

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

C.P. No. D – 6211 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of main case

25.01.2019

Mr. Abdul Majeed Khoso, Advocate for petitioner.

Mr. Khalid Mehmood Awan, Special Prosecutor NAB a/w Adnan Hafeez Abbasi,
I.O. of the case.

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Omar Sial, J.: The allegation against Mohammad Irfan, the petitioner, is that he being an employee of a pharmaceutical company, entered into financial transactions with 17 persons. He took money from them on the pretext of investing in a business and giving returns to those individuals, however, he defaulted on his obligations. It is alleged that he misappropriated Rs. 38,536,175 from 14 persons whereas 3 other affected persons did not press their claim against him. Reference No. 17 of 2018 is pending adjudication in the learned Accountability Court No. II in Karachi.

2. We have heard the learned counsel for the petitioner as well as the learned Special Prosecutor, NAB and the investigating officer of the case. Our observations are as follows.

3. The Reference against the petitioner shows that the he is accused of primarily cheating the public at large. Upon a query as to how the transactions allegedly carried out by the petitioner fall within the domain of NAB as it prima facie appeared that it was a business transaction between individuals and that the public at large had not been affected, we were told by the investigating officer that the Reference had been filed on the instructions of D.G. NAB Mohammad Altaf Bawani whose nephew was one of the persons ostensibly cheated by the applicant and who, according to NAB's investigation report, was also a partner of the complainant Muhammad Ali Mitha. Another two of the said affectees, namely Fahad Haroon Bawani and Muhammad Umair were also listed as partners of the complainant. The foregoing coupled with the fact that the complaint against the applicant was made by his ex-business partner Muhammad Ali Mitha, does not at this stage, conclusively rule out ulterior motives of the complainant in filing the complaint against the petitioner.

4. It is also a matter of record that after being business partners from 2012 to 2017, the applicant owed some money to the complainant Muhammad Ali Mitha and in satisfaction of that obligation, made out a cheque of Rs. 2,500,000 on 22-8-2017, which cheque bounced upon presentation at the Bank's counters and consequently, an F.I.R. bearing number 421 of 2018 was registered under section 489-F on 11-12-2017 at the Aziz Bhatti police station. The case is pending adjudication before the learned Civil Judge and Judicial Magistrate IX, Karachi East. Similarly, another affectee, Fahad Haroon, also has registered an F.I.R. bearing number 254 of 2018 under section 489-F at the Site-B police station against the petitioner for a bounced cheque of Rs. 2,500,000. Yet another affectee, Rashid Arain, has also lodged an F.I.R. bearing number 526 of 2017 under section 489-F at the Shahrah-e-Faisal police station against the petitioner for a bounced cheque of Rs. 500,000. To a query whether the amount of Rs. 5,500,000, for which the three cases were filed, was an amount that is included in the Reference, we were informed by the learned Special Prosecutor and the investigating officer that it was. Both remained silent on our query as to whether a person can be prosecuted for the same offence on two different forums.

5. In paragraph 7.1 of the Investigation Report it is recorded by the investigating officer that most of the claimants had not given the investigating officer any documentary evidence of the money allegedly given by them to the petitioner. It is also noted by the investigating officer that "no one came from general public" after a general notice was published in the newspapers. Reference may also be made to the judgment of the Hon'ble Supreme Court in **Rafiq Haji Usman vs The Chairman NAB (2015 SCMR 1575)** where it was observed "*We are of the view that 13 persons would hardly constitute public in its literal and ordinary sense; furthermore meaning of the word large i.e. "considerable or relatively great size, extent or capacity having wide range and scope" does not bring 22 or 13 persons as the case may be within its concept and fold. Thus from this angle as well the said section seemingly perhaps can be held not attracted to the instant case. It is trite law that the provisions of law which constitute criminal offences shall be strictly construed and applied, thus prima facie we have not been persuaded by the plea made by the learned Deputy Prosecutor General that in such a case section 9(x) ibid shall be attracted.*"

6. There is a disparity in the amounts claimed by the alleged affectees as stated in their letters to the D.G. NAB and the amounts that find place in the investigation report. It appears that NAB took it upon itself to also include profits on the money ostensibly given by the affectees to the petitioner.

7. In view of the above, we are of the view that the petitioner has made out a case for grant of bail pending trial. We accordingly admit him to bail subject to his furnishing a solvent surety in the amount of Rs. 200,000 and a P.R. Bond in the like amount subject to the satisfaction of the learned trial court.

JUDGE

CHIEF JUSTICE