

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

C.P. No.D-4162 of 2016

Date	Order with signature(s) of Judge(s)
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Present:

**Muhammad Ali Mazhar, J.
Abdul Maalik Gaddi, J.**

Moulana Mufti Saifullah Jameel.....Petitioner

Versus

National Accountability Bureau
& another.....Respondents

20th February, 2017.

Mr. Jawaid Ahmed Chattari, Advocate for the
Petitioner

Mr. Akram Jawed, Special Prosecutor, NAB alongwith
Investigating Officer, Ahmed Bin Zahid, AD/IO, NAB.

Mr. Asim Mansoor Khan, DAG.

Muhammad Ali Mazhar, J. This petition has been moved for bail in NAB Reference No.09/2014. The brief facts of the case are that initially Reference No.09/2014 was filed against four persons i.e. Shafiq-ur-Rehman, Muhammad Inam, Muhammad Talha and Faizan Ahmed Siddiqui, subsequently, a supplementary Reference was filed in which present petitioner has been nominated as Accused No.06.

2. The learned counsel for the petitioner argued that the petitioner is Naib Raees of Darul Ufta “Jamia Binoria Site”, Karachi. A notice was received to the petitioner from NAB

and he attended the I.O who recorded his statement. Another notice was received to the petitioner to appear before the Judicial Magistrate, South where the statement of one of the accused Muhammad Shabbir was to be recorded under Section 164 Cr.P.C. After the statement of Muhammad Shabbir, NAB Authority arrested the petitioner. Since the petitioner's family was unaware therefore his son filed a Constitution Petition No.C.P.No.D-2237/2016 in this court regarding the missing of his father. However the NAB disclosed the arrest of the present petitioner on the basis of the statement under Section 164 Cr.P.C. of Muhammad Shabbir and filed a supplementary reference bearing No.09/2014 in the Accountability Court. He further argued that no specific role of the present petitioner is mentioned in the reference. The allegation against the petitioner are that he signed on "Fatwa" with some other persons and some amount was credited in the petitioner's bank accounts from the account of main accused Shafiq-ur-Rahman who is on bail by this court. He further argued that the plea of prosecution that some amount was found in the personal bank accounts of the petitioner and some amount was directly credited in other bank account of the petitioner is the matter of further inquiry to prove the guilt of the petitioner. He further argued that the investigation is under process for last considerable period of time but the trial court has not even framed the charge. To sum up, the learned counsel argued that the main accused Shaif-ur-Rahman is on bail so keeping in view the rule of consistency, the petitioner is also entitled to be released on bail on the same terms and conditions and the petitioner agrees to fulfil the same conditions.

3. The learned Special Prosecutor NAB argued that the role of the petitioner in the supplementary reference is clear that he has committed an offence of corruption and corrupt practices as defined under Section 9 (a) and punishable under Section 10 of NAO 1999. The learned Accountability Court has already taken cognizance of the above said reference. Various complaints were received from general public against accused persons Shafiq-ur-Rehman, Muhammad Inam, Muhammad Talha and others. The accused persons were receiving huge amount on the pretext of Modarba business (Islamic Mode of financing) and they promised to pay huge profits to the investors. The whole scam was facilitated through a Fatwa issued by Darul Ifta Jamia Binoria, Karachi. According to the prosecution witnesses, accused Mufti Abdullah Shoukat facilitated the crime of accused Shafiq-ur-Rehman by luring public to invest in the Modarba business of Shafiq-ur-Rehman (accused No.1) with this firm statement and confirmation that he examined the business of Shafiq-ur-Rehman and said business is according to the principles of Islam and the Fatwa in this regard was also issued by Darul-Ifta, Jamia Binoria. He further argued that witnesses have deposed that they invested their money on the basis of fatwa given by Darul Ifta Jamia Binoria, Karachi and the said fatwa was duly signed by accused Mufti Abdullah Shoukat, Mufti Saifullah Jameel (petitioner/accused) and Mufti Nadir Jan which is also present on the website of Jamia Binoria. It was further averred that various bank accounts of Mufti Saifullah Jameel (petitioner) have been traced by the I.O in which huge sum was deposited and some amount was credited directly from the bank accounts of Shafiq-ur-Rehman (accused No.1). To answer the rule of consistency, the learned Special Prosecutor argued that though the main accused Shafiq-ur-Rahman has been

granted bail by this court in the same reference but he has jumped the bail and trial court has submitted reference in this court for further proceedings.

