitioners were arrested. The Bureau has received 89 complaints so far allegedly involving Rs.61,768,613/- as amount received by the Petitioners. The assets and bank accounts of the Firm and operated in the names of the Petitioners have been identified. The Petitioners were subjected to investigation when they remained in custody of the Bureau during physical remand. The Petitioners were sent on judicial remand upon completion of the physical

remand. The Petitioners are, therefore, incarcerated in the prison without being investigated.

4. The learned counsels for the Petitioners and the learned Special Prosecutor of the Bureau have been heard at great length.

5. The Petitioners were arrested on 01-04-2021. They were subjected to investigation while they remained in the custody of the investigating officer for sixty one days pursuant to grant of physical remand by the competent court. The learned Accountability Court No.III, Islamabad refused to extend the concession of bail vide order, dated 21-12-2021. A plain reading of the aforementioned order shows that the learned trial court undertook deeper appreciation of the record and formed opinions at the bail stage, which, prima facie, do not appear to be in conformity with the principles of fair trial of an accused guaranteed under Article 10-A of the Constitution.

6. The Petitioners deny cheating public at large. Their assets and bank accounts have been identified by the Bureau. Admittedly, considerable funds are deposited in the bank accounts. The Bureau is empowered to freeze the assets and bank accounts in exercise of powers conferred under section 12 of the Ordinance of 1999. Moreover, the provisions of section 23 are also attracted.

7. The Bureau has so far received 89 complaints, involving an amount of Rs.62 million, after a public notice was published in the

daily newspapers. The Petitioners are not being investigated because they are no more on physical remand. Whether or not they had cheated public at large and mens rea existed, requires further probe. Their further incarceration would not serve any useful purpose and definitely amount to punishing them sans conviction. Their incarceration would not be in conformity with the principles of proportionality and reasonableness. It would also not be in consonance with the fundamental rights guaranteed under Articles 9 and 14 of the Constitution. The rights of the complainants, who have approached the Bureau, can be safeguarded at this stage while sufficient assets and bank accounts have been identified by the Bureau in order to secure the legitimate interests of the other investors.

8. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 SC 81] as follows:

"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".

9. For reasons recorded above, we are of the opinion that further incarceration of the Petitioners would be unreasonable, unnecessary and violative of their fundamental rights guaranteed

under the Constitution. We, therefore, **allow** both the petitions and direct release of the Petitioners by extending the concession of bail, subject to deposit of pay order(s) amounting to Rs.70 million (rupees seventy million) and one surety each to the satisfaction of the learned trial court. The pay order(s) shall be handed over by the learned trial court to the Investigating Officer of the Bureau. The latter shall be at liberty to impose such reasonable restrictions relating to the movement of the Petitioners as may be necessary so as to ensure their attendance for the purpose of further investigation or proceedings before the learned trial court, as the case may be.

Needless to mention that the observations recorded in this order are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

(SAMAN RAFAT IMTIAZ)
JUDGE

Luqman Khan/*