

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

MR. JUSTICE MUHAMMAD IQBAL KALHORO

MR. JUSTICE SHAMSUDDIN ABBASI.

Const. Petition No.2262 of 2016

Petitioner Syed Athar Hussain son of Syed Tahir Hussain through Mr. Shaukat Hayat, Advocate.

Respondent Chairman NAB & another
Through Mr. Muhammad Akram Javed,
Special Prosecutor NAB and Mr. Abdul
Jabbar Rajput, DAG.

Const. Petition No.841 of 2016

Petitioner Muhammad Safdar son of Sakhi Muhammad
Through Mr. Muhammad Ishaque Khan,
Advocate.

Respondent Chairman NAB & another
Through Mr. Muhammad Akram Javed,
Special Prosecutor NAB and Mr. Abdul
Jabbar Rajput, DAG.

Const. Petition No.1356 of 2016

Petitioner Muhammad Ejaz Chaudhry son of
Muhammad Ghulam Mohiyuddin
Through Mr. Obaid ur Rehman Khan,
Advocate.

Respondent Chairman NAB & another
Through Mr. Muhammad Akram Javed,
Special Prosecutor NAB and Mr. Abdul
Jabbar Rajput, DAG.

Const. Petition No.3026 of 2016

Petitioner Abdul Hameed son of Muhammad
Through Mr. Sikandar Zulqarnin, Advocate.

Respondent Chairman NAB & another
Through Mr. Muhammad Akram Javed,
Special Prosecutor NAB and Mr. Abdul
Jabbar Rajput, DAG.

Dates of hearing 17.10.2018, 25.10.2018, 31.10.2018,
09.11.2018, 12.11.2018 & 19.11.2018

Date of order 29.11.2018
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ORDER

SHAMSUDDIN ABBASI, J:- Through CP D- 2262 of 2016 petitioner Syed Athar Hussain seeks post-arrest bail whereas petitioners Muhammad Safar, Muhammad Ejaz Chaudhry and Abdul Hameed

seek pre-arrest bail through their respective petitions viz CP D- 841 of 2016, CP D- 1356 of 2016 and CP D- 3026 of 2016, in Reference No.13 of 2016 under Section 9(a) of National Accountability Ordinance, 1999 (NAO, 1999) punishable under Section 16(c) of NAO, 1999 and are on ad-interim pre-arrest bail granted to them by this Court without touching the merits of the case.

2. Precise but relevant facts as disclosed in the Reference No.13 of 2016 are that accused No.1, Dr. Asim Hussain, during his tenure as Minister for Petroleum and Natural Resources, Government of Pakistan and Chief Trustee/Chancellor of Ziauddin Hospital Trust from 2008-2013 gained illegal benefits in terms of illegal allotment of State lands, besides he raised illegal encroachment on KDA land for his commercial activities and involved in laundering of proceeds of crime (illegal gains) abroad and within Pakistan by misusing his authority, thereby deprived State of Rs.462.5 billion from 2010 to 2013. During investigation it was also revealed that Dr. Asim Hussain {accused No.1} registered a Trust in the name and style “Dr. Ziauddin Ahmed Trust” in the year 1981, objective of which was charitable but he never adhered to it. In the year 1987 the Income Tax Tribunal decided the status of Trust as non-charitable, however, it was never used for charitable purposes and in reality it was used for commercial activity in the guise of trust in clear violation of the terms and conditions of the registered trust deed and provisions of Trust Act, 1882. He used the trust as a vehicle for manipulation, money laundering, accumulation of wealth and assets as well earning reputation in the society and got allotted various lands from Government fraudulently in the garb of noble cause.

3. The accused No.2, Abdul Hameed (petitioner in CP D- 3026 of 2016) during his posting as Group Finance Advisor, Ziauddin Group of Hospital and University had facilitated Dr. Asim Hussain {accused No.1} into illegal conversion, placement and integration of illegal money and then converted the same into assets abroad and in Pakistan by way of money laundering. He had been receiving cash from Dr. Asim Hussain {accused No.1} and placing the same into his own bank accounts and subsequently layering the same into other accounts, withdrew the same intermittently for purchase of property and used to make payment through pay orders/demand drafts etc. in

respect of various persons for investment in Pakistan and abroad on behalf of Dr. Asim Hussain {accused No.1} and once the transaction was over he used to intimate through coded conversation to Dr. Asim Hussain {accused No.1} about placement and layering of money, which constitutes “money laundering”.

4. The accused No.3 Syed Athar Hussain (petitioner in CP D- 2262 of 2016) and accused No.4, Masood Haider Jaffery {absconder} while their postings as Directors Land, KDA, allotted illegal lease of KDA land, measuring 2 acres at North Nazimabad and 2.8 acres at Clifton, Karachi, by missing their authority.

5. The accused No.5 Muhammad Ejaz Chaudhry (petitioner in CP D- 1356 of 2016) during his posting as Secretary Petroleum and Natural Resources, Government of Pakistan, facilitated Dr. Asim Hussain {accused No.1} in the name of load management and moved summaries for gas curtailment to fertilizer companies without considering the rational approach and implementing the decision of ECC taken in June 2001, whereby fertilizer companies were to be provided 80% of gas supply.

