

**W.P. No.20793/2021**

**Mian Muhammad Shahbaz Sharif**

**NAB, etc.**

**22.04.2021 M/s. Azam Nazir Tarar, Muhammad Amjad Pervaiz, Attaullah Tarar, Khawaja Mohsin Abbas, Muhammad Nawaz Chaudhry, Zahir Abbas, Khawar Ikram Bhatti, Muhammad Nasir Chohan, Anwaar Hussain, Mian Naseem Saqlain and Muhammad Adil Chattha, Advocates for the petitioner. Syed Faisal Raza Bukhari, Barrister Usman G. Rashid Cheema & Mr. Naeem Tariq Sanghera, Special Prosecutors with Aftab Ahmad, Additional Director & Hamid Javaid, Assistant Director, for NAB.**

This Full Bench constituted, under Rule (5) Chapter 4, Part-H of High Court Rules and Orders Volume-V read with section 378 of Code of Criminal Procedure, by the Hon'ble Chief Justice as Referee Judges after when the Justice Sardar Muhammad Sarfraz Dogar and Justice Asjad Javaid Ghural could not reach on consensus in the matter of grant of post arrest bail to the petitioner as the senior member of the Division Bench granted the post arrest bail and the other member refused. Rule (5) of Chapter 4, Part-H of High Court Rules and Orders Volume-V and section 378 of Code of Criminal Procedure, 1860 are reproduced as under:-

**Rule (5) Chapter 4, Part-H of High Court Rules and Orders Volume-V**

*“When an appeal is heard by a Bench consisting of two Judges and the Judges composing the Bench being equally divided in opinion as to the decision on a point, state that point for reference to another Judge or Judges under clause 26 of the Letters Patent, the case shall be heard on that point by one or more Judges to be nominated by the Chief Justice. The Chief Justice may be such other Judge or one of such other Judges”.*

**378 Cr.P.C.**

*“Procedure in case of difference of opinion. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgement or order shall follow such opinion.”*

Since the hon’ble brother Judges did not formulate their issue wise difference of opinion, after perusal of the two orders passed in the matter of bail dated 14.04.2021 the following points of dissent are found by us:-

***a) Whether the petitioner is entitled to the grant of post arrest bail in ACRNo.22/2020 (State versus Mian Shahbaz Sharif, etc.) a reference under section 18(g) read with section 24(b) of the National Accountability Ordinance, 1999 pending in the Accountability Court No.2, Lahore on the allegation of assets beyond means under section 9(a),(iv),(v), and (xii) of NAO, 1999 and section 3 of Anti Money Laundering Act 2010, punishable under section 10 of NAO, 1999 and schedule thereto for earning assets beyond known source of income to the petitioner to the***

***extent of 7328 Millions approximately through Fictitious Telegraphic Transfer (FTT) in the name of the co-accused family members and Benamidars and others?***

***b) Whether the petitioner is entitled to the post arrest bail in the ACRNo.22/2020 on medical grounds?***

***c) Whether the petitioner is entitled to the post arrest bail in ACRNo.22/2020 on the ground of delay in conclusion of the trial?***

2. Before giving our opinion on the above three points of dissent it is appropriate to narrate some necessary facts.

3. Through this Constitutional petition, petitioner seeks bail after arrest in the Accountability Reference No. 22 of 20 made under Section 18(g) read with Section 24(b) of the National Accountability Ordinance, 1999 on the allegation that on receipt of report from the Financial Monitoring Unit (**FMU**), Government of Pakistan regarding suspicious and currency transactions (**STR/CTR**) in the bank accounts of Mian Muhammad Shahbaz Sharif/petitioner and his other family members and business entities as owned by them and also of establishing 9 industrial units thereby acquiring billions of rupees from the year 2008 till 2018. During the inquiry, it was found that assets of the petitioner and co-accused family members and benamidars exponentially increased in value 412 times from 1998 to 2018 as it

increased from Rs. 14.865 Million to Rs. 6112 Million without having the corresponding sources of income. The inquiry was upgraded into investigation conducted in respect of allegation of corruption and corrupt practices defined under Section 9(a) of the NAO, 1999 punishable under Section 10 of NAO, 1999 read with Sections 3 & 4 of Anti Money Laundering Act (AMLA) 2010 and the respective schedules thereto. During the investigation, it was revealed that petitioner remained a Member of National Assembly (1990-1993), Member of Provincial Assembly/Opposition Leader, Punjab (1993-1997), held of the office of the Chief Minister, Punjab (1997-1999) and then from 2008 to 2018 and in the year 2018 the petitioner was elected as MNA and presently is Opposition Leader in the National Assembly. Mst. Nusrat Shahbaz, his wife, Muhammad Hamza Shahbaz Sharif and Suleman Shahbaz Sharif, sons, Mrs. Rabia Imran Ali and Mrs. Javeria Ali, daughters and Mst. Tehmina Durrani, second wife of the petitioner, were all close relatives and benamidars of the petitioner. Besides, co-accused/Nisar Ahmed, an employee in the Chief Minister Secretariat, Ali Ahmed Khan, an employee in the Chief Minister Office and Syed Muhammad Tahir Naqvi, an employee of M/s Ramzan Sugar Mills Pvt. Ltd and frontman of the petitioner,

