

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Umar Ata Bandial  
Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Muhammad Ali Mazhar

**Civil Petitions No.5178, 5179 & 5180 of 2021.**

(Against the orders dated 26.08.2021 of the Islamabad High Court,  
Islamabad passed in W.Ps. No.1244, 1242 and 2862 of 2021)

Saif ur Rehman Khan (*in all cases*)

..... Petitioner(s)

**Versus**

Chairman, NAB, NAB Headquarters, Islamabad, etc.  
(*in CPs-5178 & 5180 of 2021*)  
SECP through its Chairman, etc. (*in CP-5179/2021*)

..... Respondent(s)

For the petitioner(s): Mr. Muhammad Latif Khan Khosa, Sr. ASC.  
Malik Javed Iqbal Wains, ASC.  
a/w Sai fur Rehman-petitioner.

For the NAB(s): Mr. Sattar Awan, Spl. Prosecutor.  
Irfan Naeem Mangi, D.G. NAB.  
Fayaz Ahmad Qureshi, D.G. H.Q.NAB.  
Sardar Muzaffar Ahmad Khan, DPGA.  
Syed Jamil-ur-Rehman, A.D.  
M. Adil Shehzad, A.D. NAB  
Shahid Islam, A.D. NAB  
Haider Azmat, A.D. NAB  
Qasim Hussain, ASI.  
M. Sadiq, H.C.  
Farrukh Abbas Shah, H.C.  
Abid Nazir, Constable  
Abrar Hussain Shah, Constable.

Date of hearing: 22.09.2021

**ORDER**

**Syed Mansoor Ali Shah, J.-** Briefly, the allegations against the petitioner are that by using the business name of B4U Global (changed to SR Group during the pendency of the inquiry) through social media platforms he induced and lured the members of the general public ("investors") to invest money in "B4U Global" promising them unrealistic profit of 7% to 20% per month (equal to 84% to 240% per year). According to the National Accountability Bureau ("NAB") the lucrative return on investment promised by B4U Global/ SR Group is a *ponzi* or a *pyramid scheme* to defraud and cheat the public at large and to deprive them of their money. As a result, the members of the general public

enticed by the *ponzi scheme* of the petitioner, deposited money into various accounts in the names of certain individuals, registered companies and unregistered businesses, all controlled and managed by the petitioner. On the inquiry conducted by the NAB, the petitioner has so far been found to have defrauded the public at large to the tune of Rs.10.86 billion.

2. On receipt of the complaints filed against petitioner, the NAB initiated proceedings under Section 9(a)(ix)(x) of the National Accountability Ordinance, 1999 ("NAB Ordinance"). The NAB issued a notice to the petitioner, the Chief Executive Officer of the B4U Group of companies, under Section 19 of the NAB Ordinance on 3 March 2021, requesting him to furnish certain information relating to the B4U Group and its associate companies. The petitioner did not provide the information sought for. The NAB then issued two call up notices to the petitioner requiring him to appear along with record of the B4U Group of companies, its subsidiary companies and the list of bank accounts maintained by him and the companies of B4U Group, in the NAB office at Islamabad on 12 March 2021 and 19 March 2021 respectively, to make his statement. The petitioner did not turn up before the NAB, rather challenged the legality of the said three notices in the Islamabad High Court by invoking its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution") through filing two writ petitions: one regarding the information requiring notice and the other regarding the call up notices. The petitioner also prayed for restraining the NAB from arresting him and for grant of bail before arrest, in the said petitions. The High Court issued notice to the NAB on the said writ petitions and meanwhile granted the relief of ad-interim bail before arrest to him, on 1 April 2021.

3. In the aforesaid writ petitions, the petitioner praying for quashing of the said notices *inter alia* pleaded that he owns private limited companies registered with the Securities and Exchange Commission of Pakistan ("SECP") under valid licenses/certificates; that the SECP has already issued him the show cause notice regarding the same matter of inviting investments, on 25 January 2021, under the relevant laws, namely, the Companies Act, 2017 ("Companies Act") and the Securities and Exchange Commission of Pakistan Act, 1997 ("SECP Act"), which proceedings are pending before the SECP, the competent authority; that the initiation of proceedings by the NAB amounts to

double jeopardy; and that the proceedings initiated by the NAB without a Reference from the SECP are also barred by the specific provisions of Section 41-B of the SECP Act.

4. During pendency of the said writ petitions, the proceedings initiated by the SECP were concluded vide orders dated 20.05.2021, and the SECP also made a Reference to the NAB, on 9 July 2021, for proceedings under the NAB Ordinance, in terms of Section 41-B of the SECP Act. Regarding this Reference, the petitioner filed a third writ petition in the High Court praying for quashing of the Reference, mainly on the grounds that the Reference has been sent by the SECP to the NAB to fill the lacuna and defeat the adjudication of his pending two writ petitions; that the proceedings by the NAB on the Reference would amount to double jeopardy and thus infringe his fundamental right guaranteed by Article 13 of the Constitution; and that only the Court of Sessions can take cognizance of any offence under the Companies Act, in terms of Section 37 of the SECP Act and Section 482 of the Companies Act.