6. The accused No.6, Muhammad Safdar (petitioner in CP D- 841 of 2016) while he was CEO, Karachi Dock Labour Board {KDLB} given illegal extension and award of KDLB contract in violation of PPRA Rules and facilitated Dr. Asim Hussain {accused No.1} in taking over of hospital and misusing it for private practices and referral facility, he also allowed Dr. Asim Hussain {accused No.1} to use KDLB premises for nursing accommodation and after his retirement from KDLB he was appointed as GM HR in Ziauddin Hospital.

7. On appraisal of material collected during investigation, it was established that accused No.1 to 6 in connivance with each other have committed land fraud amounting to Rs.9.5 billion, money laundering to the tune of Rs.3 billion, misuse of authority and criminal breach of trust through fertilizer scam worth Rs.450 billion, hence liable to be prosecuted for offence of corruption and corrupt practices as envisaged under Section 9(a) punishable under Section

10 of NAO, 1999 read with schedule thereto and Section 3 and 4 of the Anti-Money Laundering Act, 2010, hence this reference.

8. We have noticed that NAB has arraigned different accused with different allegations and role in a one and same reference having no nexus with each other except that Dr. Asim Hussain {accused No.1} is common and has been involved in all allegations who is alleged to have committed different offences but NAB has accumulated all offences in a single reference. In order to substantiate each allegation against each accused in connivance with Dr. Asim Hussain {accused No.1}, we deem it appropriate to discuss allegation and role of each accused separately.

Petitioner Syed Athar Hussain {CP D – 2262 of 2016}

9. Through his petition, petitioner Syed Athar Hussain seeks post arrest bail. The allegation against him is that while his posting as Director Land, KDA, Karachi, he extended favour to Dr. Asim Hussain {accused No.1} and granted him illegal lease of KDA land reserved for amenity by misusing his authority.

10. It is contended on behalf of petitioner that he has been falsely implicated in the case with malafide intention and ulterior motives as otherwise he has nothing to do with the allegations leveled against him in the reference; that the petitioner has unblemished and meritorious service record and after his retirement he joined Sir Syed University of Engineering & Technology as Deputy Registrar; that the allegations with regard to allotment of land in favour of Dr. Asim Hussain {accused No.1} at North Nazimabad and Clifton are false, baseless and without any documentary evidence inasmuch as the petitioner neither had any authority of granting lease of KDA land nor he ever granted any such lease in favour of accused No.1; that Plot No.ST-4, measuring 2.8 acres, Scheme No.5, Block-6, Clifton, Karachi, was allotted to Dr. Ziauddin Ahmed Trust by the then Chief Minister, Sindh and the decision was conveyed to the Director General, KDA, by Mr. Kamran Dost, Deputy Secretary for Secretary to the Government of Sindh vide letter dated 11.04.1994 whereas Plots No.ST-8/1-a and ST-8/1-b, measuring 908 and 1347 square yards respectively, Scheme No.2, Block-F, North Nazimabad, Karachi, was not the KDA land, therefore, question of allotment by KDA does not

arise; that at the time of allotment of subject lands the petitioner was not the Director of KDA; that the allotments in favour of accused No.1 were made on 28.04.1994 and the same were cancelled on 17.07.1997 and such a decision was challenged before a competent authority i.e. Justice (R) Abdul Rehman, Chairman, Sindh Government Lands Committee, who recommended restoration of both plots in favour of accused No.1 vide letter dated 24.12.2002 and based on such recommendation the Director General, KDA, restored the allotment of both plots in favour of accused No.1 subject to payment of dues in favour of KDA vide letter dated 06.01.2003; that no liability as to the involvement of the petitioner could be pinned down in absence of any documentary proof and yet 14 witnesses have been examined by the prosecution but none of them have uttered a single word with regard to the allegations leveled against the petitioner in the reference; that the petitioner is in continuous custody since 07.04.2016 which is more than two years but his trial has not been concluded so much so there is no likelihood of the trial being completed in near future as such the petitioner deserves concession of bail on merits as well on the ground of hardships. In support of his contentions, the learned counsel for the petitioner has placed reliance on the cases of *Imtiaz Ahmed v The State through Special Prosecutor, ANF* {2017 SCMR 1194, *Himesh Khan v The National Accountability Bureau (NAB), Lahore & others* {2015 SCMR 1092}, *Zulfiqar Ashraf v The State & others* {2016 SCMR 18}, *Atta Abbas Zaidi v Chairman, National Accountability Bureau (NAB) and 2 others* {PLD 2017 Sindh 120}, *Anwar Saifullah Khan v The State and 3 others* {2001 SCMR 1040}, *Nazir Hussain v Ziaul Haq and others* {1983 SCMR 72}, unreported order of this Court dated 12.10.2017 in CP No.D- 5369 of 2017, unreported order of this Court dated 17.04.2017 in CP No.D- 6307 of 2016 & other connected petitions and unreported order of this Court dated 01.06.2018 in CP No.D- 265 of 2015 & other connected petitions.

