

**IN THE HIGH COURT OF SINDH, KARACHI**

Before

Mr. Justice Ahmed Ali M. Shaikh, C.J.  
Mr. Justice Mohammad Karim Khan Agha, J

**Petition No. and name of petitioner along with counsel.**

1. C.P. No.D-132 of 2018 Sharjeel Inam Memon  
V Chairman NAB & another.  
Sharjeel Inam Memon S/o Inam-ul-Haq (petitioner No.1),  
through M/s. Sardar M. Latif Khoso, Shahab Sarki and  
Zulfiqar Ali Langah Advocates
2. C.P. No. D-7667 of 2017 Zulfiqar Ali Shallwani V The NAB  
through its Chairman.  
Zulfiqar Ali Shallwani S/o Pir Muhammad Shallwani  
(petitioner No.2),  
Through Mr. Aamir Raza Naqvi & Afaz Ahmed, Advocates.
3. C.P. No. D-7328 of 2017 Sarang Latif V Federation of  
Pakistan & others.  
Sarang Latif S/o Ameer Bux Chandio (petitioner No.3)  
Through M/s. Amanullah Sheikh & Manzoor Hussain,  
Advocates.
4. C.P. No. D-8001 of 2017 Gulzar Ali & another V The  
Federation of Pakistan & others.  
1. Gulzar Ali S/o Ch. Muhammad Ali. (petitioner No.4)  
2. Salman Mansoor S/o Mian Ghalib Mansoor. (petitioner  
No.5)  
Through M/s. Barrister Khawaja Naveed Ahmed & Irfan  
Bashir Bhutta , Advocates.
5. C.P. No. D-8855 of 2017 Umar Shazad V Federation  
Pakistan through Secretary Ministry of Interior & others.  
Umar Shazad S/o Nadir Khan (petitioner No.6)  
Through M/S Amanullah Sheikh and Manzoor Hussain  
Khoso, Advocates.

**Counsel for the Respondents.**

Mr. Mohammed Altaf, Special Prosecutor, NAB.

Dates of Hearing: 13-02-2018 and 23-02-2018

Date of Order: 02-03-2018

**ORDER**

**Mohammed Karim Khan Agha, J.** Through these petitions,  
petitioners 1, 2, 3, 4, 5 & 6 (Sharjeel Inam Memon, Zulfiqar

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Ali Shallwani, Sarang Latif, Gulzar Ali, Salman Mansoor and Umer Shazad) seek bail after arrest in National Accountability Bureau (NAB) **Reference No.50 of 2016 State v Sharjeel Inam Memon and others** which was filed against them and others by NAB on 28-09-2016 for acts of corruption and corrupt practices, under the National Accountability Ordinance 1999 (NAO). Their ad interim pre arrest bail granted to them by various orders of this court, along with other co-accused, were recalled by this Court vide consolidated order dated 25-10-2017, hence their petitions for post arrest bail. The detailed facts of the case are more particularly set out in the reference and the consolidated pre arrest bail order dated 25-10-2017 which should be read as part and parcel of this order. Through this consolidated order we now propose to dispose of the post arrest bail petitions filed by the petitioners.

2. It should however be mentioned that petitioner No.1 Sharjeel Inam Memon despite being arrested and taken into custody when his pre arrest bail was recalled by order dated 25-10-2015 by passed this court and moved the Hon'ble Supreme Court directly for post arrest bail which vide order dated 02-1-2018 was dismissed with the observation that he may move the relevant court if so advised. Accordingly the petitioner No.1 moved this court for post arrest bail on both merits and medical grounds.

3. The brief facts of the case as alleged in **Reference No.50/16 State v Sharjeel Inam Memon and others** which

was filed by NAB on 28-09-2016 against the petitioners and other co-accused concerned a financial scam by officials of the Information and Archives Department Government of Sindh(GOS) and various advertising agencies whereby the advertising agencies were appointed illegally and in violation of the relevant rules through a misuse of authority/failure to exercise authority by the government officials who malafide, deliberately and in connivance with each other awarded contracts to advertising agencies at exorbitant rates which unduly benefited the advertising agencies who are beneficiaries in this case who acted in connivance with the government officials which lead to a colossal loss of approximately **RS 5 Billion** to the state exchequer hence the aforesaid reference was filed against the petitioners by NAB under the NAO on the grounds of corruption and corrupt practices.

4. **These bail petitions concern two categories of petitioners. Firstly there are the Government officials** who allegedly misused/failed to exercise their authority (Sharjeel Inam Memon (petitioner No.1), Zulfikar Ali Shallwani (petitioner No.2), Sarang Latif Chandio (petitioner No.3) and **secondly there are the advertising agencies** and their representatives who were the beneficiaries of the deliberate and malafide connivance of the Government officials who misused/failed to exercise their authority ; representatives of Adart being Gulzar Ali (petitioner No.4) and Salman Mansoor (petitioner No.5); proprietor of Daily Milan Umar Shehzad (petitioner No.6).

**We will firstly deal with the case of the Government officials.**

5. Learned counsel for the petitioner No.1 Sarjeel Inam Memon contended that petitioner No.1 was entitled to post arrest bail on two separate grounds (a) merits and (b) medical grounds.

6. With regard to merits he contended that the complaint filed by Ms Zeenat Jehan on 06-06-2013 was not maintainable under the NAO and in any event it had nothing to do with petitioner No.1 who had only taken over as Minister of the Information Department about a week before the complaint was made and even then her S.161 statement was recorded 3 years later; that it was a case of pick and choose as the media houses who had put on air the adverts had not been made accused; that the whole appointment process was transparent and had nothing to do with the Minister who is only concerned with policy decisions; that there was no uniform rate provided by advertisers and that the Information Department had done its best to ensure that it got the most competitive rates. In this respect he placed particular reliance on a Note moved by the Federal Government Ministry of Information and Broadcasting dated 24-11-2017; that the case was based on documentary evidence; that the petitioner was no longer required for investigation; that he would not abscond as he had voluntarily returned to Pakistan to face the charges against him and for all the above reasons he was entitled to post

arrest bail. In support of his contentions on merits he placed reliance on the following authorities; **Maqbool Ahmed Lehri and another v. NAB and another** (2016 SCMR 154), **Saeed Ahmed v. The State** (1996 SCMR 1132), **Muhammad Boota v. The State** (2013 P Cr.L J 318), **Iftikhar-ul-Hassan v. The State** (2013 P Cr. L J 1486), **Manzoor and 4 others v. The State** (PLD 1972 SC 81), **Amir v. The State** (PLD 1972 SC 277) and **Muhammad Afzal v. The State** (2005 P Cr. L J 1814).

