

IN THE HIGH COURT OF SINDH, KARACHI

Before Mr Justice Ahmed Ali M Shaikh
Mr. Justice Mohammad Karim Khan Agha

Petition No. and name of petitioner along with counsel.

1. C.P No D-1955 of 2017 Sharjeel Inam Memon
V Chairman NAB & another.
Sharjeel Inam Memon S/o Inam-ul-Haq (Petitioner No 1),
through M/s Aamir Raza Naqvi, Shahab Sarki & Afaq
Ahmed, Advocates
2. C.P. No. D-3397 of 2015 Zulfiqar Ali Shallwani V The NAB
through its Chairman
Zulfiqar Ali Shallwani S/o Pir Muhammad Shallwani
(Petitioner No 2),
through Mr. Aamir Raza Naqvi, Advocate
3. C.P. No. D-3133 of 2016 & D-7907 of 2015
Mansoor Ahmed Rajput V Director General NAB & another
Mansoor Ahmed Rajput S/o Ghulam Muhammad Rajput
(Petitioner No.3)
through Mr Zubair Ahmed Rajput, Advocate.
- 4 C P. No D-3151 of 2016 & D-3958 of 2015
Muhammad Yousuf Kaboro V Director General (Sindh)-NAB &
another
Muhammad Yousuf Kaboro S/o Fateh Muhammad Kaboro
(Petitioner No.4)
Through Mr Wasim Ahmed Kehar Advocate
- 5 C P No D-5378 of 2016 Sarang Latif V Federation of
Pakistan & others.
Sarang Latif S/o Ameer Bux Chandio (Petitioner No 5) :
through Mr. Manzoor Hussain Khoso, Advocate
- 6 C P. No D-5377 of 2016 Altaf Hussain Memon V
Federation Pakistan through Secretary Ministry of Interior &
others
Altaf Hussain Memon S/o Muhammad Ramzan
(Petitioner No.6).
through Mr. Manzoor Hussain Khoso, Advocate.
7. C P. No D-5668 of 2016 Inam Akbar & others V NAB
through its Chairman & others
1. Inam Akbar S/o Ghulam Akbar (Petitioner No.7),
2. Riaz Munir S/o Fakhur Munir (Petitioner No 8),
3. Muhammad Hanif S/o Muhammad Baslur (Petitioner No.9)
4. Asim Amir Khan Sikandar S/o Yaqoob Khan Senior
(Petitioner No 10).
through M/s Azhar Siddiqui, Saad Rasool S M Iqbal, Yasin
Azad Advocates.

8. C.P. No. D-5052 of 2016 Syed Masood Hashmi V. The Chairman NAB & another.
Syed Masood Hashmi S/o Syed Haseen Hashmi (Petitioner No 11).
through Syed Mahmood Alam Rizvi and Khalid Javed Khan, Advocates.
9. C.P. No D-3157 of 2016 Gulzar Ali V The State & another
Gulzar Ali S/o Muhammad Ali (Petitioner No.12)
through M/s. Raja Mir Muhammad and Muhammad Mansoor Mir, Advocates.
10. C.P. No. D-5951 of 2015 Salman Mansoor & another
V The State & another
Salman Mansoor S/o Mian Ghalib Mansoor (Petitioner No.13)
through M/s Raja Mir Muhammad and Muhammad Mansoor Mir, Advocates.
11. C.P. No. D-5379 of 2016 Umar Shahzad Khan V Federation Pakistan through Secretary Ministry of Interior & others
Umar Shahzad Khan S/o Nadir Khan (Petitioner No.14)
through Mr. Manzoor Hussain Khoso, Advocate
- 12 C P. No D-5393 of 2016 Syed Naveed V The State & another
Syed Naveed S/o Syed Majeed (Petitioner No 15)
through M/s. Mr Humul Zubedi , Advocate.

Counsel for the Respondents.

Mr. Mohmmmed Altaf, Special Prosecutor, NAB

Dates of Hearing: 23-08-2017, 12-09-2017, 13-09-2017,
21-09-2017, 05-10-2017, 09-10-2017,
11-10-2017, 18-10-2017 and 23-10-
2017

Date of Order: 25-10-2017

ORDER

Mohammed Karim Khan Aqha, J Through these petitions, the above named petitioners were granted ad interim pre arrest bail by this court vide various orders in connection with inquiries/investigations being conducted against them by the National Accountability Bureau (NAB) in relation to acts of corruption falling within the purview of the National Accountability Ordinance 1999 (NAO) which lead to NAB filing Reference **No.50/16 State v Sharjeel Inam Memon and**

others on 28-09-2016 against the petitioners in connection with a scam by officials of the Information and Archives Department Government of Sindh and various advertising agencies whereby the advertising agencies were appointed illegally and in violation of the relevant rules through a misuse of authority/failure to exercise authority by the Government officials who malafide, deliberately and connivance with each other awarded contracts to advertising agencies at exorbitant rates which unduly benefited the advertising agencies who are beneficiaries in this case who acted in connivance with the government officials which lead to a colossal loss of approximately **RS 5 Billion** to the state exchequer hence the aforesaid reference was filed against the petitioners by NAB under the NAO on the grounds of corruption and corrupt practices. By this common order we propose to dispose of the aforesaid petitions for the grant of pre arrest bail.

2. The facts of the case as per Reference No.50/2016 are that an investigation was conducted regarding corruption and corrupt practices in the advertisement of awareness campaigns carried out by the Sindh Information Department in electronic media i.e. TV Channels & FM Channels, in respect of the period **from July 2013 to June 2015**, which revealed that an amount of **Rs. 5,766,479,766/-** was paid during the said period by the said department to the advertising agencies for awareness campaigns as per the details that follows:-

Sr. #	Name of Agency	Amount Paid (Rs)
1	M/s. Evernew Concepts Pvt. Ltd	4,154,585,676
2	M/s Orient Communication Pvt Ltd	320,062,994
3	M/s Adarts Karachi Pvt. Ltd	317,338,970
4	M/s. Connect Marketing Pvt. Ltd.	310,474,132
5	M/s Value Added Marketing Service Pvt. Ltd.	205,827,587
6	M/s. Xnine Communications Pvt. Ltd	374,546,739
7	M/s. Insync Advertisement Pvt.Ltd.	83,643,668
	TOTAL	5,766,479,766

3. The investigation further reveals that pre-qualification of advertising agencies was conducted in violation of Sindh Public Procurement Rules, 2010 (the Rules). The accused No.1 Sharjeel Inam Memon, Ex-Minister Information, during his tenure from **31.05.2013 to 22.07.2015** illegally approved releasing of official advertisement in electronic media for awareness campaigns through these so called pre-qualified advertising agencies without due competition between these advertising agencies and contracts / release orders were issued to favorite advertising agencies at exorbitant rates even without confirming the market rates in respect of per minutes cost of FM & TV Channels as required in the Rules. Further, by misusing his authority, in some instances, the Accused No.1 approved directly the media plan submitted by the advertising agencies which was subsequently processed through the Accused No.2 to 7 who are officers of Sindh Information Department, a clear violation of the Rules.

4. The investigation also reveals that advertising agencies suppressed the invoices issued by the media channels which had showed the actual amounts, with ulterior motives and malafide intention in connivance with the officials of Sindh Information Department and claimed much higher amounts as compared to the amounts of invoices issued by the media channels. Whereas, as per well settled practice, advertising agencies are entitled to get only 15% agency commission against the total bill / invoice received from the media channel.

5. It is also apparent from the investigation that Accused No.2 Zulfiqar Ali Shallwani was posted as Secretary Information & Archives Department Government of Sindh from 19.09.2013 to 31.07.2015. He has, in his aforesaid capacity, misused his authority in Pre-qualification / selection process of advertising agencies by violating the Rules. Further, he deliberately and with malafide intention appointed junior officers at the post of Director Advertisement

of Information Department who acted on his illegal orders and with their active connivance with each other he got processed for approval advertisement / awareness campaign in electronic media i.e. TV & Radio which were carried out through so-called pre-qualified advertising agencies at exorbitant rates without competition and ascertaining market rates. Due to his misuse of authority national exchequer has suffered huge loss against payments of bills on exorbitant and unjustified rates.

6. As per investigation Accused No.3 Ms. Anita Balochi (Absconding and now proclaimed offender) was posted as Deputy Director, Information in BPS-18 from 12.09.2012 to 31.12.2013 and from 16.01.2014 to 12.02.2014. The accused No.4 Mansoor Ahmed Rajput was posted as Deputy Director, Information in BPS-18 from 18.02.2014 to 18.12.2014. Further, the Accused No.5 Muhammad Yousuf Kaboro was posted as Deputy Director Information in BPS-18 from 31.12.2013 to 16.01.2014 and 18.12.2014 to 17.12.2015. The Accused No.3 to 5 during the tenure of their respective periods, were allowed to work as Director Information (Advertisement) by Accused No.2, Zulfiqar Ali Shallwani. They are found to have misused their authority as they illegally issued release orders for media campaigns at exorbitant rates without following procurement rules and due competition between the so-called pre-qualified advertising agencies and without ascertaining the market rates of each FM Radio & TV channel and processed the bills for payment from AG Sindh office at exorbitant rates in connivance with Accused No.1 and 2 which resulted into heavy loss to the national exchequer.

7. The investigation also reveals that Accused No.6 Sarang Latif Chandio was posted as Information Officer (Billing) in Advertisement Section, Sindh Information Department in BPS-17 from 17.12.2012 to 16.09.2014. During this period he processed bills for media campaigns at exorbitant rates

without verification of transmission certificates and without ascertaining the market rates of each FM Radio & TV channel and processed the bills for payment from AG Sindh Office. He did not obtain the invoices of the media channel and got approval of over invoiced bogus bills in connivance with his superior officers / accused for payment which resulted into huge loss to national exchequer.

8. The investigation also reveals that Accused No.7 Altaf Hussain Memon is Section Officer (General) in BPS-17 since 22.10.2011. He was under direct command of accused No.2 and during the relevant period he signed the bills for media campaigns as DDO on his behalf. He used to sign on the bills for payment without verification and in violation of rules. He did not check the bills containing exorbitant amounts which were approved for payment which resulted into huge loss to national exchequer.

9. Per the investigation report Accused No.8 Inam Akbar was owner of advertising agency M/s. Evernew Concepts Pvt. Ltd (Evernew) and as such he has been **found overall beneficiary and key player** of the said advertising agency. He was the Director/share holder of the company having 218,078 shares as on 17.02.2012. Thereafter on 04.05.2013, the accused Inam Akbar with malafide intention shown in the documents transferred his shares to his employees and made them directors and shareholders, but actually he remained the owner / real beneficiary as he himself operated two accounts of the company i.e. Account No.00242002228303 maintained at Silk Bank DHA "Y" Block Branch Lahore. The amount received from Sindh Information Department has been found transferred to his personal as well as his other companies' accounts. He signed agreements with media channels regarding release of advertisements in media channels through his company namely M/s. Space Craft Pvt. Ltd. regarding advertisement of Sindh Information Department during the period under investigation. Moreover, he is the **major beneficiary** of the illegal proceeds of

Rs.2,223,198,092/- through excessive billing showing exorbitant rates of media channels in connivance with management, shareholders of Evernew and officers of Information Department.

10. The investigation further reveals that as per record of SECP, the Accused No.9 Riaz Munir is CEO of Evernew whereas Accused No.10 Fazal Mahmood (now deceased) was its Director who have actively connived with the Accused No.8 and as such are responsible for causing loss to national exchequer by excessive billing showing exorbitant rates of media channels. They alongwith Accused No.8, 11 and 12 are beneficiary of illegal, overpriced and exorbitantly invoiced receipts.

11. The investigation report also shows that Accused No.11 Muhammad Hanif was Company Secretary and Accused No.12 Asim Amir Khan Sikandar was Senior Executive Director of Evernew. Both the accused jointly operated the bank accounts of the company. Further, they actively connived with Accused No.8, 9 and 10 as such aided and abetted as well as assisted them in transferring the crime proceeds. Both accused are equally responsible for causing loss to the national exchequer. They alongwith accused No.8, 9 and 10 are beneficiary of illegal, overpriced and exorbitantly invoiced receipts.

12. The investigation further reveals that Accused No.13 Syed Masood Hashmi is CEO/Director/ overall owner of the advertising agency M/s. Orient Communication Pvt. Ltd (Orient). which received Rs.320 Million from Sindh Information Department against release of advertisement campaigns on Electronic Media (FM/TV). He obtained invoices on exorbitant rates from the media and same amount was claimed from the Sindh Information Department, but he got special discounts / credit notes in addition to 15% agency commission from the media and as such was major

beneficiary of exorbitant rates which resulted into loss to the national exchequer to the tune of Rs.75,830,568/-

13. As per investigation report Accused No.14 Gulzar Ali and Accused No.15 Salman Mansoor are both Directors of advertising agency M/s. Adart Karachi Pvt. Ltd. (Adart) which has received Rs.317 Million from Sindh Information Department, against release of advertisement campaigns on Electronic Media (FM). The Accused No.14 used to operate the account of the company and is its major shareholder, whereas the Accused No.15 being Director connived with the other accused which resulted in loss to the national exchequer to the tune of Rs.229,536,413/- by submitting bogus bills with fake transmission certificates and also billed excessively / exorbitantly.

14. It also transpires from investigation report that Accused No.16 Umar Shahzad is Proprietor of Daily Milan, and Accused No.17 is Proprietor of Media Power Link, who carried out advertisement campaigns in Electronic Media on behalf of accused No.14 and 15 and as such received amounts of Rs.124,031,247/- and Rs.121,955,632/- respectively in their accounts from Accused No.14. They have connived with accused No.14 and 15 in submission of fake and forged invoices and transmission certificates and also billed excessively / exorbitantly and as such they are jointly and severally liable with the other accused persons.