11. The learned Special Prosecutor NAB, on the other hand, has contended that petitioner Syed Athar Hussain and co-accused Masood Haider Jaffery while serving as Directors {Land} misused their authority and granted illegal lease of KDA lands, measuring 2 acres, at North Nazimabad, and 2.8 acres at Clifton, Karachi, in favour of Dr. Asim Hussain {accused No.1} and in this context NAB

during investigation collected sufficient documentary evidence coupled with ocular evidence in shape of statements under Section 161, Cr.P.C. of witnesses, which substantiated the allegations leveled against Dr. Asim Hussain {accused No.1}, who with connivance of other accused committed offence of corruption and corrupt practices under Section 9(a) and 10 of NAO, 1999.

12. Record reflects that in 1994 two plots were allotted to M/s Dr. Ziauddin Memorial Hospital Trust viz Plot No.ST-4/B, measuring 11430 square yards (2.80 acres), Scheme No.5, Block-6, Clifton, Karachi, and Plots No.ST-8/1-a and ST-8/1-b, measuring 908 and 1347 square yards respectively, Scheme No.2, Block-F, North Nazimabad, Karachi, for the construction of trauma centre and general hospital but the same were cancelled in year 1997. The matter was adjudicated before this Court by way of filing C.P. No.D-1458 of 1997. During pendency of the petition, the Director General, KDA, passed a speaking order on 29.12.2001, which was reproduced in this Court, operative para whereof is reproduced below:-

“4. However, since the petitioner has already constructed a hospital building on the said plot in which a hospital is operating, I am of the considered view that under the circumstances and to meet the ends of equity and justice the case of the petitioner for allotment of the said plot be accepted subject to clearance from the Government/agencies.

5. In view of the above position the case of the petitioner is considered through this Speaking Order subject to nomination of a KDA Member in their Governing Body and payment of dues if any”.

A committee was constituted by the Government of Sindh to examine the legality of all allotments made by the Government under the chairmanship of Justice (R) Abdul Rehman. The committee has also examined the case of allotment of M/s Dr. Ziauddin Memorial Hospital Trust and recommended withdrawal of cancellation order and restoration of allotment and such orders of Chairman were conveyed to M/s Dr. Ziauddin Memorial Hospital Trust vide letter dated 06.01.2003, which is reproduced below:-

“In pursuance of Local Government Department, Govt. of Sindh letter No.SO(Land)/HTP/6-195/93 dated 26.12.2002, I am directed to intimate that the Competent Authority has been pleased to restore the amenity plots viz ST-8/1-a & ST-8/1-b, Block-F, measuring 908 & 1346 sq. yds. Scheme No.2 (North Nazimabad) & Plot No.ST-4/B,

Block-6, measuring 11430 sq. yds., Scheme No.5 (Clifton) in favour of Dr. Ziauddin Ahmed Trust as per recommendations of Justice (R) Abdur Rehman, Chairman Sindh Govt. Lands Committee vide letter No.PS-CH/SGLG/424/02 dated 24.12.2002. The cancellation letters issued earlier vide No.350 & 361 dated 17.07.1997 are withdrawn and both plots are hereby restored.

The KDA restored both plots in favour of M/s Ziauddin Memorial Hospital Trust and Dr. Asim Hussain {accused No.1} applied for execution of lease in writing and then KDA entered into a lease agreement with Dr. Asim Hussain {accused No.1}.

13. We have noticed that during investigation, I.O. of the case sorted-out the lands allotted to Dr. Asim Hussain {accused No.1} by the Land Utilization Department, Government of Sindh besides subject matter of lands situated at North Nazimabad and Clifton, Karachi, details whereof are as under:-

- v) Land in NC-54 Deh Jam Chakro, Karachi admeasuring 4 acres;*
- vi) Land in Sector 52/A, NC-97 Deh Bitti Amri, Karachi, admeasuring 2 acres;*
- vii) Land in NC-24 Deh Dih Karachi, admeasuring 4 acres;*
- viii) Land in NC-108 Deh Chuliar for Ziauddin Medical University, admeasuring 25 acres;*
- (ix) Land in NC-24, Deh Dih for Educational purpose, admeasuring 15 acres;*
- x) Land in NC No.24, Deh Dih District Malir for Industrial purpose, admeasuring 10 acres; and*
- xi) Land in Educational City Deh Chanhar, admeasuring 24.26 acres.*

14. We have also examined the point of malafide against prosecution. We are of the view that there seems to be a case of pick and choose as I.O. has not arraigned any official as accused who allotted amenity plots to Dr. Asim Hussain {accused No.1} in the year 1994 or those who restored the allotment. It is surprising rather astonishing that more than 84 acres valuable lands at different parts of Karachi were allotted to Dr. Asim Hussain {accused No.1} by the Land Utilization Department, Government of Sindh but none from those who allotted these valuable lands to Dr. Asim Hussain {accused

No.1} has been arraigned as accused in the reference, which clearly manifests malafide on the part of prosecution.

15. From tentative assessment of the record, we are of the view that neither the plots in question were allotted by the petitioner to Dr. Asim Hussain {accused No.1} in 1994 nor he was competent authority to restore the same after cancellation. Even I.O. has not denied during arguments that accused Masood Haider Jaffery {absconder} was Director, KDA, who entered into lease agreement with Dr. Asim Hussain {accused No.1} and at that relevant time petitioner was Additional Director, KDA. At the most NAB has leveled allegation against the petitioner that he had put his note on note sheet for entering into a deed of lease with M/s Ziauddin Memorial Hospital Trust which too was executed after approval of competent authority for restoration of earlier allotments. In the mentioned circumstances, we are of the considered view that the case of the petitioner falls within the purview of further inquiry. He is, therefore, admitted to bail subject to his furnishing surety in the sum of Rs.1,000,000/- {Rupees one million} and P.R. Bond in the like amount to the satisfaction of the trial Court.