7. With regard to bail on medical grounds he relied on numerous medical documents and medical reports from duly constituted medical boards which he submitted met the legal requirement of bail on medical grounds and as such in addition he was entitled to bail on medical grounds. In this respect he placed reliance on the cases of **Peer Mukaram ul Haq vs. NAB through Chairman and others** (2006 SCMR 1225), **Mian Manzoor Ahmad Watto vs. The State** (2000 SCMR 107), **Feroze Khan vs. The State** (2012 MLD 1152), **Bohair Qazi and others vs. The State** (2012 P Cr. LJ 1228), **Zakhim Khan Masood vs. The State** (1998 SCMR 1065), **Maqsood vs. Ali Muhammad and another** (1971 SCMR 657), **Malik Muhammad Yousufullah Khan vs. The State and another** (PLD 1995 SC 58), **Muhammad Riaz vs. The State** (2006 P Cr. LJ 1459), **Altaf Hussain vs. The State and another** (2011 YLR 2228) **Muhammad Ali Athar vs. Director General NAB Punjab, Thokar Niaz Baig Lahore and 2 others** (2013 P Cr. LJ 58) and the supreme court decision in

**Dr Asim Hussain V NAB** in CP 2167/17 dated 29-08-2017 (unreported).

8. Learned counsel for the petitioner No.2 Zulfiqar Ali Shallwani contended that he was posted after the complaint was made ; that the selection of the advertising agencies was made in a transparent manner as per SEPRAs Rules; that the rates which were charged by the advertising agencies were not exorbitant; that he had not appointed the Deputy Directors as Directors; that there has been no allegation that the advertising policy was wrong; that he had no idea about the subletting of any of the contracts; that he was not aware of the payments that had been made to the advertising agencies; that he had not benefited personally from the award of the contracts and at the most it could be said that he was negligent in the performance of his duties and as such he was entitled to post arrest bail. In support of his contentions he placed reliance on the cases of **Waris Meah and another v. The State and another** (PLD 1957 SC 157) **Mushahid Shah v. Federal Investigation Agency** (2017 SCMR 1218) and **Muhammad Nadeem Anwar v. National Accountability Bureau** (PLD 2008 SC 645).

9. Learned counsel for the petitioner No.3 Sarang Latif Chandio contended that he was information officer billing at the time of the offenses; that in effect he was a rubber stamp who simply signed and approved all the documents which were placed before him and then forwarded them and

as such he was entirely innocent of any wrong doing and was entitled to post arrest bail.

**Turning to the case of the advertising agencies (beneficiaries)**

10. Learned counsel for petitioners No.4 and 5 who were representatives of Adart advertising agency (Adart) being Gulzar Ali (petitioner No.4) and Salman Mansoor (petitioner No.5) contended that with respect to petitioner No.4 Gulzar Ali he was entitled to bail on both merits and medical grounds.

11. With regard to merits petitioner No.4 Gulzar Ali contended that he was entirely innocent; that his company Adarts had provided the most competitive rates; that there was no material against him and as such he was entitled to post arrest bail.

12. In connection with bail on medical grounds in respect of petitioner No.4 Gulzar Ali learned counsel submitted that the petitioner is both a sick and infirm person who had been admitted in hospital on numerous occasions for cervical dislocation and pains and that he also suffered from diabetes. He produced various medical documents in support of his contentions. He also stated that he was an elderly man of 78 years of age and for all the above reasons he was entitled to bail on medical grounds.

13. Learned counsel for petitioner No.5 Salman Mansoor contended that he was innocent of any wrong doing; that he

was a young man who had nothing to do with Adarts at the time of the commission of the offense and that during this time period he was studying abroad in Cardiff; that there was no material against him and as such he was entitled to post arrest bail.

14. Learned counsel for the petitioner No.6 proprietor of Daily Milan Umar Shehzad contended that he was completely innocent of any wrong doing; that he had only been paid the commission which he was entitled to; that there was no material against him and for all the above reasons he was entitled to post arrest bail.

15. Learned Special Prosecutor NAB submitted that with regard to merits there was more than sufficient material on record to connect all the petitioners to the commission of the offenses for which they had been charged and in this respect took the court through various documents in support of his contentions. He also relied on the finding on merit in the consolidated pre arrest bail order whereby the pre arrest bail of all the petitioners had been recalled by this court and thus for all the above reasons submitted that the post arrest bail petitions of all of the petitioners should be dismissed.

16. With regard to the medical conditions of petitioner No.1 Sharjeel Inam Memon and petitioner No.4 Gulzar Ali based on the medical related material which had been placed before this court he submitted that this did not entitle them to bail on medical grounds based on the relevant law on the grant of bail on medical grounds as they had not met the relevant



legal criteria. With regard to petitioner No.1 he could be adequately treated in hospital whereas petitioner No.4 had not even produced a report on the current state of his health by a duly constituted medical board. In support of his contentions he relied on the cases of **Muhammed Aslam Bajwa v The State** (PLD 2004 SC 780) and **The State v Haji Kabeer Khan** (PLD 2005 SC 364)

17. We have heard the parties and have carefully gone through the documents on record and considered the medical reports and other medically related material placed on record and the various authorities relied upon by the parties in the light of the particular facts and circumstances of this case.

18. 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.

#### **General**

19. 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.

20. 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, resultantly a colossal loss to the tune of RS 5 billion was caused to the national exchequer.

21. The petitioners in this case all claim that they are entirely innocent and not connected to the offence in any way. Without going into a deep appreciation of the material on record it would appear that through the investigation report and material collected by NAB which we have scanned that nearly all of the accused to a greater or lesser extent are connected to the commission of the alleged offence. It is more a question of degree.

22. With regard to the Government officials we have also taken into consideration that they are paid and employed to serve the State/Province out of tax payers money and have a special duty to protect, safe guard and ensure that the tax payers money is well spent and not squandered needlessly or misappropriated through corruption in performing their duties/functions

23. For offenses of corruption charged under the NAO (white collar crimes) the Hon'ble Supreme Court in the recent case of **Rai Mohammed Khan V NAB** (2017 SCMR P.1152) has 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 over RS 5 Billion as 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 while 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 in 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.”

24. Indeed, as in **Rai Mohammed Khan's case** (Supra) it is extremely tragic and rather ironic that the Information Department GOS is squandering billions of rupees and eating up billions of rupees in corruption associated with advertising

campaigns on world water day, tinted mirrors and pressure horns, cultural festivals etc when such money could have been utilized to give genuine relief to the public on the ground in different parts of Sindh such as the provision of portable drinking water in rural areas, maintaining hospitals and schools etc which would have really improved the quality of life for many extremely poor people of this province and made an **actual positive and beneficial difference to their lives.**

### **Mens rea**

25. With regard to the question of mens rea a number of counsel have stressed the lack of mens rea on the part of their respective petitioners in the scam through a number of authorities and as such they cannot be held liable. The question of mens rea can very often be inferred from the facts and circumstances of the case and as discussed below based on the material before us prima facie it can be inferred that nearly all the petitioners had the requisite mens rea to commit the offense for which they are charged in the reference through their acts, conduct, failure to exercise authority, misuse of authority , deliberately violating the Rules and sidelining other officers to give effect to their pre planned loot and plunder of the exchequer through an illegal and deliberate dual invoicing system operated by the advertising agencies (which we will discuss later in this order) which deliberately went unchecked by the Government officials which caused a colossal loss to the exchequer. The final determination of mens rea in respect of each of the

petitioners will, in any event, be decided by the trial court after hearing all the evidence in the case.

**Dealing with the petitions on merit.**

26. When we recalled the pre arrest bail of the petitioners vide our order dated 25-10-2017 we dealt with each case of the petitioners in detail **on merits** and found that there was sufficient material on record to connect the petitioners to the offense for which they had been charged. Following the case of **The State v Zubair** (PLD 1986 SC 173) the petitioners must show some new ground for their bail application or a ground which was not available at the time when their pre arrest bail was argued.

