

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammed Karim Khan Agha, J.

Petition No. and name of petitioner along with counsel.

1. C.P. No. D-2025 of 2017 Syed Ali Raza V Federation of Pakistan & another.
Syed Ali Raza S/o Syed Hashim Raza (petitioner No.1),
through Mr. Haider Waheed, Advocate.
2. C.P. No. D-3274 of 2017. Dr. Mirza Abrar Baig V The State
through Director General (Sindh) NAB.
Dr. Mirza Abrar Baig S/o Mirza Irshq Baig (petitioner No.2),
through Syed Mahmood Alam Rizvi, Advocate.
3. C.P. No. D-2095 of 2017 Zubair Ahmed V Federation of
Pakistan & others.
Zubair Ahmed S/o Muhammad Ijaz (petitioner No.3)
through Mr. Muhammad Azam Chughtai, Advocate.
4. C.P. No. D-3318 of 2017 Imran Ghani V The State through
Director General (Sindh) NAB.
Imran Ghani S/o Syed Usman Ghani (petitioner No.4).
through Syed Mahmood Alam Rizvi, Advocate.
5. C.P. No. D-2832 of 2017 Kausar Iqbal Malik V Chairman
NAB & others.
Kausar Iqbal Malik S/o Mehboob Khan (petitioner No.5)
through Mr. Shahab Sarki, Advocate.
6. C.P. No. D-2158 of 2017 Qamar Hussain V Pakistan
through Secretary Ministry of Interior & another.
Qamar Hussain S/o Sajjad Hussain (petitioner No.6)
through Mr. Ali Almani, Advocate.
7. C.P. No. D-2366 of 2017 Tahir Yaqub V Federation of
Pakistan & others.
Tahir Yaqub S/o Ch. Muhammad Yaqub (petitioner No.7)
through Mr. Jaffar Raza, Advocate.
8. C.P. No. D-2759 of 2017 Muhammad Imran Butt
V Chairman NAB & others
Muhammad Imran Butt S/o Allauddin (petitioner No.8)
through Mr. Azeem Farooqui, Advocate.
9. C.P. No. D-3461 of 2017 Muhammad Waseem Khan
V Chairman NAB & others
Muhammad Waseem Khan S/o Sana Muhammad Khan
(petitioner No.9)
through Mr. Ghulam M. Dars, Advocate.

Counsel for the Respondents.

Mr. Yasir Siddiq, Special Prosecutor, NAB.

Dates of Hearing: 29.08.2017, 30-08-2017, 19-09-2017
20.09.2017 and 22.09.2017

Date of Order: 27-09-2017

ORDER

Mohammed Karim Khan Agha, J. Through these petitions, petitioners 1,3,5 to 9 (Syed Ali Raza, Zubair Ahmed, Kausar Iqbal Malik, Qamar Hussain, Tahir Yaqub, Muhammad Imran Butt and Muhammad Waseem Khan) seek bail before arrest which was earlier granted to them through various orders of this court whereas petitioners 2 and 4 (Dr. Mirza Abrar Baig and Imran Ghani) seek bail after arrest in National Accountability Bureau (NAB) Reference No.13 of 2017 which was filed against them all by NAB for acts of corruption under the National Accountability Ordinance 1999 (NAO).

2. The charge against the above named petitioners as enumerated in Reference No.13 of 2017 are that the investigation revealed that accused No.1, Ali Raza Ex-President of National Bank of Pakistan (NBP/the bank), misused his authority in connivance with other accused persons, so as to gain benefits and / or favour for him or to other persons and also willfully failed to exercise his authority to prevent the grant of undue favour to the other accused persons. He, being Bank President, misused his authority and issued certain orders whereby granted undue concessions and /or benefits and also failed to exercise his authority to

prevent the grant or rendition of undue benefits and /or favours, in connivance with other accused persons consequent thereto a loss of approx US\$185 million had been caused to NBP during years 2001-2012.

3. As regards the allegations against the petitioner/accused revealed that Mirza Abrar Baig, the then SEVP, Group Chief, HR Group (abetted with accused No.1, Ali Raza and knowingly failed to exercise his authority to prevent the commission of offences of misappropriation of funds), sheer violation of rules/laws of NBP and failed to repatriate the accused No.2, Zubair Ahmed from Bahrain who was posted there for almost 18 years and in that way abetted the commission of offence with accused No.1, 2, 10 and 11 persons causing loss to the National Exchequer.

4. The investigation revealed that petitioner/accused Zubair Ahmed the then SEVP /Regional Chief Executive (now Retired), misused his authority and sanctioned loans through the branches of Bangladesh (Central Bank) and NBP's own policies with malafide intention to cause misappropriation of the funds of the National Exchequer.

5. According to the investigation the allegation against the petitioner /accused Imran Ghani, are that he being Incharge Overseas Desk of NBP was responsible for overall affairs of the Overseas HR related matters. He misused his authority and initiated the proposal for awarding accused No.11. Q.S. M. Jehanzeb special assignment without mentioning the fact of violation of overseas policy in the case of overstay of Q.S.M.

Jehanzeb in Bangladesh Operation. He also deliberately failed to mention the fact about accused No.11, Q.S.M Jehanzeb which he had done in Bangladesh Operation which led the bank to book loss of billions of rupees over the period of time. Actually in umbrella of Special Assignment he accommodated accused No.11 Q.S.M. Jehanzeb to stay in Bangladesh and retire from there after attaining his superannuation retirement i.e. 11.11.2010 without repatriating back to Pakistan to avoid any departmental action.

6. As per contents of reference the charge against petitioner/accused Kausar Iqbal Malik, by not exercising his lawful authority, abetted to give undue benefits/concessions to accused No.2, Zubair Ahmed by not exercising / misusing of his authority in the matter at relevant time.

7. The petitioner/accused Qamar Hussain, the then EVP, Head HRD, recommended proposals to give post-retirement benefits / concession to accused No.2, Zubair Ahmed by not exercising / misusing of his authority in the matter at relevant time.

8. It is alleged in the reference that the petitioner/accused Tahir Yaqub, Ex-EVP / then group chief (OC CMG / OBG) during period of May, 2004 to December 2008 and January 2009 was looking after the Overseas portfolio of the Bank including operation of Bangladesh as per rules and laws, but he willfully failed to exercise his authority in this regard. He also knowingly and deliberately exercised the powers not vested in him and exceeded from his mandate with malafide

for restructuring of classified loans and waiver of loans in Bangladesh. He, with common intention and abetment, caused a loss to the National Exchequer.