Petitioner Muhammad Safdar {CP D – 841 of 2016}

16. Petitioner Muhammad Safdar seeks pre-arrest bail and is on ad-interim pre-arrest bail granted to him by this Court without touching the merits of the case. The allegation against him is that he in his capacity as CEO, KDLB given illegal extension and award of KDLB contract in violation of PPRA Rules and facilitated accused No.1 in taking over of hospital of KDLB and misusing it for private practices and referral facility. He also allowed Dr. Asim Hussain {accused No.1} to use KDLB premises for nursing accommodation and after his retirement from KDLB he was benefited by Dr. Asim Hussain {accused No.1} by way of appointment as GM HR in his Hospital.

17. Learned counsel for petitioner Muhammad Safdar has contended that after receiving call up notices the petitioner surrendered himself before this Court for seeking pre-arrest bail and is on ad-interim pre-arrest bail granted by this Court without

touching the merits of the case and he never mis-used such extraordinary concession; that the petitioner has been falsely implicated in this case with malafide intention and ulterior motives; that he was Secretary to KDLB and there was no post of Chief Executive Officer {CEO} in the entire set-up of Karachi Dock Labour Board {KDLB}; the entire Organizational/Administrative Setup of KDLB provided in Karachi Dock Workers (Regulation of Employment) Scheme, 1973, promulgated under the Ordinance, 1973, *inter-alia*, Act of 1974, to regulate the employment of dockworkers, even then trial Court framed charge showing the petitioner as CEO of KDLB; that neither the petitioner was holding any key post nor he had the authority to take decision; that all agreements between KDLB and M/s Ziauddin Trust were signed by the competent authority and were in accordance with law; that the function, power and role of Chairman has been defined in law; that the Board has terminated the agreement in respect of KDLB hospital with Dr. Asim Hussain {accused No.1} and such a decision was challenged by him in a suit seeking declaration and injunction against KDLB before this Court. He has drawn our attention to the minutes of meeting of KDLB Hospital Management Committee, headed by Rear Admiral (R) Akbar H. Khan as Chairman wherein the proposal with regard to handing over KDLB hospital building to M/s Dr. Ziauddin Hospital was approved; that there is clear malafide on the part of NAB for non-joining the authority which had taken the decisions and they have not been shown as accused in the reference. The petitioner has never misused the concession of bail; the investigation has been completed and the reference has been filed in Court; the case of the prosecution rests upon documentary evidence and question of tampering with the prosecution evidence does not arise, out of 36 witnesses 14 have been examined and none of them have uttered a single word against the petitioner. Lastly, he has prayed that the ad-interim pre-arrest bail order may be confirmed.

18. In contra, learned Special Prosecutor NAB has contended that Dr. Asim Hussain {accused No.1} in collusion with petitioner Muhammad Safdar got an agreement with KDLB for concessional treatment facility for 45,000/- dockworkers at the rate of Rs.4.26 per day per worker in the year 1996 but on the contrary Dr. Asim Hussain reneged from contractual obligation and fraudulently KDLB

hospital has been made to work as a referral outreach wherefrom almost 73% of patients are referred to Dr. Ziauddin Hospital in connivance with the petitioner Muhammad Safdar, which charged extra amount from KDLB in the heads of OPD and IPD without any list of patient, and after his retirement the petitioner joined Dr. Ziauddin Hospital as General Manager H.R.; that the petitioner extended the contract between KDLB and M/s Ziauddin Trust without getting approval from Board and during investigation statements under Section 161, Cr.P.C. of Dr. Muhammad Shoab, Nasir Khan and other witnesses were recorded, who have attributed specific role and implicated the petitioner in the commission of offence and during investigation sufficient documentary evidence has been collected which shows that the petitioner in connivance with Dr. Asim Hussain {accused No.1} caused colossal loss to KDLB; that the petitioner actively and in collusion with Dr. Asim Hussain has caused heavy loss to KDLB; that no evidence of enmity in terms of malafide or ulterior motive is available on record, which is a pre-requisite for granting pre-arrest bail, hence the petitioner does not deserve concession of bail.