27. It is extremely doubtful that any of the petitioners have been able to produce any new ground or been able to rely on any material which they were not aware of at the time when their pre arrest bail was recalled (apart from petitioner No.1 and 4's medical ground which we will deal with later in this order) but have simply repeated in large part their arguments at the pre arrest bail stage which have already been dealt with in that order.

28. **In the case of petitioner No.1 Sharjeel Inam Memon** we have already found that Ms Zeenat Jahan's complaint was entertainable under S.18 of the NAO especially as at Para 3 it referred to financial corruption in the information department. A complaint to NAB, like an FIR, only gets the ball rolling in a criminal inquiry/investigation and like an FIR where it leads to after inquiry/investigation and the collection

of evidence is another matter. In this case it lead to the petitioners and the filing of a reference against them for corruption; the selection process was not transparent; SEPR Rules were violated; the question of there being no fixed rates for adverts has already been addressed and rejected by us in our earlier order rejecting pre arrest bail. For example, if say 20 2 minute slots were required to advertise the "Misconception on family planning" in our view the fairer and more transparent option was for each of the so called pre qualified advertising agencies putting in their sealed bids after taking account of their own bulk discounts, credit notes and even reduction in their 15% commission so that the lowest bid could have been considered; the invoices on record clearly show the corruption by the advertising agencies and the petitioners from the information department through the system of dual invoicing which caused a loss to the GOS; it was not a case of pick and choose i.e. the media houses who aired the adverts were not included in the reference as they gave genuine invoices whereas the dual invoicing was adopted by the advertising agencies in connivance with the co-accused (including the Government official petitioners) in the information department which caused a colossal loss to the Government of Sindh. With regard to the authorities cited by him we consider that they are of little, if any, assistance to him based on the particular facts and circumstances of this case

29. **With respect to the case of petitioner No.2 Zulfiqar Ali Shallwani** we have already found that the SEPR Rules,

were violated; that the award of the advertising contracts were on a non transparent basis; that the rates of payment were exorbitant; that he deliberately allowed the Deputy Directors to perform the function of Director without any lawful authority and thereby he willfully failed to exercise his authority and the fact that he allowed this practice to continue for so long under his nose clearly shows that it was not a case of negligence but was deliberately done/allowed by him to favour the advertising agencies; he was a senior and experienced bureaucrat and being secretary would have known about the illegal subletting of contracts as he was part of the committee which selected the original 10 pre qualified advertising agencies which did not include the sub lettees; that he was posted as secretary throughout the time when these illegalities took place. Furthermore, his contention that the process of awarding contracts to adverting agencies was transparent is completely destroyed by the following chain of documents/events. On 02-12-2013 the adverting agencies were selected at a meeting which he attended and was a signatory, on 17-04-2014 the selected adverting agencies were duly informed of their selection **however** on 12-12-2013 **before** the advertising agencies had been informed of their selection the petitioner has signed and approved the payment of a bill to one of the selected adverting agencies apparently before it had even been informed that it was selected for crores of rupees. There are also other bill approval letters on record signed by the petitioner **prior to** the advertising agency being informed of its selection on 17-04-2014 and as

such this was not an isolated incident. This clearly shows that the whole selection process was a façade and was a managed affair and that petitioner **Zulfiqar Ali Shallwani** was fully involved in it and knew all about the payments made to the advertising agencies and the amounts paid (which he approved) especially as under the Rules of Business he was the Chief Accounting Officer for the Information Department. We also find that the authorities relied upon by him are of little, if any, assistance to him based on the particular facts and circumstances of this case.

30. **With respect to the case of petitioner No.3 Sarang Latif** we have already found that he was an experienced BPS 17 officer who was fully aware of his responsibilities to check and verify the bills which he deliberately failed to do and thereby willfully failed to exercise his authority. We have been shown at least 8 bills bearing his signature which were approved by him without being checked or verified. If he had checked and verified them then the scam of dual invoicing would have been uncovered.

31. **With respect to the case of petitioner No.4 Gulzar Ali** we have already found that he was a Director of Adart throughout the reference period; he was a majority shareholder of Adart; he signed agreements on behalf of Adart; he operated bank accounts on behalf of Adart and that he illegally massively overcharged the GOS for works carried out by his illegal sub contractors.



32. **With respect to the case of petitioner No.5 Salman Mansoor** we have already found that that he wrote **directly** to the Minister (petitioner No.1) in his capacity as Media Manager for Adart **on a number of occasions**. For example, on 28.05.2014 in respect of media campaign in order to raise awareness of child marriage Bill, on 29.05.2014 in connection with media campaign to combat law and order situation in Sindh, on 06-06-2014 in respect of media campaign for awareness of women and child protection Bill which all indicate that **he had a number of meetings with the Minister** and was fully involved in the procurement of business for Adart.(IR P.605,612, 619).This material totally belies his claim that he was outside of Pakistan studying in Cardiff and had nothing to do with Adarts during the period when the offenses were committed. He signed on Adart letter head, under the title media manager and was also a director of Adarts.

33. **With respect to the case of petitioner No.6 Umar Shazad** we have already found that he was an illegal sublettee of Adart. He was not on the GOS pre qualified list of approved advertisers. By his own admission he established his business in 2013 and his first contract was the one in this case given to him by Adart. By his own admission he had no prior expertise or experience in advertising. He could not produce any corporate or other documents as to how the entity Daily Milan had come into existence. He could not produce any invoice which he had given to any radio station. The invoice was given to Adart and he received 3%

commission. From the above in our view it is apparent that Petitioner No.16 Umer Shazad was illegally favored and given a verbal contract by Adart which simply enabled him to cause loss to the GOS and benefit to himself.

34. **All the petitioners have been given a specific role in the reference. In any event, after re hearing this matter and re examining the same based on the arguments brought before us we are of the view that no material has been brought on record to persuade us that our original findings in respect of each of the petitioners to connect them to the commission of the offense for which they have been charged requires interference wherein the specific role of the petitioners and the material connecting them to the commission of the offense for which they have been charged has been fully discussed. Our order dated 25-10-2017 recalling the petitioners' pre arrest bail should be read as part and parcel of this order and for the sake of brevity we reproduce our findings on merit in respect of each petitioner.**

#### **The Government officials**

35. **Turning to the case of petitioner No.1 Sharjeel Inam Memon** in connection with his petition for post arrest bail on merits (as opposed to medical bail will be dealt with later in this order) we have already held as under whilst dismissing his case for pre arrest bail at Para's 66 to 72:

**“66. Turning to the case of petitioner No.1 Sharjeel Inam Memon who was the concerned Minister at the time of the offense. He has been assigned a specific role at para 3 of the reference which reads as under:**

“3. The investigation further reveals that pre-qualification of advertising agencies was conducted in violation of Sindh Public Procurement Rules, 2010. The accused No.1 **Sharjeel Inam Memon**, Ex-Minister Information, during his tenure from 31.05.2013 to 22.07.2015 illegally approved releasing of official advertisement in electronic media for awareness campaigns through these so called pre-qualified advertising agencies without due competition between these advertising agencies and contracts / release orders were issued to favorite advertising agencies at exorbitant rates even without confirming the market rates in respect of per minute cost of FM & TV Channels as required in SPP Rules, 2010. Further, by misusing his authority, in some instances, the Accused No.1 approved directly the media plan submitted by the advertising agencies which was subsequently got processed through the Accused No.2 to 7 who are officers of Sindh Information Department, a clear violation of the said rules.