9. Allegation against petitioner / accused Muhammad Imran Butt, being Regional Chief (RCE) (Acting) and having full information of Bangladesh debacle. He misused his authority and failed to take any notice that an amount of approximately BDL 2.4 Billion was sanctioned to various parties including Cotton Corporation Group in the branches of Bangladesh Operations without observing the rules and regulation of the Bank of Bangladesh (Central Bank) and Bank's own policies. Many serious lapses were reported to him as Acting RCE but he failed to take any concrete action to safe guard the bank's interest. He failed to stop accused Muhammad Wasim Khan from sanctioning loans beyond his powers but in some instances he jointly with accused No.8, Waseem Khan approved loans beyond his discretionary powers and without obtaining appropriate security to safe guard the bank's interest. This act on his part caused further loss of BDT 3.200 Billion to the bank as bad loan. Hence he committed offence of misuse of authority as Acting REC, NBP, Bahrain.

10. During the course of investigation, it was revealed that the petitioner/accused Muhammad Wasim Khan, being Manager, Gulshan Branch, Bangladesh failed to carryout his responsibility to keep comprehensive check and balance in the branch rather he became instrumental and acted to

benefit the defaulted parties. As General Manager (Acting) and in connivance with accused No.9, Muhammad Imran Butt, he sanctioned large number of L/Cs to Cotton Corporation Group beyond his discretionary power and without observing rules and regulations of bank's policy and procedure. This caused further loss to the bank for about BDT, 3.200 Billion. Hence he committed offence of misuse of authority as Acting GM, NBP Bangladesh.

11. We shall firstly deal with the petitions seeking pre arrest bail as the considerations for the grant of pre arrest bail are different from those in cases concerning post arrest bail.

Pre arrest bail petitions.

12. **Learned counsel for petitioner No.1 (Syed Ali Raza)** contended that the petitioner No.1. was a very seasoned and prominent banker who had received many awards and medals on account of his service to the banking industry and therefore, could not even think of misusing his authority.

13. At the outset he submitted that the reference filed against petitioner No.1 lacked jurisdiction under the NAO since this was in effect a case which fell under S.31 (D) NAO and since no permission had been obtained from the Governor of the State Bank of Pakistan (SBP) which was a mandatory requirement under S.31 (D) NAO which involves imprudent loans which this reference in effect revolves around NAB had no jurisdiction to file the reference. Even otherwise he contended that petitioner No.1 had absolutely

no knowledge of the two main allegations in the reference. Namely (a) that he had misused his authority/failed to exercise his authority which led to a colossal loss to the bank and (b) he had no knowledge of the illegal extensions given to any employee of the bank in either Bangladesh or Bahrain or that any such person had ever caused any loss to the bank through illegal activities. According to him petitioner No.1 had not breached the policy regarding overseas postings since he was not aware for how long any employee was posted abroad and he had never received such reports from the Human Resources Department. Even otherwise being the President of the Bank he had the power and the authority to act at any time to relax the policy of non-extension in time of persons posted abroad which as per bank policy was a maximum of five years. He could relax such policy because as President he had complete discretion to do so. He further contended that petitioner No.1 had no idea that any losses were being caused in the banks Bangladesh operations as such reports had never been brought to his attention. So far as he was concerned the bank was making huge profits as per its accounts which he received and considered and it was not his role to micro manage all operations of the bank which could be left to other senior members of the bank under whose supervision such matters fell and as such his pre arrest bail should be confirmed. In support of his contentions he placed reliance on the following authorities **Sarfraz Ahmed v. Chairman, NAB** (2016 P Cr. L J 79), **Mohae-ud-Din v. State** (2015 P Cr. L J 621), **Kalb-e-Ali v. Chairman, NAB**

(2011 P Cr. L J 565), **Khalilullah Jan Sarhandi v. Chairman, NAB** (2008 P Cr. L J 967), **Hassan Jameel Ansari v. National Accountability Bureau (NAB)** (2012 YLR 2809) **Inamul Haque v. The State** (2000 YLR 289), **Naseem Abdul Sattar v. Federation of Pakistan** (PLD 2013 Sindh 357), **Mansur-ul-Haque v. Government of Pakistan** (PLD 2008 Supreme Court 166), **Muzammil Niazi v. State** (PLD 2003 Karachi 526), **Tariq Javed Afridi v. State** (PLD 2002 Lahore 233), **M. Anwar Saifullah Khan v. State** (PLD 2002 Lahore 458), **Kaloodi International (Pvt.) Ltd. v. Federation of Pakistan** (PLD 2001 Karachi 311), **Imtiaz Ahmed v. State** (PLD 1997 Supreme Court 545), **Wahid Bakhsh Baloch v. State** (2014 SCMR 985), **The State v. Idrees Ghauri** (2008 SCMR 1118), **Chaudhry Shujat Hussain v. State** (1995 SCMR 1249),

14. **Turning to the case of petitioner No.3 Zubair Ahmed.** Learned counsel for the petitioner contended like petitioner No.1 that this case fell under S.31 (D) and NAB had no jurisdiction as it was a case of loan default and no permission of the Governor of the SBP had been taken to initiate any inquiry under S.31 (D); that there was absolutely no evidence against him; that he had no control over NBP operations however when he heard of irregularities /illegalities in the Bangladesh operations he opened an inquiry into the matter and thus was trying to solve the problem by exercising his authority; that he only had administrative powers up to his grade which was SEVP; that he reported directly to the President and not Head Office; that he caused no loss; that the main accused was accused No.11

QSM Jehanzeb who was an absconder and thus he had no liability and thus his pre arrest bail should be confirmed; he did not raise the plea of malafides.

15. **Turning to the case of petitioner No.8 Mohammed Imran** who succeeded Zubair Ahmed as Regional Acting Chief. Learned counsel for the petitioner contended that he was completely innocent of any wrong doing. He made no loans; sanctioned no loans; that he did not sign any documents; that he received no benefit and when he heard of the irregularities/illegalities in the Bangladesh operations through the whistle blowing process he took action vide letter 01-07-2012 which was all he was required to do. His role was confined to monitoring irregularities and nothing else. He claimed that the malafides of NAB was evident from the fact that he had been exonerated by an internal inquiry report and yet Munawar Gopal who had not been exonerated and who should have been an accused was a PW and as such based on the above considerations he was entitled to the confirmation of his pre arrest bail. In support of his contention he placed reliance on **Fayyaz Ahmed V State** (SCMR 1628) and **Maqbool Ahmed Shaikh V The State** (2014 YLR 2644).