19. Record reflects that Karachi Dock Labour Board {KDLB} runs its affairs through Chairman and by virtue of its post Chairman KPT would be the Chairman of KDLB. The Board consists of 14 members appointed by the Federal Government. There is also one Vice Chairman to be elected by the Board from amongst the members. Set-up of KDLB provided in the Karachi Dock Workers (Regulation of Employment) Scheme, 1973, promulgated under the Ordinance, 1973, *inter-alia*, Act of 1974, to regulate the employment of Dockworkers who perform the job of loading/unloading of cargo into/from ships at the Karachi Port. The Board constituted under Clause 4 of the Scheme, 1973, is a body corporate having perpetual succession and common seal with power to acquire, hold and dispose of movable and immovable properties and shall sue and be sued by the said name. KDLB decided to construct 110 bedded hospital building at Keamari, Karachi, to provide treatment facilities to its registered dockworkers and their departments. After completion of 110 bedded hospital building in August, 1995, the Board decided to get the hospital building equipped and run through private organization having experience of running 200 bedded hospital. For

this purpose tenders were invited and contract was awarded to Dr. Ziauddin Hospital as per decision of the Board, which is competent authority to take any decision. Record reflects that KDLB entered into an agreement with Dr. Ziauddin Hospital after getting approval in its 236th ordinary meeting held on 27.03.1996 under the chairmanship of Rear Admiral (Retd) Akbar H. Khan. Here it would be conducive to refer relevant portion of the minutes of meeting as under:-

“B.R.No.23:- *Approved that KDLB Hospital Building be handed over to M/s Dr. Ziauddin Hospital to equip and run the hospital on the agreed terms and conditions and contract documents be got vetted by the Legal Consultants before execution.*

In compliance of the decision approved in the meeting, a letter dated 14.04.1996 was issued by the Chairman. The KDLB terminated the agreement of KDLB hospital with Dr. Ziauddin Hospital and the matter was adjudicated before this Court by filing Suit No.39 of 1997, by Dr. Asim Hussain {accused No.1} against management of KDLB. During pendency of suit, the management of KDLB resolved the issue by way of compromise outside the Court and based on such compromise the suit was withdrawn by signing fresh agreement between KDLB and Dr. Asim Hussain {accused No.1}. After completion of agreement, KDLB extended the agreement from time to time and in the year 2013 agreement was signed by the parties for a period of five years and according to the learned counsel for the petitioner still KDLB hospital is being run by Dr. Asim Hussain hospital management. Record reflects that the petitioner was Secretary of KDLB as well executive officer of Board and it was his responsibility to get the decisions of the Board implemented. Insofar as the contention of Special Prosecutor, NAB, that after completion of period of agreement with Dr. Asim Hussain hospital, the petitioner continued this position without getting approval from Board. At this juncture, we have made query from Special Prosecutor as well as I.O. as to whether during investigation Chairman and Members of KDLB were examined under Section 161, Cr.P.C. they replied in negative. Even Special Prosecutor NAB did not deny the fact that still hospital is running under the management of Dr. Ziauddin Memorial Hospital Trust. The petitioner neither had any authority to award contract of KDLB hospital nor any documentary evidence is available on record to show that the petitioner has misused his authority by extending

contract to Dr. Asim Hussain {accused No.1} without approval of the Board. Here the question arises as to whether the award of contract of KDLB hospital to Dr. Asim Hussain {accused No.1} was in violation of PPRA Rules and if reply is positive than why the Chairman and Members of the Board, who have awarded contract to Dr. Asim Hussain {accused No.1}, have not been arraigned as accused in the reference, even I.O. did not bother to examine them under Section 161, Cr.P.C. Record did not show any displeasure of the Board on any act of the petitioner, who was not competent authority to award contract. Petitioner has already attained the age of superannuation but still Dr. Asim Hussain {accused No.1} has retained possession of KDLB hospital.

20. From tentative assessment of available material, it transpires that neither the petitioner was competent to award contract to Dr. Asim Hussain {accused No.1} nor he acted in violation of Board decision. KDLB is a body corporate and runs its affairs through Chairman and during investigation neither Chairman nor Members of the Board were examined, even no illegality has been pointed out by the Board nor shown any displeasure against petitioner in the entire minutes of its meetings. Petitioner is a man of advance age. Nothing has been brought on record to show that petitioner has gained any benefit and no money trail was sorted-out. Thus, there seems to be a case of pick and choose. At this juncture, we have taken guidance from an unreported case of *Mansoor Ahmed Khan v The State through NAB, Sindh*, in Civil Petition No.540-K of 2017, wherein the Hon'ble Supreme Court held as under:-

“Many other persons similarly placed who are prima facie a part of this transaction have not been even glared at for being roped in or rounded up. In the circumstances we won't like to become a part of a discriminatory accountability which is based on pick and choose by declining bail to the petitioner who has been in jail for more than nine months yet conclusion of his trial is not in sight”

21. For what has been discussed above, we are of the considered view that the case of the petitioner requires further inquiry and he is entitled to the concession of pre-arrest bail as such the ad-interim-pre-arrest bail, granted earlier to him, is hereby confirmed on the same terms and conditions.

Petitioner Muhammad Ejaz Chaudhry {CP D – 1356 of 2016}

22. Petitioner Muhammad Ejaz Chaudhry through his petition seeks pre-arrest bail and is on ad-interim pre-arrest bail granted to him by this Court without touching the merits of the case. The allegation against him is that while his posting as Secretary Petroleum and Natural Resources, he facilitated Dr. Asim Hussain {accused No.1} in the name of load management and moved summaries for gas curtailment without considering the rational approach and implementing the decision of ECC taken in June 2001, whereby fertilizer companies were to be provided 80% of gas supply.