15. **This reference therefore concerns two categories of persons. Firstly there are the Government officials who allegedly misused/failed to exercise their authority (Sharjeel Inam Memon, Zulfikar Ali Shallwani, Ms Anita Baloch (absconding and proclaimed offender), Mansoor Ahmed Rajput, Muhammed Yousaf Kaboro, Sarang Latif Chandio and Altaf Hussain Memon) and secondly there are the advertising agencies and their representatives who were the beneficiaries of the deliberate and malafide connivance of the Government officials who misused/failed to exercise their**

authority (representatives of Evernew being Inam Akbar, Riaz Munir, Fazal Mahmood (deceased), Muhammed Hanif, Asim Ahmed Khan Sikander; Orient headed by Masood Hasami; representatives of Adart being Gulzar Ali and Salman Mansoor; proprietor of Daily Milan Umar Shehzad and proprietor of M/s Media Power Link (Media Power) Syed Naveed).

We will firstly deal with the case of the Government officials.

16. **Turning to the case of petitioner No.1 Sharjeel Inam Memon who was the Minister of Information and Archives at the time of the alleged offense.** Learned counsels for petitioner No.1 initially were of the view that the Rules did not apply in this case and even if they did they had been complied with later on however in their arguments they conceded that the Rules did apply; that petitioner No.1 was completely innocent of any wrong doing and had complied with all relevant rules and regulations in engaging the advertising agencies, agreeing their fees and sanctioning their fees; that the Government of Sindh (GOS) had to engage an advertising agency in order to get its adverts aired on the relevant T.V and radio channels and through an advertising agency the GOS was able to achieve the best rates and in this respect he compared the case with one of going to a travel agency in order to book an air ticket rather than going straight to an airline as the travel agency due to its own relationships with the airlines was able to secure a lower priced ticket; that each channel has its own rates in this unregulated industry and that NAB has not been able to show that such adverts were available at a lesser rate; there was no allegation of any kickback or financial gain; that he did not approve the media plan; that advertisements were made and pre qualification took place before the concerned advertising agency was appointed which was done in a transparent manner; that he acted under the advice of the Secretary Information and

Archives (petitioner No.2) and that the NAB had acted malafide by concealing certain documents which exonerated him and thus for all the above reasons petitioner No.1 was entitled to pre arrest bail. In support of his contentions he placed reliance on the following authorities **Abdul Aziz Khan Niazi V. The State through Chairman, NAB, Islamabad** (PLD 2003 SC 668), **Ramesh M. Udeshi V. The State** (2005 SCMR 648), **Mansur-ul-Haq V. Govt. of Pakistan** (PLD 2008 SC 166), **Khan Asfandyar Wali & others V. Federation of Pakistan through Cabinet Division, Islamabad & others** (PLD 2001 SC 607), **Rauf Bakhsh Kadri V. The State & others** (2003 MLD 777), **Waris Meah V. (1) The State (2) The State Bank of Pakistan** (PLD 1957 SC (Pak.) 157), **Tariq Saeed & another V. Chairman NAB & 2 others** (2005 YLR 445) (Lahore), **Sindh High Court Bar Association through Secretary & another V. Federation of Pakistan through Secretary, Ministry of Law & justice and others** (PLD 2009 SC 789), **The State V. M. Idress Ghauri & others** (2008 SCMR 1118), **Sanjay Chandra & others V. Central Bureau of Investigation & others** (2012 SCMR 1732) and **Syed Mushahid Shah & others V. Federal Investigation Agency & others** (2017 SCMR 1218).

17. Learned counsel for petitioner No.2 **Zulfiqar Ali Shallwani** who at the time of the offense was secretary **Information and Archives Department** submitted that the Rules had been followed and that every thing had been done in a transparent manner and that he had not committed any illegality. There was no evidence that the rates which the selected advertising agencies charged were exorbitant; that the bidding process was competitive and that there was no question of him sidelining certain senior officials of his department with his so "called" blue eyed boys so that the scam could be implemented. That for all the above reasons he was entitled to pre arrest bail. In support of his contentions he placed reliance on the same authorities cited by petitioner No.1.

18. **Learned counsel for petitioner No.3 Mansoor Ahmed Rajput who at the time of the offense was Deputy Director Information (Advertisement)** submitted that he was deputy director Information but was allowed by the Secretary to work as a Director who was aware that he was only at deputy level; that the allegations against him were only general in nature; that all the relevant Rules had been followed; the letters which he had sent to the advertisers were under the instructions of the competent authority who he confirmed was the Minister Information and Archives (petitioner No.1 Sharjeel Inam Memon); although he did not deny his signature on the documents he only wrote "for" the Director since the office of Director was vacant (although he knew Director Zeenat Jehan was available in the Ministry) and he was the senior most deputy director and to sign on behalf of the director was a routine manner; that he had no nexus with the advertising agencies and he has not made any financial gain and as such for all the above reasons he was entitled to pre arrest bail. In support of his contentions he placed reliance on **Nisar Ahmed Ansari v. Federation of Pakistan** (2016 PCr.LJ 761), **Abdul Aziz Khan Niazi v. State** (PLD 2003 SC 668) and **Hasan Jameel Ansari v. National Accountability Bureau (NAB)** (2012 YLR 2809).

19. **Learned counsel for petitioner No.4 Mohammed Yousuf Kaboro who at the time of the offense was Deputy Director Information (Advertisement)** made similar submissions to petitioner No.3 Mansoor Ahmed Rajput but additionally submitted that he did not sign any bills and that his signature on such bills were fake and as such his pre arrest bail should be confirmed.

20. **Learned counsel for petitioner No.5 Sarang Latif who at the time of the offense was Information Officer (billing) Information and Archives Department** submitted that the petitioner was innocent and that he had processed the bills in

good faith and as such his pre arrest bail should be confirmed.

21. **Learned counsel for petitioner No.6 Altaf Hussain Memon** who at the time of the offense was **Section officer (G) Information and Archives Department** submitted that he was completely innocent; that he had not signed any bills or sanctioned any payment; had not received any personal benefit and he had nothing to do with the advertising agencies and as such he was entitled to have his pre arrest bail confirmed.

Turning to the case of the advertising agencies who were the beneficiaries of the misuse of/failure to exercise authority by the Government officials which caused a colossal loss to the exchequer whose case was dealt with above.

22. **Learned counsel for petitioner No.7 Inam Akbar** who at the time of the offense allegedly had nothing to do with Evernew submitted that he was completely innocent of any wrong doing; that NAB had no jurisdiction to hear his case as the procedural formalities under S.18 NAO had not been correctly carried out. Namely that no complaint was made by an appropriate Government and nor was a complaint received. Even if a complaint had been received it did not relate to any offense under the NAO and instead related to non compliance with orders of the Supreme Court concerning persons posted in violation of services rules; that NAB had no power to arrest him once the reference had been filed and the trial court could not issue non bailable warrants against him; that he had left Evernew before the scam took place and therefore had nothing to do with the scam; that there was no uniform policy for price fixation at 15% or any other rate for advertising and that this was a completely unregulated industry and as such there was no question of his company charging exorbitant rates; that he by filing a petition before

the Lahore High Court had actually sought that Federal and provincial Governments ensured uniformity/transparency in pricing and as such was trying to remedy the situation; that it was incorrect to suggest that advertising companies were only paid on the basis of the length of the advert and how long it ran for since the advertising companies had to also be compensated for the creative design which they put into the adverts which fully justified Evernew's rates of billing; that the investigation was completed and he was no longer required any more and as such for all the above reasons his pre arrest bail should be confirmed. In support of his contentions he placed reliance on the **Media Commission Report dated 10-06-2013, Maqbool Ahmed Shaikh V The State** (2014 YLR 2644) **Anwar Ahmed Khan V State** (1996 SCMR 24) **Dr.Arsalan Iftikhar V Malik Riaz Hussain** (PLD 2012 SC 903) **Shoaib Warsi V Federation of Pakistan** (PLD 2017 Sindh 243), **Makhdoom Javed Hashmi V. The State (Lahore DB)** (2003 P.Cr.L.J. 266), **Muhammad Jahangir Badar V. The State & others (FB)** (PLD 2003 SC 525), **Muzammil Niazi V. The State (DB)** (PLD 2003 Karachi 526), **Haji Ghulam Ali V. The State (SC.FB)** (2003 SCMR 597), **Khan Haroon Resikh V. The State & 2 others (DB)** (PLD 2003 Lahore 517), **Chairman NAB, Islamabad V. Asif Baig Muhammad & others (SC.DB)** (2004 SCMR 91), **Muhammad Shafi Nirban V. National Accountability Bureau (Karachi DB)** (2007 P.Cr.L.J. 1282), **Muzaffar Ayaz Abid Baloch V. Regional National Accountability Bureau Sindh** (PLD 2007 Karachi (DB) 558), **Dr. Allah Nawaz A. Qazi V. The State** (2008 SCMR 196), **Fazal-e-Hadi V. NAB (Karachi DB)** (2008 P.Cr.L.J. 171), **Manzoor Hussain Shahani V. NAB** (PLD 2008 SC 324), **Farhad Sajid V. NAB (Peshawar DB)** (2008 P.Cr.L.J. 910), **Muhammad Tahir Siddiqui & another V. NAB (SC.FB)** (2003 SCMR 1085), **Sardar Muhammad Naseem V. Judge Accountability Court (DB)** (PLD 2006 Lahore 162), **Muhammad Rasheed Hassan V. The State** (PLD 2008 Karachi (DB) 146), **Arif Sharif V. Chairman NAB (SC.FB)** (2004 SCMR 1805), **Muhammad Iqbal Solangi V.**

The State (DB) (PLD 2004 Karachi 377), Farrukh Sayyar Khan V. The State & another (Lahore DB) (2005 MLD 519), Asif Ali Zardari V. Federation of Pakistan (SC.FB) (2005 SCMR 422), Muhammad Amin Qureshi & another V. The State (Karachi DB) (2007 P.Cr.L.J. 105), Hassan Raza V. The State (Karachi DB) (MLD 2003 729), Abdul Aziz Khan Niazi V. The State (FB) (PLD 2003 SC 66), The State V. Haji Kabeer Khan (FB) (PLD 2005 SC 364), Saeedullah Soomro & another V. The State (SC.DB) (2004 SCMR 660), Ayaz Younus V. The State (Karachi DB) (2006 MLD 452), Raja Muhammad Zarat Khan V. The State (PLD 2007 Karachi 27), Syed Ali Nawaz Shah & others V. The State & others (9FB) (PLD 2003 SC 837), Wakeeluddin & others V. The State (Karachi DB) (2007 P.Cr.L.J. 1515), Abdul Qadir Tawakkal V. Chairman NAB (Karachi DB) (2008 MLD 257), Fazal-e-Hadi V. NAB (Karachi DB) (NLR 2008 SD 459), Dr. Allah Nawaz A. Qazi V. The State (SC) (NLR 2008 CrLJ 526), Manzoor Hussain Shahani V. NAB (PLD 2008 SC 324), Farhad Sajid V. NAB (Peshawar DB) (2008 PCRLJ 910), Muhammad Rasheed Hassan V. The State (PLD 2008 Karachi (DB) 146), Anwarul Haq Qureshi V. NAB (2008 SCMR 1135), Gul Hassan Saand V. The State through NAB (PLD 2008 Karachi (DB) 234), Farooq Ahmed Hashmi V. NAB (Sindh) (Karachi DB) (2008 MLD 1419), Muhammad Nadeem Anwar & another V. NAB (PLD 2008 SC 645), Rizwan Ahmed V. NAB (PLD 2008 Lahore 381), Fazal-e-Hadi V. NAB & another (Karachi) (NLR 2008 CrLJ 919), Manzoor Hussain Shahani V. NAB (PLJ 2008 SC 344), Zakaullah Khan Sherwani V. The State (PLJ 2008 Lahore-DB 276), Makhdoom Javed Hashmi V. The State (Lahore DB) (2003 PCrLJ 266), Muhammad Jahangir Badar V. The State & others (FB) (PLD 2003 SC 525) and Muzammil Niazi V. The State (DB) (PLD 2003 Karachi 526).

23. Learned counsel for petitioner No.8 Riaz Munir who at the time of the offense was CEO of Evernew submitted that he was completely innocent of any wrong doing; that the

reference was not sustainable as it should have been filed against the company and not the Chief Executive; that he was a minority shareholder; that he was only CEO for a short period; that he had no power to operate the company's bank accounts or to sign cheques; he had no bank account and as such no money had been transferred into it; that the malafide of the NAB had been shown by the NAB in Para 9 of the reference whereby virtually the whole blame / responsibility / liability had been placed on petitioner No.7 (Inam Akbar) according to NAB's own reference and he was being needlessly roped in for malafide reasons; that the NAB should have constituted a JIT to investigate the matter; that NAB should have appointed forensic accountants to determine the precise amount of the loss; that this was a case of further inquiry and that for all the above reasons his pre arrest bail should be confirmed. In support of his contentions he placed reliance on the definition of "legal entity", **Superintendent of Police, FIA Lahore V Akhtar Hussain Bhutta** (PLD 1978 SC 193), **Qasim Shah v. State** (PLD 1991 SC 893), **Dr. Majid Naeem v. National Accountability Bureau** (PLD 2012 Lahore 293) and **Maqbool Ahmed Shaikh V The State** (YLR 2014 2644).

24. **Learned counsel for petitioner No.10 Asim Amir Khan Sikander who at the time of the offense was Senior Executive Director of Evernew** submitted that he was completely innocent of any wrong doing. He was simply a humble employee and he had been malafidely roped into the case by the NAB; his role was simply that of operating the company's accounts and being a part of the management; that he had nothing to do with the media plan; that he was not a beneficiary; that there was no material against him and for all the above reasons his pre arrest bail should be confirmed. In support of his contentions he placed reliance on **Maqbool Ahmed Lehri V NAB** (2016 SCMR 154).