16. **Turning to the case of petitioner No.7 Tahir Yaqub.** Learned counsel contended that the petitioner was completely innocent of any wrong doing; that he had nothing to do with credit or HR matters as his role was confined to marketing and as such it was not his job to have any involvement in

credit matters and as such his pre-arrest bail should be confirmed. According to him the malafides of NAB was in illegally filing this reference under S.31 (D)

17. **Turning to the case of petitioner No.9 Mohammed Wasim Khan** his learned counsel pointed to the NAB inquiry report which found that his liability was NIL and as such he had caused no loss; that more importantly he was the whistle blower who originally brought the illegal activities of the accused bankers to light along with the later whistle blower Munawar Gopal and as such he was not involved in any offense rather he had brought the offense to the attention of the competent authority. It was the function of Imran Butt (accused No.9) to take the further steps. With regard to the specific allegation against him of opening the LC's he contended that this was not his decision but the decision of the credit committee which he followed in good faith. He had actually moved the memorandum to the credit committee with a view to resolving some of the credit issues which were effecting the bank. He further contended that he had been malafidely roped into this case by Munawar Gopal who was a PW who had not mentioned his name at all in his original S.161 statement but had 2 years later in an additional S.161 statement mentioned his role which was a complete after thought and as such he was entitled to pre arrest bail.

18. **Turning to the case of Petitioner No. 6 Qamar Hussain.** Learned counsel for Qamar Hussain contended that he is completely innocent; that he is a relatively junior officer

in the NBP's chain of command in the HR department and the only allegation against the petitioner is that he was one of the bankers who sanctioned the end of service benefits of Zubair Ahmed and he did so after the President of the Bank had issued a non involvement certificate (NIC). According to him the fact that the then President Mr. Iqbal Ashraf who had given the NIC had not been arrayed as an accused in this reference showed malafide on the part of NAB and as there was insufficient material to connect him to the commission of the offense his pre arrest bail should be confirmed.

19. **Learned counsel for petitioner No. 5 Mr Kauser Iqbal Malik** argued on the same grounds as petitioner Qamar Hussain in that this was his only involvement in this reference and the main difference between his case and that of Qamar Hussain was that he was a more senior officer and in particular he had only returned to the NBP on 14th February 2014 after 7 years on deputation and since the sanction was given only one month after his return based on the NIC of the then President he could not have been aware of or been a part of the illegalities in the Bangladesh operations and as such there was insufficient material to connect him to the offense for which he had been charged and as mentioned by learned counsel for Qamar Hussain there was malafide on the part of NAB by not including the then President.

20. Learned special prosecutor NAB vehemently opposed the confirmation of pre arrest bail to each of the petitioners who had applied for the same. He contended that the

petitioners were all bank officials who held senior positions in the NBP who had breached rules, regulations and laws in connivance with each other in order to benefit others by fraudulently sanctioning loans, extending credit with insufficient security, writing off interest and principle through their misuse of authority/failure to exercise authority which caused a huge loss to the national exchequer. They had also deliberately and malafide through their misuse of authority/failure to exercise their authority allowed completely illegal extensions in overseas service to some of the petitioners in connivance with each other who were actually instrumental in causing such a colossal loss in the NBP's Bangladesh operations in order to cover up all their illegalities and NAB had more than sufficient evidence through S.161 statements and documents to prove beyond a reasonable doubt that all the petitioners were responsible for the offenses for which they had been charged and as such the pre arrest bail granted to all the petitioners should be recalled.

21. We have heard the parties and have carefully gone through the record and considered the case law cited by them. At the outset we are of the view that the authorities cited by the learned counsel for the petitioners are of little, if any, assistance to them based on the particular facts and circumstances of this case.

22. We would also like to make it clear that the findings in this order are only based on a tentative assessment of the

material available on record and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

23. 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 commission of the offense for which he is charged.

24. 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.

25. It is now well settled law that pre arrest bail is an extraordinary relief and is only available in cases where there has been malafide on the part of the complainant or the police. In this regard reference may be made to the case of **Rana Mohammed Arshad V Muhammad Rafique** (PLD 2009

SC 427) which held at P. 431 that the following conditions need to be satisfied before pre arrest bail can be granted as set out below:

"9. Even since then, the said interpretation so made, the said powers so found and the parameters so prescribed, have been regularly and repeatedly coming up for scrutiny by the Superior Courts including this Court. But each time the matter was re-examined, the same was only re-affirmed. The said concept as it was initially propounded; as it developed and as the same stands today, may be summarized for the benefit of us all as under:--

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations **to protect innocent persons against victimization through abuse of law for ulterior motives;**
- (b) **pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;**
- (c) **bail before arrest can not be granted unless the person seeking it satisfies the conditions specified subsection (2) of section 497 of Code of Criminal Procedure** i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- (d) **not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;**
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first

instant i.e. the Court of Session, before petitioning the High Court for the purpose.”(bold added)

26. The requirement of malafide in order to qualify for pre arrest bail has recently been emphasized by the Hon'ble Supreme Court in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066) as under:-

“..... This Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person **unless** the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police”

27. Certain of the petitioners have claimed malafides on account of NAB and the complainant because this case falls under S.31 (D) and no permission of the Governor of the SBP was received, that Munawar Gopang should have been an accused rather than a PW and that the whole reference was based on a pick and choose basis and that in the case of petitioners Qamar Hussain and Kauser Iqbal Malik since the then President had not been included in the reference who had given the NIC to allow the post retirement benefits to Zubair Ahmed this amounted to malafide on the part of NAB.