23. Learned counsel appearing on behalf of petitioner Muhammad Ejaz Chaudhry has contended that the petitioner was a civil servant and held the posts of Federal Secretary Privatization, Petroleum, National Harmony, Chief Secretary {Sindh} and Secretary Coordination from 2010 till his retirement in 2015; that he has been falsely implicated in this reference with malafide intention and ulterior motives; that after receiving call up notices the petitioner responded positively and replied all the queries made by the I.O. who expressed his view that the petitioner would be a prosecution witness in the case but malafidely implicated him as an accused in the reference and thereafter the petitioner approached this Court and got ad-interim pre-arrest bail and never misused the concession of such bail; that the allegations leveled against the petitioner in the reference are false and baseless and in support of this the learned counsel has referred to various similar summaries which were followed by his predecessors; that the petitioner has moved summaries when there was acute short fall of gas in winter season and the ECC as well as Federal Cabinet have taken decisions; that the petitioner acted in good faith and never committed any illegality or wrong doing; learned counsel emphasized that merely moving summary is not an offence and he has done his job in accordance with law whereas the decision taking authority was ECC as well as Federal Government, who have taken the decision in respect of acute short fall of gas but surprisingly only the petitioner has been implicated in this case while his other successors who adopted and followed the same policy and moved identical summaries were not joined as accused in the reference which is clear malafide on the part of NAB; that there is no

allegation against the petitioner for any illegal gain; learned counsel has referred to a letter dated 16.05.2012 addressed to Secretary, Ministry of Petroleum & Natural Resources, Islamabad by Managing Director Sui Northern Gas Pipelines Limited in respect of natural gas load management and the petitioner has moved summary to ECC on the factual position given by management of Sui Northern Gas Pipelines Limited as well as Joint Secretary, Ministry of Water and Power, Government of Pakistan; that the petitioner is a retired and senior citizen of Pakistan, hence deserves for grant of pre-arrest bail.

24. The learned Special Prosecutor NAB, on the other hand, has contended that petitioner Muhammad Ejaz Chaudhry in connivance with Dr. Asim Hussain {accused No.1} has caused cumulative and colossal loss to economy, state institutions and resources of the country only to seek self-aggrandizement, illegal gains and exploited his office as well as constitutional and legal forum like ECC and Cabinet by using his overwhelming influence and misguidance; that the petitioner in connivance with Dr. Asim Hussain {accused No.1} moved five summaries with malafide intention and *mens rea* just to mislead ECC and Cabinet for curtailment of gas supply to fertilizer sector and on due to the illegal acts of accused persons national economy has suffered a lot and the prices of urea arose from 850 to 1830 per bag which were the biggest incensement in the fertilizer sector; that the petitioner in connivance with Dr. Asim Hussain {accused No.1} malafidely supplied gas not only to power sector but also to a company “M/s Star Power Company” which was not even running its power generation and caused loss to national exchequer; that no evidence of enmity in terms of malafide or ulterior motive is available on record, which is a pre-requisite for granting pre-arrest bail, hence the petitioner does not deserve concession of bail.

25. It is admitted fact that summary is not a decision but it is a proposal for competent authority to approve or disapprove. Under the Constitution of Pakistan Cabinet is supreme executive forum for policy decisions. Cabinet has to form Economic Coordination Committee {ECC} which has to work on behalf of Cabinet and has a mandate to analyze and decide proposals from different ministries. It was regular practice since 2005 that summaries in respect of gas

allocation and load management are to be prepared by Ministry of Petroleum, Gas & National Resources under Rules of Business of Government of Pakistan for Gas Allocation and Management Policy, 2005, for all sectors using gas specially Power, Industry, Food Security, CNG, Fertilizer Sectors etc. particularly in winter season due to gap in between demand and supply. ECC comprised of all stake holders including top representatives of Power, Industry, Food Security, CNG, Fertilizer Sectors etc. to take collective decisions with the consultation of each other. In the reference, the petitioner is facing charges of approving summaries in the year 2011 and on 02.01.2012 for derangement of priority order in Gas Load Policy, 2005, and irrational approach in submitting a summary for ECC on gas load management and in connivance with Dr. Asim Hussain {accused No.1} caused cumulative and colossal loss to exchequer to the tune of Rs.450 billion.

26. We have confined ourselves to act of petitioner mentioned in the reference. A tentative assessment of record, it reveals that petitioner was not competent authority to make policy for curtailments of gas supply and load management. He had moved summaries for decisions and to implement policies after approval of competent forum.

27. Record reflects that petitioner has moved five summaries to the Economic Coordination Committee {ECC} of the Cabinet regarding gas load shedding due to acute short fall in winter season. Such summaries were moved on the basis of information furnished by Managing Director Sui Northern Gas Pipelines Limited vide its letters dated 16.05.2012, 15.06.2012 and 27.06.2012 and in view of such information the petitioner gave proposals to the Minister, Economic Committee of Cabinet Division {ECC} and Cabinet. ECC meetings were chaired by Minister of Finance, Revenue and Economic Affairs on different dates viz 11.11.2011, 15.12.2011 and 03.07.2012. It appears from record that prior to moving summaries by petitioner, different summaries were moved to ECC {since 2008} and ECC and Cabinet Division had approved the same whereby Policy, 2005 was being modified {since 2008}. As per law the ECC and Cabinet are competent forms to change/modify earlier policies. In view of this background of the matter, we are of the considered view

