

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-2208 of 2017
Ehsan Ullah Shah

Vs.

NAB

Date of hearing:	23-01-2018.
Date of Order	23-01-2018.
Petitioner:	Through Mr. Amir Raza Naqvi, Advocate.
Respondent:	Through Mr. Mohammed Altaf Special Prosecutor NAB.

ORDER

Mohammed Karim Khan Agha, J.- By this order, we propose to dispose of the above petition for grant of post arrest bail by the petitioner (Ehsanullah Shah) in the above petition arising out of National Accountability Bureau (NAB) Reference No.24/2015 State v. Ehsan Ullah Shah and others which is proceeding before the Accountability court in Karachi having been filed by NAB under S.9 of the National Accountability Ordinance 1999 (NAO) on 12.08.2015.

2. This is a reference concerning the cheating of the public at large. Initially there were five accused in the reference who all connived together in the scam and were all related to each other. One of the accused Shah Rafiuddin Shah (originally accused No.5 in the reference) however has now become an approver against the other four co-accused and recorded his S.164 statement.

3. The allegations against the petitioner and other co-accused 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 petitioner and other co-accused an inquiry was authorized by NAB.

4. The petitioner (accused No.1) is one of the Directors of the company known as M/s. Sunland Crops Care (Pvt.) Ltd which deals in fertilizers and pesticides. Accused No.2 is another Director of the company whilst accused No.3 to 5 (including now approver Shah Rafiuddin Shah) are the agents of 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. Per prosecution in a number of these scams the main culprits are either religious scholars or have agents who are religiously minded people. These persons allure general public into investing into Shariah Compliant Products, e.g. Modarba of Musharka. Due to their religious standing, the 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.**

5. 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 (of which **the petitioner** is one of the Directors). 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.

6. 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. (**the petitioner** is Managing Director and petitioner No.2 is Incharge)
- iv. Azher Shah Sherazi. (petitioner No.2)
- v. Ahsan Ullah Shah. (**the petitioner**)
- vi. Shah Abdul Qadir. (accused No.2)
- vii. Syed Shah Rafi Ullah.(accused No.5)
- viii. Shah Abdul Rahim. (accused No.4)

7. The co-accused No.3 and 4 are brothers and real nephew of accused No.1 and 2 (the petitioners). Accused No.5 (now approver) 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 the petitioner** and his co-accused director. 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.

9. This is the second post arrest bail application of the petitioner before this court. The first post arrest bail application was dismissed by this court vide order dated 04-05-2016 on merits and was not appealed before the Supreme Court. In para 24 of the order as set out below for ease of reference the following directions were given by this court.

“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”.

10. Learned counsel for the petitioner submitted that a fresh ground had arisen which entitled him to again move this court for post arrest bail since although the trial court has recorded the evidence of some of the witnesses none of them have implicated him and other witnesses have not been examined and the trial court has not completed the trial within 3 months as directed and as such he was entitled to post arrest bail.

11. Learned special prosecutor NAB opposed the bail application and stated that no fresh ground had come on record which justified the filing of the second bail application and as such it should be dismissed and that even otherwise there was more than enough material on record to prove beyond a reasonable doubt that the petitioner had committed the crime for which he had been charged in the reference.

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

13. 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.

14. Firstly we find that non-compliance of a direction given by the High Court to a trial court to conclude a trial within a given period of time is neither a ground for granting bail nor a fresh ground for grant of bail. In this respect reliance is placed on the case of on **Nisar Ahmed v. The State & others** (PLD 2016 S.C. 11) which held as under at para-4 (P.13).

“4. We have scanned the material placed on record and are unable to subscribe to such submissions of the learned ASC. Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C., nor filing of direct complaint will have any bearing as regards earlier bail refusing orders, which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case”.

15. On this ground alone the petition could have been dismissed.

16. However we also note that since our order dismissing the petitioners first bail application 3 PW's have been examined. At least one of the PW's has implicated the petitioner and the others the company of which the petitioner was admittedly a Director.

17. Furthermore at the time when post arrest bail had initially been declined to the petitioner Shah Rafiuddin Shah who was related to the petitioner and played an integral part in the scam was a co accused in the reference but has now become an approver. In his S.164 statement he has fully implicated the petitioner and his company in the offense of cheating the public at large which is corroborated by other material on record and which totally belies the petitioner's stance that he was abroad and had no idea that his company was being used to perpetuate this fraud. This new material is **in addition** to the fact that we had already whilst dismissing the petitioner's first post arrest bail application found that there was sufficient material to connect the petitioner to the offense for which he has been charged.

18. With respect to the merits of the case we find no material which persuades us to deviate from our original finding on merit which also shows the shocking nature of the this crime whereby religious scholars duped trusting religious minded persons to invest their hard earned money in an Islamic investment product on the basis of blind faith with the intention of defrauding them, which findings are further bolstered by the S.164 statement of Shah Rafiuddin Shah as alluded to above.

19. For ease of reference we reproduce below our findings at Para's 16 to 23 of our order dismissing the petitioners first bail application (the petitioner is referred to as petitioner No.1):

"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 themselves 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.

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"

20. It is also cannot be ignored that the Hon'ble Supreme Court in recent times has also taken a stringent view in granting bail in NAB cases. In the recent case of **Rai Mohammed Khan V NAB** (2017 SCMR P.1152) it was 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 Billions 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."

21. Thus for the above mentioned reasons we find that there is no merit in the petition in hand and even otherwise after the S.164 statement of approver Shah Rafiuddin Shah which is corroborated by other material before us there is more than sufficient material on record to connect the petitioner to the offense for which he has been charged in the reference and thus for the reasons mentioned above the petitioner's second petition for post arrest bail is hereby dismissed.

22. The petition stands disposed of in the above terms