are also his benamidars. According to the allegations, accused/ Qasim Qayyum, an unregistered money changer, laundered the disproportionate funds of the petitioner and his family members. Co-accused/Rashid Karamat, Masroor Anwar, Muhammad Usman, Fazal Dad Abbasi and Muhammad Shoaib Qamar, the employees of Sharif Group of Companies also allegedly committed the predicated offences of money laundering and thereby actively aided and abetted the petitioner and his family members in the acquisition of assets disproportionate to their known source of income. Co-accused/Haroon Yousaf Aziz, son-in-law of the petitioner also committed the offence of money laundering who had falsely shown a loan extended to co-accused Suleman Shahbaz Sharif, without having proportionate source of income. Muhammad Mushtaq and Yasir Mushtaq, two private persons, in collusion with the petitioner, his two sons and others also laundered the disproportionate funds of the accused persons under the garb of fake loans. Said two persons became approver during the investigation. According to the NAB, the co-accused/Shahid Rafique and Aftab Mahmood, were the money changers at Lahore and U.K., respectively, who aided and abetted with the petitioner and his other family members who arranged Fictitious Telegraphic Transfer (FTT)

showing the funds transacted from U.K. whereas no such amount was ever sent by any genuine remitter but by petitioner and his family members provided cash from unknown sources for the purposes of money laundering. During the period 2008 to 2018, huge multifold and disproportionate increase in the assets of the petitioner and his co-accused family members swallowed to Rs. 6122 Million whereas the present value of the assets is Rs. 7328 Million during the period when he was also the Chief Minister, Punjab and had no corresponding loan and proportionate source of income. The petitioner and his family members established 13 companies in their own names and 4 benamidar concerns in the name of the employees/benamidars for the benefit of the petitioner and his co-accused family member. According to the NAB investigation, petitioner had claimed the business and agriculture income but it could not be substantiated and was found fake. In other words, the total value of disproportionate assets and expenditures of the accused persons comes to Rs. 6122 Million whereas corresponding source of income from known source of income were insufficient and that the present value of asset was Rs. 7328 Million because the value of the shares in the companies increased to 1206 Million. To explain, the

individual ownership, the detail of the assets of the petitioner and his family members is reflected from the following table:-

Sr.#	Disproportionate Assets Held	Amount(M)
1	In his own name (Mian Muhammad Shahbaz Sharif)	269.301
2	In the name of Wife Mrs. Nusrat Shahbaz Sharif	299.746
3	In the name of Son Muhammad Hamza Shahbaz Sharif	533.00
4	In the name of Son Suleman Shahbaz Sharif	2259.763
5	In the name of Daughter Mrs. Rabia Imran (Fake TTs)	57.517
6	In the name of Daughter Mrs. Javeria Ali (Fake TTs)	31.329
7	In the name of Benamidars (M/s Good Nature Trading Company Pvt. Ltd & M/s Unitas Steel Pvt.Ltd. )	1884.817
8	In the name of benamidars (M/s Nisar Trading Concern)	515.271
9	Undeclared / unjustified banking deposits through Benamidars / Benami Concerns	271.393
Disproportionate Assets acquired till the 30.06.2018		6,122.137
Current Value of Shares based on Net Assets of Companies		1206.000
Current Value of Disproportionate Assets		7,328.137

Details of Disproportionate assets held in the name of accused persons are enumerated below:

(a) **Immovable Assets:**

Sr.#	Description of Property	Ownership	Value (Rs.)
1	House No. 87 & 96, Block H, Model Town, Lahore Measuring 10 Kanal	Mrs. Nusrat Shahbaz Sharif	128,776,534
2	Nishat Lodges, DoongaGali, Abbottabad Measuring 9 Kanal 2.5 Marla	Mrs. Nusrat Shahbaz Sharif	57,804,850
3	House No. 8/7, Block A, Phase V, DHA, Lahore measuring 10 Marla	Mrs. TehminaDurrani	24,000,000
4	Plot No 8/8, Block A, Phase V, DHA, Lahore measuring 10 Marla	Mian Muhammad Shahbaz Sharif	14,500,000
5	Cottage No. 23 & Villa No. 19 at Whispering Pines, Mauza Makhnial Measuring 13.5 Marla	Mrs. TehminaDurrani	14,700,000
6	House No(s). 48-5L Judicial Employees Cooperative Society, Lahore measuring 06 Kanal, 09 Marla and 135-sq.Ft& House No.(s)61A,62,63,64,65,6	Muhammad Hamza Shahbaz Sharif	136,440,669