that the competent authority is equally responsible for any wrong decision approved by it. We have also given due weight to the submission of learned counsel for the petitioner that the successors of the petitioner have also adopted same policy and moved identical summaries to ECC and the same were also approved by the ECC as well as Cabinet but NAB has neither implicated those who moved similar and identical summaries to ECC as well as concerned Managing Director, Sui Northern Gas Pipelines Limited, on whose information the summaries were prepared by the petitioner. It is pertinent to mention here that NAB has not arraigned any other person who was a part of decision and caused colossal loss to national exchequer, even I.O. has not examined the members of ECC and Cabinet under Section 161, Cr.P.C., which seems to be a case of pick and choose. The record does not reveal that the petitioner is a beneficiary or got monetary benefit from Dr. Asim Hussain {accused No.1}. In the mentioned circumstances and while placing reliance on the decision of Hon'ble Supreme Court in the case of *Mansoor Ahmed Khan* {supra}, we are of the considered view that the case of the petitioner falls within the purview of further inquiry and he is entitled to the grant of pre-arrest, therefore, the ad-interim pre-arrest bail, granted to him earlier, is hereby confirmed on the same terms and conditions.

Petitioner Abdul Hameed {CP D – 3026 of 2016}

28. Through his petition, petitioner Abdul Hameed seeks pre-arrest bail and is on ad-interim pre-arrest bail granted to him by this Court without touching the merits of the case. He was Group Finance Advisor, Ziauddin Group of Hospital and University. He has been attributed a specific role towards conversion of illegal money into assets abroad as well in Pakistan by way of money laundering. It is also stated in the reference that he used to receive cash from Dr. Asim Hussain {accused No.1}, keep the same into his own bank accounts and then layered the same into other accounts, withdrew the same intermittently for purchase of property and used to make payment through pay order/demand draft etc in respect of various persons for investment in Pakistan and abroad on behalf of accused No.1 and once the transaction was over he used to intimate through

coded conversation to accused No.1 about placement and layering of money.

29. It is contended by the learned counsel for the petitioner that he is a qualified chartered accountant and he joined M/s Zia Medical Centre, LLC UAE in September, 2015; that on coming to know about filing of the reference against Dr. Asim Hussain the petitioner winded up his setup in Dubai and immediately came to Pakistan and got transitory bail and then interim pre-arrest bail and never misused the concession of such bail; that the petitioner has been falsely implicated in the reference with malafide intention and ulterior motives; that the allegations leveled against the petitioner in reference are false and baseless and the petitioner never committed any illegal act or money laundering and such an allegation is leveled against him just to implicate Dr. Asim Hussain {accused No.1} in the reference; that the relation between Dr. Asim Hussain {accused No.1} and the petitioner was of master and servant and it was not possible for the petitioner to do any illegal act for Dr. Asim Hussain {accused No.1}; that NAB has failed to collect any iota under Section 34, PPC; that offences under Anti-Money Laundering Law are not scheduled offences under NAB Law; that NAB has failed to collect any evidence which shows that the petitioner has facilitated Dr. Asim Hussain {accused No.1} in offences under Anti-Money Laundering Act; that some of the PWs have not supported the case prosecution in trial Court; that he has not misused the concession of bail; that out of 36 witnesses 14 have been examined but none of them have uttered a single word against the petitioner, which proves that there is no case against the petitioner and prayed for confirmation of interim order of pre-arrest bail. In support of his submissions, learned counsel has relied upon the cases of *National Accountability Bureau through Chairman v Aamir Lodhi & another* {PLD 2008 Supreme Court 697}, *Aamir Bashir & another v The State & others* {2017 SCMR 2060}, *Khalil Ahmed Soomro & others v The State* {PLD 2017 SC 730}, *Rana Muhammad Arshad v Muhammad Rafique & another* {PLD 2009 SC 427}, *Lal Muhammad Kalhoro & others v The State* {2007 SCMR 843}, *Zaigham Ashraf v The State & others* {2016 SCMR 18}, *Mansoor ul Haque v Government of Pakistan* {PLD 2008 Supreme Court 166}, *The State & others v M. Idrees Ghauri & others* {2008 SCMR 1118}, *Anwar Saifullah Khan v The State* {2001 SCMR 1040}, *Dilmurad v The State*

{SBLR 2010 SC 275}, unreported order passed by Hon'ble Supreme Court in Civil Petition No.194, 298 & 304 of 2018 and unreported order passed by this Court in Criminal Bail Application No.812 of 2000.

30. The learned Special Prosecutor NAB, on the other hand, has contended that petitioner Abdul Hameed was financial advisor of M/s Dr. Ziauddin Hospital and he in connivance with Dr. Asim Hussain {accused No.1} committed offence of money laundering and illegal conversion of money into assets abroad and in Pakistan under Section 3 & 4 of Anti-Money Laundering Act, 2010; that during investigation statements under Section 161 Cr.P.C. of Asif Bhatti and Naveed were recorded, who have fully implicated the petitioner in the commission of offence as well as details of bank accounts and properties were also collected coupled with ocular as well as documentary evidence, which shows that the petitioner was benamidar of Dr. Asim Hussain {accused No.1} and involved in money laundering offences and holding properties as benamidar; that no evidence of enmity in terms of malafide or ulterior motive is available on record, which is a pre-requisite for granting pre-arrest bail, hence the petitioner does not deserve concession of bail.