25. **Learned counsel for petitioner No.9 Mohammed Hanif who at the time of the offense was Company Secretary of Evernew** submitted that he was sailing in the same boat as petitioner No.10 Asim Amir Khan Sikander and adopted his arguments and submitted that his pre arrest bail should also be confirmed

26. **Learned counsel for Petitioner No.11 Masood Hashmi who at the time of the offense was CEO of Orient** submitted that the petitioner had acted strictly in accordance with the law and market practice; that the industry is not regulated and it is up to the agency and the channel to fix the rate for the adverts and that he was entitled to keep any bulk discount which he acquired on account of placing the adverts and this bulk discount was exclusively his benefit which did not have to be passed on to the GOS and in this respect he referred to a letter dated 01-06-2016 from the Pakistan Broadcasters Association; he conceded that the petitioner had also billed for FM radio however this was a bona fide mistake and the amount had been refunded to the GOS and for all the above reasons he was entitled to pre arrest bail. In addition he was prepared to place a security amounting to RS 75,830,568 being his share of the liability.

27. **Learned counsel for petitioner No.13 Salman Mansoor who at the time of the offense was a Director of Adart** submitted that his company was only responsible for radio adverts; that he was only a minority shareholder and was not a Director at the time when the offense occurred and during most of the reference period he had been abroad and had no involvement in this scam; that he had not produced any fake or bogus transmission certificate as alleged and in fact the genuine transmission certificates had been deliberately concealed by the NAB; that Adart had not charged at an exorbitant rate as they had only charged 15% commission which they were entitled to charge; that it was a family company which had sub let the entire contract out to

other accused Umar Shahzade proprietor of Daily Milan and Syed Naveed proprietor of Media Power and if any wrong doing had been done the responsibility liability lay with the two sub contractors and thus for all the above reasons his bail should be confirmed.

28. **Learned counsel for petitioner No. 12 Gulzar Ali who at the time of the offense was a Director of Adart** adopted the arguments of petitioner No.13 Salman Mansoor. In addition he submitted that the company could only be named in the reference and not an individual Director and that the petitioner was an aged man of 77 years and for all the above reasons his bail should be confirmed.

29. **Learned counsel for petitioner No.14 Umer Shahzad** who at the time of the offense was proprietor of daily Milan submitted that he was completely innocent of any wrongdoing; that all his invoices were genuine; that S.161 Statement of Qazi Ahmed Mateen exonerated him and thus his pre arrest bail should be confirmed

30. **Learned counsel for petitioner No.15 Syed Naveed** who at the time of the offense was proprietor of Media Power submitted that he was completely innocent; that he had not submitted any fake bills or invoices; that no PW had implicated him in their S.161 statement and the S.161 statement of Qazi Ahmed Mateen exonerated him; that he had taken only 3% commission and that as admitted by NAB in its IR it was Adart who was to blame who charged the GOS inflated invoices well above the 3% which he had charged and as such his pre arrest bail should be confirmed.

31. **Learned senior Prosecutor for the NAB** opposed all the petitions for the grant of pre arrest bail and submitted that NAB had collected more than sufficient material in the shape of S.161 statements and other documentary evidence, which he briefly referred to, to show that all the petitioners

were connected to the offense for which they had been charged and as such their pre arrest bail should be recalled.

32. We have heard learned counsel for the parties at great length spread over a number of hearings and on request even permitted the exceptional step of allowing two counsels to make submissions on behalf of some of the petitioners despite this being a bail matter where deep appreciation of the material on record is not permitted (for example, Aamir Raza Naqvi and Shahab Sarki advocates were both permitted to argue on behalf of petitioner No.1, Syed Mahmood Alam Rizvi and Khalid Javed Khan, advocates were both permitted to argue on behalf of petitioner No.11 and Azhar Siddiqui and Saad Rasool advocates made lengthy submissions on behalf of petitioner No.7 Inam Akbar, however after they had completed their submissions another counsel Mr. Shabbir Shar advocate attempted to file his vakalanama on behalf of Mr. Inam Akbar. Since two senior and experienced counsels for Mr. Inam Akbar had already argued at length and they had concluded their arguments on the last date, keeping in view that this was, as mentioned above a bail matter where a deep appreciation of the material on record is not to be made we declined to take Mr. Shabbir Shah's vakalatnama on record and hear arguments from him on behalf of Mr. Inam Akbar especially as, judged from the conduct of Mr. Inam Akbar who remained absent after both his counsel were heard on unimpressive medical certificates and even when this order was announced, this appeared to be a deliberate delaying tactic only to prolong an already long outstanding pre arrest bail matter which being an extraordinary relief should be decided at the earliest without unnecessary delay.

33. We have also carefully reviewed the material on record, the relevant statutory law and the case law cited by the parties.

34. We would also like to make it clear that the findings in this order are only based on a tentative assessment of the material available on record and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

FINDINGS ON MALAFIDES (Government officials and Beneficiaries/advertising companies)

35. It is now well settled law that pre arrest bail is an extraordinary relief and is only available in cases where there has been malafide on the part of the complainant or the police. In this regard reference may be made to the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) which held at P. 431 that the following conditions need to be satisfied before pre arrest bail can be granted as set out below:

"9. Even since then, the said interpretation so made, the said powers so found and the parameters so prescribed, have been regularly and repeatedly coming up for scrutiny by the Superior Courts including this Court. But each time the matter was re-examined, the same was only re-affirmed. The said concept as it was initially propounded; as it developed and as the same stands today, may be summarized for the benefit of us all as under:--

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- (c) bail before arrest can not be granted unless the person seeking it satisfies the conditions specified subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

- (d) **not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;**
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, "in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose."(bold added)

36. The requirement of malafide in order to qualify for pre-arrest bail has recently been emphasized by the Hon'ble Supreme Court in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066) as under:-

"..... This Court has repeatedly declared that the concession of pre-arrest bail **cannot** be allowed to an accused person **unless** the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest **being actuated by mala fide** on the part of the complainant party or the local Police"

37. In this case petitioner No.1 Sharjeel Inam Memon (Minister for Information GOS), petitioner No.8 Riaz Munir, petitioner No.10, Asim Sikander Khan, petitioner No.9, Mohammed Hanif (all executives at Evernew) and petitioner No. 13 Salman Mansoor and petitioner No.14 Gulzar Ali (both Directors of Adart) have claimed malafides on the part of the NAB.

38. Petitioner No. 1 (Sharjeel Inam Memon) claimed that NAB had deliberately concealed documents which would have

exonerated him. We have seen these documents and do not consider that such documents exonerate petitioner No.1. Furthermore, there is no material to show that they were concealed by NAB as it appears that they were in the possession of the petitioner who for reasons best known to himself failed to disclose them to the NAB when he appeared to record his statement. This conduct alone prima facie casts doubt on the authenticity of these documents which the petitioner will be free to use in his defense at trial if so advised. Thus, in our view he has failed to make out a case of malafide against NAB.

39. Petitioner No.8 Riaz Munir, petitioner No.10 Asim Sikander Khan and petitioner No.9 Mohammed Hanif all of whom were a part of Evernew also claimed malafides on account that they were humble employees of Evernew and had been malafide roped into the case by NAB when the real and only culprit in Evernew was petitioner No.7 Inam Akbar as per Para 9 of the reference.

40. Petitioner No.10 Asim Sikander Khan and petitioner No.9 Mohammed Hanif in our view were not simply humble employees who had no idea about this scam and what was going on. Both of the above petitioners had the power to operate the bank Accounts of Evernew which they did so operate. They would have known that petitioner No.7 Inam Akbar had allegedly left the company however they still transferred funds from the information department received by Evernew into bank accounts which they knew belonged to companies of which Inam Akbar was a part **and even into his Inam Akbar's own personal account.** Likewise they knew that Inam Akbar despite allegedly having left the company was still operating Evernew's bank accounts but never raised any objections hence we find no malafide on the part of NAB in respect of Petitioner No.10 Asim Sikander Khan and petitioner No.9 Mohammed Hanif.

41. With regard to the case of Riaz Munir the CEO of Evernew in the sense that he was needlessly placed in the reference when NAB itself had virtually placed the whole responsibility/blame/liability on petitioner No.7 Inam Akbar by virtue of para 9 of its own reference. Having considered para 9 of the reference and the role and powers of petitioner No.8 Riaz Munir we find some substance in this submission as we will discuss later when we deal with the case of Riaz Munir as it appears that he was just a "dummy" CEO who had no power to operate bank accounts or do any other thing ordinarily expected of a CEO and was put in place by Inam Akbar petitioner No.7 to camouflage his own illegalities and as such NAB should have noticed this and thus the inclusion of petitioner No.8 (Riaz Munir) in the reference in our view has tinges of malafide associated with it based on the particular facts and circumstances of the case concerning petitioner No.8 Riaz Munir. In this regard we place reliance on the recent supreme court case of **Khalil Ahmed Soomro and others V State** (unreported dated 28-07-2017) where it was held as under in terms of proving malafides at the pre arrest bail stage (although this was not a NAB case we consider the finding relevant) at Para 5;

"Para 5. Although for grant of pre-arrest bail one of the pre-conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials **and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide.** In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years imprisonment. All those aspects if are combinably taken, may constitute element of mala fide" (bold added).

42. Petitioner No. 13 Salman Mansoor and petitioner No.14 Gulzar Ali (both Directors of Adart) claimed malafide on account of NAB concealing the genuine transmission certificates. We find this not to be the case and as such there is no substance to this allegation and no malafide on the part of NAB. The material on record as we will come to later clearly implicates both petitioner No. 13 Salman Mansoor and petitioner No.14 Gulzar Ali

43. Thus, since there has been no malafide on the part of the NAB in this case, apart from tinges in respect of petitioner No.8 Riaz Munir, the ad interim pre arrest bail of all the other above mentioned petitioners deserves to be recalled on this ground alone.

FINDINGS IN RESPECT OF GOVERNMENT OFFICIALS and some general points plead by some of the parties

Introduction.

White collar crimes

44. At the outset, as we have done before in other similar NAB cases, we observe that cases of white collar crime are generally of an intricate and complex nature and the whole transaction and each component part of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offense. However, notwithstanding this observation it is settled law that in cases of bail each of the accused needs in some way to be connected with the alleged offense through a specific role and in the case of non bailable offenses such as this there are reasonable grounds for believing that the accused is connected with the commission of the offense for which he is charged.

45. The current case, as with many NAB cases, is more a case of a joint criminal enterprise whereby every accused plays their role in order to achieve a criminal object all of which they were aware of and could not have been achieved without the active participation of all involved.

46. The accused in this case all claim that they are entirely innocent and not connected to the offence in any way. Without going into a deep appreciation of the material on record it would appear that through the investigation report and material collected by NAB which we have scanned that nearly all of the accused to a greater or lesser extent are connected to the commission of the alleged offence. It is more a question of degree.

47. With regard to the Government officials we have also taken into consideration that they are paid and employed to serve the State/Province out of tax payers money and have a special duty to protect, safe guard and ensure that the tax payers money is well spent and not squandered needlessly or misappropriated through corruption in performing their duties/functions

48. For offenses of corruption charged under the NAO (white collar crimes) the Hon'ble Supreme Court in the recent case of **Rai Mohammed Khan V NAB** (2017 SCMR P.1152) has emphasized that the **grant of bail in such cases must be construed strictly and rigidly** even if, as in that case referred to above, the amount involved was on the lesser side being only approx RS 12M (**as opposed to RS 5 Billion in this case**) in the following terms at P.1154 para 7:

“Under the principle of law and justice, each bail petition is to be decided on its own merits and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well being of the poor people,

is consistently embezzled / misappropriated at a large scale and why the majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. It has become the foremost obligation of each and every institution, including the Judicator, to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply the Anti-Corruption laws somewhat rigidly, once on fact the case is made out, at bail stage, against the accused person. Distinction, however, is to be drawn between the ordinary criminal cases and of corruption on the above analysis and grounds, while dealing with bail matter to an accused person, charged for such like crimes and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence."

49. Indeed, as in **Rai Mohammed Khan's case** (Supra) it is extremely tragic and rather ironic that the Information Department GOS is squandering billions of rupees and eating up billions of rupees in corruption associated with advertising campaigns on world water day, tinted mirrors and pressure horns, cultural festivals etc when such money could have been utilized to give genuine relief to the public on the ground in different parts of Sindh such as the provision of portable drinking water in rural areas, maintaining hospitals and schools etc which would have really improved the quality of life for many extremely poor people of this province and made an **actual positive and beneficial difference to their lives.**

Arrest

50. One point that has been raised by some counsels and through a large number of authorities concerns the power of arrest and the fact that the petitioners must receive notice before they can be arrested and that there must be some tangible material before an arrest can be made. We have not considered this issue as these petitions primarily concern pre arrest bail, and a similar question specifically concerning the

applicability of S.91 Cr.PC in NAB cases has already been decided by a Divisional Bench of this court in CPD No.2382/16 in the case of **Syed Sohail Hasan V DG NAB** dated 16-12-2016 (unreported) which we understand has not been appealed and has reached finality **and again similar petitions are pending** before another Divisional Bench of this court on the issue which is the appropriate Bench where this issue can be decided.

Potential discrimination in arrest of the accused who is the subject of inquiry/investigation or is ultimately named in a reference.

51. We are deeply concerned and troubled by the fact that both NAB and the Accountability Courts up and down the Country seem to be adopting different policies regarding arrest of persons named in inquiries, investigations and against whom a reference is filed in different provinces of the Country. For example, in Sindh most such persons tend to seek pre arrest bail and are arrested by the NAB if it is declined by the High Court even after the reference has been filed. However in other provinces especially, the Punjab and the Islamabad capital territory, it appears that few accused are arrested by NAB and are simply allowed to seek bond for appearance from the concerned Accountability Court at the time when the reference is filed. Such cases generally concern the so called big shots and other influential persons. Such persons are not even requested by NAB to be placed by the Ministry of Interior on the ECL or the concerned trial court and come and go as they please (and sometimes do not return and thereby abscond). Prima facie this pick and choose basis of arrest of accused amounts to discrimination which is contrary to Article 25 of the Constitution which provides as under.

"A.25(1) Equality of citizens. All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children" (bold added)

52. It is also contrary to the well settled principles of what amounts to discrimination in **I.A Sherwani's case** (1991 SCMR 1041).