	8,69,70,71, Block K Johar Town, Lahore measuring 2 Kanal, 2 Marla		
7	Agricultural land measuring 391 Kanal & 12 Marla located at Mauza Dorahtta, TehsilBhowana Chiniot	Muhammad Hamza Shahbaz Sharif & Suleman Shahbaz	95,773,702
8	2x Foreign Apartment in UK	Mian Muhammad Shahbaz Sharif	147,863,088
Total			619.858 Million

(b) Movable Assets:

Sr. #	Name of Company	Date of Incorp.	Name of Shareholder	2017	Value in PKR
1	Ramzan Sugar Mills	4/8/1990	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u> <u>Mrs. Nusrat Shahbaz</u> <u>Mrs. Rabia Imran</u> <u>Mrs. Javeria Ali</u>	<u>4,617,000</u> <u>2,679,000</u> <u>6,441,000</u> <u>120,000</u> <u>120,000</u>	Inheritance
	European Asian Trading Corporation Pvt. Ltd	1/2/05	Suleman Shahbaz Sharif Mrs. Rabia Imran	10,000 10,000	100,000 100,000
3	Madni Trading Pvt. Ltd.	1/2/05	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u> <u>Mrs. Nusrat Shahbaz</u>	<u>1,000</u> <u>1,000</u> <u>800</u>	<u>10,000</u> <u>10,000</u> <u>8,000</u>
4	Sharif Feed Mills Pvt. Ltd.	29/6/05	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u>	<u>9,999,800</u> <u>10,000,000</u>	<u>99,998,000</u> <u>100,000,000</u>
5	Madina Construction Company Pvt. Ltd.	17/4/06	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u>	<u>1,000</u> <u>1,000</u>	<u>10,000</u> <u>10,000</u>
6	Sharif Poultry Farms Pvt. Ltd	10/4/07	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u> <u>Mrs. Nusrat Shahbaz</u> <u>Mrs. Rabia Imran</u>	<u>1,000</u> <u>1,000</u> <u>800</u> <u>1,000</u>	<u>10,000</u> <u>10,000</u> <u>8,000</u> <u>10,000</u>
7	Sharif Dairy Farms Pvt. Ltd	27/11/08	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u> <u>Mrs. Nusrat Shahbaz</u>	<u>1,000</u> <u>9,998,000</u> <u>800</u>	<u>10,000</u> <u>99,980,000</u> <u>8,000</u>
8	Ramzan Energy Limited	12/5/10	<u>Hamza Shahbaz Sharif</u> <u>Suleman Shahbaz Sharif</u> <u>Mrs. Nusrat</u>	<u>10,000</u> <u>4,010,020</u> <u>8,000</u>	<u>100,000</u> <u>40,100,200</u> <u>80,000</u>



			Shahbaz Sharif Feed Mills	5,289,677	52,896,770
9	Sharif Milk Products Pvt. Ltd.	07/09/11	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz	1,000 1,000 800	10,000 10,000 8,000
10	Crystal Plastic Pvt. Ltd.	02/07/12	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nustrat Shahbaz	1,957,500 1,957,500 434,800	19,575,000 19,575,000 4,348,000
11	Chiniot Power Ltd.	26/08/13	Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Zainab Suleman	170,863,600 98,000 1,000	1,708,636,000 980,000 10,000
12	AG Energy Consultant s Pvt. Ltd.	24/09/13	Suleman Shahbaz Sharif	51,000	510,000
13	Al-Arabia Sugar Mills Ltd	18/11/16	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Ramzan Sugar Mills Sharif Feed Mills	155,000 155,000 1,000 269,990 29,000	1,550,000 1,550,000 10,000 2,699,900 290,000
14	Unitas Power Ltd.	7/10/20 16	Hamza Shahbaz Sharif Suleman Shahbaz Sharif	175,000 175,000	1,750,000 1,750,000
					<b>2,157Mil lion</b>