28. With regard to NAB failing to get the permission of the Governor of the SBP to authorize the inquiry under S.31 (D) NAO we are of the view that this does not amount to malafide on the part of NAB as this reference has not been charged under S.31 (D) of the NAO and hence the question of permission or not is irrelevant. This reference has been

charged under S.9 NAO which deals with misuse of authority and failure to exercise authority in order to benefit others and fraud and criminal breach of trust all of which elements appear to be present in this case as it was in the 2010 case of the Bank of Punjab as will be discussed later which in our view is on similar footing to this case namely illegal loans being sanctioned through the misuse of authority/failure to exercise authority through fraud by bank officials. With regard to this being a pick and choose exercise by NAB as to who should be an accused and favoring Munawar Gopang by allowing him to be a PW as opposed to an accused we find no substance to the argument. It appears that to some extent over 60 bank officials were attributed some element of blame in the Bank's internal inquiry. The reality is that for a prosecution to succeed it is not possible for 60 accused to be put in one reference. This is because it may entail 60 different cross examinations by 60 separate lawyers of each PW. What with absence of senior counsel, accused not turning up, lawyers strikes etc the result would be that such a trial would virtually be never ending and would probably end in the death of most of the accused before judgment was announced. The trial in effect would be an exercise in futility. One of the objects and purposes of the NAO as set out in its preamble and made specifically clear in S.16 (a) is that trials under the NAO must be expeditious. By putting 60 persons in a reference this object of the legislation would be defeated. Thus, NAB using its expertise, experience and prosecutorial discretion must be left to determine who and who does not go

into a reference based on who the best evidence is against, who are the major/most senior players in the scam, who it can make as a PW instead of an accused in order to strengthen or expedite its case or who may be an approver. Such a process in essence amounts to good case/trial management provided that it is made on bona fide considerations which it appears to be in this case. In our view only when obvious and blatant and potentially malafide omissions from the reference especially in respect of very senior persons whom there is strong evidence against is present may be one of the reasons for a case of malafide being made out especially if it appears that prima facie there is strong tangible material against him. In our view the fact that Munawar Gopang has been made a PW will only shorten NAB's prosecution and enable it to bring on record compelling evidence in order to strengthen the prosecution's case which may not have been available otherwise. Thus, in this case we are of the view that only 16 of the approximately 60 identified in the NBP inquiry report being placed in the reference is not malafide on the part of the NAB based on the facts and circumstances of this case where it appears that only the most senior, most responsible officers and thus against whom the best evidence lies have been included in the reference. However, based on that yardstick we do however find an element of malafide in the case of Qamar Hussain and Kauser Iqbal Malik which appears to be an off shoot of the main case (the main case concerning connivance and misuse/failure to exercise authority in sanctioning loans, write offs, etc in the

Bangladesh operations) and where in our view the failure to include the then President Iqbal Ashraf in the reference has a tinge of malafide since these two officers acted on the then Presidents NIC's who has not been included in this aspect of the reference for reasons best known to the NAB.

29. Thus, in our view none of the petitioners have been able to make out a case of malafide (except petitioners Qamar Hussain and Kauser Iqbal Malik) and thus on this count alone their pre arrest bail should be recalled.

30. **Turning to the case of petitioner No.1 Syed Ali Raza former President of the NBP.** At the outset we would make it clear that every man is equal before the law however high or low his position in life may be as provided in Article 25 of the Constitution and Islamic law as such the fact that petitioner No.1 was President of the bank with many awards and honors to his name is irrelevant in this case.

31. We find no force in the contention by learned counsel for the petitioner that this is a case which falls within the ambit of S.31 (D) NAO which concerns inquiry, investigation of proceedings in respect of imprudent bank loans. From a bare reading of the reference it is clear that this case is one which falls under the ambit of S.9 NAO which primarily in this case concerns a misuse of authority and failure to exercise authority which led to undue benefit and favors to others and a loss to the National Exchequer. In our view this case is similar to the reference which the NAB filed against the Bank of Punjab (BOP) whereby numerous bank officials

through their connivance and deliberate misusing and failing to exercise their authority had caused a colossal loss to the BOP. As in that case the President, Directors, Senior Officials of the BOP and beneficiaries were all accused in the reference. A discussion of that cases investigation under S.9 by the NAB and a duty of the Supreme Court to monitor so that such investigations are carried out fairly can be found in the case of **BOP V Haris Steel Industries (Pvt) Ltd** (PLD 2010 SC 1109) and **BOP V Accountability Court No.1** (PLD 2014 Lah 92) although this case involved the acceptance of a PB from a BOP accused the case indicates at P.98 Para 2 that the case concerned misuse of authority by the President of the BOP and other senior BOP banking officials in order to favour beneficiaries through their fraud, misuse of authority and failure to exercise authority which nearly brought the bank and its depositors down and fell within S.9 NAO. Thus we find that petitioner No.1's contention that NAB does not have the jurisdiction to deal with this case of mega corruption under the NAO to be without substance as based on the particular facts and circumstances of the case it falls squarely within the ambit of S.9 NAO. With regard to the NAB having the authority to investigate bankers we note that the NAB had received the permission of the SBP as per S. 31(c) of the NAO to proceed against the accused in this reference all of whom are bank employees of the NBP and thus there has been no violation of the NAO in this respect.

32. We would also point out that in this case we have taken into account that in our view bankers, all of whom are

accused in this reference, have a special fiduciary duty of trust to their depositors and in this case as well the national exchequer which cannot be taken lightly

33. The petitioner No.1 has been assigned a specific role in the reference which is set out in para 2 of this order and by his own admission is a seasoned experienced banker of repute who had served as President of the NBP for ten and half years and as such would have known "the ins and outs" of the bank and all its policies. With regard to the allegations that he failed to exercise his authority to prevent the illegal activities which were occurring in the Bangladesh operation of NBP which caused a colossal loss to the bank it is clear from the record that he was fully aware of such activities and illegalities which were causing a colossal loss to the bank and by failing to exercise his authority failed to take any measures to rectify the situation. Petitioner No.1 was President of the Bank and Chairman of the Board of Directors. The audit reports of the bank were placed before him for his consideration in ordinary course as President of the Bank and chairman of the Board of Directors and he was in full knowledge of the illegalities/irregularities/violation of rules and regulations and adverse comments in connection with operations of the NBP Bangladesh (refer S.161 statement of Shakeel Hayat). This case does not concern the net profit being made by the NBP which may have been even greater had the petitioner taken measures to exercise his authority to prevent losses which were illegally caused by a failure to exercise authority/misuse of authority by him and other co-