67. The first point to note is that with regard to the Sindh Information Festival which contract went to Orient and other adverts e.g. on renewal of arms license and World Water day which went to Evernew and other advertising agencies named in the reference **there is not even a request from the concerned department/Ministry e.g. Culture and Tourism and Home Ministry for a media campaign on record.** This seems to have been decided alone by petitioner No.1 on his own accord completely illegally and against all rules and regulations in connivance with the advertising agencies. On a transitory review of the Rules we are of the considered view that they apply to awarding contracts to making advertisements in respect GOS media campaigns and which is apparent from a letter dated 06-06-2012 by the GOS placed on record by petitioner No.1 himself thus the Rules had to be followed in this case which is further bolstered by the Advertisement Policy which was duly notified in the **Sindh Government Gazette dated 01-07-2011 whereby Para 2 specifically states that the Rules are to be a complied with** and the S.161 statement of Muhammad Ayub Ali Khan and Meer Alam Jokio which point to violation of certain Rules. Letter dated 08-05-2015 Muhammed Ayub Chandio (Manager Enforcement) to NAB again confirms that the Rules were violated

when the advertising contracts were awarded (Vol. 1 P.316) The Advertising Policy, which amongst other things, aims to promote transparency and to get the most competitive rates for the GOS also provides at Para 2 under the heading objective, "that the major objective of the Information Department is to publicize policies of the government of the day and to distribute / issue advertisement to print as well as electronic media on **merit basis in proper and judicious manner, in compliance with salient feature of the Advertisement Policy, SPRA Rules 2010 and the existing Financial Rules and Regulations.**" In this case as we shall see there was a complete lack of merit and transparency in awarding the advertisements to the advertising agencies which were not awarded in a proper and judicious manner and were awarded in complete violation of the Rules and the aforesaid policy which caused a massive loss to the exchequer.

68. A pre qualification advertisement was placed in "the Dawn" newspaper on 14-09-2013 for advertising agencies to be used by the GOS, on 03-12-2013 a Prequalification meeting was held whereby the competent authority approved 10 out of 18 advertising agencies as pre qualifying. No detailed reasons have been given as to why these 10 agencies out of the 18 were considered as pre qualified and were preferred over the others contrary to S.24A of the General Clauses Act. The meeting on 03-12-2013 was attended by petitioner No.1 who admittedly was the competent authority and a letter was sent for his approval on 16-04-2014, which he duly approved, so that successful advertising agencies could be informed. The approval, as with the minutes are both signed by petitioner No.1 one day later on 17-04-2014. On the same day the 10 selected agencies were informed of their selection.

69. As such when the Sindh Media Festival advertising campaign or any other GOS advertising campaign was considered it would be expected that the 10 pre qualified advertising agencies should have been contacted **after** 17-04-2014 to make their presentations, competitive bids etc. Instead it appears that a letter to this effect was sent to all the 10 agencies on 02-01-2014 (i.e. 3 months **before** they were put on the panel).

70. On 09-01-2014 the petitioner No.1 chaired a meeting along with petitioner No.2 where the 10 companies put up their presentations and the contract was awarded to Orient McCann for the Sindh advertising Festival. **Not a word was mentioned in this meeting about the prices being offered by any of the other companies or market rates, bulk discount or credit notes and the contract was only awarded to Orient and none of the other 9. There was no competitive bidding.** On 10-01-2014 the competent

authority i.e. petitioner No.1 signed off on Orient. **On 15 January (only 5 days later) Syed Masood Hashmi the CEO of Orient on 15.01.2014 wrote directly to petitioner No.1 referring to subsequent meetings, sent the media plan and proposed commercials for approval. This was duly approved by the Minister unilaterally** without sending the media plan down the chain of command in the Information department for consideration which proposals would then have been put up by way of summary for his approval by the secretary.

71. The petitioner No.1 pointed to another pre qualification advertisement in the "Dawn" dated 09-06-2012 and other pre qualification meetings to justify his stance but it seems apparent to us that these documents refer to the previous year and would not be applicable to the relevant time period of the Sindh Festival and other subsequent advertising campaigns which form a part of the reference. Thus, it seems apparent to us that based on the documents the contracts were awarded to all the advertising agencies for the Sindh Festival and other campaigns named in the reference in an illegal manner. With regard to Orient the short time frame involved and the contents of Orient's letter whereby Masood Hashmi writes directly to the petitioner No.1 who immediately approves the same in our view leads to the only reasonable inference that there was no real transparency in the award of this contract especially as no prices were ever shown or compared with the other companies during the presentation. **There is certainly no material as to which of the agencies offered the lowest rate and rates do not seem to have been discussed at all which in our view would be one of the key considerations in competitive bidding under the Rules and to show transparency.** As such the Rules were flouted by petitioner No.1 in order to favor not just Orient but all the other accused advertising agencies named in the reference who were the beneficiaries of the scam to a massive extent and likewise the exchequer suffered a massive loss running into billions of rupees. It is in our view both inconceivable and incredible that no market survey of the prevailing rates was even attempted to be carried out or that no one in the information department had any understanding of how the advertising agencies operated as the Information department has been in existence and awarding advertising contracts regularly for years on end. **Furthermore,** it appears from the record that 4 of the advertising agencies which so benefited have already admitted their guilt and entered into voluntary returns with NAB (namely M/S Connect Marketing for RS 310,474,131, M/S Value Added marketing for RS 205,827,587, M/S Xnine communications for RS 374,546,739 and M/S Insync Advertisement for RS

83,643,668). The complete lack of transparency in the whole process is further seen by the fact that most of the advertising campaigns which were awarded went to one advertising agency namely Evernew without any competitive bidding and which did not even provide invoices for the work it did before payment was approved on some occasions. Evernew were communicating directly with petitioner No.1 the Information Minister and were sending huge invoices with little if any detail which in some cases were approved prior to the advert being run and had no transmission receipts, no indication of at what time the advert ran but were rather unjustified lump sum bills which were deliberately not checked by the government officials yet were all approved by petitioner No.1 being the Minister (see P.153-183 of IR).

72. It is also apparent from the aforesaid letter (from petitioner Hashmi of Orient) that petitioner No.1 **directly approved the media plan in violation of the Rules** and P.149 of the NAB IR shows that petitioner No.1 directly approved the payment of Orient's bills without any release order which included cables, newspapers and websites which no approval had been given which the petitioner would have been well aware of and even Orient charged for FM radio Bills which it had no authority to charge for. Unsurprisingly 21 cheques from Orient amounting to RS 349494063 all dated 22-04-2014 were received on the same day for payment with no staggering in payment i.e. after each advert was shown. **As with Orient the other co-accused advertising agencies also communicated directly with the Minister and he acted in the same manner as he did with Orient regarding release orders and approval of media plans.** Thus taking into account all the above considerations in our view prima facie there is sufficient material on record to connect petitioner No.1 with the offense for which he is charged which caused a colossal loss to the GOS and therefore his pre arrest bail granted by this Court is recalled with immediate effect.

36. As such after considering the arguments in this case we remain of the view that there is prima facie sufficient material on record to connect **petitioner No.1 Sharjeel Inam Memon** to the offense for which he has been charged and as such his petition for post arrest bail on merits is dismissed.