**(C) Director’s Loan to the companies by accused  
Muhammad Hamza Sharif and Suleman Shahbaz Sharif**

Sr. No.	Companies Name	Director’s Loan
1	M/s Sharif Feed Mills Pvt. Ltd.	79,139,279
2	M/s Sharif Dairy Farms Pvt. Ltd.	358,319,955
3	M/s Chiniot Power Ltd.	5,000,000
4	M/s Ramzan Sugar Mills Ltd.	27,482,375
5	M/s Madni Trading Pvt. Ltd.	6,286,600
6	M/s Madina Construction Pvt. Ltd.	9,335,770
7	M/s Sharif Poultry Farms Pvt. Ltd.	8,188,087
8	M/s Sharif Milk Products Pvt. Ltd.	112,267,235
9	M/s Crystal Plastics Ltd.	2,745,154
10	M/s Al-Arabia Sugar Mills Ltd.	5,000,000
Total		613.764 Million

**(d) Benami assets held in the name of employees—Rs.  
2,400.088 Million**

- a. M/s Good Nature Trading Company Pvt. Ltd---Rs.1,804.527 Million
- b. M/s Unitas Steel Pvt. Ltd.----Rs. 81.050 Million
- c. M/s Nisar Trading Concern----Rs. 515.271 million

4. According to the said reference, property No. 96-H Model Town, Lahore was notified as Chief Minister Camp Office by the petitioner and, therefore, became direct beneficiary of the said property. Rs. 4.900 Million were transferred by Mrs. Nusrat Shahbaz Sharif, in the account of the petitioner bearing No. 1019-79001146-03, maintained at Habib Bank Limited, New Muslim Town Branch, Lahore to pay custom duty of Toyota Land Cruiser owned by the petitioner. Another amount of Rs. 2.450 Million was also transferred by her in the account of the petitioner.

5. Co-accused/ Muhammad Hamza Shahbaz Sharif, received 23 fake foreign remittances of Rs. 181.611 Million from UAE and U.K. which was used as a source of seed money into the business owned by the petitioner and his family members. He also used said fake remittances to purchase property No. 96-H Model Town, Lahore for the benefit of the petitioner. Likewise, Suleman Shahbaz Sharif/co-accused received 111 fake foreign remittances of Rs. 803.907 Million from fake/bogus foreign remittances in his bank accounts maintained at Silk Bank,

Faysal Bank, Bank Al-Falah and deposited 49 foreign pay orders amounting to Rs. 375.695 Million in his Account No. 1003371199 maintained at Bank Alfalah, Circular Road Branch, Lahore. He received Rs. 83.781 Million in his account at Silk Bank. He also received Rs. 647.954 Million fake foreign remittances with the aid and abetment of Muhammad Mushtaq, Yasir Mushtaq (approvers) and Syed Muhammad Tahir Naqvi (PO). Mrs. Rabia Imran Ali and Mrs. Javeria Ali, also aided and abetted the petitioner, their father, and received Rs. 57.516 Million and Rs. 31.329 Million fake foreign remittances for the benefit of the petitioner.

6. The petitioner alleged to have established a benami company M/s Good Nature Trading Company (Pvt.) Ltd and M/s Unitas Steel (Pvt.) Ltd in the year 2015-16 whereas Nisar Ahmed, Ali Ahmed and Syed Muhammad Tahir Naqvi, were shown its directors/shareholders having entire shareholding to be divided amongst them. Nisar Ahmed, was employed in relaxation of rules by the petitioner being the Chief Minister. Foreign remittances of Rs. 112.625 Million, Rs. 71.950 Million and Rs. 39.300 Million were received by him from UAE and U.K. through bank transactions whereas Nisar Ahmed, has no source of income. Likewise, M/s Waqar Trading Company was

the other benamidar. Business was run in the name of Syed Muhammad Tahir Naqvi who was employee of Ramzan Sugar Mills (Pvt.) Ltd.

7. The petitioner and the co-accused persons alleged to have received Rs. 11 Million from Muhammad Mushtaq, of Al-Rehman Gardens, Rs. 2 Million from Nasrullah Khan Warraich, of Al-Jalil Town, Rs. 2.5 Million from Muhammad Iqbal Sajid, of ISUZU Motors. Rs. 15 Million from Raja Ali Akbar of Ghouri Town, Rs. 7.5 Million from Malik Saif ul Malook Khokhar, Rs. 1 Million from Altaf Hussain, of Gohar Publishers, Rs. 10 Million from Arshad Javed Warraich, MPA, Sialkot, Rs. 1 Million from Muhammad Abdullah, brother of Asadullah Arain, ex-MPA and Rs. 15 Million from Nawabzada Tahir ul Mulk, under the garb of party funds in the account of M/s Nisar Trading Concern. The petitioner and the co-accused persons thereby acquired benefit of Rs. 65 Million through dishonest means in addition to Rs. 460.271 Million which were deposited in the benami account without disclosing the source.