53. Such pick and chose basis on whether a NAB accused is arrested is not only prima facie discriminatory but it will also undermine the public's confidence in the rule of law and good, fair and effective administration of justice especially as it appears that generally speaking the so called bigshots/influentials are not arrested and do not even need to apply for pre arrest bail whilst the relatively smaller fry are terrified of arrest on receipt of even a NAB call up notice and seek pre arrest bail which may be declined leading to their arrest.

54. Keeping in view this background NAB is expected to prepare and as far as possible adhere to (exceptional cases excluded) a uniform policy on arrest in NAB cases under S.24 (a) and (c) NAO and other applicable provisions of the NAO applicable to each province of the country which is equally applicable to all persons no matter however high or low their position in life may be and no matter which province they hail from.

55. Likewise the Administrative Judge of the Accountability Courts in Sindh shall also ensure that all Accountability Courts throughout Sindh **apply both a uniform and consistent policy strictly in accordance with the law** in respect of issuing non bailable warrants and arrest **after** a reference is filed against an accused who has not been arrested by the NAB, is not an absconder and is not on pre arrest bail keeping in view S. 9(b) NAO. Since NAO cases are non bailable much will depend on the final outcome of the

case which is similar to S.91 which is already pending before this court for determination as mentioned above.

56. **However the important point to be made is that all Accountability Courts through out the Country should have a consistent policy/approach on how to deal with such cases in accordance with law** once a reference has been filed and the time comes for the Accountability Court to summon the accused and the manner in which he is summoned keeping in view that under S.9 (b) NAO cases are non bailable. **The Accountability courts throughout the Country need to apply uniform and consistent policies in this respect strictly in accordance with the law** otherwise the perception of discriminatory treatment by the Accountability Courts where the reference is filed and the status of the accused may arise on arrest in NAB cases after the reference is filed which may undermine the public's confidence in the Accountability Courts. **By adopting a uniform policy throughout the Country in all Accountability Courts strictly in accordance with the law on this issue will only serve, in our view, to strengthen the public's confidence in the Country's judicial system and in particular its system of accountability where the issue of pick and choose and different treatment between big shots and small fry is a burning issue for the public.**

The Prosecution concealing favourable/exculpatory material from the accused.

57. Some of the petitioners have contended that the NAB deliberately concealed material which was favorable to them (both at the bail stage and also at trial)

58. Although there are no specific rules regarding disclosure of exculpatory material which tends to exonerate an accused we consider that this situation is covered by Article 10 (A) of the Constitution which provides as under.

"A.10 (A). Right to fair trial. For the determination of his civil rights and obligations **or in any criminal charge against him a person shall be entitled to a fair trial and due process.**"(bold added)

59. Although Article 4 of the Constitution through judicial determination had been regarded as the due process clause in Pakistan the 18th Amendment through A.10 (A) formally made it a part of the constitution.

60. So what is due process? By way of just one example the 14th Amendment to the United States of America Constitution provides as under:

"AMENDMENT XIV [1868]. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**"(bold added)

61. In the case of **Brady V Maryland** (373 US 83 (1963)) The US Supreme Court held that it was a due process right of the accused to have disclosed to him any material gathered by the prosecution which may tend to show his innocence in the following terms:

"The Third Circuit, in the **Baldi case**, construed that statement in **Pyle v. Kansas** to mean that the **"suppression of evidence favorable"** to the accused was itself sufficient to amount to a denial of due process. 195 F.2d at 820. In **Napue v. Illinois**, 360 U.S. 264, 269, we extended the test formulated in **Mooney v. Holohan** when we said: **"The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."** And see **Alcorta v. Texas**, 355 U. S. 28; **Wilde v. Wyoming**, Cf. **Durley v. Mayo**, 351 U. S. 277, 285 (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor, but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." [Footnote 2] A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals. 226 Md. at 427, 174 A.2d at 169".(bold added)

62. The US Supreme Court in the recent case of **Charles S. Turner et al V United States** (2017 SCMR 1489) affirmed **Brady's case** (Supra) only highlighting whether or not the exculpatory evidence to be disclosed to the accused by the prosecution was **material** to the guilt or innocence of the accused. If material it was to be disclosed. In **Charles S. Turner** (Supra) **it was also held that it was not the role of the prosecution/prosecutor in a criminal trial to win at all costs** (i.e obtain a conviction) in the following terms at P.1503.

"I note that the majority and I share some common ground. We agree on the universe of exculpatory of impeaching evidence suppressed in this case: The majority's description of that evidence, and of the trial held without it, is scrupulously fair. See *ante*, at 2-6, 7-9. **We also agree-as does the Government - that such evidence ought to be disclosed to defendants as a matter of course.** See *ante*, at 10. Constitutional requirements aside, **turning over exculpatory materials is a core responsibility of all prosecutors - whose professional interest and obligation is not to win cases but to ensure justice is done.**" (bold added)

63. In our view when Article 10(A) was added to the Constitution by the 18th Amendment, after lengthy debate and detailed consideration of a cross party committee of

Parliament, it was **not** meant to be just a paper right or illusionary right but a meaningful right for the accused in all criminal cases especially as it is a **fundamental right** under the Constitution and we fully endorse the findings and sentiments expressed in **Brady's case** (Supra) and **Charles S. Turner case** (Supra)

64. Thus, we expect the NAB investigators as assisted by NAB legal officers to consider any material which they uncover during the course of an inquiry/investigation or before a determination is made whether or not to file a reference whether that material tends to exonerate the accused from the proposed charge and as such justifies the exclusion of the accused from the reference. If it does and the reference is not filed against the said accused then that material may lose its relevance. However if a reference is filed against an accused the NAB prosecutors at the time of handing over all the material supporting the reference under S.265 © Cr.PC should also **without request** hand over to the accused/counsel for the accused any material which has come to their attention during the course of inquiry/investigation which lead to the filing of the reference or is otherwise in their possession which tends to exonerate the accused even to the slightest extent. **The Chairman NAB shall take note of this paragraph.**

Mens rea

65. With regard to the question of mens rea again a number of counsel have stressed the lack of mens rea on the part of their respective petitioners in the scam through a number of authorities and as such they cannot be held liable. The question of mens rea can very often be inferred from the facts and circumstances of the case and as discussed below based on the material before us prima facie it can be inferred that nearly all the petitioners had the requisite mens rea to commit the offense for which they are charged in the

reference through their acts, conduct, failure to exercise authority, misuse of authority, deliberately violating the Rules and sidelining other officers to give effect to their pre planned loot and plunder of the exchequer through an illegal and deliberate dual invoicing system operated by the advertising agencies (which we will discuss later in this order) which deliberately went unchecked by the Government officials which caused a colossal loss to the exchequer. The final determination of mens rea in respect of each of the petitioners will, in any event, be decided by the trial court after hearing all the evidence in the case.

66. **Turning to the case of petitioner No.1 Sharjeel Inam Memon who was the concerned Minister at the time of the offense.** He has been assigned a specific role at para 3 of the reference which reads as under:

"3. The investigation further reveals that pre-qualification of advertising agencies was conducted in violation of Sindh Public Procurement Rules, 2010. The accused No.1 **Sharjeel Inam Memon**, Ex-Minister Information, during his tenure from 31.05.2013 to 22.07.2015 illegally approved releasing of official advertisement in electronic media for awareness campaigns through these so called pre-qualified advertising agencies without due competition between these advertising agencies and contracts / release orders were issued to favorite advertising agencies at exorbitant rates even without confirming the market rates in respect of per minute cost of FM & TV Channels as required in SPP Rules, 2010. Further, by misusing his authority, in some instances, the Accused No.1 approved directly the media plan submitted by the advertising agencies which was subsequently got processed through the Accused No.2 to 7 who are officers of Sindh Information Department, a clear violation of the said rules.

67. The first point to note is that with regard to the Sindh Information Festival which contract went to Orient and other adverts e.g. on renewal of arms license and World Water day which went to Evernew and other advertising agencies named in the reference **there is not even a request from the**

concerned department/Ministry e.g. Culture and Tourism and Home Ministry for a media campaign on record. This seems to have been decided alone by petitioner No.1 on his own accord completely illegally and against all rules and regulations in connivance with the advertising agencies. On a transitory review of the Rules we are of the considered view that they apply to awarding contracts to making advertisements in respect GOS media campaigns and which is apparent from a letter dated 06-06-2012 by the GOS placed on record by petitioner No.1 himself thus the Rules had to be followed in this case which is further bolstered by the Advertisement Policy which was duly notified in the **Sindh Government Gazette dated 01-07-2011 whereby Para 2 specifically states that the Rules are to be complied with** and the S.161 statement of Muhammad Ayub Ali Khan and Meer Alam Jokio which point to violation of certain Rules. Letter dated 08-05-2015 Muhammed Ayub Chandio (Manager Enforcement) to NAB again confirms that the Rules were violated when the advertising contracts were awarded (Vol. 1 P.316) The Advertising Policy, which amongst other things, aims to promote transparency and to get the most competitive rates for the GOS also provides at Para 2 under the heading objective, "that the major objective of the Information Department is to publicize policies of the government of the day and to distribute / issue advertisement to print as well as electronic media on **merit basis in proper and judicious manner, in compliance with salient feature of the Advertisement Policy, SPRA Rules 2010 and the existing Financial Rules and Regulations.**" In this case as we shall see there was a complete lack of merit and transparency in awarding the advertisements to the advertising agencies which were not awarded in a proper and judicious manner and were awarded in complete violation of the Rules and the aforesaid policy which caused a massive loss to the exchequer.

68. A pre qualification advertisement was placed in "the Dawn" newspaper on 14-09-2013 for advertising agencies to be used by the GOS, on 03-12-2013 a Prequalification meeting was held whereby the competent authority approved 10 out of 18 advertising agencies as pre qualifying. No detailed reasons have been given as to why these 10 agencies out of the 18 were considered as pre qualified and were preferred over the others contrary to S.24A of the General Clauses Act. The meeting on 03-12-2013 was attended by petitioner No.1 who admittedly was the competent authority and a letter was sent for his approval on 16-04-2014, which he duly approved, so that successful advertising agencies could be informed. The approval, as with the minutes are both signed by petitioner No.1 one day later on 17-04-2014. On the same day the 10 selected agencies were informed of their selection.

69. As such when the Sindh Media Festival advertising campaign or any other GOS advertising campaign was considered it would be expected that the 10 pre qualified advertising agencies should have been contacted **after** 17-04-2014 to make their presentations, competitive bids etc. Instead it appears that a letter to this effect was sent to all the 10 agencies on 02-01-2014 (i.e. 3 months **before** they were put on the panel).

70. On 09-01-2014 the petitioner No.1 chaired a meeting along with petitioner No.2 where the 10 companies put up there presentations and the contract was awarded to Orient McCann for the Sindh advertising Festival. **Not a word was mentioned in this meeting about the prices being offered by any of the other companies or market rates, bulk discount or credit notes and the contract was only awarded to Orient and none of the other 9. There was no competitive bidding.** On 10-01-2014 the competent authority i.e. petitioner No.1 signed off on Orient. **On 15 January (only 5 days later) Syed Masood Hashmi the CEO**

of Orient on 15.01.2014 wrote directly to petitioner No.1 referring to subsequent meetings, sent the media plan and proposed commercials for approval. This was duly approved by the Minister unilaterally without sending the media plan down the chain of command in the Information department for consideration which proposals would then have been put up by way of summary for his approval by the secretary.

71. The petitioner No.1 pointed to another pre qualification advertisement in the "Dawn" dated 09-06-2012 and other pre qualification meetings to justify his stance but it seems apparent to us that these documents refer to the previous year and would not be applicable to the relevant time period of the Sindh Festival and other subsequent advertising campaigns which form a part of the reference. Thus, it seems apparent to us that based on the documents the contracts were awarded to all the advertising agencies for the Sindh Festival and other campaigns named in the reference in an illegal manner. With regard to Orient the short time frame involved and the contents of Orient's letter whereby Masood Hashmi writes directly to the petitioner No.1 who immediately approves the same in our view leads to the only reasonable inference that there was no real transparency in the award of this contract especially as no prices were ever shown or compared with the other companies during the presentation. **There is certainly no material as to which of the agencies offered the lowest rate and rates do not seem to have been discussed at all which in our view would be one of the key considerations in competitive bidding under the Rules and to show transparency.** As such the Rules were flouted by petitioner No.1 in order to favor not just Orient but all the other accused advertising agencies named in the reference who were the beneficiaries of the scam to a massive extent and likewise the exchequer suffered a massive loss running into billions of rupees. It is in our view both inconceivable and incredible that no market survey of the

prevailing rates was even attempted to be carried out or that no one in the information department had any understanding of how the advertising agencies operated as the Information department has been in existence and awarding advertising contracts regularly for years on end. **Furthermore**, it appears from the record that 4 of the advertising agencies which so benefited have already admitted their guilt and entered into voluntary returns with NAB (namely M/S Connect Marketing for RS 310,474,131, M/S Value Added marketing for RS 205,827,587, M/S Xnine communications for RS 374,546,739 and M/S Insync Advertisement for RS 83,643,668). The complete lack of transparency in the whole process is further seen by the fact that most of the advertising campaigns which were awarded went to one advertising agency namely Evernew without any competitive bidding and which did not even provide invoices for the work it did before payment was approved on some occasions. Evernew were communicating directly with petitioner No.1 the Information Minister and were sending huge invoices with little if any detail which in some cases were approved prior to the advert being run and had no transmission receipts, no indication of at what time the advert ran but were rather unjustified lump sum bills which were deliberately not checked by the government officials yet were all approved by petitioner No.1 being the Minister (see P.153-183 of IR).

72. It is also apparent from the aforesaid letter (from petitioner Hashmi of Orient) that petitioner No.1 **directly approved the media plan in violation of the Rules** and P.149 of the NAB IR shows that petitioner No.1 directly approved the payment of Orient's bills without any release order which included cables, newspapers and websites which no approval had been given which the petitioner would have been well aware of and even Orient charged for FM radio Bills which it had no authority to charge for. Unsurprisingly 21 cheques from Orient amounting to RS 349494063 all dated 22-04-2014 were received on the same day for payment with

no staggering in payment i.e. after each advert was shown. As with Orient the other co-accused advertising agencies also communicated directly with the Minister and he acted in the same manner as he did with Orient regarding release orders and approval of media plans. Thus taking into account all the above considerations in our view prima facie there is sufficient material on record to connect petitioner No.1 with the offense for which he is charged which caused a colossal loss to the GOS and therefore his pre arrest bail granted by this Court is recalled with immediate effect.