37. **Turning to the case of petitioner No.2 Zulfiqar Ali Shallwani** in connection with his petition for post arrest bail

on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 73 to 74:

**Turning to the case of petitioner No.2 Zulfiqar Ali Shallwani who was secretary Information and Archives Department at the time of the offense.**

73. He has been given a specific role in para 5 of the reference which reads as under;

"5. It is also apparent from the investigation that Accused No.2 **Zulfiqar Ali Shallwani** was posted as Secretary Information & Archives Department Government of Sindh from 19.09.2013 to 31.07.2015. He has, in his aforesaid capacity, misused his authority in Pre-qualification / selection process of advertising agencies by violating SSP Rules, 2010. Further, he deliberately and with malafide intention appointed junior officers at the post of Director Advertisement of Information Department who acted on his illegal orders and with their active connivance with each other he got processed for approval advertisement / awareness campaign in electronic media i.e. TV & Radio which were carried out through so-called pre-qualified advertising agencies at exorbitant rates without competition and ascertaining market rates. Due to his misuse of authority the national exchequer has suffered huge loss against payments of bills on exorbitant and unjustified rates".

74. With regard to petitioner No.2 virtually the same material referred to in recalling petitioner No.1's pre arrest bail is applicable as he was a part of all relevant meetings and signed all the relevant documents which the Minister also signed. S.161 Statement of Muhammed Ayub Khan is sufficient to show just a few of the Rules which were violated and statement of Meer Alam Jokio the lack of competitive bidding. With regard to the sidelining of senior officers in favour of his favorites it is apparent from the complainant and S.161 statement of Zeenat Jahan that senior officers were indeed malafidely sidelined and junior officers who were Deputy Directors were given the de facto charge of Director by petitioner No.2 so that they could in connivance with petitioner No.1 and 2 put the scam into effect. The junior officers are accused No.3 Ms Anita Baloch (a BPS 18 officer who was given the position of BPS 19) who has absconded and been declared a proclaimed offender by the trial court, petitioner No.3 Mansoor Ahmed Rajput and petitioner No.4 Muhammad Yousaf Kaboro, who all followed the illegal orders of petitioners No.1 and No.2 and with malafide intention violated the Rules and ensured that the favored advertising agencies got the

contracts and made massive exorbitant payments to them. The signature of these officials along with petitioner No.2 find place on many of the important documents which enabled this scam to take place. Thus we are of the view that taking all the above considerations into account there is prima facie sufficient material on record to connect petitioner No.2 to the offense for which he has been charged which caused a colossal loss to the GOS and as such his pre arrest bail is recalled with immediate effect”.

38. As such after considering the arguments in this case we remain of the view that there is prima facie sufficient material on record to connect petitioner No.2 **Zulfiqar Ali Shallwani** to the offense for which he has been charged and as such his petition for post arrest bail is dismissed.

39. **Turning to the case of petitioner No.3 Sarang Latif Chandio** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 77 to 78 where he is referred to as petitioner No.5:

**“77. Petitioner No.5 Sarang Latif Chandio at the time of the offense was information officer (billing) and has been given a specific role at para 7 of the reference which reads as under;**

“The investigation also reveals that Accused No.6 **Sarang Latif Chandio** was posted as Information Officer (Billing) in Advertisement Section, Sindh Information Department in BPS-17 from 17.12.2012 to 16.09.2014. During this period he processed bills for media campaigns at exorbitant rates without verification of transmission certificates and without ascertaining the market rates of each FM Radio and TV channel and processed the bills for payment from AG Sindh Office. He did not obtain the invoices of the media channel and got approval of over invoiced bogus bills in connivance with his superior officers / accused for payment which resulted in a huge loss to national exchequer”



78. In essence the role of petitioner No.5 Sarang Latif Chandio was to verify the bills charged by the advertising agencies by comparing them with the transmission certificates which they received from the T.V/radio station which aired the advert and which would have shown the amount which the T.V/Radio station actually charged the advertising agency and other relevant material in this regard to ensure that the advert had been aired and at what rate. Sarang Latif Chandio however completely failed to check any of the bills which the T.V and radio channels made and were paid by the advertising agencies instead he blindly relied on the fake and bogus bills which he received for payment from the advertising agencies which enabled fake and exorbitant and unjustified bills to be paid to the advertising agencies. This was a complete failure to exercise authority on the part of petitioner No.5 Sarang Chandio which led to the loss of billions of rupees to the state exchequer. Had he carried out his functions then such unjustified and illegal payments could have been stopped. Fake bills were processed by him and when these are read in light of the S.161 statement of Javid Ahmed along with associated documents (P.287-293) there is little doubt that petitioner No.5 Sarang Chandio deliberately failed to exercise his authority in order to favour the beneficiaries. His conduct in failing to verify the bills was also in complete violation of the Advertisement Policy in terms of the section dealing with billings and payments which he would have been fully aware of. He may not have been a huge cog in the wheel but without his active involvement and connivance with the other government co-accused the wheel could not have turned and the scam could not have taken place and hence he is equally as liable. Thus, in our view there is prima facie sufficient material on record to connect him with the offense for which he has been charged and his pre arrest bail is hereby recalled with immediate effect".

40. As such after considering the arguments in this case we remain of the view that there is prima facie sufficient material on record to connect petitioner No.3 **Sarang Latif Chandio** to the offense for which he has been charged and as such his petition for post arrest bail is dismissed.

41. **FINDINGS IN RESPECT OF THE BENEFICIARIES  
(advertising agencies) on merits.**

**Introduction**

42. Whilst dealing with the case of the Government officials earlier in this order we have already found that there was deliberate and malafide misuse of authority/failure to exercise authority in violation of the relevant rules and regulations by the Government officials in connivance with the beneficiaries which caused a massive financial gain to the beneficiaries and a huge loss to the government exchequer.

43. There is both a general allegation against all the advertising agencies as well as a specific one. The general one which is found at Para 4 of the Reference reads as under:

**“Para 4. That the investigation also reveals that advertising agencies suppressed the invoices issued by the media channels which had showed the actual amounts, with ulterior motives and malafide intention in connivance with the officials of Sindh Information Department and claimed much higher amounts as compared to the amounts invoices issued by the media channels. Whereas, as per well settled practice, advertising agencies are entitled to get only 15% agency commission against the total bill / invoice received from the media channel. (bold added)**

44. **At the outset it is both pertinent and relevant to observe** that 4 other Media/advertising companies (M/s Connect Marketing Pvt Ltd, M/S Value Added Marketing Services Pvt Ltd, M/S Xnine Pvt Ltd and M/s Sync Advertisement Pvt Ltd) all of whom had allegedly been illegally awarded advertising contracts in violation of the Rules by the Ministry of Information and who had all over charged the Ministry of Information and were faced with the same allegations as the advertisers in the reference by using the

same modus operandi **all admitted their guilt** and entered into voluntary returns with the NAB whereby they repaid their ill gotten gains.