8. The petitioner and the co-accused persons also alleged to have aided and abetted benamidar/Suleman Shahbaz Sharif, for receiving Rs. 603.064 Million from Muhammad Mushtaq, by concealing the true origin of the money.

9. According to the Reference filed by NAB, the foregoing facts and the evidence collected so far sufficiently establishes that the petitioner and the co-accused persons have acquired assets in their own names and in the name of benamidars/associates to the tune of Rs. 7328 Million disproportionate to their known source of income and for which they cannot reasonably account for. They were, therefore, involved in the commission of offence of corruption and corrupt practices as defined under Section 9(a)(iv)(v) and (xii) of NAO, 1999 read with Section 3 of the Anti Money Laundering Act (AMLA) 2010 punishable under Section 10 of NAO, 1999 read with Section 4 of Anti Money Laundering Act (AMLA) 2010 and schedules thereto.

10. Learned counsel for the petitioner contend that the petitioner was arrested on 28.09.2020 and only 10 prosecution witnesses out of total 110 prosecution witnesses could be recorded and at present the learned trial court is vacant. Place reliance upon **PLD 2002 SC 546**, titled "Ch. Zulfiqar Ali versus The State", **PLD 2019 SC 112** titled "Tallat Ishaq versus National Accountability Bureau through Chairman, and others" and the order passed in **W.P. No.7425/2021** (Hamza Shahbaz Sharif Vs. NAB, etc.) to support their arguments on the delay in conclusion of trial. Submit that no tangible

evidence is available against the petitioner as none of the PWs has ever stated that the money was sent or received by the petitioner directly for his own benefit. The petitioner has declared his assets in FBR at the relevant time, therefore, he cannot be asked to disclose other sources before the NAB. Place reliance upon **PLD 2020 Lah. 205** titled “Maryam Nawaz Sharif versus Chairman, NAB and 2 others”, **PLD 2020 Sindh 365(372)** titled “Agha Massihuddin Khan Durrani and others versus Chairman, National Accountability Bureau, Islamabad and others”, **PLD 2021 SC 1** titled “Justice Qazi Faez Isa versus The President of Pakistan and others”. They also argue that the allegation of benami transaction in respect of the co-accused person could not be proved on the basis that it lacked pre-requisites. Place reliance upon **PLD 2002 SC 408** titled “Mst.Zahida Sattar and others versus Federation of Pakistan and others”, **2003 P.Cr.L.J. 266** titled “Makhdoom Javed Hashmi versus The State and 2 others”, **2016 P.Cr.L.J. 1343** titled “Ghulam Sarwar Khan Lalwani versus The State”, **PLD 2017 Lah. 23** titled “Brig. (R)Imtiaz Ahmad versus The State”, **2011 SCMR 136** titled “Khalid Aziz versus The State”, **PLD 2011 SC 1144** titled “Ghani-ur-Rehman versus National Accountability Bureau and others”. They pray for the grant of

post arrest bail also on the ground that where there is dissent in grant of post arrest bail, case of further inquiry is made out.

11. Conversely, the learned Prosecutors appearing on behalf of the NAB submit that the allegation against the petitioner is that of assets beyond means and that in response to various call-up notices the co-accused persons did not appear. According to the allegation, in the year 1988-90, total declared assets of the petitioner and his entire family members were of rupees 2.1 million which increased to 14.8 million in 1998 through industrial business which he inherited but surprisingly when he became the Chief Minister Punjab in 1997 his assets started increasing and in the year 2018 it amounted to 7328 million which were declared by him. According to NAB, 96-H Model Town, which is comprised of 10-kanals was in the name of Nusrat Shahbaz, wife of the petitioner, purchased against 128.776 million. This is the place where the petitioner as Chief Minister made his Camp Office from 2010 to 2018. Their main emphasis is that all the properties were made after 2005 through Fictitious Telegraphic Transfer (FTT) and the money was received and not as a result of family settlement. Another property Nishat Lodges Donga Gali measuring 9-kanals 2.5-marlas was in the name of Nusrat Shahbaz which

was valued Rs.57.804 but she had no sources of income of her own. A 6-kanal property in LDA Judicial Colony belonged to Hamza Shahbaz son of the petitioner and another house measuring 10 marlas at DHA was gifted to Tehmina Durrani against 38.5 million. One property in Islamabad valuing Rs.14.773 million of said Tehmina Durrani belonged to the petitioner was gifted to her. 391 kanals 12 marlas agricultural land belonged to Hamza Shahbaz and Suleman Shahbaz, two sons of the petitioner is valuing Rs. 95.773. Further submit that 13 industrial units were established from these Fictitious Telegraphic Transfer (FTTs). According to the learned Prosecutors Ikaram ul Haq, Nadeem Saeed and Ghulam Rasool Gorski, recorded their statement under section 161 Cr.P.C. in which the family members of the petitioner were directly involved and since all were benamidars for the benefit of the petitioner, he is to be held responsible. The petitioner has not shown any business through which he could earn money Rs.26.9 million which is unaccounted money. They, therefore, pray for dismissal of the writ petition.

