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IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Ghulam Rabbani
Mr. Justice Khalil-ur-Rehman Ramday

Constitution Petitions Nos. 20 to 27, 39 & 45 of 2009
Human Rights Cases Nos. 20424-P, 20982-P/2009, 19465-P/2010
And CMA 1478/2010

The Bank of Punjab
NIB Bank

...Petitioners

Versus

Haris Steel Industries (Pvt) Ltd & others	...Respondents (Const. P 20/09)
Sheikh Muhammad Afzal, etc.	...Respondents (Const. P 21/09)
Haris Afzal, etc.	...Respondents (Const. P 22/09)
Harnesh Khan & others.	...Respondents (Const. P 23/09)
Muhammad Zia-ul-Haq, etc.	...Respondents (Const. P 24/09)
Haroon Aziz, etc.	...Respondents (Const. P 25/09)
Muhammad Shoaib Qureshi, etc.	...Respondents (Const. P 26/09)
Aziz-ur-Rehman, etc.	...Respondents (Const. P 27/09)
Haris Steel Industries, Ltd.	...Respondents (Const. P. 39 & 45/09)

For the petitioner:
(in Const.Ps. 20-27 & 39/09)

Kh. Haris Ahmad, ASC
Mr. Arshad Ali Chaudhry, AOR

For the Petitioner
(in Const. P. 45/2009)

Nemo

For the Applicant
(in CMA 367 & 686/2010)

Mr. Mehmood A. Sheikh, ASC
with Mr. Harnesh Khan, accused

For respondents

(in Const.P.22/2010)

Mr. Ozair Karamat Bhandari, ASC
with Haris Afzal

(in Const.P.24/2010)

Zia-ul-Haq & Nauman Arif

(in Const.P.26/2010)

Mr. Ahmed Awais, ASC
with M. Shoaib Qureshi

(in Const.P.27/2010)

Aziz ul Hamid (in person)

For the NAB

Mian Muhammad Bashir, DPG
Raja Aamir Abbas, DPG
Dr. Asghar Rana, ADPG
Ch. Akhtar Ali, AOR
Mr. Rafat Rauf, Director

	Mr. Aftab Ahmed, A.D. /I.O.
For state Bank	Raja Abdul Ghafoor, ASC/AOR
For Foreign Office	Mr. Shair Bahadur Khan, Legal Advisor
For F.I.A.	Mr. Muhammad Azam Khan, Dir. Law
For M/O Interior	Mr. Ali Muhammad Malik, S.O (Law)
For Govt. of Punjab	Mr. Hassan Akhtar, Dy. Secretary

Date of hearing: 26.05.2009

ORDER

Iftikhar Muhammad Chaudhry, CJ-- Barrister Mehmood Sheikh, learned counsel appeared along with Hamesh Khan. Latter is present in Court alongwith his family members since morning. At the request of his counsel, his family members including wife, sister and other relatives were allowed to meet him in an independent room. Hamesh Khan confirms that since his arrival in Pakistan he is detained in Chamba House, Lahore; basic facilities of the life including the services of doctors are available to him; his wife has also been allowed to meet him. On our query his wife Mst. Muneera Arif, confirms that there is no restriction on her for taking children to meet the father, however, she on her own had not accompanied them to Chamba House. Hamesh Khan also states that he has not been harassed or tortured in any manner by the NAB Authorities. However, his counsel has moved an application requesting for meeting his client in absence of Staff of the NAB. We have gone through the relevant SOPs maintained for this purpose and noticed that such request cannot be allowed, however, subject to the conditions laid down therein he shall be allowed to meet the client accordingly. CMA 1478 of 2010 is disposed of.

2. Learned counsel for the parties placed on record minutes of the meeting of the Salvage Committee, same is ordered to be kept on record, however, in respect of item No.14 of the report, request is rejected.

3. Sheikh Haris s/o Sheikh Afzal states that his family is not being allowed to visit his father and medical facilities are also not being given to him. Inspector General as well as Superintendent, Prison are directed to deal with him strictly in accordance with the jail rules and if there is any complaint about his health, he should be provided medical facilities according to the rules.

4. Learned counsel appearing for Sheikh Muneer states that his remand has been completed and there is no incriminating evidence forthcoming against him. This aspect of the case cannot be adjudicated upon by this Court. If he has any grievance, he may approach the competent court of law. As far as Seth Nisar is concerned, no progress has been made for causing his arrest. Director Financial Crimes Investigation, NAB states that a progress report in this behalf shall be made within next 10 to 15 days, he, however states that in the meantime his assets valuing around Rs.20 crores have been frozen and that further steps shall be taken for taking possession of the property and that in that behalf application has been moved before the Accountability Court, which has not yet been disposed of. In view of the statement so made on behalf of the NAB, the Accountability Court is directed to dispose of the application expeditiously within a period of 10 days.