45. The main defense of the advertising agencies was that they did not charge exorbitant rates and that they were fully entitled to charge the rates which they did. This was because according to them this was an unregulated industry. In this respect **The Pakistan Broadcasting Association Rules and Regulations Governing Conduct of Advertising Agencies / MBHS provides as under at Para 9.**

**"9. All accredited Agencies / MBHs shall be entitled to a maximum of 15% commission on the business placed by them with the Broadcast Houses and no Agency / MBH shall claim, demand or receive any commission or compensation from "Broadcast House beyond the specified rate. Provided that at its option, a Broadcast House may allow a cash discount to any Agency / MBH".**

**Thereafter Rules and Regulations Governing conduct of advertising agencies (As adopted at the Extraordinary General Council Meeting held on 29<sup>th</sup> December, 1977 and amended by the Extraordinary General Council Meeting held on March, 19, 2003, March 31, 2012 and March 31, 2015) provided as under.**

**"7. All accredited agencies, whether provisionally or full accredited, shall be entitled to trade discount, not exceeding 15% of the invoice on the business placed by them with the member publications and no agency shall claim, demand or receive any trade discount or compensation from a member publication beyond this specified rate. Provided that at its option a member publication may allow a cash discount upto 15% to an agency in case of settlement of its bills by the agency within 30 days of billing in cases of fully accredited agency and 15 days in case of provisionally accredited agency".**

46. Thus, according to the petitioners 4 and 5 (representatives and directors of Adart Agency and petitioner No.6 Umer Shazad proprietor Daily Milan they were entitled to keep (a) 15% commission as of right (b) any other form of bulk discount or (c) credit note availed by them.

47. However none of petitioners 4, 5 and 6 were able to refer to any documents such as transmission certificates, bulk discounts credit notes which they had received and were entitled to keep in support of their contentions.

48. **Modus Operandi:** In effect by way of an example of what was happening was that the advertising agency for example would be given an invoice by the T.V company for the advert of RS 100 out of which the advertising agency kept 15% as commission, then kept another amount as bulk discount say 15%, then kept another amount by way of credit note say another 15%, so the advertising agency would only pay RS 55. However when the advert agency invoiced the Information Department GOS for the advert run by the T.V company the advertising agency **gave a different invoice** which would only show RS 100 less 15% commission so that the cost of the advert to the GOS was RS 85 which allowed the advertising agency in this example to pocket an extra RS 30 on top of its allowed commission (with the GOS allegedly having no idea about this practice when for all practical purposes this extra RS 30 was most probably split between the advertising agency which had been favoured and the Government officials who are also co-accused in this

reference and favored them by violating the Rules). **As such the true amount paid to the T.V Company by the advertising agency has been dishonestly suppressed by the advertising agency in its invoices to the GOS.**

49. Even if we accept that the advertising agency was allowed 15% commission as per Para 7 of the amended Pakistan Broadcasting Association Rules and Regulations Governing Conduct of Advertising Agencies / MBHS only an extra 15% was available making a total of 30% if the bills were paid within a specified period. However as is apparent from the documents on record the advertising agencies (petitioners, 4, 5 and 6) were claiming far more than this as indicated in the relevant tables in the reference which have not been disputed by petitioners 4, 5 and 6.

50. Had the bidding process been done in a fair and transparent manner through competitive bidding in accordance with the relevant rules (which we have already found that it was not) then such practices could have been prevented and such illegal and unnecessary loss would not have been caused to the GOS.

51. **The cases of petitioner No.4 Gulzar Ali petitioner No.5 Salman Mansoor and petitioner No.6 Umar Shehzad (the proprietor of Daily Milan) are to some extent interlinked in that both petitioners 5 and 6 were Directors of Adart Advertising Agency to whom the GOS Ministry of Information illegally and in connivance with it awarded it advertising contracts whilst petitioner No.6**

was one of Adart's illegal sublettees of the advertising contracts awarded to it by the GOS information department.

52. **Turning to the case of petitioner No.4 Gulzar Ali** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 116 to 119 where he is referred to as petitioner No.14:

116. **Turning to the case of petitioner No.14 Gulzar Ali who was a Director of Adart** at the time of the scam which only dealt with radio commercials/adverts as opposed to T.V. As we have already discussed with regard to the case of petitioner Riaz Munir the NAB under the NAO were empowered and had jurisdiction to charge Gulzar Ali as a Director of Adart. Apart from his general role of over invoicing in the reference he has been given a specific role in the reference at para 13 which reads as under:

"As per investigation report Accused No.14 **Gulzar Ali** and Accused No.15 **Saiman Mansoor** are both Directors of advertising agency M/s. Adart Karachi Pvt. Ltd. (Adart) which has received Rs.317 Million from Sindh Information Department, against release of advertisement campaigns on Electronic Media (FM). The Accused No.14 used to operate the account of the company and is its major shareholder, whereas the Accused No.15 being Director acted in connivance with the other accused persons which resulted into loss to the national exchequer to the tune of Rs.229,536,413/- by submitting bogus bills with fake transmission certificates and also billed excessively / exorbitantly".

117. He was a Director of Adart throughout the reference period; he was a majority shareholder of Adart; he signed agreements on behalf of Adart; he operated bank accounts on behalf of Adart and as can be seen by the table below he illegally massively overcharged the GOS for works carried out by his illegal sub contractors (Daily Milan and Media Power). He has not been able to produce a single invoice or other document in support of his contention that Adart only charged 15% commission and contrary to his contention

Adart and its illegal sublettees deducted far more than 15% commission as is shown by the table reproduced below which shows how much loss Adart caused to the national exchequer. Fake invoices of Adart and over billing can be found at P.289, 291, 301, 309, 311 of the IR. **Such illegality and loss is further bolstered by the fact that Adart attempted to enter into a VR with NAB which according to them was on account of the IO "twisting their arm". Their argument however of coercion by the IO is totally belied by the fact that NAB did not accept their VR.** Adart's letter to NAB dated 20-11-2015 requesting a VR is attached with Adart's CP.No.3286/16 filed before this court at Annex D. In fact **so desperate** were Adart to enter in to a VR and thereby admit their guilt that they even filed CP.No.3286/16 before this court seeking a direction that NAB accept their VR at prayer clause © of the petition which was dismissed by this court.

#### Adart Bank Accounts

S. No.	Channel (FM)	Amount received from Govt. by the Agency (Rs.)	Actual invoice amount of the Channel (Rs.)	Difference/loss to national exchequer (Rs.0)
1	Hot FM 105 Network	115,197,183	2,057,680	11,5181,382
2	Jeay FM 88 Network	29,336,200	997,672	29,162,106
3	FM 100 Pakistan	45,673,033	1,234,044	44,738,989
4	FM 104 Kashmore	20,095,450	204,764	19,890,686
5	Josh FM 99 Karachi /Hyd	20,563,250	Fake TCs	20,563,250
		<b>230,865,116</b>	<b>4,494,160</b>	<b>229,536,413</b>

118. In our view the case of Adart illustrates well the complete farce and illegality of this entire scam as we shall highlight as follows. Adart allegedly were short listed on the GOS advertising agency panel due to their vast experience and expertise in the field of advertising. It was then allegedly after various presentations able to convince the GOS that it had the capacity, ability and expertise over and above any other adverting agency to conduct a first rate advertisement campaign if it was awarded a contract by the GOS. Based on all these factors the GOS awarded it the relevant advertising campaign at vast expense. So what does Adart then do? Does it use its experience and expertise to carry out a first rate advertising campaign on behalf of the GOS as it had undertaken to do if it was awarded the contract after its various wondrous and ground breaking presentations? No. Instead it illegally sublets the **entire** contract of the campaign to two one man bands (Daily Milan and M/S Media Power Link both of which are sole proprietorships) which are **not** on the approved panel of advertisers for the GOS. Even then quite incredibly

Adart's agreement with these two one man bands is **verbal** with nothing in writing. No approval was sought by Adart from the GOS to sublet its advertising contract to another entity which was not on the GOS's approved panel which makes a complete mockery of the whole concept of the Rules, the Advertisement Policy, merit, transparency, the need to advertise in the newspapers, pre qualify etc.