accused in the reference who were also employees of the NBP all of whom like petitioner No.1 owed a fiduciary duty of care to the bank, its depositors and the national exchequer. In particular in 2009 and 2010 audit report the issue of non-performing loans in Bangladesh operations was clearly mentioned and was also pointed out in its overall conclusions raising alarming concerns about the Bangladesh operations on which no effective action was taken. Like wise the audit report of 2011-12 raised particular concerns about the operations of the bank in Bangladesh. 25 irregularities were noted in the audit report but again no action was taken. However despite these all being within the petitioner's knowledge he failed to exercise his authority and misused his authority in allowing the situation to continue. S. 161 Cr.P.C. statement of Shakeel Hayat also shows the huge irregularities being carried out in the Bangladesh operation of the bank which had also been highlighted in the audit report which petitioner No.1 was fully aware. Notwithstanding such knowledge there is no material on record to show that the petitioner No.1 in his capacity as Chairman of the Board in his ten and half years as President of NBP ever even held any meeting to discuss the operations of the overseas branches of the bank, (including in Bangladesh) notwithstanding his knowledge concerning the illegalities being carried out in the Bangladesh Operation which was continuing right under his nose. In our view not only did petitioner No.1 misuse his authority/failed to exercise his authority but his inaction(s) prima facie amount to criminal negligence on his part bearing

in mind his vast experience as a Senior Banker, especially as President of the NBP over such a long period of time. The document at F 336 headed Presidents Note by a NBP internal investigation team is particularly damning of the Presidents running of the bank and goes along way in explaining how this illegality in Bangladesh was able to flourish under the nose of the President. (See also S.161 statement of Syed Shahid Hussain Gadezi)

34. With regard to the allegations that he was unaware of the HR policy on overseas tenure and posting we find such a argument quite incredible bearing in mind that he had been the President of the NBP for over ten and half years. Such lack of knowledge about such important bank policy issues beggars belief. We are the view that he was fully aware of the non-extension policy but malafidely and deliberately ordered it to be violated in the cases of the accused No.2 Zubair Ahmed who was Regional Chief Executive NBP based in Bahrain who served overseas for around 18 years and who was also responsible for the Bangladesh operations who by his own admission he met quite regularly. Likewise he allowed accused No.11 SQM Jehanzeb who remained posted in Bangladesh for more than five and was committing a great deal of the illegalities which was causing heavy loss to the bank to remain posted in Bangladesh for frivolous and unjustified reasons in clear violation of the overseas posting policy. In our view to allow these two officers to remain posted overseas in violation of the overseas posting policy was a deliberate attempt by petitioner No.1 to shield these officials

from potential criminal liability and at a minimum from disciplinary proceedings. (see SBP letter dated 10-04-2015 seeking an explanation from the NBP President on this issue). Accused No.11 therefore never returned to Pakistan to be held accountable for his illegal conduct and retired overseas and is an absconder in this case. Likewise Zubair Ahmed was continuously extended without reason. According to petitioner No.3 Zubair Ahmed who was in regular contact with petitioner No.1 and as Regional Chief for the Bangladesh Operations carried out two inquiries into the Bangladesh operations which were both aborted and again it does not seem believable to a reasonable man that Zubair Ahmed being an experienced senior banker would not have mentioned the substance of these inquiries or the problems which were being faced in the Bangladesh operations to petitioner No.1 who he directly reported to. What is more surprising is that Zubair Ahmed petitioner No.3 aborted both these inquiries despite knowing of the wrong doing taking place in the Bangladesh operations by NBP officials posted in Bangladesh within days. We will return again to this aspect of the case when we come to the case of petitioner No.3 Zubair Ahmed.

35. With regard to petitioner No.1's contentions that as President of the Bank he had absolute discretion to relax the overseas policy unilaterally we find this argument to be unsustainable keeping in view the oversea's posting policy. The President of the NBP is not a king exercising a royal prerogative by acting according to his own whims and wishes

in running a bank. The bank has a structure with a Board of Directors, a management committee and various sub-committees. The policy of non-extension is absolute and allows relaxation in only two situations at the Presidents discretion one of which is age and the other is family and even then subject to the ratification of the HR Sub committee. (see Overseas posting policy) The reasons for relaxation have not been met in this case (Zubair and Jehanzeb) and nowhere are such reasons for relaxation specifically found in writing. Likewise no ratification by the HR Sub committee has been placed on record. Thus we are of the view that the petitioner No.1 also misused his authority/ failed to exercise his authority for malafide reasons in allowing both Zubair Ahmed and Jehanzeb to remain in Bahrain and Bangladesh respectively beyond the non-extension period as provided in the bank's overseas policy on frivolous grounds in order to shield them from potential criminal liability or at a minimum disciplinary proceedings and did not even take any action once against such postings once this came to his attention. Even otherwise under the oversea's posting policy before an extension could be granted both the extendees (Zubair Ahmed and Jehanzeb) had to **first** return to Pakistan before they could be extended which they failed to do and thus there extension was also illegal on this count. Petitioner No.1 did not raise the ground of any malafides on account of the NAB for filing the reference against him, apart from it being under S.31 (D) and being without jurisdiction, and we have not seen any such malafides on behalf of NAB from the record.

36. As such we find that there is sufficient material on record to prima facie connect the petitioner No.1 to the offence for which he has been charged. In addition we are of the view that there is no material to suggest that NAB has acted in a malafide manner against petitioner No.1 which is a pre-condition for the grant of pre-arrest bail. As such the pre-arrest bail granted to petitioner No.1 is hereby recalled with immediate effect.

37. **Turning to the case of Petitioner No.3 Zubair Ahmed who was regional chief executive** with oversight of the Bangladesh operations when the offense was committed and has been given a specific role in the reference as set out in para 4 of this order. The contention of petitioner No.3 Zubair Ahmed that he had no control over operations in Bangladesh is completely belied by the office order dated 12-02-2002 concerning reorganization of overseas operations which at Para 4 provides as under:

· **“REGIONAL CHIEF EXECUTIVE:** Regional Chief Executives will exercise business **and financial powers** and administrative powers in accordance with their respective grades. **They will be responsible for affairs of branches and offices falling under their jurisdiction** as detailed at annexure “C” and carry full administrative authority over these Branches and offices accordingly. They will have direct administrative reporting line to the President. **To facilitate mobility for business purposes, RCEs are authorized to travel within their region,** (all Cities and States) and Pakistan with pre-advise to Head Office. Similarly inter regional visit with mutual concurrence and consultation amongst the concerned RCEs is also authorized in the same manner. They are also authorized to depute any staff in their region for official visits in the same manner. **It is understood and required that RCEs will exercise this authority with**

diligence and specifically for purpose of monitoring branches and business opportunities in other Cities and States. RCEs are also authorized to transfer staff within their respective Region and depute any staff within their Region for additional support. Head Office will be informed of such transfers accordingly.