Turning to the case of petitioner No.2 **Zulfiqar Ali Shallwani** who was secretary Information and Archives Department at the time of the offense.

73. He has been given a specific role in para 5 of the reference which reads as under;

"5. It is also apparent from the investigation that Accused No.2 **Zulfiqar Ali Shallwani** was posted as Secretary Information & Archives Department Government of Sindh from 19.09.2013 to 31.07.2015. He has, in his aforesaid capacity, misused his authority in Pre-qualification / selection process of advertising agencies by violating SSP Rules, 2010. Further, he deliberately and with malafide intention appointed junior officers at the post of Director Advertisement of Information Department who acted on his illegal orders and with their active connivance with each other he got processed for approval advertisement / awareness campaign in electronic media i.e. TV & Radio which were carried out through so-called pre-qualified advertising agencies at exorbitant rates without competition and ascertaining market rates. Due to his misuse of authority the national exchequer has suffered huge loss against payments of bills on exorbitant and unjustified rates".

74. With regard to petitioner No.2 virtually the same material referred to in recalling petitioner No.1's pre arrest bail is applicable as he was a part of all relevant meetings and signed all the relevant documents which the Minister also signed. S.161 Statement of Muhammed Ayub Khan is

sufficient to show just a few of the Rules which were violated and statement of Meer Alam Jokio the lack of competitive bidding. With regard to the sidelining of senior officers in favour of his favorites it is apparent from the complainant and S.161 statement of Zeenat Jahan that senior officers were indeed malafidely sidelined and junior officers who were Deputy Directors were given the de facto charge of Director by petitioner No.2 so that they could in connivance with petitioner No.1 and 2 put the scam into effect. The junior officers are accused No.3 Ms Anita Baloch (a BPS 18 officer who was given the position of BPS 19) who has absconded and been declared a proclaimed offender by the trial court, petitioner No.3 Mansoor Ahmed Rajput and petitioner No.4 Muhammad Yousaf Kaboro, who all followed the illegal orders of petitioners No.1 and No.2 and with malafide intention violated the Rules and ensured that the favored advertising agencies got the contracts and made massive exorbitant payments to them. The signature of these officials along with petitioner No.2 find place on many of the important documents which enabled this scam to take place. Thus we are of the view that taking all the above considerations into account there is prima facie sufficient material on record to connect petitioner No.2 to the offense for which he has been charged which caused a colossal loss to the GOS and as such his pre arrest bail is recalled with immediate effect.

75. **Petitioner No.3 Mansoor Ahmed Rajput and petitioner No.4 Muhammed Yousaf Kaboro**, along with accused No.3 Ms Anita Baloch (who as mentioned earlier has absconded and been declared a proclaimed offender by the trial court) have all been given specific roles at Para 6 of the reference as under:

"6.As per investigation Accused No.3 Ms. Anita Baloch was posted as Deputy Director, Information in BPS-18 from 12.09.2012 to 31.12.2013 and from 16.01.2014 to 12.02.2014. **The accused No.4 Mansoor Ahmed Rajput** was posted as Deputy Director, Information in BPS-18 from 18.02.2014 to 18.12.2014. Further, the

Accused No.5 Muhammad Yousuf Kaboro was posted as Deputy Director Information in BPS-18 from 31.12.2013 to 16.01.2014 and 18.12.2014 to 17.12.2015. The Accused No.3 to 5 during the tenure of their respective periods, they were allowed to work as Director Information (Advertisement) by Accused No.2, Zulfiqar Ali Shalwani. They are found to have misused their authority as they illegally issued release orders for media campaigns at exorbitant rates without following procurement rules and due competition between the so-called pre-qualified advertising agencies and without ascertaining the market rates of each FM Radio and TV channel and processed the bills for payment from AG Sindh office at exorbitant rates in connivance with Accused No.1 and 2 which resulted into heavy loss to the national exchequer".

76. Much of the same material in respect of petitioner No.2 applies to them since they were an intricate part of the scam deliberately put in place by petitioners No.1 and 2 in order to give effect to the scam (S.161 of Ms Zeenat Jahan). Without their active connivance and involvement in misusing their authority/failing to exercise their authority the scam could not have materialized and they too violated the Rules. Petitioner No.3 Mansoor Ahmed Rajput and petitioner No.4 Muhammed Yousaf Kaboro had no any lawful authority to sign letters or any other documents under the "title of Director" but they deliberately did so in order to facilitate the crime. The fact that petitioner No.3 Mansoor Ahmed Rajput was allegedly signing as "for" in our view carries no weight as he had no such authority to sign on behalf of the Director especially when crores of rupees were involved. In any event we have seen his original letters to the advertising agencies informing them of their selection and the word "for" is not present before or after his signature. As such this argument is without substance. He has not denied his signature and the malefides and connivance on the part of petitioner No.3 Mansoor Ahmed Rajput and petitioner No.4 Yousaf Kaboro is clearly shown by the fact that on some occasions they signed as Deputy Directors and on other occasions they signed as Directors on dates very close in time. The material on record shows that they were **de facto** Directors who for the purpose

of carrying out the crime could be relied upon to do the needful and hence Directors such as Ms Zeenat Jahan were sidelined. They were also fully aware that Ms Zeenat Jehan was a Director in the information department who was available and did have the authority to sign yet none of them either approached her or requested the secretary to appoint a full time director. **They have not been able to point to a single document on record whereby they have been given additional/acting/look after charge as Director which, being experienced Information officials, they would have known was required for them to sign as Director,** but which with malafide intentions they deliberately ignored. As Deputy Directors they were both signing release bills which they had no lawful authority to do worth billions of rupees (see S.161 Statement of Meer Alam Jokio and other documents on record bearing their signatures). In some cases the record reveals that one advertising agency Evernew was sanctioned a payment even **before** it was put on the approved list of advertisers by petitioner No.3 Mansoor Ahmed Rajput and the illegal Bill for Orient vis a vis FM radio was also signed by petitioner No.3 Mansoor Ahmed Rajput despite the bill being a fake and bogus one. Both the petitioners 3 and 4 were releasing payment before the work was carried out in connection with bogus bills which they in any event had no lawful authority to do being only deputy Directors. Petitioner No.4 Yousaf Kaboro signed over 120 Bills as Director and although he denies his signature on a comparison with his signature on his lawyers' vakalatnama it appears to be the same to us and as such this argument in our view is unsustainable. Rather it appears from the record that both Mansoor Ahmed Rajput and Yousaf Kabore were both fully on board and played a pivotal role in this scam. Thus, in our view there is prima facie sufficient material on record to connect both the petitioners No.3 Mansoor Ahmed Rajput and No.4 Yousaf Kaboro to the offense for which they have been charged and as such ad interim pre arrest bail is recalled in respect of both of them with immediate effect.

77. **Petitioner No.5 Sarang Latif Chandio** at the time of the offense was information officer (billing) and has been given a specific role at para 7 of the reference which reads as under;

"The investigation also reveals that Accused No.6 **Sarang Latif Chandio** was posted as Information Officer (Billing) in Advertisement Section, Sindh Information Department in BPS-17 from 17.12.2012 to 16.09.2014. During this period he processed bills for media campaigns at exorbitant rates without verification of transmission certificates and without ascertaining the market rates of each FM Radio and TV channel and processed the bills for payment from AG Sindh Office. He did not obtain the invoices of the media channel and got approval of over invoiced bogus bills in connivance with his superior officers / accused for payment which resulted in a huge loss to national exchequer".

78. In essence the role of petitioner No.5 Sarang Latif Chandio was to verify the bills charged by the advertising agencies by comparing them with the transmission certificates which they received from the T.V/radio station which aired the advert and which would have shown the amount which the T.V/Radio station actually charged the advertising agency and other relevant material in this regard to ensure that the advert had been aired and at what rate. Sarang Latif Chandio however completely failed to check any of the bills which the T.V and radio channels made and were paid by the advertising agencies instead he blindly relied on the fake and bogus bills which he received for payment from the advertising agencies which enabled fake and exorbitant and unjustified bills to be paid to the advertising agencies. This was a complete failure to exercise authority on the part of petitioner No.5 Sarang Chandio which lead to the loss of billions of rupees to the state exchequer. Had he carried out his functions then such unjustified and illegal payments could have been stopped. Fake bills were processed by him and when these are read in light of the S.161 statement of

Javaid Ahmed along with associated documents (P.287-293) there is little doubt that petitioner No.5 Sarang Chandio deliberately failed to exercise his authority in order to favour the beneficiaries. His conduct in failing to verify the bills was also in complete violation of the Advertisement Policy in terms of the section dealing with billings and payments which he would have been fully aware of. He may not have been a huge cog in the wheel but without his active involvement and connivance with the other government co-accused the wheel could not have turned and the scam could not have taken place and hence he is equally as liable. Thus, in our view there is prima facie sufficient material on record to connect him with the offense for which he has been charged and his pre arrest bail is hereby recalled with immediate effect.

79. **Petitioner No.6 Altaf Hussain Memon at the time of the offense was Section Officer (G) Information and Archives Department** and has been given a specific role at para 8 of the reference which reads as under;

"The investigation also reveals that Accused No:7 **Altaf Hussain Memon** is Section Officer (General) in BPS-17 since 22.10.2011. He was under direct command of accused No.2 and during the relevant period he signed the bills for media campaigns as DDO on his behalf. He used to sign on the bills for payment without verification and in violation of rules. He did not check the bills containing exorbitant amounts which were approved for payment which resulted into huge loss to national exchequer".

80. We consider that much of the discussion above relating to petitioner No.5 Sarang Latif Chandio also applies to petitioner No.6 Altaf Hussain Memon who was also DDO and signed all the bills without verification and as such once again he could have prevented the scam by exercising his authority but in our view he deliberately failed to do so as he was an integral part of the scam. He reported directly to petitioner No.2 Secretary Zulfiquar Ali Shallwani and blindly followed his illegal orders. Again he was a small cog in a big

wheel but without his active involvement and connivance with the other co-accused government officials the wheel could not have turned and the scam could have been prevented. Thus, we find that there is sufficient material to connect him to the commission of the offense and his pre arrest bail is recalled with immediate effect.

FINDINGS IN RESPECT OF THE BENEFICIARIES (advertising agencies).

Introduction

81. Whilst dealing with the case of the Government officials (petitioner's No.1 to 6) earlier in this order we have already found that there was deliberate and malafide misuse of authority/failure to exercise authority in violation of the relevant rules and regulations by the Government officials in connivance with the beneficiaries which caused a massive financial gain to the beneficiaries and a huge loss to the government exchequer.

82. There is both a general allegation against all the advertising agencies as well as a specific one. The general one which is found at Para 4 of the Reference reads as under:

“Para 4. That the investigation also reveals that **advertising agencies suppressed the invoices issued by the media channels which had showed the actual amounts, with ulterior motives and malafide intention in connivance with the officials of Sindh Information Department and claimed much higher amounts as compared to the amounts invoices issued by the media channels. Whereas, as per well settled practice, advertising agencies are entitled to get only 15% agency commission against the total bill / invoice received from the media channel.** (bold added)

83. At the outset it is both pertinent and relevant to observe that 4 other Media/advertising companies (M/s Connect Marketing Pvt Ltd, M/S Value Added Marketing Services Pvt Ltd, M/S Xnine Pvt Ltd and M/s Sync Advertisement Pvt Ltd) all of whom had allegedly been illegally

awarded advertising contracts in violation of the Rules by the Ministry of Information and who had all over charged the Ministry of Information and were faced with the same allegations as the advertisers in the reference by using the same modus operandi all admitted their guilt and entered into voluntary returns with the NAB whereby they repaid their ill gotten gains.

Turning firstly to the case of petitioner No.11 Masood Hashmi who was CEO of Orient at the time of the scam.

84. Apart from his general role of suppressing invoices petitioner No.11 has also been given a specific role at Para 12 of the reference which reads as under;

"12. The investigation further reveals that Accused No.13 **Syed Masood Hashmi** is CEO/Director/overall owner of the advertising agency of M/s. Orient Communication Pvt. Ltd (Orient). which received Rs.320 Million from Sindh Information Department against release of advertisement campaigns on Electronic Media (FM/TV). He obtained invoices on the exorbitant rates from the media and same amount was claimed from the Sindh Information Department, but he got special discounts / credit notes in addition to 15% agency commission from the media and as such was major beneficiary of exorbitant rates which resulted into loss to the national exchequer to the tune of Rs.75,830,568/-

85. His main defense was that he did not charge exorbitant rates and that he was fully entitled to charge the rates which he did. This was because according to him this was an unregulated industry. In this respect **The Pakistan Broadcasting Association Rules and Regulations Governing Conduct of Advertising Agencies / MBHS** provides as under at Para 9.

"9. All accredited Agencies / MBHs shall be entitled to a **maximum of 15% commission** on the business placed by them with the Broadcast Houses and no Agency / MBH shall claim, demand or receive any commission or

compensation from "Broadcast House beyond the specified rate. **Provided that at its option, a Broadcast House may allow a cash discount to any Agency / MBH**".

Thereafter Rules and Regulations Governing conduct of advertising agencies (As adopted at the Extraordinary General Council Meeting held on 29th December, 1977 and amended by the Extraordinary General Council Meeting held on March, 19, 2003, March 31, 2012 and March 31, 2015) provided as under.

"7. All accredited agencies, whether provisionally or full accredited, shall be entitled to trade discount, **not exceeding 15% of the invoice on the business placed by them** with the member publications and no agency shall claim, demand or receive any trade discount or compensation from a member publication beyond this specified rate. **Provided that at its option a member publication may allow a cash discount upto 15% to an agency in case of settlement of its bills by the agency within 30 days of billing in cases of fully accredited agency and 15 days in case of provisionally accredited agency**".