**12. Arguments heard. File perused.**

**13. Our findings on the point of dissent mentioned in clause "B and C" are as follows:-**



14. The petitioner according to paragraph “t” of the grounds of his bail petition has stated that he is 70 years old and has prolapsed disc at L4-5 level with Retrolisthesis, a cancer survivor and is known case of Adenocarcinoid Tumor of Appendix and status post right hemi colectomy since January 2003 when he underwent a surgery. His yearly follow up CT with Ardenal Gland, cancer marker Chromogranin A and B level are conducted to examine the possibility of recurrence of cancer which were delayed because of his confinement in jail. The grant of bail on medical grounds has been well explained by the apex Court by giving guidelines on the following judgments followed in grant of bail to Mian Muhammad Nawaz Sharif on medical grounds on 25.10.2019 in Writ Petition No. 63511 of 2019. MUHAMMAD ARSHAD versus THE STATE and another **(1997 SCMR 1275)** Malik MUHAMMAD YOUSAFULLAH KHAN versus THE STATE and another **(PLD 1995 Supreme Court 58)**, HANIF AHMED BHATTI versus FEDERATION OF PAKISTAN and others **(PLD 2005 Karachi 364)** IMTIAZ AHMED versus The STATE through Special Prosecutor, ANF **(2017 SCMR 1194)** and SHARJEEL INAM MEMON versus NATIONAL ACCOUNTABILITY BUREAU **(2018 SCMR 2023)**.

In none of them, medical ground can be accepted as claimed rather is required to be investigated by the Medical Board comprising of the experts in the subject to ascertain the type and severity of ailment and the availability of essential treatment inside jail. The file does not reflect any such report. Besides, the delay in conclusion of trial is a ground agitated also in clause "t" as the petitioner was arrested on 28.09.2020 and as many as 110 witnesses have been cited in the volumes record of 58 volumes which were made part of the reference. There is no report from the learned trial court about the delay in trial and vacancy in the Accountability Court, needless to mention that in the presence of decision made by the authorities that the vacant Accountability Courts will be filled up soon, we are not persuaded that it is a case of incarceration since statutory ground is not available to a person under National Accountability Ordinance, 1999, therefore, by referring the case of the brother of the petitioner namely, Mian Muhammad Nawaz Sharif versus NAB (W.P. No. 63511 of 2019 decided on 25.10.2019), we are of the considered and unanimous opinion that case of the petitioner for the grant of post arrest bail on medical ground as well as on delay in conclusion of the trial is not made out,

therefore, we side with our learned brother **Mr. Asjad Javed Ghural. J.**, on points b & c.

15. As far as point of dissent in clause “a” for the grant of bail on merits is concerned, it may be acknowledged that we have been enlightened by the valuable assistance rendered by the learned counsels for the petitioner as well as the learned Prosecutor for NAB and now well understand that the prosecution case is simply that petitioner being the public office holder has amassed money and had built up the assets in the name of his close relatives and the dependents as Beanamidars through fraudulent FTTs whereas the petitioner was the main beneficiary.

16. To further analyze the issue it is relevant to refer to the Dictionary meaning of the word “Corruption” which is an act done with an intent to give some advantage inconsistent with official duty and rights of others, and such act of official or fiduciary person who malafidely or wrongfully uses his situation to procure some benefits for himself or others contrary to his duty. The word corrupt practices are succession of acts of a similar kind of spoiled, tainted, vitiated, depraved, debased, morally degenerated acts.

A Benami Transaction is defined under Section 41 of the Transfer of Property Act, 1882, which is reproduced as under:-

**41. Transfer by ostensible owner.** Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

In such like situation, to prove the Benami Transaction certain facts are to be proved which are discussed in the case reported as DIN MUHAMMAD WAGAN versus Mst. RASHIDA KHATOON through Legal Heirs **(2002 CLC 1573)**. Burden is always upon a person who claims the Benami Transaction as held in Messrs SHALIMAR LTD., KARACHI versus RAISUDDIN SIDDIQUI and 3 others **(1979 CLC 338)**. Starting from judgment given in SREE MEENAKSHI MILLS LTD., MADURAI versus COMMISSIONER OF INCOME TAX, MADRAS **(PLD 1957 Supreme Court (Ind.) 188)** MUHAMMAD SAJJAD HUSSAIN versus MUHAMMAD ANWAR HUSSAIN **(1991 SCMR 703)** up till ABDUL MAJEED and others versus AMIR MUHAMMAD and others **(2005 SCMR 577)**, it has been held that in order to prove a Benami Transaction (i) Source of Income (ii) Custody of titled Document (iii) Possession of the Property (iv) Motive of the transaction. To prove this, the evidence should be confidence inspiring.