38. It is quite apparent from the above that petitioner Zubair Ahmed had control of the branches in Bangladesh and was not a mere powerless spectator to the wrongs, illegalities and irregularities being committed in such branches. He was a very senior Banker being Regional Head with years of experience behind him. He visited Bangladesh 21 times over a 3 year period and claimed TA/DA of US\$69,000 (yet made no report/note of such visit) and as such it was inconceivable that he was unaware of the illegalities being committed in the Bangladesh operations. During oral arguments by his own admission he started two inquiries in the alleged wrong doing in the Bangladesh branches where he had even taken away certain powers of the officials who were allegedly committing illegalities but for reasons best known to himself the 2 inquiries were aborted and after 3 days the powers were returned to the concerned officials. In our view this shows that petitioner No.3 Zubair Ahmed was fully aware of the wrong doings/illegalities in the Bangladesh branch **and had the power and authority to prevent it** but he did nothing to prevent it which was a complete failure to exercise his authority and in fact by aborting the inquiries and handing back the powers it is apparent that he was a part of the cover up to deliberately hide the illegalities in the Bangladesh

banking operations and **shield** those responsible for liability (Refer Zubair Ahmed's letter dated 16-03-2009 to Jehanzeb taking away his discretionary powers and letter dated 19-03-2009 restoring those discretionary powers after 3 days only). He had the power as indicated in the re organization of overseas operations to transfer the delinquent officials and commence disciplinary proceedings. He also by his own admission reported directly to the President so in our view it is inconceivable that he did not report this matter to the President who he was in regular contact with. If he did not do so this in our view would amount to a clear failure to exercise his authority to prevent the losses which later occurred (Reference is made to S.161 statement of Khalid Mahmood and his Report).

39. Once this debacle came to light and could no longer be concealed 3 inquiries were authorized by the bank. The Khalid Mahmood Report at P.47 found that petitioner No.3 failed to exercise his authority. See also S.161 statement of Munawar Hussain Gopang dated 07-07-2015

40. Petitioner No.3 was also the beneficiary of the illegal actions of accused No.5 Mirza Abrar Baig and accused No.10 Imran Ghanj who through both there misuse of authority/failure to exercise authority violated the HR overseas policy by extending the petitioner's stay overseas beyond the limit of 5 years and allowed him to remain outside of Pakistan for **18 years** which can hardly be seen as a small oversight especially as petitioner No.3 had 3 negative reports

against him which was completely in violation of such rules so that he could continue the illegalities in Bangladesh operations unabated and cover up the same. Such illegal extension was also approved by the President of the bank without any justification whatsoever and completely in violation of the non extension policy on overseas postings which we have already found that he was aware of and that he had no unilateral powers to relax arbitrarily based on his own whims and wishes. As such we find that there is sufficient material on record to prima facie connect the petitioner No.3 Zubair Ahmed to the offense for which he has been charged and accordingly his pre arrest bail is hereby immediately recalled especially as there has been no malafide on the part of the NAB.

41. **Turning to the case of petitioner No.8 Mohammed Imran who succeeded Zubair Ahmed as Regional Acting Chief Executive.** He has been given a specific role in the reference as set out at Para 9 of this order. In essence the same discussion of material on record applies to him as it does to petitioner No.3 Zubair Ahmed as mentioned above whose pre arrest bail we have already recalled save that he was not involved in the extension of any one in Bangladesh. Yes, he was initially a whistleblower but he did absolutely nothing to follow up on the so called whistle blowing. Instead he allowed the same illegalities to continue right under his nose in Bangladesh for which he was in charge of all branches. (see Folder (B) P.209-210 setting out his responsibilities). His arguments concerning malafides in,

choosing Munawar Gopang as a PW instead of an accused have already been dealt with earlier in this order. Thus, prima facie we find sufficient material on record to connect petitioner No.8 to the offense for which he has been charged and as such his pre arrest bail is hereby recalled.

42. **Turning to the case of Petitioner No.7 Tahir Yaqub who was then group chief Overseas Banking Group (OBG).**

He has been given a specific role in the reference which is set out in para 8 of this order. At the time of the offense he was in charge Overseas portfolio of the Bank including operations of Bangladesh. It is correct that his role was primarily marketing and at first sight it is difficult to see how he is involved in this mega scam which largely revolved around loans. However it came to light that he was sent to Bangladesh to perform a special assignment to restructure accounts and waive off interest and extend overdrafts up to a maximum of 120 days. See P.301 and 303 of his CP for this special assignment /mandate. This was his specific mandate which is corroborated by S.161 Statement Munawar Hussain Gopang. The material before us also reveals that he illegally exceeded his mandate by not only giving further extensions in over drafts and waived off interest **but he also waived off principal** amount which was completely illegal and went beyond his mandate and directly favored those person who had their principal amount waived off or credit period again extended beyond his mandate. In this respect the documents at P.77 and 78 of Folder B confirm this illegality. The Gardezi Report at Folder F P.140 relevant P.338 also held him

responsible for all such illegal actions. Although not mentioned in the reference the material on record also shows that he illegally gave 30 promotions along with increments which he had no lawful authority to do and was completely outside his mandate and shows his tendency to misuse his authority. For the reasons discussed above we are of the view that prima facie there is sufficient material on record to connect the petitioner Tahir Yaqub to the offense for which he has been charged and as such his pre arrest bail is recalled with immediate effect. (See S.161 statement of Syed Shahid Hussain Gardezi)

43. **Turning to the case of petitioner No.9 Mohammed Wasim Khan.** He has been given a specific role in the reference at Para 10 of this order. At the time when the offense was committed he was Manager, Gulshan Branch, Bangladesh where most of the illegalities were taking place. He was posted at the branch on 11-12-2010 and became general manager from **23-02-012** in place of accused Jehanzeb. Instead of exercising his authority to prevent any illegalities being carried out at the branch he continued and allowed the same illegal practices to flourish which had been carried out by his predecessor Accused No.11 Jehanzeb knowing that such practices were illegal and in violation of the relevant rules and regulations. Although Accused No.11 Jehanzeb has absconded for ease of reference his role as set out at Para 13 in the reference is set out as under to show the continued illegalities/irregularities;

“13. That the investigation further revealed that accused No.11 Q.S.M. Jehanzeb, Ex-VP/then G.M. (Bangladesh), now retired, being responsible for all operational affairs of the Bangladesh but he miserably failed to exercise his authority to prevent the grant and rendition of undue benefits or favours which he could have prevented if he exercised his authority honestly under the rules / regulations. He sanctioned loans beyond his discretionary powers and in that way misused his authority so as to gain / render benefit to the parties / borrowers.”