119. Thus, based on the material before us we are prima facie of the view that there is sufficient material to connect petitioner No.14 Gulzar Ali to the offense for which he has been charged and hereby recall his bail with immediate effect".

53. As such after considering the arguments in this case we remain of the view that there is prima facie sufficient material on record to connect **petitioner No.4 Gulzar Ali** to the offense for which he has been charged and as such his petition for post arrest bail on merits is dismissed.

54. **Turning to the case of petitioner No.5 Salman Mansoor** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 120 to 121 where he is referred to as petitioner No.13:

"120. **Turning to the case of petitioner No.13 Salman Mansoor who was a Director of Adart** at the time of the scam. We have seen from the record that he wrote **directly** to the Minister (petitioner No.1) in his capacity as Media Manager for Adart on a number of occasions. For example, on 28.05.2014 in respect of media campaign in order to raise awareness of child marriage Bill, on 29.05.2014 in connection with media campaign to combat law and order situation in Sindh, on 06-06-2014 in respect of media campaign for awareness of women and child protection Bill which all indicate that **he had a number of meetings with the Minister** and was fully involved in the procurement of business for Adart.(IR P.605,612, 619) More importantly **he signed** in his capacity as media manager massively illegally inflated invoices at RS 6000 and 9500 per minute for the Radio adverts which he had illegally sublet to either Milan or Power link who had been charged by the radio station a much lower rate as discussed below in the cases of Umer Shehzad (Milan) and Syed Naveed (Media



Power) all of which were approved and paid in connivance with the Government official petitioners named in this order whose signatures are on the release orders (IR 605 to 611, 612 to 618, 619-624). For example, just one of the letters which he sent to the Minister is set out below for ease of reference:

**Adarts**

**Karachi (Pvt) Limited.**

Azayam Plaza (4<sup>th</sup> floor) 5-A, Sindhi Muslim Housing Society, Share Faisal, Karachi-7400, Pakistan  
Phone 34552773, 34551483, 34552427 Fax-34558474

E-mail: [adartskarachi@gmail.com](mailto:adartskarachi@gmail.com)

To,  
**The Minister,**  
Government of Sindh  
Karachi.

Dated: 29/5/14

Subject: **Request for Electronic Media Campaign Approval**

Respected Sir,

**As per our discussion in the meeting.** Please find attached the **summary of media plan** regarding "Campaign on Electronic Media (FM Radios) to combat law and order situation in Sindh" in this regards **you are requested to kindly approve the media plan for the release order and for further process.**

We hope to have a long-term business relationship with Information Department Government of Sindh.

Thanking you in anticipation. (bold added)

Sd/-

**Media Manager  
(SALMAN MANSOOR)"**

121. The media plan was illegally approved by the Minister (petitioner No.1) as were the massively inflated invoices provided under the signature of petitioner No.13. As such we completely reject the stance of petitioner No.13 Salman Mansoor that he played virtually no role in Adart being awarded advertising contracts from the Information Department GOS and claiming and being paid for massively over inflated bills. **The material referred to above reveals that he played a full part in illegally over billing the GOS along with his Adart Director petitioner No.14 Gulzar Ali. They were partners in crime; whilst petitioner No.14 Gulzar Ali was in the engine room dealing with the illegal sub contracting and operating the bank accounts petitioner No.13 Salman Mansoor was the "face" of Adart who was attending all the meetings with the Minister and**

**other officials of the Information department to ensure that advertising contracts were awarded to Adart and that the illegally massively inflated bills of Adart were paid in connivance with the officials of Information department GOS.** Thus, we find that prima facie there is sufficient material on record to connect the petitioner to the offense for which he has been charged and as such his pre arrest bail is recalled with immediate effect”

55. As such after considering the arguments in this case we remain of the view that there is prima facie sufficient material on record to connect **petitioner No.5 Salman Mansoor** to the offense for which he has been charged and as such his petition for post arrest bail is dismissed.

56. **Turning to the case of petitioner No.6 Umer Shehzad who was Proprietor of Daily Milan** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 122 to 124 where he is referred to as petitioner No.16:

**“122.Turning to the case of petitioner No.16 Umer Shazad who was Proprietor of Daily Milan** at the time of the scam who was illegally sublet a part of the work by Adart.

123. In addition to his general role of suppressing invoices he along with petitioner No.15 Syed Naveed have been given a specific role at para 14 of the reference which reads as under;

“14. It is also transpires from investigation report that Accused No.16 **Umar Shahzad** is Proprietor of Daily Milan, and Accused No.17 **Syed Naveed** is Proprietor of Media Power Link, who carried out advertisement campaigns in Electronic Media on behalf of accused No.14 and 15 and as such received amounts of Rs.124,031,247/- and Rs.121,955,632/- respectively in their accounts from Accused No.14. They have connived with accused No.14 and 15 in submission of fake and forged invoices and transmission certificates and also billed excessively / exorbitantly and as such

they are jointly and severally liable with the other accused persons”.

124. Petitioner No.16 Umer Shazad was an illegal sublettee of Adart. He was not on the GOS pre qualified list of approved advertisers. By his own admission he established his business in 2013 and his first contract was the one in this case given to him by Adart. By his own admission he had no prior expertise or experience in advertising. He could not produce any corporate or other documents as to how the entity Daily Milan had come into existence. He could not produce any invoice which he had given to any radio station. The invoice was given to Adart and he received 3% commission. From the above in our view it is apparent that Petitioner No.16 Umer Shazad was illegally favored and given a verbal contract by Adart which simply enabled him to cause loss to the GOS and benefit to himself. It may be correct that Adart was primarily responsible by pointing to Adart's bills to the GOS which were massively inflated but this passing on the blame (interestingly Adart blamed him for the loss) cannot absolve him of his own criminal liability. The fact that he gave no invoice to any radio station and there is no material on record to show that he negotiated competitive rates with the radio stations shows he has connived with Adart in causing a massive loss to the GOS. Furthermore, the record shows that the S.161 Statement of Qazi Mateen is of no assistance to him (IR 275).FM Radio 100's letter (IR P.277) to NAB by Qazi Mateen simply says that TC's were given to Umer Shehzad which he was unable to produce and that an amount was also received from him. A perusal of the verification certificate (IR P.2237 shows that he was charged RS400 per minute by FM 100, a number of invoices were fake, and even otherwise he was charging Adart RS 5,000 per minute which was a massively over inflated bill (IR 109 Bill dated 07-02-2009). Likewise S.161 Statement of Muhammed Feroze Alam of FM 104 Kashmore (IR P.295), Kashmore's letter dated 01-04-2016 (IR 297) Kashmore charging Umer Shehzad RS 200 per min (IR 2293), and Adarts charging GOS RS 3000 per min (IR 00000111) which were massively over inflated bills by both parties. Other such examples are also present on the record. Thus, Umer Shehzad was over charging Adart massively and Adart were again over charging the GOS massively on top of the amount which Umer Shehzad had already overcharged. Thus in our view there is prima facie sufficient material on record to connect him with the offense for which

he has been charged and as such his interim pre arrest bail is recalled with immediate effect”

57. As such after considering the arguments in this case we remain of the view that there is prima facie sufficient material on record to connect **petitioner No.6 Umer Shehzad** to the offense for which he has been charged and as such his petition for post arrest bail is dismissed.