5. A report of progress in investigation of case has been submitted on behalf of the NAB. Learned counsel for the NAB states that investigation is going on in Hamesh Khan and necessary aspects of the case in this behalf shall be submitted later on. We have gone through the report and find that it is unsatisfactory particularly with reference to the steps of investigation, for which they were required to probe further into the matter in the light of the statements of Sheikh Afzal, Irfan Ali and others. Raja Aamir Abbas, DPG, present in Court, has discussed some of the aspects of the case. He is, however, directed to bring all these facts to the notice of the Chairman, NAB and inform us about the further

strategy, if can be adopted for better investigation of the case. If the Chairman feels, he can on his own attend the Court.

6. "It is already 2:45 p.m., case is adjourned for tomorrow i.e. 27.5.2010 at Sr. No.1. Director Financial Crimes Investigation is directed to take Hamesh Khan back to Lahore by today's evening flight in safe custody. He should come back and be present in the Court tomorrow when the hearing of the case will commence.

Chief Justice

Judge

Judge

Islamabad

26th May, 2010

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MR. JUSTICE GHULAM RABBANI
MR. JUSTICE KHALIL-UR-REHMAN RAMDAY

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(in Const. P. 27/2010)

Aziz ul Hamid (in person)

For the NAB

Mr. Naveed Ahsan, Chairman NAB
Mr. Tariq Khosa, Secretary,
Narcotics Control Division
Raja Aamir Abbas, DPG
Mr. Rafat Rauf, Director
Mr. Aftab Ahmed, A.D. / I.O.
Ch. Akhtar Ali, AOR

For state Bank

Raja Abdul Ghafoor, ASC/AOR

For Foreign Office

Mr. Shair Bahadur Khan, Legal Advisor

For F.I.A.

Mr. Muhammad Azam Khan, Dir, Law

For Govt. of Punjab

Mr. Hassan Akhtar, Dy. Secretary

Date of hearing:

27.05.2010

ORDER

These matters are before this Court in pursuance of the proceedings instituted by the Bank of Punjab (BoP) and others. The subject-matter relates to criminal misappropriation of huge amounts of BoP moneys allegedly committed by the functionaries of the BoP and/in collusion with its customers, including M/S Haris Steel Mills Pvt. Ltd and its partners, etc.

2. In response to the processes issued from time to time to procure the attendance of the accused, it was reported that the then President of the BoP, namely, Hamesh Khan had left the country in violation and in defiance of the orders passed by the Interior Ministry, placing his name on the Exit Control List (ECL), and restraining him from leaving the country. Similarly, one Sheikh Afzal and his family members, including his son Sheikh Haris had also left the country. The NAB authorities, however, commenced proceedings against them under the National Accountability Ordinance, 1999 (NAO 1999), by initiating the requisite investigations and inquiry. It was reported then that a

huge amount of about nine billion rupees had been misappropriated in just one of the transactions involving the said Haris Steel Mills. The NAB officials and the FIA, headed at that time by Mr. Tariq Khosa as its Director General, made concerted efforts, on the directions of this Court, to bring the absconding accused back to Pakistan to face proceedings before this Court as also before the NAB authorities.

3. It may be noticed here for the sake of record that at the very initial stages, i.e. in the year 2008 this Court, as it then stood constituted, was approached and an order had been secured for the transfer of the cases pending before the Lahore High Court to the Islamabad High Court. This aspect has got its own factual background, which need not be detailed at this stage but which would be mentioned in its requisite details when this matter is being finally disposed of by this Court. Besides the NAB and the FIA, the Foreign Office was also associated at a later stage, and these functionaries, in pursuance of the directions of the Court to achieve the object, adopted various strategies and ultimately succeeded in achieving the object. As a result thereof, all the concerned persons, including Hamesh Khan, a former President, BoP involved in the present proceedings as also in the proceedings pending before the NAB authorities/courts were brought back to Pakistan. Some of the respondents and the accused persons before the NAB courts entered into voluntary plea bargain and surrendered their movable and immovable properties to return the allegedly misappropriated amounts of

money of the BoP. The said exercise is still continuing and is presently passing through its different phases. The act of the NAB, the FIA and of the Foreign Office in bringing the said absconding accused back to the arms of law is really creditable as it is very rare that the availability of such like persons, once they had left the country, could ever be secured in such a short span of time. Naturally, this was the result of the cooperation, which was also extended to the Pakistani authorities by the respective governments of various foreign countries, including Malaysia, UAE and the USA from where they have been brought back to Pakistan. Progress of the cases, however, continued during this period. Meanwhile, after his arrest, Sheikh Afzal accused made disclosures before the NAB authorities, through a hand written statement mentioning how the allegedly misappropriated amounts were distributed by him to various prominent personalities named therein and stated also that he was ready to settle his accounts with the BoP. It is to be noted that Sheikh Afzal was also produced in this Court when he brought his statement in writing, which was placed on record.

