

467

**IN THE HIGH COURT OF SINDH AT KARACHI**

Before: Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Mohammed Karim Khan Agha

C.P. No.D-832 of 2016  
Ehsan Ullah Shah & another

Vs.

NAB & another

Date of hearing:	22.04.2016.
Date of Order	04.05.2016
Petitioners:	Through Mr. Zaheer ul Hassan Minhas, Advocate.
Respondents:	Through Mr. Noor Muhammad Dayo, ADPG, NAB and Mr. Muhammad Aslam Bhutta, Special Prosecutor NAB alongwith I/O. Hassan Noor.

**ORDER**

**Mohammed Karim Khan Agha, J.**- By this common order, we propose to dispose of the above petition for grant of post arrest bail by petitioner No.1 (Ehsanullah Shah) and petitioner No.2 (Syed Azhar Hussain) arising from National Accountability Bureau (NAB) Reference No.24/2015 State v. Ehsan Ullah Shah and others which was filed before the Administrative Judge Accountability Courts in Karachi by NAB under S.9 of the National Accountability Ordinance 1999 (NAO) on 12.08.2015.

2. The allegations against the petitioners as per reference are that upon receipt of various complaints from different affectees regarding defrauding public at large by offering attractive monthly profit in the garb of Riba free business by the above mentioned petitioners and others an inquiry was authorized by NAB.

3. The accused No.1 and 2 (petitioners) are the directors of the company namely M/s. Sunland Crops Care (Pvt.) Ltd, a private limited company registered with the Security and Exchange Commission of Pakistan (SECP). The company is dealing in fertilizers and pesticides. The accused No.3 to 5 are the agents of

✓

468

the company and used to gather/collect money from investors on the pretext of investment into that business. The subject scam is similar in nature to many other scams of the same kind. In all these scams the main culprits are either religious scholars or have agents who are religious people. These persons allure general public into investing into Shariah Compliant Products, e.g. Modarba of Musharka. Due to their religious standing, general public is more inclined towards investing with them. However in this scam, the accused persons have defrauded these investors and later on fled without paying the principal amounts to the investors.

4. The investigation report reveals that so far 101 claimants / affectees have lodged their claim amounting to Rs.151.327/- million and all of them stated that they had been approached by one of the agents, who lured them into the scam by offering lucrative monthly or quarterly profit on their investment. They were told that the invested amount shall be invested into the business of fertilizers / pesticides run by M/s Sunland Crops Care (Pvt.) Limited. They further stated that some of them were paid profits in the start, but that was only a plan of the accused persons as they wanted to build their trust into the minds of investors. However later on they stopped paying any profits.

5. The investigation report reveals that record from different banks was seized under proper seizure memo which revealed that the accused persons were maintaining about 39 x bank accounts in different bank branches. It was established that the amount was invested with the agent through cash/cheques. The accounts were in their own names or in the names of different firms such as:

- i. M/s Hadia Trading Company.
- ii. M/s Kiswal Metal Co.
- iii. M/s Sunland Crops Care. (petitioner No.1 is Managing Director and petitioner No.2 is Incharge)
- iv. Azher Shah Sherazi. (petitioner No.2)
- v. Ahsan Ullah Shah. (petitioner No.1)
- vi. Shah Abdul Qadir. (accused No.2)
- vii. Syed Shah Rafi Ullah.(accused No.5)
- viii. Shah Abdul Rahim.(accused No.4)

27

6. During the course of investigation it has been established that accused No.1 and 2 (the petitioners) are Managing Director and Incharge of M/s Sunland Crops Care Investment Company respectively which is a private limited company incorporated with SECP and deals in fertilizers and pesticides. The accused persons in collusion, connivance and collaboration with each other defrauded the public at large by offering attractive monthly profit in the garb of Riba free business; thereby accused persons have committed the offence of corruption and corrupt practices by collecting billions of rupees from the public.

7. The accused No.3 and 4 are brothers and real nephew of accused No.1 and 2 (the petitioners). Accused No.5 is brother in law of accused No.4. They were the agents operating in Karachi. The accused No.5 was operating as agent in Mansehra KPK. They were first contacting with general individuals / public and lured them into investing and then collected funds from the affectees for onward transfer to accused No.1 and 2 (the petitioners). In the process, they derived benefits from those funds.