86. Thus, according to Orient they were entitled to keep (a) 15% commission as of right (b) any other form of bulk discount or (c) credit note availed by them.

87. In this respect Orient referred to numerous transmission certificates, bulk discounts credit notes which they had received and were entitled to keep.

88. **Modus Operandi:** In effect by way of an example of what was the happening was that the advertising agency for example would be given an invoice by the T.V company for the advert of RS 100 out of which the advertising agency kept 15% as commission, then kept another amount as bulk discount say 15%, then kept another amount by way of credit note say another 15%, so the advertising agency would only pay RS 55. However when the advertising agency invoiced the Information Department GOS for the advert run by the T.V company the advertising agency **gave a different invoice** which would only show RS 100 less 15% commission so that

the cost of the advert to the GOS was RS 85 which allowed the advertising agency in this example to pocket an extra RS 30 on top of its allowed commission (with the GOS allegedly having no idea about this practice when for all practical purposes this extra RS 30 was most probably split between the advertising agency which had been favoured and the Government officials who are also co-accused in this reference and favored them by violating the Rules). As such the true amount paid to the T.V company by the advertising agency has been dishonestly suppressed by the advertising agency in its invoices to the GOS.

89. Even if we accept that the advertising agency was allowed 15% commission as per Para 7 of the amended Pakistan Broadcasting Association Rules and Regulations Governing Conduct of Advertising Agencies / MBHS only an extra 15% was available making a total of 30% if the bills were paid within a specified period. However as is apparent from the documents on record Orient was claiming far more than this as indicated by the table in the reference (which is reproduced below) which has not been disputed by Orient which in the various columns shows the amount received by Orient from GOS, amount actually paid to the TV Channel by Orient and the resultant loss to the exchequer. In nearly all cases the discount was well over 30% reaching as high as 70% in some cases.

M/s Orient Communications Pvt Ltd.

S. No	Channel (TV/FM)	Amount received from Govt. by the Agency	Actual paid or payable by the agency to the channel after deduction of agency commission & special discounts	Difference / loss to national exchequer which also includes amount of credit Note / Special discount obtained by the agency
1	Dunya News TV Channel	7,382,667	4,773,884	1,501,383

2	Geo TV Network	30,792,184	23,482,085	3,166,202
3	Metro One TV Channel	16,551,500	6,060,371	8,704,259
4	Samma TV Channel	3,647,000	2,306,919	793,031
5	ARY News TV Channel	9,102,916	7,501,958	682,763
6	Awaz TV Channel	23,173,800	8,190,113	16,679,734
7	Health TV Channel	1,790,248	1,253,174	228,257
8	Sindh TV Network	15,901,999	2,767,818	11,582,671
9	Mehran TV Channel	16,517,001	10,234,254	6,431,854
10	Dawn News TV Channel	17,010,663	11,175,915	3,283,150
11	News One TV Channel	5,285,000	2,676,011	1,934,364
12	Solo Media Group	21,671,500	5,000,000	13,420,775
13	Digi Media	4,306,500	2,500,000	1,431,500
14	FM 100	Fake TC & Invoice		5,990,625
Total		173,132,978	87,922,502	75,830,568

90. The above modus operandi of dual invoices and the above chart in our view comprehensively shows that Orient was deliberately and with malafide intention suppressing invoices from the GOS which enabled it to illegally benefit greatly and caused a colossal loss to the GOS. **This was the modus operandi adopted by all the advertising agencies who are petitioners except that the other agencies conduct was far more illegal as they had no credit notes or bulk billing discount to show precisely why they had deducted what amount. Instead, as will become apparent later in this order as we deal with each advertising**

agency, apart from the 15% commission the other co-accused advertising agencies simply charged any illegal excessive amount which they choose through this dual invoice system.

91. Had the bidding process been done in a fair and transparent manner through competitive bidding in accordance with the relevant rules (which we have already found that it was not) then such practices could have been prevented and such illegal and unnecessary loss would not have been caused to the GOS.

92. With regard to over billing by Orient and Evernew reference can be made to S.161 statements of Mohammed Harris Hussain and associated documents (IR P.215 to 223) Ghulam Hussain and associated documents (IR P.225 to 231) Kaleem Ahmed and associated documents (IR P.239 to 245, 251, 253), Mohammed Ali Saeed and associated documents (IR P.255-267) Kaneel Iqpat (IR P.269 to 273) and Qazi Ahmed Mateen (IR P.275)

93. Although we observe that Orient is prepared to put up security in respect of the amount of loss it caused to the GOS in return for its CEO Mr. Masood Hashmi being granted pre arrest bail we, at this point in time, reject such option which we have done in other cases before us as a matter of consistency, especially as there had been no malafide against Orient and the amount involved is colossal. Orient may however, if so advised, approach the NAB under S.25 (b) NAO in respect of settling this amount by way of plea bargain as the reference has already been filed. This is the stage of pre arrest bail and we have found no malafides on the part of the NAB and are of the view that prima facie there is sufficient material to connect the petitioner with the offense for which he has been charged and as such hereby recall his pre arrest bail with immediate effect.

Turning to the case of petitioner No.7 Inam Akbar who allegedly was a private individual having divested all his ownership rights in Evernew prior to the scam.

94. At the outset we would like to observe as reproduced in the section dealing with the petitioners arguments that he has relied on a plethora of authorities. Most of these authorities appear to us to be of little relevance to the case at hand and the list of authorities just seems to be a list related to all NAB bail cases run off the computer without any thought as to whether they are applicable to the case in hand. For example, some refer to undue delay, others relate to post arrest bail etc. Although we have carefully considered all these authorities it is expected that senior counsel in order to assist the court and make their case would take the time and effort to themselves go through the authorities which they intend to place before the court before so placing them and only cite relevant ones in respect of their case as this would both genuinely assist the court and save the valuable time of the court. Counsel in choosing such cases to cite in our view must act as a sniper by producing only the relevant cases on point rather than using a scatter gun approach. Very often it is a few relevant Supreme Court authorities which are directly on point which will carry the day rather than hundreds of authorities which are mainly neither here nor there.

95. Turning to the jurisdictional issue raised by the petitioner. We are of the view that NAB **does** have the jurisdiction to deal with this case under S.9 NAO and that no procedural irregularities have been committed by the NAB prior to the filing of the reference. In essence as per S.18 NAO NAB acted on a complaint received from Ms Zeenat Jehan who at the time of the complaint was director in the information department, GOS. The complaint, amongst other things, speaks of corruption being committed in the Information Department and as such the Chairman NAB authorized an inquiry into such allegation of corruption. After inquiry and then investigation NAB unearthed the above

scam in the Information Department GOS involving the Government officials named in this reference and the advertising agencies named in this reference which caused a colossal loss to the GOS and as such the Chairman NAB filed this reference under S.9 NAO. As such we find no procedural irregularities in the filing of the reference and this jurisdictional objection is without substance.

96. In our view this was a carefully and cleverly preplanned scam between petitioner No.7 Mr Inam Akbar, who prior to the execution of the scam attempted to leave Evernew, and government officials in the Information department GOS as we will come to later.

97. As with the other advertising agencies as well as a general role he has also been given a specific role at para 9 of the reference which reads as under:

"9. It is mentioned in the investigation report that Accused No.8 **Inam Akbar** was owner of advertising agency M/s. Evernew Concepts Pvt. Ltd. and as such he has been found overall beneficiary and **key player** of the said advertising agency. He was the Director/share holder of the company having 218,078 shares as on 17.02.2012. Thereafter on 04.05.2013, the accused **Inam Akbar** with malafide intention shown in the documents transferred his shares to his employees and made them directors & shareholders, but actually he remained the owner / real beneficiary as he himself operated two accounts of the company i.e. Account No.00242002228303 maintained at Silk Bank DHA "Y" Block Branch Lahore. The amount received from Sindh Information Department has been found transferred to his personal as well as his other companies' accounts. He signed agreements with media channels regarding release of advertisements in media channels through his company namely M/s. Space Craft Pvt. Ltd. regarding advertisement of Sindh Information Department during the period under investigation. Moreover, he is the major beneficiary of the illegal proceeds of Rs.2,223,198,092/- through excessive billing showing exorbitant rates of media channels in connivance with management, shareholders of

M/s. Evernew Concepts and officers of Information Department”

98. With regard to fixation of rates the main argument was that this was an unregulated industry and that the advertisers could come to what ever arrangement they liked with the T.V channels no matter how damaging and loss causing such arrangement caused to the GOS and benefited the advertising agency.

99. We completely reject this argument and our findings in this regard in respect of petitioner No.11 Orient are reiterated. In fact the case of the petitioner is **far worse** than that of orient as he has not produced a single document to show how he billed the T.V companies for their adverts. Instead he submitted massive fake and or inflated invoices to the Information Department GOS which in collusion with the Government officials in the Information Department named in this reference caused a massive loss of **RS 4 Billion** to the GOS and benefited himself to that extent.

100. As with Orient the table showing the amount of loss caused by Evernew to the GOS is set out below for ease of reference.

Evernew Table of loss caused to national exchequer.

S. No	Channel (TV/FM)	Amount received from Govt by the Agency (Rs.)	Actual invoice amount of the channel (Rs.)	Difference/ loss to national exchequer (Rs.)
1.	Dunya News TV Channel	113,888,782	56,072,333	57,816,449
2	Geo TV network	217,341,755	44,879,665	172,462,090
3	Indus TV Channel	71,018,514	9,468,992	61,549,522
4.	Metro One TV Channel	117,197,428	19,153,167	98,044,261
5	Samma TV Channel	157,281,251	34,696,084	122,585,167
6	Waqt News TV Channel	51,436,438	12,670,000	38,766,438
7	KTN TV	270,538,615	134,983,332	135,555,283

	Network			
8	Jaag News TV Channel	89,560,833	30,835,099	58,725,734
9	CNBC Pakistan TV Channel	27,691,640	6,404,367	18,287,273
10	ARY News TV Channel	125,219,886	47,604,090	77,615,796
11	Awaz TV Channel	180,326,316	47,132,916	140,263,337
12	Roze TV Channel	47,021,672	4,898,217	42,123,455
13	Sach TV Channel	39,325,097	4,684,000	34,641,097
14	Health TV Channel	40,310,093	22,317,747	17,992,346
15	Vibe TV Channel	7,592,529	2,426,800	5,165,729
16	A-Lite TV Channel	52,949,381	8,237,798	44,711,583
17	Dharti TV Channel	132,038,802	62,706,000	69,332,802
18	Channel 5 TV Channel	97,741,523	16,288,500	81,453,023
19	Filmazia TV Channel	73,943,108	9,501,840	64,441,268
20	ARuj TV Channel	49,644,928	3,887,938	45,766,990
21	Sindh TV Network	11,8,969,179	50,782,199	68,186,980
22	Mehran TV Channel	103,256,695	27,050,827	76,205,868
23	Abb Tak TV Channel	114,289,688	47,477,744	66,811,944
24	Dawn News TV Channel	176,056,628	44,304,591	131,752,037
25	News One TV Channel	73,398,183	24,967,400	48,430,783
26	A TV Channel	27,281,403	9,343,750	17,937,653
27	Express TV Channel	94,194,812	56,530,075	37,667,737
28	Aaj TV Channel	147,773,541	57,311,668	90,461,873
29	Hot FM 105 Network	178,494,432	13,576,055	164,918,377
30	Jeay FM 88 Network	53,635,862	27,27,346	50,908,516
31	FM 100 Pakistan	36,509,649	2,311,800	34,509,287
32	FM 104 Kashmore	12,715,335	919,785	11,795,550
33	Josh FM 99 Karachi/Hyd	37,650,594	1,338,750	36,311,844
	TOTAL	3,136,294,592	914,753,529	2,223,198,092

101. Since the following media channels mentioned in the table below did not provide the record / invoices inspite of repeated notices by NAB since this amount as alleged by NAB in the below table **has not been verified we will not consider the same for the purposes of this bail application** and confine ourselves to the loss of RS 2,223,198,092 as mentioned in the table mentioned above as this figure was verified through supporting material.

S.No.	Channel Name	Unverified Amount
1.	Business Plus	53,578,663
2.	Capital TV	225,055,411
3	Digi Media Cable	8,695,652
4	Dih News	41,278,183
5	Khyber News	7,215,338
6	Kohinoor TV	75,095,111
7	Pashto 01 TV	17,573,339
8	Punjab TV	10,850,175
9	QTV	7,584,570
10	Rohi TV	70,599,831
11	Royal TV	51,046,869
12	Star Asia TV	44,604,971
13	Value TV	38,841,266
14	Web Advt.	1,708,621
15	Web J/P	1,719,565
16	Zam TV	3,158,400
		658,605,965

102. With regard to the massive illegal over billing through dual invoices the same S.161 statements and associated documents as referred to in the case of petitioner No.11 Orient is relied upon and in addition S.161 Statement of Muhamed Haris Hasan of Metro One News (IR P.215) and associated documents at IR P.219 (Verification chart), IR P.1132 (Evernew's invoice to media One), IR P1400 GOS cheque to Evernew which show that the media channel charged Evernew RS850,000 less 15% and the GOS was

billed RS4718438 showing illegal over billing of RS 3718438 by Evernew. Likewise S.161 Statement of Mr.Mirza Zaffar Javaid of KTN (IR. P1807) and associated documents at IR P.1811 (verification Chart), IR P.1829 (KTN News invoice to Evernew) IR P.407 (GOS Cheque to Evernew) which show that KTN invoiced Evernew RS 9744000 less 15% commission and that Evernew invoiced GOS RS 18513600 which was duly paid by GOS to Evernew by cheque showing illegal over billing of RS 8769,600 which was loss caused to the GOS and undue benefit to Evernew. Many other examples can be found on the record.

103. With regard to his petition filed in the Lahore High Court seeking greater transparency in the advertising industry we note that this petition was filed **after** NAB initiated its inquiry and **after** petitioner Inam Akbar had been granted pre arrest bail by this court and was simply an attempt to camouflage himself from the repercussions of the NAB inquiry against him in connection with this scam and an attempt to paint himself as the "good guy" and nothing more.