To establish a Benamidar, it must be shown that person is financially dependent upon his family members for his maintenance support and that he is the ostensible owner of the properties in the ownership of his family members. This is the most easy meaning traced from the common Dictionary meanings. Likewise, the Benamidar's status and responsibility have been explained in JANE MARGRETE WILLIAM versus ABDUL HAMID MIAN (1994 CLC 1437), in which it was held that where any property was purchased by a husband in the name of his wife, the presumption was that the beneficiary was benamidar and if he claimed it her own by alleging that husband made a gift, burden would lie upon him to establish.

17. In order to prove their case, the prosecution has given the details of the assets and the inadequate resources disclosed by the petitioner and his family members utilized for the assets. Admittedly, neither of these assets were in the name of the petitioner nor the FTTs had come in his personal account. To prove the allegation of the beneficiary, the NAB has demonstrated before this Court; for example, House No. 96-H Model Town, Lahore which became the office of the petitioner as the Chief Minister of Punjab for a good 9 years from 2009 to 2018 which is enough to establish that he had not only the possession

over this property but also had enjoyed the ownership right and, therefore, was its beneficiary. It is, however, not denied that this property is owned by his wife namely, Nusrat Shahbaz, living with him. As already discussed that for a benami transaction the possession of actual owner (the wife) cannot be construed as the exclusive possession of the husband but a joint possession. The prosecution case is that this property was built up from the said amounts of FTTs sent to the wife by the petitioner. However, the answer to the questions; i.e. during which time this amount was sent for the property purchased are missing which are needed to connect the petitioner to make a good prosecution case to withhold the concession of bail. Besides, the NAB has also alleged that certain amounts were given in the party funds by the party political supporters which were utilized for the personal benefit of the petitioner. Had it been the case, it would have become a dispute, at the most, between two individuals or a matter to be considered by the Election Commission of Pakistan for collecting party funds from certain undesirable persons by suggesting a money trail.

18. In the investigation report of the NAB, it is stated that the valuable resources to purchase or build up such assets could not be

provided by the petitioner despite various notices. In the table mentioned in paragraph No.3 of this order, the allegation is that petitioner had assets worth 269.301 Million in his name but its proof was not enclosed with the reference. No investigation was conducted to dig out the source of income of the petitioner. The other beneficiaries were either Hamza Shahbaz Sharif or Suleman Shahbaz Sharif. Likewise, in paragraph No.4 of this order the NAB case was narrated according to which the amount of Rs. 409 Million was given by Nusrat Shahbaz, to the petitioner to pay the custom duty of vehicle, and another amount of Rs. 2.45 Million was also transferred in his account. However, these assets may have been frozen by NAB, hence should have been secured from their further alienation. Besides, direct remittances in the account of the petitioner are missing. We are afraid that half-hearted attempt by the NAB will not absolve them from their responsibility to prove the case against the petitioner as the presumption of innocence always lies in favour of the accused person and the onus shifts only after initial discharge of burden by the prosecution as held in Asfand Yar Wali's case reported as **(PLD 2001 Supreme Court 607)**. Interestingly, the NAB has categorically admitted before us that petitioner is not alleged to have received any kickbacks or any

such ill-gotten money in return to a favour extended to someone to build up the assets in the name of his family. These detailed explanations were to be provided by the co-accused persons; i.e. the sons, the daughters and the wives of the petitioner but since we are dealing with the case of the petitioner perhaps this does not appear to be his sole responsibility.

19. In the case of Brig. (R) Imtiaz Ahmed, the prosecution produced the income tax and wealth tax documents of the accused (therein) but failed to find his any other source of income and the ingredients of Benami Transaction of his wife could not be established. Reliance is placed upon Brig. (R) IMTIAZ AHMAD versus The STATE (PLD 2017 Lahore 23) and order dated 26.06.2019 passed in Crl. Appeals No. 480, 481 and 482 of 2015 titled “National Accountability Bureau, Islamabad versus Brig. (Retd.) Imtiaz Ahmad, Mrs. Nasreen Imtiaz and Adnan A. Khawaja, respectively, upholding the said judgment. Hence, it is now law that transaction in the income tax return carries the presumption of truthfulness.