44. When confronted the petitioner had no explanation as to why he had sanctioned the concerned letters of credit despite knowing that the concerned companies were massive defaulters. **The main beneficiaries seem to be Cotton Corporation and Wafa enterprises which were all headed by one man Mr. Zia Ul Haq who the branch was clearly giving undue favours to. Folder H P.276 the Central Bank of Bangladesh by letter dated 07-04-2013 directly pointed out to him violations of rules and regulations at his branch which needed to be rectified but the petitioner failed to rectify the situation as pointed out to him.**

45. By another letter to him from the Central Bank of Bangladesh dated 10-06-2013 again the Central Bank of Bangladesh pointed out further violations being committed by his branch which needed to be rectified which specifically concerned the issuance of letters of credit. An extract of the Central bank of Bangladesh's letter in material part is set out below;

“Para 4. As mentioned above, the Branch did not exercise due diligence while opening the said L/Cs and the Branch also failed to take any effective steps to recover the dues from the clients against those accepted bills; Identify the officers who are

responsible for extending undue and irregular credit facilities to the clients and take punitive measures against them". (italics added)

46. Again petitioner No 9 failed to comply with such directives and instructions and thus the petitioner deliberately misused his authority/failed to exercise his authority despite being on notice from even the Central Bank of Bangladesh to prevent the illegalities and violations of rules and regulations which were being carried out under his nose and was causing a colossal loss to the NBP. It is also interesting to note that a draft fact finding mission by the reputed auditors KPMG pointed out the violations of the rules and regulations at the branch which were being breached. We do not see any malafides on the part of the complainant nor the NAB. The fact that Munawar Hussain Gopang who was also a whistle blower who was chosen to be a prosecution witness in our view is irrelevant since, as discussed above, it is sometimes important to the success of a prosecution to make persons who have key information PW's as opposed to other accused who have less information or are not prepared to become PW's. In fact the material placed before us on a tentative assessment indicates that the petitioner 9 was doing everything in his power as branch manager to continue the illegal practices of Jehanzeb and cover up such practices. See Second S.161 statement of Munawar Hussain Gopang. Therefore we are of the view that there is sufficient material to prima facie connect the petitioner No.9 Mohammed Waseem to the offense for which he has been charged and as such his pre arrest bail is hereby recalled with immediate effect.

47. **Turning to the case of Petitioners Mr Qamar Hussain and Mr. Kauser Iqbal Malik** respectively we have already found tinges of malafide in their case by the NAB failing to include in the reference the then President of the NBP Mr. Iqbal Ashraf who had given the NIC which the petitioners had acted upon and without which no post retirement service benefits could have been given to Zubair Ahmed. Furthermore, they had nothing to do with the re hiring of Zubair Ahmed which was apparently done so that he could face disciplinary proceedings although it was strongly objected to by the SBP. In our view since there is a tinge of malafide on the part of NAB; that this seems an off shoot case which has nothing to do with the huge losses sustained by Bangladesh operations through its lending operations; the relatively minor loss to the NBP which can be recovered by the NBP from Zubair Ahmed and the complete lack of material to show any connivance with any of the other accused in the major Bangladesh operations scam we hereby confirm the pre arrest bail granted by this court to Qamar Hussain and Kauser Iqbal Malik on the same terms and conditions.

Post arrest Bail cases.

48. Since post arrest bail cases require different considerations to pre arrest bail cases we have dealt with them separately. For example, there is no need to show any malafide on the part of the complainant or the NAB.

49. Turning to the cases of petitioner Mirza Abrar Baig who was Group Chief HR and petitioner Imran Ghani who was Incharge overseas desk for HR NBP at the time when the offense was committed. Both of these cases can be dealt with together since they both in effect have been charged with illegally extending Zubair Ahmed and Jehanzeb in overseas posting in violation of the overseas posting policy which had a catastrophic effect of causing further loss to the NBP. According to learned counsel for Mirza Abrar Baig and Imran Ghani there was no malafide on their part in authorizing the extension in service overseas of both Zubair Ahmed in Bahrain and Jehanzeb in Bangladesh as they were acting on the instructions of petitioner No.1 Syed Ali Raza who was President of the bank and they had no knowledge that any wrong doing was being carried out by these individuals and as such they should be admitted to post arrest bail.

50. As noted above we have considered the arguments of learned counsel including those of learned counsel for Mr.Mirza and Mr.Ghani seeking post arrest bail and senior prosecutor for NAB who vehemently opposed the grant of post arrest bail to these two petitioners and reviewed the relevant record and case law.

51. The key consideration in refusing to grant post arrest bail is whether there are reasonable grounds to connect the petitioners to the offense if the offense falls within the prohibitory clause of S.497 Cr.PC as in this case in which

case bail **must** be refused. In this respect reliance is placed on the case of **Tariq Bashir V State** (PLD 1995 SC 34).

52. Both of the petitioners have been given a specific role in the reference as set out at Para's 3 and 5 respectively of this order. It needs to be considered that Zubair Ahmed and Jehanzeb were not just any two ordinary employees of the NBP working abroad. Both of these extended employees had a direct nexus in enabling the illegalities in NBP's Bangladesh operations to be carried out and later attempted to be covered up and both petitioners had the ability to prevent such illegalities which they failed to do by a misuse of authority and failure to exercise authority. Mr. Jehanzeb was the man on the ground who was committing a number of illegalities and Zubair Ahmed was the man at the Regional office responsible for monitoring Mr. Jehanzeb in the Bangladesh operations who reported directly to the President (petitioner No.1) by allowing the extensions of both these men the petitioners allowed the illegalities to continue in Bangladesh and be covered up which also gives a direct nexus to the President (petitioner No.1) who authorized these illegal extensions and shows that he was in connivance with Zubair Ahmed, his successor and Jehanzeb just as the petitioners Mirza and Ghani were in connivance with them, including the President in order to give effect to the illegalities and cover up of such illegalities in the Bangladesh operations which resulted in a loss of US\$185 M to the bank and the national exchequer and the depositors.