5. The High Court dismissed the said three writ petitions of the petitioner, vide its short orders dated 26.08.2021, and also recalled the ad-interim bail before arrest granted to him. The petitioner, therefore, has approached this Court seeking leave to appeal against the said orders of the High Court and praying for the same reliefs that have been declined to him by the High Court.

6. The main stance of the petitioner before the High Court as well as before this Court is that he has not collected any amount for investment from any person; these are his private limited companies registered with the SECP that have received investment of money from the investors. Therefore, the matter falls within the exclusive domain of the SECP. We find the stance is totally misconceived. As per the material collected by the NAB so far, money from the investors has been received not only in the bank accounts of the registered companies but also in the personal accounts of the petitioner and his family members as well as of their unregistered companies, which does not fall within the domain of the SECP. The actions taken by the SECP under the Companies Act, in the present matter, relates to the alleged illegal acts of the registered companies and their directors, not to those alleged illegal acts that have

been done by the petitioner and his family members in their personal capacity.

7. Even as to registered companies, under Section 264 (3) of the Companies Act a person who forms a company for any fraudulent or unlawful purpose, or carries on unauthorized business, is liable to be proceeded against for any other action provided in any other law for the time being in force, in addition to the action taken under Subsection (1) of that Section. Likewise, under Section 500 of the Companies Act a person who acts as a director or officer of the company and is responsible for carrying on any business or any transaction which is ultra vires of the company is also personally liable for the liabilities and obligations arising out of such business or transaction. These provisions leave little doubt to find that there is no bar for the NAB to inquire into and investigate the commission of alleged offence under Section 9 of the NAB Ordinance by the petitioner and to proceed further against him under that Ordinance.

8. The bar of Section 41B of the SECP Act vehemently pleaded on behalf of the petitioner is not, in our opinion, attracted to the present matter. Section 41B relates to “any regulated activity, regulated securities activity, transaction, process or permission granted under this Act or any administered legislation”. The petitioner has failed to show that the allegations against him falls within the scope of any of the said matters. Similarly the bar of Section 37 of the SECP Act and Section 482 of the Companies Act pleaded by the petitioner is also not attracted to the investigation of the allegations against him by the NAB or taking cognizance of the alleged offences punishable under the NAB Ordinance by the Accountability Court, as the provisions of the said Sections of both the Acts relate to taking cognizance of any offence punishable under those Acts, not to the offences punishable under other laws.

9. It has also been argued on behalf of the petitioner that the provisions of the Companies Act and the SECP Act have the effect notwithstanding any other law for the time being in force and are to prevail over the provisions of the NAB Ordinance. We are of the opinion that the question of taking precedence of those Acts over the NAB Ordinance does not arise unless it is shown that the offences of cheating as defined in Section 415 of the PPC and thereby dishonestly inducing members of the public at large to deliver any property including money

or valuable security to any person and criminal breach of trust as defined in Section 405 of the PPC with regard to any property including money or valuable security entrusted by members of the public at large, as defined and made punishable under the NAB Ordinance, are also punishable under the Companies Act and the SECP Act.

10. The provisions of Section 496(1)(d) of the Companies Act referred to on behalf of the petitioner relate to any fraudulent scheme, artifice or practice that is employed in the course of business of the company. It is not the petitioner's case before us that it was the business of the petitioner's companies to invite and accept deposits from the public as those companies were admittedly not the banking companies; therefore, the alleged *Ponzi scheme* was not employed by the companies in the course of business of those companies. Therefore, we are of a *prima facie* view that the mischief addressed in the aforesaid laws has a limited scope restricted to invitation of deposits by companies, which can be both through fraud or by a *bonafide* mistake. The aforesaid laws in no way impede NAB to assume jurisdiction under section 9(a) (ix) & (x) of the NAB Ordinance. The NAB enjoys a totally different jurisdiction, which does not overlap with the Companies Act or SECP Act. The question of cheating the public at large and of breach of trust does not fall within the domain of Companies Act or SECP Act, but squarely falls under the NAB Ordinance. Therefore, the SECP sending a reference to the NAB or the NAB taking cognizance on the basis of the reference has little significance in the facts and circumstances of the case, when NAB in our tentative view could have taken cognizance on their own.

11. The provisions of Section 84 of the Companies Act referred to on behalf of the petitioner relate to mere inviting or accepting deposits from the public; they do not relate to commission of offence of cheating and criminal breach of trust in relation to the money deposited by the public. A company may invite and accept deposits from the public without any intention of committing, or actual commission of, cheating and criminal breach of trust in relation to the deposits of the public. In other words, if cheating and/or criminal breach of trust is not committed, or alleged to have committed, in inviting and accepting deposits, such act of a company and its officer in default is though still punishable under Section 84 of the Companies Act, but it is not punishable under the PPC or the NAB Ordinance. And, conversely the offences of cheating and criminal breach of trust in relation to inviting

and accepting deposits from the public, which are punishable under the PPC and the NAB Ordinance, are not punishable under Section 84 of Companies Act. There is thus no conflict between the provisions of Section 84 of the Companies Act and the provisions of Section 9 of the NAB Ordinance, and the question of giving precedence to one over the other does not arise.