4. The basic allegation against all the accused is that Shafiq-ur-Rahman along with other accused persons cheated public at large by luring general public to invest in their fraudulent Modarba business and looted their hard earned money by aiding, assisting and abetting each other in the commission of the offence. The reason of implicating the petitioner in the supplementary Reference is the statement of Muhammad Shabbir son of Sardar Muhammad whose statement was recorded under Section 161 and 164 Cr.P.C. The I.O admitted that both the statements are verbatim so he pointed out relevant portion from 161 Cr.P.C. statement in which it is stated that “**Mufti Saifullah Jameel (petitioner) and Abdullah Quettawal also used to visit factory often with the diary and hand carry bag. They also used to carry cheques and cash in the bag.**” The I.O further pointed out paragraph No.5 of supplementary Reference in which it is stated that Fatwa was issued by Darul Ifta Jamia Binoria, Karachi which was duly signed by Mufti Abdullah Shoukat, Mufti Saifullah Jameel (petitioner) and Mufti Nadir Jan. However, paragraph No.6 revealed that on further investigation various Bank accounts of the petitioner and co-accused were identified in which huge deposits were credited and also enormous funds were credited directly from the Bank accounts of Shafiq-ur-Rehman. However the Special Prosecutor and I.O both admitted that nothing is available on record to show that any complaint was lodged against the petitioner by any alleged investor nor there is evidence that the petitioner received the money from any investor for

Modarba business. We specifically asked the question to the I.O as to whether the petitioner was also partner in the Modarba business, the I.O candidly admitted that no such evidence is available.

5. The amount allegedly deposited in the Bank accounts of petitioner from the Bank accounts of main accused as mentioned in sub-para (b) of para 9 of Investigation Report, makes a total sum of Rs.9,589,900/-. He has also shown us other details of bank accounts jotted down in Table-II at page 4 of the Investigation Report, which are basically the details of personal accounts of the petitioner. However the I.O admitted that no direct complaint was received from any claimant or the investor against the petitioner. The petitioner was not nominated in the original reference but he was implicated on the statement of Muhammad Shabbir which tentatively gives this impression that at initial time no evidence was available against the petitioner. The amount lying in the personal accounts need evidence whether it was money of modarba business or from the petitioner's own resources or earnings however for the amount mentioned in investigation report in subparagraph (b) of Paragraph (9) that it was transferred/credited from the account of main accused again it is to be established during trial that this amount was really credited to deprive or misappropriate the amount of investors in the modarba business or there was some dealings between the petitioner and the main accused. However for this amount, the counsel for the petitioner agreed to furnish tangible security and to fulfill other conditions of bail similar to the conditions laid down in the bail order of co-accused Shaifiq-ur-Rahman. So far as the sanctity of alleged fatwa is concerned it is the dominion of

the trial court to examine its effect and validity that lured or influenced the mind of general public to such a great extent that they invested the amount in modarba business. The implication of petitioner on the allegations made in the statement of Muhammad Shabbir and signing alleged fatwa and its repercussions require further inquiry. It is also a fact that since 18.4.2016 the petitioner is in custody but no charge has been framed so far by the trial court and track record do show that considerable time will be consumed to conclude the trial. Whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail and in such a situation it would be better to keep him on bail than in the jail during the trial. Prosecution in order to make out a case for refusal of bail to an accused is primarily supposed to place on record material on basis of which he is believed to be involved in a non-bailable offence, but in absence of such material the court for the purpose of releasing the accused on bail, instead of dilating upon the facts of the case in details, can dispose of the matter by holding that his detention is unjustified or unreasonable. Reference can be made to **PLD 1996 S.C. 241 & PLD 2002 S.C. 572**. In the bail order authored by one of us (Muhammad Ali Mazhar-J) in the case of co-accused **Shafiq-ur-Rahman (CP.No-D-3294/29014)** the court held that further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that deeper appreciation of

evidence is not permissible at bail stage simultaneously it is also well settled that object of trial is to make an accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Accused is entitled to expeditious access to justice, which includes a right to fair and expeditious trial without any unreasonable and inordinate delay. The intention of law is that the criminal case must be disposed of without unnecessary delay it is not difficult to comprehend that inordinate delay in imparting justice is likely to cause erosion of public confidence in the judicial system on one hand and on the other hand it is bound to create a sense of helplessness, despair feeling of frustration and anguish apart from adding to their woes and miseries. Reference: **Ali Anwar Ruk, Abdul Jabbar, Syed Mansoor Ali and Sardar Amin Farooqui reported in 2014 SBLR 766, PLJ 2014 Karachi 251=2014 CrLJ 777, PLJ 2014 Karachi 254=2014 UC 784 and PLJ 2014 Karachi 268.**

6. The reasons of opposing bail on the ground that the main accused has jumped the bail is not well-founded and this cannot become a sole cause to decline the bail on the rule of consistency at this stage. In the petition of co-accused, we have already issued notice to the surety for conducting further proceedings and in that case the law will take its own course where not only surety may be forfeited but tangible security of huge amount was also secured to safeguard the interest of claimants/prosecution.

7. As a result of above discussion, the petitioner (Mufti Saifullah Jameel) is granted bail subject to furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five

Lac) with P.R. bond in the like amount to the satisfaction of the trial court. In addition to the surety, the petitioner shall also furnish tangible security in the sum of Rs.10 Million in the trial court. He will also deposit original valid passport and shall not leave the country without permission of the trial court. The above findings are tentative in nature and shall not prejudice the case of either party. The petition is disposed of.

Judge

Judge