53. In this respect a look at the Bank's overseas posting policy dated January 2008 is of significance with provides at Para 5 (b) as under:

"5 (b). The period of overseas posting of any Pak based employee shall be for a **maximum period of five years** from the date of joining of the Bank's overseas office, **which shall not be extendable under any circumstances**. Promotion of employees, overstaying abroad for any reason, shall only be considered subject to post repatriation provided they fulfill the eligibility and qualifying criteria as per Promotion Policy applicable at the time".

54. Relaxation is allowed in the following terms under Para 6 of the policy as under;

"6. DISCRETIONARY POWERS OF THE PRESIDENT.

The President NBP, may at his discretion, allow the following relaxation **subject to ratification by the Board's Sub-Committee on HRM / Board of Directors**.

- i. AGE: To a maximum extent of five years;
- ii. FAMILY SIZE: To the extent of four children.

Sd/-

(Qamar Hussain)

Senior Vice President (HRP&PW)

Sd/-

(Dr. Mirza Abrar Baig)

SEVP/Group Chief (HRM&AG)

55. It is highly significant that this policy has been prepared by petitioner Mirza and as such he was fully aware of it especially the non extension aspect and relaxation aspect by the President.

56. It appears from the file that petitioners Mirza and Ghani did attempt to repatriate Mr. Jehanzeb after completion of his 5 years then quite inexplicably they by letter dated 16-11-2009 on the orders of the competent authority (i.e. the President/petitioner No.1) sanctioned a special assignment to Jehanzeb for undertaking a study to explore the avenues of

enhancing the business in NBP Bangladesh. Having drafted the overseas policy petitioners Mirza and Ghani would have been well aware that an extension was not allowable. Even otherwise the President's reasons for allowing the extension (competent authority) through the exercise of his discretion must be given in writing under S.24 General Clauses Act especially as all such exercise of discretion must be exercised reasonably and not arbitrarily or on whimsical grounds. In this case no reasons for the exercise of the discretion have been given. Even if the reasons are to consider the environment for better business opportunities these reasons in the case of Jehanzeb are frivolous and arbitrary and do not appeal to reason based on the particular facts and circumstances of this case and are clearly designed to shield him from liability and to retire in Bangladesh. The petitioners did not seek a copy of the ratification of this decision from the HR Sub committee/Board of directors as required by the rule and the petitioners blindly acted on the decision ignoring this important pre condition which they were well aware of which lead to a misuse of authority /failure to exercise authority on their part. Furthermore, **before** this extension was allowable Mr.Jehanzeb had to return back to Pakistan **first** which he failed to do and the petitioners were both well aware of this requirement yet they kept mum for reasons best known to themselves. Most importantly and significantly from our point of view neither Mr.Mirza nor Mr.Ghani who signed the special assignment letter brought it to the attention of the competent authority that such an extension was illegal and in complete.

violation of the overseas policy and reasons for relaxation and had no HR sub committee/Board of Directors approval for the relaxation. They deliberately and malafide chose to keep mum. As for the reason given for the extension this is completely spurious and is a clear attempt by the President in connivance with petitioners Mirza and Ghani to allow Jehanzeb to continue his illegal activities in Bangladesh and shield him from any responsibility. Likewise the completely illegal extension given to Zubair Ahmed which allowed both officers to remain associated with Bangladesh operations for years on end in complete violation of the overseas posting policy which Mirza himself jointly drafted. The aforesaid letter is even signed by the President/petitioner No.1, Mirza and Ghani. Like wise a letter on the same subject dated 20-11-2009. Even on his overstay after the expiry of his 3 month assignment Mr. Zubair Ahmed despite receiving letters from HR failed to take any action against Jehanzeb and Mirza and Ghani failed to report this issue to the President. By Note dated 15-06-2010 signed by Ghani Mr. Jehanzeb was **again quite incredibly** extended for a further 6 months in violation of the overseas policy despite his up coming retirement/superannuation which would cause huge problems for the bank if he retired in Bangladesh. Such correspondence when read together in our view clearly shows that the President (petitioner No.1), Zubair Ahmed (petitioner No.3) and Mirza and Ghani were all on board in conniving to allow Jehanzeb to retire in Bangladesh so that he could escape any liability for his illegal acts in Bangladesh. (See

S.161 statement of Syed Shahid Hussain Gardezi and second S.161 statement of Munawar Hussain Gopang dated 04-01-2017)

57. It appears from the record that everyone was on board in this joint criminal enterprise to allow the illegal acts of the Bangladesh operations and to cover up the same from the President, through Zubair Ahmed and down through HR. Had HR through Mirza and/or Ghani acted in accordance with the HR policy and the relevant rules and regulations then not only could the massive loss in Bangladesh operations have been mitigated but Mr. Janzeb and the other officers who were acting illegally could have been stopped and brought to book.

58. In our view the actions of Mirza and Ghani in allowing extensions to Zubair Ahmed and Jehanzeb in complete violation of the overseas posting policy amounted to a complete misuse /failure to exercise authority which contributed to the colossal loss in millions of US\$ to the NBP. Notably even on receipt of letter dated 05-11-2010 from Shahid Anwar Khan addressed to petitioner Mirza setting out grave illegalities committed by Jehanzeb in the Bangladesh operations Mirza being aware of the same still does not appear to have taken any action on it. As such, taking the above discussion into account, in our view there is sufficient material on record to connect both petitioners Mirza Abrar Baig and Imran Ghani to the offense for which they are charged and as such both the post arrest bail applications of

petitioner Mirza Abrar Baig and petitioner Imran Ghani are dismissed.

59. These are the reasons for our short order dated 22-09-2017 which reads as under;

“Mr. Shah Khawar Advocate completed his arguments in C.P. No.D-3461/2017, so also Mr. Sahibzada Muzaffar Advocate completed his arguments in C.P. No.D-2759/2017. The learned counsel for the petitioners in other connected constitution petitions have already advanced and concluded their arguments on 29.8.2017, 30.8.2017, 19.9.2017 and 20.9.2017. We also heard learned Special Prosecutor NAB.

For the reasons to be recorded separately, Const. Petitions Nos.D-2025/2017, D-2095/2017, D-2366/2017, D-2759/2017, De-3274/2017, D-3318/2017 and D-3461/2017 stand dismissed, however, Order dated 10.04.2017 and 05.05.2017 passed in Const. Petitions No.D-2159/2017 and D-2832/2017 respectively, granting ad-interim pre-arrest bail to petitioners Qamar Hussain and Kausar Iqbal Malik, stand confirmed on same terms and conditions”.