8. It has been established during the investigation that the accused No.1 to 5, in connivance with each other, have committed the offence of cheating the public at large through illegal gains by depriving the affectees of their hard earned money. So far 101 claimants / affectees have approached the NAB for their claims amounting to Rs.151.327/- million. Thus the accused persons have committed the offence of corruption and corrupt practices as defined under section 9(a) of NAO, 1999 and punishable under section 10 of the aforesaid ordinance and schedule thereto. According to NAB a supplementary Reference may be filed after receiving more claims from other affectees as and when necessary.

9. Learned counsel for the petitioners submitted that the petitioners are innocent and have nothing to do with the alleged scam and have been dragged into these proceedings merely due to incompetence of respondents especially the investigation officer. He further submitted that as soon as the petitioners had learnt about the fact that the co-accused are collecting sums from the general public in petitioners' name under the garb of Modarba and

12/11

470

Musharka, the petitioners publicized Public Notice in daily City News Karachi dated 26.09.2013, daily Ummat Karachi dated 26.09.2013, daily Ausaf Islamabad dated 27.09.2013, daily Shumal Abbot Abad dated 26.09.2013 and warned the general public from being victims of such fraud and subsequently the petitioners' company Sunland Crops Care Private Limited has also filed a lawsuit against the co-accused being Suit No.788/2014 in the court of 5<sup>th</sup> Senior Civil Judge, Karachi South on 04.08.2014 and the respondent No.2 has authorized investigation on 25.3.2015 much after the petitioners have publically warned the public. According to him none of the affectees have been allured by the petitioners or have paid any sum to them or have entered into any Modarba agreement with them but few persons have recorded their statements against the petitioners which have nothing to do with alleged scam and violation thereof attracts only civil liability. He therefore prayed that the petitioners be enlarged on post arrest bail.

10. Mr. Noor Muhammad Dayo, ADPG appearing on behalf of the NAB has vehemently opposed the grant of bail to the petitioners. He submitted that sufficient material has been collected by the NAB to connect the petitioners to the offence as charged and that such material establishes the guilt of both of the petitioners beyond a reasonable doubt.

11. We have considered the submissions raised by the learned counsel for the parties and perused the record.

12. We would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us and that this order shall not prejudice the case of any party at trial whose case shall be decided on merits based on the evidence produced before the trial court.

13. 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 and in the case of non bailable offenses such as this there are reasonable grounds for believing that the accused is connected with the offense charged.

14. It seems an admitted position that the petitioners were the directors of M/s Sunland Crops Care Investment Company which is a private limited company incorporated with SECP and deals in fertilizers and pesticides. The case of the petitioners is that they had nothing to do with the scam and when they heard of it they reacted immediately by placing adverts in the news papers telling people not to make such investments and later on filed a civil suit against some of the other accused in the reference for damages for misleadingly using their names for the purpose of the scam.

15. The matter however appears to us not to be so straight forward. This is because all the 5 accused (including both the petitioners) are inter related being brothers, nephews and brother in law and therefore knew each other well. It was not a case of the petitioners not knowing the other accused.

16. Furthermore the petitioners have been given a specific role in the offense as under:

"petitioners No.1 and 2 are Managing Director and Incharge of M/s Sunland Crops Care Investment Company respectively which is a private limited company incorporated with SECP and deals in fertilizers and pesticides. The accused persons **(including the petitioners)** in collusion, connivance and collaboration with each other defrauded the public at large by offering attractive monthly profit in the garb of Riba free business; thereby accused persons have committed the offence of corruption and corrupt practices by collecting billions of rupees from the public" (bold added)

17. It is apparent from a number of the S.161 statements that the other accused in the reference duped the investors into investing in M/s Sunland Crops Care Investment Company in exchange for large returns on their investments through Islamic



modes of financing. These other accused seem to have been the primary agents/frontmen of the petitioners who funneled the investors money into the company or other accounts of either themselves or the petitioners. In fact in a number of S.161 statements the petitioners are directly implicated in the scam itself which it appears was being masterminded by them through their company (for example the S.161 statements of Lt Commander (Rtd) Mohammed Javed Shezade, Ishaq Khan, Hafez Abdul Rehman, Muhammed Asfaq, Ghulam Mustafa, Naveed Masood Hashmi, Muhammed Shah).