104. In fact the devious and malafide conduct of petitioner No.7 Inam Akbar is further illustrated by the fact that once the scam was set up he attempted to deliberately distance himself from his company Evernew by handing out the position of CEO, Directorships and his shares to other employees of the company to give the appearance that at the time of the scam he had nothing to do with the company and the scam. **This however was pure camouflage and in our view he was the mastermind in Evernew behind the scam who remained fully in charge of Evernew before, during and after the scam. He was and remained firstly its de jure head and later its de facto head. This is evident from the fact that he still had power to operate Evernew's bank Accounts and much of the monies obtained illegally through the Information department was paid into Evernew Accounts which he had the power to operate and were thereafter transferred to companies in which he had**

an interest (IR P.321-327 where he signs on behalf of the Midas Group which includes Evernew and Space Craft (pvt) Ltd and in particular P.357 where he signs on behalf of Space Craft) or his personal account and even signs cheques from the company account (P.339 and 341 IR) which would not be the case if he had nothing more to do with the company. The record reveals that he was even signing contracts on behalf of the company after he allegedly left it. (see IR P.327 and 333) In this regard the following banking details of Evernew which have not been disputed are of significance as set out below;

Operation of Evernew's Accounts

Sr. No	Account Number	Title of Account	Bank / Branch	Operated by	Amount credited received from Information department (Rs.)
1	0024-2002228303	Evernew Concepts Pvt Limited	Silk Bank Allama Iqbal Town Branch Lahore	Inam Akbar	1,736,239,960
2	603-081921-100	Evernew Concepts Pvt Limited	Sindh Bank DHA "Y" Block Branch Lahore	Inam Akbar	1,634,089,141
3	2004-0347788-0001	Evernew Concepts Pvt Limited	Bank Islami Circular Road Branch Lahore	Muhammad Hanif and Asim Amir Khan Sikandar	371,785,225
4.	1250-79008395-55	Evernew Concepts Pvt Limited	HBL Walton Road Branch	Muhammad Hanif and Asim Amir Khan Sikandar	412,471,350
Total Amount					4,154,585,676

105. Apart from his operation of Evernew's Bank accounts (despite him allegedly having nothing to do with the company any more) the banking details of Evernew also reveal that a large amount received from the Information Department-scam and paid into Evernew's bank account operated by him was subsequently transferred into accounts of other companies of which the petitioner Inam Akbar was closely linked being

owner/proprietor or Director or shareholder for example M/S Midas Pvt Ltd, M/S Space Craft Pvt Ltd, M/S Rohi Enterprises, M/S Central Media Network Pvt Ltd and even **his own personal account** as shown by the following tables set out below;

Transactions from the A/c No. 603-081921-100 title as Evernew Concept Pvt Ltd Sindh Bank DHA "Y" Block Branch Lahore.				
S. No.	Description	Dated	Amount(Rs.)	Favoring
1.	Cheque No.10624544	27.01.2014	15,000,000	Midas Pvt Pvt Ltd.
2.	Cheque No.10118781	25.02.2014	100,000,000	Midas Pvt Ltd.
3.	Cheque No.10930284	30.05.2014	5,400,000	Midas Pvt Ltd.
4.	Cheque No.10930316	13.08.2014	10,500,000	Midas Pvt Ltd.
5.	Cheque No.10930138	15.08.2014	34,500,000	Midas Pvt Pvt Ltd.
6.	Cheque No.10930322	20.08.2014	40,000,000	Space Craft Pvt Ltd.
7.	Cheque No.10930323	21.08.2014	232,500,000	Space Craft Pvt. Ltd.
8.	Cheque No.10948913	27.11.2014	58,255,000	Space Craft Pvt. Ltd.

Transactions from the A/c No.0024-2002228303 Title as Evernew Concepts Pvt Ltd Silk Bank Allama Iqbal Town Branch Lahore

S. No.	Description	Dated	Amount(Rs.)	Favoring
1.	Cheque No.0711074	10.03.2015	5,000,000	Inam Akbar
2.	Cheque No.20147422	13.05.2015	110,000,000	Space Craft Pvt. Ltd.
3.	Cheque No.2147421	13.05.2015	120,000,000.	Space Craft Pvt. Ltd.
4.	Cheque No.2147420	13.05.2015	120,000,000	Space Craft Pvt Ltd.
5.	Cheque No.9896185	05.11.2014	50,000,000	Central Media Network Pvt Ltd
6.	Cheque	26.11.2014	150,000,000	Inam

	No.0711032			Akbar
7.	Cheque No.9819081	17.09.2014	18,700,000	Midas Pvt Ltd
8.	Cheque No9.9819058	13.08.2014	50,000,000	Evernew Concepts Pvt.
9.	Cheque No.9819059	13.08.2014	80,000,000	Evernew Concepts Pvt.
10.	Cheque No.9896181	24.07.2014	48,700,000	Space Craft Pvt Ltd.
Transactions from the A/c No. 200403677880001 Title as Evernew Concept Pvt Ltd maintained at Bank Islamic Circular Road Branch, Lahore				
S. No.	Description	Dated	Amount(Rs.)	Favoring
11.	Cheque No.12169804	06.10.2015	40,750,000	Evernew Concepts Pvt Ltd
	Cheque No.12169802	06.01.2015	40,000,000	Central Media Network Pvt Ltd.
12.	Cheque No.12166805	06.01.2015	38,000,000	Space Craft Pvt Ltd.
13.	Cheque No.12169801	06.01.2015	50,000,000	Rohi Entertain- ment
14.	Cheque No.12166806	18.02.2015	25,000,000	Evernew Concepts Pvt
15.	Cheque No.12169807	19.02.2015	5,000,000	Evernew Concepts Pvt
16.	Cheque No.12169809	19.02.2015	20,000,000	Central Media Network Pvt Ltd
17.	Cheque No.12169808	19.02.2015	50,000,000	Rohi Entertainm ent
18.	Cheque No.12169816	18.03.2015	27,700,000	Space Craft Pvt Ltd.
19.	Cheque No.12169818	24.03.2015	85,500,000	Inam Akbar

106. Thus, with respect to petitioner No.7 Inam Akbar we find that there has been no malafides on the part of the NAB against him and that there is prima facie sufficient material on record to connect him with the offense for which he has

been charged and as such his pre arrest bail is recalled with immediate effect.

107. **Turning to the case of petitioner No.8 Riaz Munir who was CEO of Evernew at the time of the scam.** We have already found that there were tinges of malafide by NAB in including him in the reference as NAB had itself conceded in para 9 of the reference that he had little to do with the scam which was orchestrated by petitioner No 7 Inam Akbar. This is evident from para 9 of the reference which was reproduced above in the case of Inam Akbar

108. With regard to petitioner Riaz Munir's contention that the company should have been the accused in the reference and not the Directors of that company we find no substance in this contention. This is because the NAO is a special law with overriding effect by virtue of S.3 NAO. Furthermore, in recent times it has been held by the Supreme Court in the case of **Syed Mushahid Shah V FIA (2017 SCMR 1218)** that when two special laws conflict then generally speaking the special law later in time will prevail keeping in view the object, purpose and policy of both statutes. Thus since we do not consider that any other special statute later in time than the NAO has such an important object, purpose and policy as set out in the preamble to the NAO the NAO will prevail over other special statutes before it and probably over those passed after it. Importantly in the NAO the definition of "person" at S.5 (o) NAO is clearly said to include the following as set out below and hence the cases law relied upon by petitioner No.8 in this regard are distinguishable

"S.5 (o) "Person" unless the context otherwise requires **includes in the case of company or a body corporate, the sponsors, Chairman, Chief Executive, Managing Director, Elected Directors, by whatever name called, and guarantors of the company or body corporate or any one exercising direction or control of the affairs of such company or a body corporate, and in the case of any firm**

partnership or sole proprietorship, the partners, proprietor or any person having any interest in the said firm, partnership or proprietorship concern or direction or control thereof.(bold added)

109. Thus, under the NAO petitioner Riaz Munir can be proceeded with in his capacity as CEO of Evernew.

110. With regard to his contention that NAB should have formed a JIT we find this contention to be of no substance as it is the prerogative of the Chairman NAB under the NAO to carry out an inquiry/investigation in any manner prescribed in the NAO in his discretion and he does not have to make a JIT for the purpose. Likewise the contention that a forensic audit should have been carried out is of no substance. This may be done at the discretion of the Chairman NAB keeping in view the costs involved, the complexity of the matter and the time taken. On a brief review of the material before us the loss calculated by the NAB and the method of calculation both appear to be reasonable. It will be open to the petitioner at trial, if so advised, to challenge such method of calculation and amount of loss by cross examining the relevant PW's at trial or challenging the documents relied upon by NAB vis a vis the calculation or putting forward his own calculation of loss (if any) through any defense witness which he may choose to call.

111. It would appear however, from the material on record that petitioner No.8 Riaz Munir was the fall guy who was left behind after petitioner Inam Akbar had cleverly allegedly left the company and was left to carry the baby. He was transferred the minimum number of shares by Inam Akbar (1.1%) to enable him to be lawfully appointed as CEO. He was CEO for a very limited period yet he had no power to operate the bank accounts, no power to sign cheques, no power to execute agreements, received no monies from the scam and to all intents and purposes was a "dummy" CEO.

112. Thus, in our view, prima facie there is insufficient material to connect him to the offense for which he has been charged and his is a case of further inquiry and since we have already found tinges of malafide in his case his pre arrest bail is confirmed on the same terms and conditions.

113. **Turning to the cases of petitioner No.10 Asim Amir Khan Sikander who was senior executive director of Evernew at the time of the scam.** We do not accept that as senior executive director that he was not a part of the scam. Crucially not only was he a part of the mangement of the company who wrote letters on behalf of Evernew to the Minister Information (petitioner No.1) in connection with media campaigns by Evernew but he also, more significantly, had the power to operate its bank accounts. He has been given a specific role at para 11 of the reference which provides as under;

“The investigation report also shows that Accused No.11 **Muhammad Hanif** was Company Secretary and Accused No.12 **Asim Amir Khan Sikandar** was Senior Executive Director of Evernew. Both the accused jointly operated the bank accounts of the company. Further, they actively connived with Accused No.8, 9 and 10 as such aided and abetted as well as assisted them in transferring the crime proceeds. Both accused are equally responsible for causing loss to national exchequer. They alongwith accused No.8, 9 and 10 are beneficiary of illegal, overpriced and exorbitantly invoiced receipts”.

114. **He and co-accused petitioner No.9 Mohammed Hanif had the power to operate Evernew's bank account at Bank Islamic circular Road Branch Lahore to the exclusion of anyone else including petitioner Inam Akbar.** The above reproduced table in respect of Evernew's bank Accounts and the power to operate the same clearly shows that petitioner No.10 Asim Amir Khan Sikander and petitioner No.9 Mohammed Hanif transferred monies from Evernew's bank account at the aforesaid branch to companies which were

connected to Inam Akbar and even to the account of Inam Akbar himself which they had no reason to do bearing in mind that they knew that Inam Akbar was no longer a part of Evernew and when confronted they admitted operating the bank accounts and making such transfers for which they had no explanation. Thus, in our view petitioners No.10 Asim Amir Khan Sikander and petitioner No.9 Mohammed Hanif were knowing and willing accomplices of petitioner No.7 Inam Akbar by transferring the ill gotten money illegally claimed from the GOS from Evernew Bank accounts into Bank Accounts of companies in which Inam Akbar had an interest and even into his personal account and thus in our view there is prima facie sufficient material on record to connect petitioners No.10 Asim Amir Khan Sikander and petitioner No.9 Mohammed Hanif to the offense for which they have been charged and as such their re arrest bail stands recalled with immediate effect.

115. **The case of petitioner No.9 Mohammed Hanif who was Company Secretary of Evernew** at the time of the scam has been dealt with above along with the case of petitioner No.10 Asim Amir Khan Sikander and for avoidance of doubt based on the same considerations mentioned in the case of petitioner No.10 Asim Amar Khan Sikander the pre arrest bail of Mohammed Hanif stands recalled with immediate effect.

116. **Turning to the case of petitioner No.14 Gulzar Ali who was a Director of Adart** at the time of the scam which only dealt with radio commercials/adverts as opposed to T.V. As we have already discussed with regard to the case of petitioner Riaz Munir the NAB under the NAO were empowered and had jurisdiction to charge Gulzar Ahmed as a Director of Adart. Apart from his general role of over invoicing in the reference he has been given a specific role in the reference at para 13 which reads as under:

“As per investigation report Accused No.14 **Gulzar Ali** and Accused No.15 **Salman Mansoor** are both Directors of advertising agency M/s. Adart Karachi.

Pvt. Ltd. (Adart) which has received Rs.317 Million from Sindh Information Department, against release of advertisement campaigns on Electronic Media (EM). The Accused No.14 used to operate the account of the company and is its major shareholder, whereas the Accused No.15 being Director acted in connivance with the other accused persons which resulted into loss to the national exchequer to the tune of Rs.229,536,413/- by submitting bogus bills with fake transmission certificates and also billed excessively / exorbitantly".

117. He was a Director of Adart throughout the reference period; he was a majority shareholder of Adart; he signed agreements on behalf of Adart; he operated bank accounts on behalf of Adart and as can be seen by the table below he illegally massively overcharged the GOS for works carried out by his illegal sub contractors (Daily Milan and Media Power). He has not been able to produce a single invoice or other document in support of his contention that Adart only charged 15% commission and contrary to his contention Adart and its illegal sublettees deducted far more than 15% commission as is shown by the table reproduced below which shows how much loss Adart caused to the national exchequer. Fake invoices of Adart and over billing can be found at P.289, 291, 301, 309, 311 of the IR. **Such illegality and loss is further bolstered by the fact that Adart attempted to enter into a VR with NAB which according to them was on account of the IO "twisting their arm". Their argument however of coercion by the IO is totally belied by the fact that NAB did not accept their VR.** Adart's letter to NAB dated 20-11-2015 requesting a VR is attached with Adart's CP.No.3286/16 filed before this court at Annex D. In fact **so desperate** were Adart to enter in to a VR and thereby admit their guilt that they even filed CP.No.3286/16 before this court seeking a direction that NAB accept their VR at prayer clause © of the petition which was dismissed by this court.