31. Record reflects that petitioner was appointed as General Manager {Finance} in Dr. Ziauddin Hospital on 28.07.2007, thereafter he got the position of Financial Advisor of Dr. Asim Hussain {accused No.1} and was looking affairs of Zia Medical Clinic at Dubai. He is facing charges of money laundering of Rs.3 billion and layering, integration and recycling of illicit money into assets in Pakistan and abroad. After examination of statements of accounts, ledger books and balance sheets of Dr. Ziauddin Hospital, it was found that Dr. Asim Hussain {accused No.1} in connivance with the present petitioner has amassed assets in Pakistan and abroad illegally. It has also come on record that the petitioner had been receiving cash from Dr. Asim Hussain {accused No.1} and placing the same into his bank accounts and subsequently layering the same into other accounts. It has also come on record that Dr. Asim Hussain {accused No.1} at the relevant time when he was Minister of Petroleum whenever visited Karachi, met with the petitioner and handed over him cash, received through gratification/illicit money for disguising and the petitioner

used to deposit the same into his own accounts through Zahid Raza and Saad Moeen, a confident of Dr. Asim Hussain {accused No.1}, then withdrew the same intermittently for purchasing of properties in Pakistan or abroad and used to make payment through pay order or demand draft and then intimated Dr. Asim Hussain {accused No.1} through coded conversation after completion of transaction. This position clearly reflects that the petitioner was front man and benamidar of Dr. Asim Hussain {accused No.1}. The details of bank accounts of petitioner and other material collected during investigation indicate abnormal transactions beyond his well source of income which too point out his involvement in money laundering.

32. We have examined the available record as well statements of witnesses under Section 161, Cr.P.C. PW. Muhammad Naveed, Manager, Wall Street Exchange Company {Pvt} Limited has stated that during the period of 2014-2015 about 17-20 transactions were made under the instructions of petitioner on phone from his money exchange during which the petitioner got US\$ 3,77,500 through his employee namely, Shahid {Peon}. PW Shoaib Saleem, Manager, Samba Bank in his 161, Cr.P.C. statement has stated that multiple suspicious transactions worth millions of rupees were transacted from petitioner's Account No.6502009328 and Account No.6403004042 from Samba Bank, Clifton Branch, Karachi, and on bank queries on Suspicious Transaction Reports {STR} petitioner failed to justify the source of transacted amounts and did not produce any document to that effect. The learned counsel for the petitioner has filed copies of depositions of PWs Naveed and Shoaib Saleem, which show that they have fully supported the case of the prosecution and specifically implicated the petitioner in the commission of offence. Record also reflects that on 18.03.2015 the I.O. conducted a raid at the office of Sub-Registrar-II, Clifton Town, Karachi, on the pointation of PW Shakeeluddin and seized a list of four pages, wherein 15 properties held in the name of Dr. Asim Hussain {accused No.1} purported to have been purchased from 01.01.2012 to 08.04.2015 and page 4 thereof reflects that Flat No.K-410, 4th floor, measuring 1078.11 square feet, Plot No.Com 10/A, Block-II, Clifton, Karachi, purchased by the present petitioner and Shakeeluddin from Rehana Khalid and Sobia Soomro and then got it

transferred to Dr. Asim Hussain {accused No.1} through General Power Sub-Attorney on 08.04.2015.

33. We have gone through the interrogation reports of Muhammad Shahid {PA Finance Officer} and Hasnain Mirza {APS/PA of Dr. Asim} available on record, filed by the learned counsel for the petitioner alongwith a statement, in shape of questionnaire wherein certain questions were put to them including some specific questions with regard to involvement of petitioner in the commission of offence and same were bluntly replied by them involving petitioner in the money laundering.

34. While deciding the petitions for pre-arrest bail of petitioners Muhammad Safdar and Muhammad Ejaz Chaudhry, who were also on ad-interim pre-arrest bail, we had taken guidance from the decision rendered by the Hon'ble Supreme Court in the case of *Mansoor Ahmed Khan* {supra} and observed their case to be of further inquiry and in particular seem to be a case of pick and choose. Such is not the position herein. The allegation against the petitioner pertains to money laundering, which is a white collar crime, and needs technical assistance particularly when petitioner himself was a financial expert of Dr. Asim Hussain {accused No.1}. In such type of crimes accused usually do not keep the foot prints alive which leads toward them.

35. At the stage of bail the detailed discussion is not necessary but as far as the evidence which is on the surface of record of this case *prima facie* connects the petitioner with the charges of conversion of illegal money into assets by way of money laundering. As regards the case law cited by the learned counsel for the petitioner, in support of his submissions, is concerned, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the petitioner. In the mentioned circumstances, we are of the considered view that the petitioner has not been able to make out a case for grant of relief{s} including concession of bail. Consequently, the petition is dismissed simultaneously recalling the interim order of granting ad-interim pre-arrest bail.

36. Above four petitions stand disposed of in the foregoing terms. It is, however, made clear that the observations made herein above are of tentative assessment and shall have no bearing on the merits of the case.

JUDGE

JUDGE

Naeem