18. Likewise numerous banking documents show that large amounts of money have been paid into and withdrawn from the accounts of the petitioners which the petitioners have failed to adequately explain and that in many cases the petitioners banking transactions are inter linked with the other accused which again the petitioners have not been able to adequately explain bearing in mind that they claim ignorance of the scam and place the blame on the other accused. If this were so there should be no inter related banking transactions between the petitioners and the other accused. The only reasonable inference being that this money belonged to the investors and was the fruits of the scam which was shared between the petitioners and other co accused in the reference who as mentioned earlier were all closely related.

19. 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. All accused therefore bear responsibility, to a lesser or greater extent, for the commission of the offense.

20. The placement of the adverts in little known newspapers and the filing of the civil suit appear to us to be a device used by the petitioners to cover them selves once they no longer intended returning the money to the investors and/or realized that the investors had discovered the scam and were going to expose it. It is true that the adverts in the news papers came after the investigation was authorized however it is to be observed that the



adverts were made only 3 months before the initial complaint was received by NAB.

21. It is true that not all scams may be of a criminal nature and as found by the Hon'ble Supreme Court in the recent case of **Rafiq Haji Usman V Chairman NAB** (SCMR 2015 P.1575) which concerned the public investing with a developer for the purposes of building houses for them such cases may be of an entirely civil nature and as such would not amount to an offense falling within the ambit of the NAO. In our view however based on the particular facts and circumstances of this case the above case is distinguishable from the present case which is criminal in nature mainly on account of the intent not to return the money, it not being invested and returned as agreed and the fact that the money which was invested was used for a purpose which had nothing to do with the reason why the money was collected from the investors. In our view the current case is a clear case of fraud and cheating the public at large which falls squarely within the ambit of the NAO

22. In our view cases of cheating the public at large out of their hard earned money need to be dealt with firmly in order to discourage such practices. In a recent bail after arrest case concerning the cheating of the public at large, although not a NAB case, but an offense being prosecuted by the FIA which involved an on line computer scam (cyber crime) in the case of **Ch.Muhammed Ashfaq V State** (SCMR 2015 P.1716) the Hon'ble Supreme Court whilst dismissing the post arrest bail application in a bailable offense which did not fall within the prohibitory clause of S.497 Cr.PC (unlike the instance case) held as under at P.1719

"7. Unfortunately, there is a growing tendency on the part of swindlers, deceiving the poor public through entrapping tricks of this nature. **In this way, such scams are becoming the order of the day, therefore, same need to be curbed with iron hand and no mercy or leniency should be shown to persons involved in such organized crimes.**

8. To get the concession of bail in offences not punishable with imprisonment for ten years, life or death, is not the right of the accused but it is certainly discretionary with the Courts of law, keeping in view the facts and circumstances of a particular case.

WA

9. In ordinary course and in crimes of ordinary nature, such discretion is to be exercised in favour of the accused however, when ingenious contrived and designed methodology is pressed into service for defrauding a bulk of poor peoples through fraudulent means, would take out the case of such accused person from the ordinary principle, where the discretion in granting bail by the court shall ordinary not to be exercised in a routine manner taking the matter leniently otherwise, the entire society would be corrupted through such acts of detestable nature.

10. At the moment, as stated at the bar, more than 50 complaints of similar nature have been lodged against the petitioner, which are still under inquiry/investigation thus, on the available record, the petitioner appears to be a member of a gang of swindlers involved in deceptive tactics, depriving poor and needy people of their hard earned money, who attached high hopes, reposing confidence in the petitioner and his accomplices that they would provide lucrative and good earning job in return. The device and well designed strategy attributed to the petitioner and his accomplices, if it is allowed to go unchecked, the same is likely to corrupt the whole society and would encourage the others to indulge in the same and similar practice." (bold added)

23. In our considered view there are reasonable grounds to link the petitioners to this most heinous of offenses i.e. the accused posing as religious scholars and abusing the trust of poor religiously minded people by duping them into investing huge amounts of their hard earned money in Islamic orientated products with allegedly high rates of return which they have no intention of honoring, an offense which is regrettably becoming more and more common, and as such the post arrest bail petitions of both the petitioners is hereby dismissed.

24. We however direct the Accountability Court hearing this reference to immediately record the evidence of the witnesses who directly implicate the petitioners and complete the trial of the reference within three months from the date of this order a copy of which the office shall immediately provide to the concerned Accountability Court.

Dated. 04-05-2016