4. The concerned authorities of the NAB have been submitting periodical progress reports. On 26.05.2010, a detailed report was filed, but the learned Prosecutor appearing on behalf of the NAB failed to convince the Court about the positive steps being taken in this behalf. We feel that there are, *prima facie*, reasons which have hindered them in conducting an across-the-board investigation of the case. This Court had, while deciding

the case of Dr. Mubashir Hasan v. Federation of Pakistan (PLD 2010 SC 265), for reasons mentioned therein suggested to the government for removal of the Chairman of the NAB. The statement of Sheikh Afzal also revealed that he had paid an amount of Rs.3,50,00,000/- to Mr. Babar Awan and other lawyers, according to him, for getting favourable decisions from the High Court and from this Court. It is also an admitted fact that the said Mr. Babar Awan is now the Law Minister of the country and according to the Rules of Business, the NAB is an attached department of the Law Ministry, though otherwise it is an independent institution, which is required to function independently to avoid injustice to any of the parties involved in the cases falling under the NAO, 1999. This could not have been the only reason. Few days ago, Mr. Irfan Qadir has been appointed as the Prosecutor General of the NAB against whom also it had been alleged by the above-mentioned Sheikh Afzal that he had been receiving huge amounts of money from him for the purpose of making payments to the lawyers whose names have been mentioned by him in the statement with assurances to him that favourable orders would be secured for them from the concerned courts including this Court. There are also available on record, statements of some other persons including Irfan Ali who is a witness of making of the said payments. Above all, no sooner Hamesh Khan was brought back to Pakistan, there were a number of rumours and speculations about the involvement of

some well-placed political and non-political influential personalities in the said Bank scam.

5. We do appreciate that despite all these odds, the concerned authorities have done their best but it has become necessary in the above-noticed circumstances that there should be a highly transparent inquiry/investigation to ensure that everyone involved in the case is dealt with according to law and no injustice is done to anyone. It is to be noted that Article 10-A of the Constitution ensures, as a fundamental right, a fair trial of the accused facing the charges. Needless to add that even in absence of this provision of the Constitution, the Courts in Pakistan had been putting their best efforts in order to ensure fair and independent trials, but after incorporation of this new provision in the Constitution, it has also become all the more important that the investigations and inquiries should be fully transparent. On having seen the report, which was submitted on 26.05.2010 and discussing various aspects of the matter when Hamesh Khan was produced before this Court, we realized that the Chairman NAB, in exercise of his powers, needed to personally look into the matter. Therefore, Raja Aamir Abbas, Deputy Prosecutor General, who has remained associated with these proceedings before this Court throughout and had held meetings with the officials of the Foreign Office, the NAB, the FIA and others from time to time, was asked to discuss this matter with the Chairman, and bring all these factors to his notice because in the interest of this nation and to save its wealth,

everyone, including the Supreme Court is bound to take necessary steps for the purpose of recovering moneys belonging to the public exchequer, whether inside or outside the country.

6. Today, he submitted a report wherein different teams have been constituted, comprising officers of the NAB, who according to the Chairman had a known reputation of honesty. Having gone through the said report, however, we noticed that there was no officer of a senior rank having requisite experience and expertise in the matter of investigations in these teams because conducting investigations of criminal cases itself is an independent subject and the ultimate fate of a criminal case also depends upon the same. As it is in our notice that Mr. Tariq Khosa, former D.G., FIA, who is now the Acting Secretary, Narcotics Division, Government of Pakistan, remained associated with this case for a considerable period of time and it was on account of the efforts made by him, in collaboration with the NAB and the FIA that he had successfully achieved the object by utilizing his official position as D.G. FIA, which is a renowned investigation agency of the country. He is one of the most senior and experienced police officers who has also been the Inspector General of Police. He now also has the honour of being a Member of the Executive Committee of INTERPOL. Raja Aamir Abbas, Deputy Prosecutor General was, therefore, asked to discuss this aspect of the matter also with the Chairman because this Court feels that in the absence of a highly skilled person, such a high profile case could not be investigated properly.

7. We are informed that a meeting was accordingly held by the Chairman, NAB with Mr. Tariq Khosa, Acting Secretary, Narcotics Control Division and minutes of the said meeting have been placed on record. Mr. Tariq Khosa also appeared along with the Chairman, NAB and submitted that subject to approval by the competent authority he would obey the judicial orders because being a public servant, he was in fact a servant of law.