Adart Bank Accounts

S. No.	Channel (FM)	Amount received from Govt. by the Agency (Rs.)	Actual invoice amount of the Channel (Rs.)	Difference / loss to national exchequer (Rs.0)
1	Hot FM 105 Network	115,197,183	2,057,680	11,5181,382
2	Jeay FM 88 Network	29,336,200	997,672	29,162,106
3	FM 100 Pakistan	45,673,033	1,234,044	44,738,989
4	FM 104 Kashmore	20,095,450	204,764	19,890,686
5	Josh FM 99 Karachi /Hyd	20,563,250	Fake TCs	20,563,250
		230,865,116	4,494,160	229,536,413

118. In our view the case of Adart illustrates well the complete farce and illegality of this entire scam as we shall highlight as follows. Adart allegedly were short listed on the GOS advertising agency panel due to their vast experience and expertise in the field of advertising. It was then allegedly after various presentations able to convince the GOS that it had the capacity, ability and expertise over and above any other adverting agency to conduct a first rate advertisement campaign if it was awarded a contract by the GOS. Based on all these factors the GOS awarded it the relevant advertising campaign at vast expense. So what does Adart then do? Does it use its experience and expertise to carry out a first rate advertising campaign on behalf of the GOS as it had undertaken to do if it was awarded the contract after its various wondrous and ground breaking presentations? No. Instead it illegally sublets the **entire** contract of the campaign to two one man bands (Daily Milan and M/S Media Power Link both of which are sole proprietorships) which are **not** on the approved panel of advertisers for the GOS. Even then quite incredibly Adart's agreement with these two one man bands is **verbal** with nothing in writing. No approval was sought by Adart from the GOS to sublet its advertising contract to another entity which was not on the GOS's approved panel which makes a complete mockery of the whole concept of the Rules, the Advertisement Policy, merit,

transparency, the need to advertise in the newspapers, pre qualify etc.

119. Thus, based on the material before us we are prima facie of the view that there is sufficient material to connect petitioner No.14 Gulzar Ali to the offense for which he has been charged and hereby recall his bail with immediate effect.

120. **Turning to the case of petitioner No.13 Salman Mansoor who was a Director of Adart** at the time of the scam. We have seen from the record that he wrote **directly** to the Minister (petitioner No.1) in his capacity as Media Manager for Adart on a number of occasions. For example, on 28.05.2014 in respect of media campaign in order to raise awareness of child marriage Bill, on 29.05.2014 in connection with media campaign to combat law and order situation in Sindh, on 06-06-2014 in respect of media campaign for awareness of women and child protection Bill which all indicate that **he had a number of meetings with the Minister** and was fully involved in the procurement of business for Adart.(IR P.605,612, 619) More importantly **he signed** in his capacity as media manager massively illegally inflated invoices at RS 6000 and 9500 per minute for the Radio adverts which he had illegally sublet to either Milan or Power link who had been charged by the radio station a much lower rate as discussed below in the cases of Umer Shezade (Milan) and Syed Naveed (Media Power) all of which were approved and paid in connivance with the Government official petitioners named in this order whose signatures are on the release orders (IR 605 to 611, 612 to 618, 619-624). For example, just one of the letters which he sent to the Minister is set out below for ease of reference:

Adarts

Karachi (Pvt) Limited.

Azayam Plaza (4th floor) 5-A, Sindhi Muslim Housing Society, Share Faisal, Karachi-7400, Pakistan
Phone 34552773, 34551483,34552427 Fax-34558474
E-mail: adartskarachi@gmail.com

To,

The Minister,
Government of Sindh

Dated: 29/5/14

Karachi.

Subject: Request for Electronic Media Campaign Approval

Respected Sir,

As per our discussion in the meeting. Please find attached the **summary of media plan** regarding "Campaign on Electronic Media (FM Radios) to combat law and order situation in Sindh" in this regards **you are requested to kindly approve the media plan for the release order and for further process.**

We hope to have a long-term business relationship with Information Department Government of Sindh.
Thanking you in anticipation. (bold added)

Sd/-

**Media Manager
(SALMAN MANSOOR)**

121. The media plan was illegally approved by the Minister (petitioner No.1) as were the massively inflated invoices provided under the signature of petitioner No.13. As such we completely reject the stance of petitioner No.13 Salman Mansoor that he played virtually no role in Adart being awarded advertising contracts from the Information Department GOS and claiming and being paid for massively over inflated bills. The material referred to above reveals that he played a full part in illegally over billing the GOS along with his Adart Director petitioner No.14 Gulazar Ali. They were partners in crime; whilst petitioner No.14 Gulazar Ali was in the engine room dealing with the illegal sub contracting and operating the bank accounts petitioner No.13 Salman Mansoor was the "face" of Adart who was attending all the meetings with the Minister and other officials of the Information department to ensure that advertising contracts were awarded to Adart and that the illegally massively inflated bills of Adart were paid in connivance with the officials of Information department GOS. Thus, we find that prima facie there is sufficient material on record to connect the petitioner to the offense for which he has been charged and as such his pre arrest bail is recalled with immediate effect.

122. Turning to the case of petitioner No.14 Umer Shezade who was Proprietor of Daily Milan at the time of the scam who was illegally sublet a part of the work by Adart.

123. In addition to his general role of suppressing invoices he along with petitioner No.15 Syed Naveed have been given a specific role at para 14 of the reference which reads as under;

"14. It is also transpires from investigation report that Accused No.16 **Umar Shahzad** is Proprietor of Daily Milan, and Accused No.17 **Syed Naveed** is Proprietor of Media Power Link, who carried out advertisement campaigns in Electronic Media on behalf of accused No.14 and 15 and as such received amounts of Rs.124,031,247/- and Rs 121,955,632/- respectively in their accounts from Accused No.14. They have connived with accused No.14 and 15 in submission of fake and forged invoices and transmission certificates and also billed excessively / exorbitantly and as such they are jointly and severally liable with the other accused persons".

124. Petitioner No.14 Umer Shezade was an illegal sublettee of Adart. He was not on the GOS pre qualified list of approved advertisers. By his own admission he established his business in 2013 and his first contract was the one in this case given to him by Adart. By his own admission he had no prior expertise or experience in advertising. He could not produce any corporate or other documents as to how the entity Daily Milan had come into existence. He could not produce any invoice which he had given to any radio station. The invoice was given to Adart and he received 3% commission. From the above in our view it is apparent that Petitioner No.15 Umer Shezade was illegally favored and given a verbal contract by Adart which simply enabled him to cause loss to the GOS and benefit to himself. It may be correct that Adart was primarily responsible by pointing to Adart's bills to the GOS which were massively inflated but this passing on the blame (interestingly Adart blamed him for the loss) cannot absolve him of his own criminal liability. The fact that he gave no invoice to any radio station and there is no material on record to show that he negotiated competitive rates with the

radio stations shows he has connived with Adart in causing a massive loss to the GOS. Furthermore, the record shows that the S.161 Statement of Qazi Mateen is of no assistance to him (IR 275). FM Radio 100's letter (IR P.277) to NAB by Qazi Mateen simply says that TC's were given to Umer Shezade which he was unable to produce and that an amount was also received from him. A perusal of the verification certificate (IR P.2237 shows that he was charged RS400 per minute by FM 100, a number of invoices were fake, and even otherwise he was charging Adart RS 5,000 per minute which was a massively over inflated bill (IR 109 Bill dated 07-02-2009). Likewise S.161 Statement of Muhammed Feroze Alam of FM 104 Kashmore (IR P.295), Kashmore's letter dated 01-04-2016 (IR 297) Kashmore charging Umer Shezade RS 200 per min (IR 2293), and Adarts charging GOS RS 3000 per min (IR 00000111) which were massively over inflated bills by both parties. Other such examples are also present on the record. Thus, Umer Shezade was over charging Adart massively and Adart were again over charging the GOS massively on top of the amount which Umer Shezade had already overcharged. Thus in our view there is prima facie sufficient material on record to connect him with the offense for which he has been charged and as such his interim pre arrest bail is recalled with immediate effect.

125. **Turning to the case of petitioner No.15 Syed Naveed who was Proprietor of Media Power** at the time of the scam who along with Petitioner No.14 Umer Shezade was given a specific role as mentioned in para 14 of the reference as reproduced above. We find that he is sailing in the same boat as petitioner No.14 and the same considerations apply to him as to petitioner No.14 (in this respect reference is made to S.161 Statement of Mr.Jawed Ahmed of FM 88 (IR P.2177), fake transmission certificates and rates of RS 400 and RS 950 charged to the FM station (IR 289-291) and Media Power's invoice of RS 6000 per minute which was charged to Adart (IR 00000104) which shows the alleged commission as a

complete subterfuge as they were massively over billing Adart which made in effect there percentage more like 25%, which Adart then again massively overcharged when it submitted its bill to the GOS. Again there is more such material on record) Thus, in our view there is prima facie sufficient material on record to connect him with the offense for which he has been charged and as such his pre arrest bail is also recalled with immediate effect.

SUMMARY.

Pre arrest bail is recalled with immediate effect in respect of :

1. Sharjeel Inam Memon (Petitioner No.1)
2. Zulfiqar Ali Shallwani (Petitioner No.2)
3. Mansoor Ahmed Rajput (Petitioner No.3)
4. Muhammad Yousuf Kaboro (Petitioner No.4)
5. Sarang Latif Chandio (Petitioner No.5)
6. Altaf Hussain Memon (Petitioner No.6)
7. Inam Akbar (Petitioner No.7),
8. Muhammad Hanif (Petitioner No.9)
9. Asim Amir Khan Sikandar (Petitioner No.10).
10. Syed Masood Hashmi (Petitioner No.11).
11. Gulzar Ali (Petitioner No.12)
12. Salman Mansoor (Petitioner No.13).
13. Umer Shezade (Petitioner No.14)
14. Syed Naveed (Petitioner No.15)

Pre arrest bail is confirmed on the same terms and conditions to;

Riaz Munir (Petitioner No.8)

126. These are the reasons for our short order dated 23-10-2017.

127. A copy of this order shall be sent to the Chairman NAB, DG's NAB Karachi and Sukkur and the Administrative Judge Accountability Courts Sindh with respect to the paragraphs of this order which relate to them for information and implementation where required.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P No. D-3397, 3907, 3958, 5951 OF 2015
C. P No. D 3133, 3151, 3157, 5052, 5377,
5378, 5379, 5393 & 5668 OF 2016
& C.P.D- 1955 OF 2017

Date	Order with signature of Judge
------	-------------------------------

23.10.2017

Mr. Amer Raza Naqvi Advocate alongwith Petitioner Zulfiqar Ali in C.P. No. D- 3397/2015 and Petitioner Sharjeel Inam Memon in D-1955/2017

Mr. Shahab Sarki Advocate for Petitioner in C.P. No. D- 1955/2017

Syed Mehmood Alam Rizvi Advocate alongwith Petitioner in C.P. No. D- 3907/2015

M/s. Muhammad Wasif Riaz and Zubair Ahmed Rajput Advocates alongwith Petitioner in C.P. No. D- 3907/2015, 3133/2016 and D- 3958/2015

Muhammad Mansoor Mir Advocate alongwith Petitioners in C.P. No. D- 5951/2015 and 3157/2015

Mr. Wasiq Ahmed Kehar Advocate alongwith Petitioner in C.P. No. D- 3151/2016 and 3958/2015

M/s. Khalid Jawed Khan Advocate alongwith Petitioner in C.P. No. D- 5052/2016

Mr. Manzoor Hussain Khoso Advocate alongwith Petitioner in C.P. No. D- 5377/2016, 5378/2016 and 5379/2016

Mr. Hummul Zubedi Advocate alongwith Petitioner in C.P. No. D- 5393/2016

M/s. Azhar Siddiqui Advocate in C.P. No. D- 5668/2016, Inam Akbar, Petitioner No.1 called absent.

Mr. S. M. Iqbal Advocate alongwith Riaz Munir-Petitioner No.2 in C.P. No. D- 5668/2016

Mr. Yaseen Azad Advocate alongwith Petitioners in C.P. No. D- 5668/2016

Mr. Muhammad Altaf, Special Prosecutor NAB, Munsif Jan, Special Prosecutor NAB alongwith Investigating Officer Asif Raza

Mr. Abid Naseem Advocate for PBA in C.P. No. D- 5668/2016

Mr. Saeed A. Memon, Assistant Attorney General for Pakistan

.....

Petitioner No.1 Inam Akbar in C.P. No. D- 5668/2016 called absent. Even on 11.10.2017 and 18.10.2017 he was also absent.

For the reasons to be recorded later on, the order dated 11.06.2015 in C.P. No. D- 3397/2015, order dated 01.07.2015 in C.P. No. D- 3907/2015, order dated 03.07.2015 in C.P. No. D- 3958/2015, Order dated 23.09.2015 in C.P. No. D- 5951/2015, Orders dated 30.05.2016 in C.P. No. D- 3133/2016, C.P. No. D- 3151/2016 and C.P. No. D- 3157/2016, Order dated 16.09.2016 in C.P. No. D-

5052/2016, Orders dated 04.10.2016 in C.P. No. D- 5377/2016, C.P. No. D- 5378/2016, and C.P. No. D- 5379/2016, Order dated 05.10.2016 in C.P. No. D- 5393/2016, Order dated 19.10.2016 in C.P. No. D- 5668/2016 and Order dated 30.03.2017 in C.P. No. D- 1955/2017, whereby Petitioners were granted ad-interim pre arrest bail stand recalled. However, earlier ad-interim pre arrest bail granted to Riaz Munir-Petitioner No.2 vide order dated 19.10.2016 passed in C.P. No. D- 5668/2016 stands confirmed on same terms and conditions.

Amjed/PS