#### **Bail on medical grounds**

58. **Turning to the case of petitioner No.1 Sharjeel Inam Memon** in connection with his petition for **bail on medical grounds.**

#### **The law on bail on medical grounds.**

59. The statutory basis for the grant of bail on medical grounds can be found in the first proviso to S.497 Cr.PC which provides as under:

“497. When bail may be taken in case of non-bailable offence. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.

Provided that the Court may direct that any person under the age of sixteen years or any woman **or any sick or infirm person accused of such an offence be released on bail.**” (bold added)

60. After a detailed study of the law on medical bail as enunciated by the superior judiciary in the case of

**Kifayatullah V Federation of Pakistan** (2017 P.Cr.LJ 192) this court came to the conclusion that the test for the grant of bail on medical grounds was laid down as long ago as 1995 by the Hon'ble Supreme Court in the case of **Mohammed Yousafullah Khan V State** (PLD 1995 SC 58) which in our view still remains good law, even after the later cases of **Muhammed Saeed Mehdi V State** (2002 SCMR 282) and **Peer Mukaram Ul Haq V NAB** (2006 SCMR P.1225), where it was held at P.65 as under:

“From the above discussed position it is clear to us that the bail on medical ground can be granted under section 497, Cr.P.C. if the Court reaches the conclusion **on the basis of medical report** that the ailment with which the accused is suffering is such that it cannot be properly treated while in custody in Jail. The fact that the appellant is not suffering from any particular type of injury (as observed by the learned Judge that there was no fracture of bone in that case), would not be a ground either to refuse or grant the bail on medical ground. **The correct criteria for grant of bail to an accused in a non-bailable case, on medical ground, in our view, would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail and that some specialized treatment is needed and his continued detention in Jail is likely to affect his capacity or is hazardous to his life**”. (bold and italics added)

61. Thus, the test would therefore appear, in non bailable cases such as the instant case, to have the following limbs as set out below all of which in turn the court would need to be satisfied of, **based on the medical reports**, before the Court before bail on medical grounds can be granted under the first proviso to S.497 (1) Cr.PC **at the courts discretion** based on the particular facts and circumstances of each case.

- (a) the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail **and**
- (b) that some specialized treatment is needed **and**
- (c) his continued detention in Jail is likely to affect his capacity **or** is hazardous to his life.

62. **Now turning to whether the medical reports before us meet the legal requirements of medical bail bearing in mind that the accused is already admitted in the JPMC hospital?**

63. We may add at this junction that during the hearing of these petitions, as per documents very fairly and candidly filed by learned counsel for petitioner No.1 and not by the NAB, the Hon'ble Supreme Court in **HRC No.4977/2018** (regarding reported shifting of accused of NAB Namely Sharjeel Inam Memon from Jail to Hospital) through an order dated 17-02-2018 sought an undertaking from the IGP that petitioner No.1 would be removed from the JPMC back to prison since in effect there was no specific order by the accountability court that he should remain hospitalized whilst the medical boards were carrying out their various tests and that:

"However, there is nothing on record to show as to whether the accused despite his admission in hospital was examined by the said medical board nor any recommendation of the medical board is available on record except a letter from Accountability Court directing Deputy Director JPMC to fix a date for final surgery of accused. **Besides, there is nothing on record to show that the accused was suffering from any disease which either could not be treated in jail hospital or would endanger the life of the accused, in case he is not timely treated. Perusal of order of the Accountability Court reflects that at the**

**relevant time the accused was not suffering from any terminal disease which could not have been treated/administered in jail hospital. Perusal of entire record reveals that there is not a single report would justify his retention in hospital.**

In the circumstances, Inspector General of Prison undertakes to immediately shift the accused to the prison and to submit a compliance report by 3.00 p.m. **In the present scenario we would also like to issue notices to the Doctors of the medical board named above to submit their recommendation on the basis whereof the accused was retained in hospital.**" (bold added)

64. In response to the above set out order a report was submitted by Dr.A.R.Jamali who was chairman of the JPMC's 3 medical boards on 23-02-2018 with copies of petitioner No.1's medical history and reports along with the personal affidavits of those Dr's who sat on the JPMC medical boards as to the correctness of the medical reports which they had signed in respect of petitioner No.1.

65. A bare perusal of the above referred order dated 17-02-2018 passed by the Hon'ble Supreme Court in HRC No.4977/2018 would suggest that the fate of the medical board reports which petitioner No.1 has relied on in this case are subjudice before the Hon'ble Supreme Court in the aforesaid HRC case and hence we have refrained ourselves at this juncture to make any observation on petitioner No.1's plea for the grant of bail on medical grounds.

66. **Turning to the case of petitioner No.4 Gulzar Ali in connection with his petition for bail on medical grounds.**

67. We have already set out the relevant law above so the only issue before us is whether the medical material before us meets the legal requirements of medical bail?

68. **At the outset it is observed that no opinion has been given by a lawfully constituted medical board as to:**

(a) the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail **and**

(b) that some specialized treatment is needed **and**

(c) his continued detention in Jail is likely to affect his capacity **or** is hazardous to his life.

69. Instead a number of medical opinions from various doctors have been filed to show that the petitioner has received medical treatment for his multiple ailments and is a diabetic.

70. Although we are sympathetic to the medical condition of petitioner No.4 Gulzar Ali especially keeping in view his advanced age of 78 years based on the medical documents which he has produced before us we are of the view that petitioner No.4 Gulzar Ali **at this point in time** has not been able to make out a case for the grant of bail on medical grounds based on the legal test as outlined above largely because he lacks an opinion of a lawfully constituted medical board to this effect and as such his petition for bail on medical grounds is dismissed. He may, if so advised, request the concerned accountability court to constitute a medical board to examine his ailments to see if the above legal test for bail on medical grounds is met and may then, if so advised,



again approach this court in respect of this issue. As was held in the case of **Haji Rahimullah V State** (1970 SCMR 514) old age alone is not a ground for bail however, in our view subject to the findings of a medical board it may be a factor for consideration in deciding his bail application based on humanitarian grounds. However, keeping in view case of **Imtiaz Ahmed V State** (2017 SCMR 1194) if the jail medical superintendent is of the view at any particular time that petitioner Gulzar Ali's life may be at serious risk due to the nature of his illnesses whilst in jail he shall, under intimation to the concerned accountability court, immediately transfer him to the appropriate hospital for check up where he shall be further dealt with as per the advice of the attending doctors.

#### **SUMMARY**

**Post arrest bail on merits is dismissed in respect of**

1. Sharjeel Inam Memon
2. Zulfiqar Ali Shallwani
3. Sarang Latif
4. Gulzar Ali
5. Salman Mansoor
6. Umar Shahzad

**Post arrest bail on medical grounds** is dismissed in respect of Gulzar Ali.

**Since the medical reports relied upon by Sharjeel Inam Memon** which are connected with his plea for post arrest bail on medical grounds are currently, as mentioned earlier in this order, before the Hon'ble Supreme court for consideration as

such we do not at this juncture deem it proper to make any findings in respect to this aspect of his petition.