20. In Abdul Aleem Khan versus The State etc (W.P. No. 16630 of 2019) decided on 15.05.2019 the bail was granted by this Court also on the ground that the properties were declared in the income tax returns. Even the



Hon'ble Judge **(Asjad Javed Ghural)** developing a difference of opinion in the present case has already granted bail in W.P. No. 3623 of 2021 (Mazhar Hussain Asif versus National Accountability Bureau, etc) while referring to the source of money declared in the tax returns. Likewise, in IMRAN Ahmad Khan NIAZI versus MIAN MUHAMMAD NAWAZ SHARIF, PRIME MINISTER OF PAKISTAN/MEMBER NATIONAL ASSEMBLY, PRIME MINISTER'S HOUSE, ISLAMABAD and 9 others (PLD 2017 Supreme Court 265), it was also held that a married daughter (Maryam Nawaz) though living in a joint family in different houses in same compound, capable of surviving of her own cannot be called a dependent of father. The living together, therefore, is not a proof of dependability.

21. The case of the prosecution is also that being a public office holders the highest standard of morality is required to be exhibited since they play a role model for the general public and if a corrupt person is given the public seat of responsibility, the public confidence in a democratic system is bound to shatter. We fully subscribed to the argument that public office holder must command the respect, honour and dignity. In short, he should be 100 % Mr. Clean. This is of course a hallmark of democracy that whenever any

public figure faces any such allegation he is bound to suffer politically which is a defeat of its own kind but here we are conscious of our limitations as we must deal with the cases only in accordance with law and not otherwise. At times, we are also guided and supported by the principles of morality but when it comes to the question of liberty of an individual, we are bound to take into account the basic principles under which the bail can be granted or refused. We cannot, however, keep our eyes closed of the principles for the grant of post arrest bail which is whether the case of the petitioner calls for further inquiry into his guilt. In the absence of any property purchased or owned in the personal name of the petitioner and in the absence of direct proof that his family members were his dependents or vice versa and in the absence of direct proof that the money came through FTTs in his account as some crime proceed or money laundering, we cannot accept the prosecution case as a gospel truth. We are also mindful of the fact that we are deciding a bail matter and not the appeal so as to appraise the entire evidence which is yet to be produced. The prosecution has yet to establish its case before the trial court on the basis of 110 witnesses. There is a possibility that the petitioner may be convicted and equal is the chance that he may be acquitted. In the

event of acquittal the retribution of the time he spent behind the bar will not be possible. Reliance is placed upon a hallmark judgment in TARIQ BASHIR and 5 others versus THE STATE (PLD 1995 Supreme Court 34). While placing reliance upon Ghani-ur-Rehman versus National Accountability Bureau and others (PLD 2011 SC 1144), KHALID AZIZ versus THE STATE (2011 SCMR 136), Mst. ZAHIDA SATTAR and others versus FEDERATION OF PAKISTAN and others (PLD 2002 Supreme Court 408), MARYAM NAWAZ SHARIF versus CHAIRMAN, NAB and 2 others (PLD 2020 Lahore 205) and Agha MASSIHUDDIN KHAN DURRANI and others versus CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU, ISLAMABAD and others (PLD 2020 Sindh 365), we have reached to the conclusion that the case of the petitioner for the grant of post arrest bail is made out.

22. Besides, the difference of opinions between judges on bail matter would clearly show the existence of reasonable grounds to connect the petitioner with the crime as doubtful which would entitle him to the benefit of doubt; a factor essential for the grant of bail. This view was given in para 10 of the judgment of the case of Tariq Bashir reported as **(PLD 1995 Supreme Court 34)**. On the same point leave to appeal was

granted by the Supreme Court in MUHAMMAD SHAKIL versus SAKHI ZAMAN and 3 others (1999 SCMR 32), and later this case was disposed of without recalling the bail granting order on 28.02.2000 while deciding CrI. Appeal No. 192 of 1998. This view was lastly followed by a Full Bench of Karachi High Court in MUZAMMIL NIAZI and others versus THE STATE (PLD 2003 Karachi 526), and is the law which we also follow.

23. For the foregoing reasons, we have found ourselves in agreement with our learned **brother Sardar Muhammad Sarfraz Dogar, J.**, on the point “a” and hereby **admit the petitioner to post arrest bail** subject to his furnishing bail bonds in the sum of Rs. 50,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial court.

**(ALI BAQAR NAJAFI)**  
**JUDGE**

**(SYED SHAHBAZ ALI RIZVI)**  
**JUDGE**

**(AALIA NEELUM)**  
**JUDGE**

Approved for reporting

**JUDGE**

*\*Shahzad/Ifthikhar\**