12. Similarly, the ground agitated by the petitioner that in view of the proceedings conducted by the SECP, the second proceedings by the NAB regarding the same matter would amount to double jeopardy and thus infringe his fundamental right to protection against double punishment guaranteed by Article 13 of the Constitution, is also not legally tenable. Article 13(a) provides that no person shall be prosecuted or punished for the same offence more than once. The expressions "prosecuted" and "same offence" used in Article 13 are of vital significance in determining the scope of the protection guaranteed. The expression "prosecuted" means prosecuted on a charge of criminal nature before a Court of law; it does not include prosecution on the basis of breach of some code of conduct by a disciplinary authority or breach of some regulatory framework by an administrative authority. The expression "same offence" means offence constituted of the same ingredients and does not mean "same matter" or "same facts". The ingredients of the offence earlier charged and the offence subsequently charged should be the same, to attract the bar of Article 13, in the sense that the facts constituting the offence earlier charged were also sufficient to justify the conviction of the offence subsequently charged (See *Jehangir Badar v. Chairman, NAB 2004 SCMR 1632* and *Hoot Khan v. NIRC PLD 1977 Kar 145*). The SECP is not a court of law, nor are the offences under the Companies Act for which it has imposed penalties on the petitioner and his companies constituted, of the same ingredients as that of the offence defined in Section 9 of the NAB Ordinance, as explained above. The shield of Article 13 of the Constitution is therefore not available to the petitioner to prevent the proceedings against him under the NAB Ordinance.

13. In view of the above legal and factual position, it cannot be said that the proceedings being conducted by the NAB, in the present matter, against the petitioner are without lawful authority.

14. So far as the prayer of the petitioner for grant of bail before arrest is concerned, we find no merits in that also. The NAB has recorded the statements of many affectees of the alleged fraud of the petitioners under Section 161 of the Code of Criminal Procedure 1898 and collected the credit and debit record of the bank accounts operated by the petitioner and his family members as well as the tax record of the petitioner and his alleged shell companies, and the record of the properties in name of the petitioner. The NAB has found, during inquiry, that about 57 bank accounts have been used for collecting money from the investors: out of which 26 are in name of the petitioner, his wives and son, 18 are in the name of registered companies and 16 in the name of unregistered companies. The petitioner, his wives and son, being the authorized signatories, also operate the accounts in the name of registered and unregistered companies. We find that, in view of the said material collected by the NAB so far, the accusation against the petitioner is well founded, and his custody is also required to the NAB for the purpose of completing investigation of the case. The prayer of the petitioner for grant of bail before arrest is therefore not sustainable.

15. It may be pertinent to mention here that after arguing the case at length, the learned counsel for the petitioner drew our attention to the fact that the High Court has not yet given the detailed reasons in support of the impugned short orders. Although this Court ordinarily waits for the detailed reasons before deciding the appeals or the petitions for leave to appeals filed against the short orders passed by the High Courts, but the peculiar facts and circumstances of a case, as those of the present case, may justify departure from this rule of practice and propriety, which is neither a rule of law nor is an absolute one and, like most of the rules, admits exception(s). The present case involves a bail matter, which is usually considered as an urgent one; the arguments advanced by learned counsel for the parties mainly relates to the scope and applicability of certain legal provisions, and not to deep appraisal of the disputed facts and the evidence thereon; and we having heard the arguments of learned counsel for the parties in detail and perusing the material available on record with their able assistance, have reached a conclusion which is no different from the one arrived at by the High Court in its short orders. In these circumstances, we deem it unnecessary to wait for the detailed reasons to be given by the High Court in support of the impugned short orders before pronouncing the

decision we have made. It is not uncommon that this Court maintains the decisions of the High Courts, in several cases, for its own reasons different from that of the High Courts.

16. For all what has been discussed above, we find that the High Court has rightly dismissed the writ petitions filed by the petitioner. The present petitions are meritless; they are therefore dismissed and leave to appeal is declined.

17. These are the reasons for our short order dated 22.09.2021, operative part of which is reproduced here for ease of reference and completion of the record:

His [petitioner's] contentions on the alleged jurisdictional defects and the merits of the case have been heard and so have the submissions by the Special Prosecutor for NAB. Having examined both aspects of the case and for the reasons to be recorded later, the ad-interim bail before arrest granted to the petitioner on 30.08.2021 is hereby recalled and Civil petition No.5178 of 2021, Civil Petition No.5179 of 2021 and Civil Petition No.5180 of 2021 are dismissed.

Judge

Judge

Islamabad,  
22<sup>nd</sup> September, 2021.  
**Approved for reporting**  
*Sadaqat*

Judge