8. Under section 27 read with section 28 of the NAO 1999, the Chairman NAB is empowered to appoint such officers and staff as he may consider necessary for the efficient performance of the functions of the NAB and exercise of the powers thereunder. It may, however, be added that the administration of justice and its quality is dependent mainly on the evidence collected for the purpose and its quality and in the absence of such an evidence, the dispensation of justice, would be rendered a mere farce. It is for this reason that, *inter alia*, the provisions of section 202 of the Code of Criminal Procedure authorize a Court, even of a Magistrate, what to talk of the apex Court of the country, to command ANY PERSON (not necessarily even a police officer) to hold a given investigation so that all available evidence could be collected through an honest, a skillful and a transparent investigation. Needless to add that on account of the provisions of section 1 and section 5 of the Code of Criminal Procedure and on account of the provisions of section 17 of the NAO, 1999, such-like provisions of the Cr.P.C. are applicable to the cases being dealt with under the NAO, 1999.

9. Be that as it may, since the Chairman, NAB in the present case, had invoked his own powers vesting in him under the provisions of sections 27 and 28 of the NAO, 1999 when the above-noticed peculiar facts had been brought to his notice at the instance of this Court, therefore, no reason exists for this Court, at least for the present, to exercise any of the powers which are available to this Court in the said connection.

10. In the light of the above, it is ordered that:

- (i) The Chairman NAB shall send a requisition along with the minutes of the meeting held as per the direction of this Court and a copy of this order, to the Secretary, Establishment for appointment of the said Mr. Tariq Khosa as the head of the investigation of the criminal cases of the BoP, not only to the extent of the case of Haris Steel Mills but also for all other matters of this financial scam, so that the competent authority may issue appropriate notification/order, allowing him to discharge functions as noted hereinbefore, besides performing his own duties as Acting Secretary, Narcotics Control Division, Government of Pakistan;
- (ii) The Chairman NAB, after issuance of the above notification by the competent authority shall hold a meeting with Mr. Tariq Khosa and other investigators who are already working on this case and who would now be so appointed as above-directed. Mr. Tariq Khosa and other officers, in consultation with the Chairman NAB, will take over the investigation of the said cases and proceed accordingly; and further that
- (iii) If Mr. Tariq Khosa considers it necessary to co-opt some other officers for his assistance, he will provide their names to the Chairman who shall send

request/requisition in the manner indicated hereinabove, for issuance of necessary notifications.

10. Adjourned to 11.06.2010, for submitting progress report by the Salvage Committee and the progress made by the investigation team.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad
May 27, 2010

✓ Subject: **MINUTES OF THE MEETING HELD AT CHAIRMAN,
NAB'S OFFICE DATED 27TH MAY, 2010**


1. During course of the hearing of the case titled as "Bank of Punjab V/s Haris Steel Mills" today on 27th May, 2010 the Honourable Supreme Court was of the opinion that some professional expert with the background of supervising investigations be engaged by the Chairman, NAB to assist him in digging out the criminalities and appropriate investigation in white collar crime with reference to Bank of Punjab case.


2. In pursuance of the above, a meeting was held in the office of Chairman, National Accountability Bureau between Mr. Nawid Ahsan, Chairman NAB and Mr. Tariq Khosa, Acting Secretary, Narcotics Control Division.

3. Mr. Tariq Khosa, who has remained former Director General, FIA and has remained associated with the case of Bank of Punjab at various stages on the direction of the Honourable Supreme Court and further he has the background in investigating agencies/police and also being a Member Executive Committee of INTERPOL, was considered for appointment as an expert to assist the Chairman NAB for investigating the case of Bank of

Punjab. Mr. Tariq Khosa expressed the view that he, being an employee of Federal Government (Secretary Narcotics Control), needs permission from the competent Government authorities in order to legally assist and render any kind of duties regarding the above subject. Mr. Tariq Khosa expressed his willingness to do the job in accordance with the law and the Chairman, NAB under the provisions of NAO, 1999 enjoys the authority to appoint any such like expert. Mr. Tariq Khosa also suggested that he may be allowed to select 2/3 suitable FIA/police officers after obtaining approval of the Government as well as concurrence of the concerned Officers, which will not take more than a couple of days.

4. In compliance with the orders of Honourable Supreme Court, the minutes are being placed before the Honourable Court with the request that the Government may be asked to approve the above arrangement.

 27/5/10
NAWID AHSAN
Chairman, NAB

 27/5/10
TARIQ KHOSA
Acting Secretary,
Narcotics Control Division