

**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-4659 of 2017 Gulsher Ahmed Chachar V National Accountability Bureau (NAB) through Chairman & others.

Gulsher Ahmed Chachar son of Muhammad Paryal Chachar (petitioner), through Mr. Bhajandas Tejwani, Advocate.

2. C.P. No. D-7188 of 2017 Uzair Abubakar V Federation of Pakistan & others

Uzair Abubakar son of Abubakar (petitioner)

Through Mr. Shahab Sarki and Ali Asghar Buriro, Advocates

3. C.P. No. D-6613 of 2017 Amjad Iqbal V Federation of Pakistan & another.

Amjad Iqbal son of Muhammad Iqbal (petitioner)

through Mr. Faisal Shahzad, Advocate.

4. C.P. No. D-6830 of 2017 Mushtaq A. Qaiser V National Accountability Bureau (NAB) through Chairman & others.

Mushtaq A. Qaiser son of Muhammad Shafi (petitioner) through Mr. Mian M. Bashir Advocate.

5. C.P. No. D-7294 of 2017 Shaukatullah V Federation of Pakistan & others.

Shaukatullah son of Gullu Khan (petitioner)

Through Khawaja Muhammad Azeem, Advocate.

**Counsel for the Respondents.**

Mr. Yassir Siddiqui, Special Prosecutor, NAB.

Dates of Hearing: 01-03-2018,14-03-2018 ,16.03.2018

Date of Order: 28-03-2018

**ORDER**

**Mohammed Karim Khan Agha, J.** Through these petitions, petitioners Shukatullah and Mushtaq A. Qaiser seek bail after arrest in National Accountability Bureau (NAB) **Reference No.22 of 2017 State V Imam-udd-ddin Marwat and others** which was filed against them by NAB for acts of corruption

and corrupt practices under the National Accountability Ordinance 1999 (NAO) on 19-09-2017 whereas petitioners Gulsher Ahmed Chahar, Uzair Abubakar and Amjad Iqbal seek confirmation of their interim pre-bail granted to them by this Court in connection with the same reference.

2. The allegations against the above named petitioners as enumerated in **Reference No.22 of 2017 State V Imam-uddin Marwat and others** are that on receipt of a complaint from National Fertilizer Marketing Limited (NFML) regarding shortage of Urea in Karachi Godowns, an enquiry was authorized by NAB which was subsequently converted into investigation.

3. That the investigation revealed that Ministry of Industries & Production (MOIP) through National Fertilizer Company (NFC) and National Fertilizer Marketing Limited (NFML), a government owned limited company initiated a Urea Import Project, involving private contractors hired for transportation from Gawadar port/Karachi to bulk storages and upcountry delivery through Tally, labour and Security Service firms. **M/s. Inam & Company (Inam & Co) a Carriage Contractor of NFML, committed default (shortage)** as transporter during year 2011-13.

4. That the investigation further revealed that accused No.1 to 4 owners/directors of defaulted company M/s. Inam & Company master minded another plan to steal/misappropriate imported Urea worth millions of rupees by changing their faces, variant nomenclatures, through

bogus/unregistered front/dummy firms in various names and availed a contract of Tally, Labour and Security of Karachi Godown through its **dummy Firms M/s. Sindh Goods Transport Company in May-June 2013 and M/s. Shameer Tally Labour and Security during Dec. 2013-2014** through fraudulent means.

5. That the investigation revealed that accused No.7 Uzair Abubakar (Ex.AGM/DGM), accused No.8 Gulsher Ahmed Chachar (Port Office Incharge/Regional Manager), accused No.9 Amjad Iqbal (Store Incharge), and accused No.10, Mushtaq A. Qaiser, (Dy. Manager) by misusing their authority collusively awarded contract of Tally, Labour and Security services at NFML Godown (Karachi) to bogus/dummy firms of M/s. Inam & Company (namely M/s. Sindh Goods Transport) owned and controlled by the Accused No.1, 2, 3 & 4 without proper approval of competent authority/MD and without submission of genuine documents or fulfilling requirements of tendering/bidding as per rules/ regulations of Public Procurement Regulatory Authority Ordinance, 2002. The accused No.7, 8, 9, 10 abrogated and disregarded all SOPs/manuals and mandatory documentation, allowing the accused No.1 to 6 to violate the essential requirements and conduct their malicious designs of misappropriation, pilferage, quantity lessening (sweep), dumping and shortage.

6. That further investigation revealed that after disclosure of these shortages in respect of M/s. Sindh Goods, accused No.1, 2, 3, 4, 5 and 6 launched another dummy firm of M/s.

Inam & Co namely M/s. Shahmeer Tally, Labour and Security and availed the possession of Rakesh Godown Karachi through an irregular tender in connivance with the accused No.7, 8, 9 and 10, through an agreement between NFML and M/s. Shahmeer Tally for 22 days from 09.12.2013 to 31.12.2013. Subsequently, this contract was extended till 08.01.2014 and 10.02.2014 and finally till the finalization of fresh tender process on various pretexts.

7. That investigation revealed that departmental enquiry was initiated which established that accused No.7 (Ex.AGM/DGM) has misused his authority in respect of M/s. Sindh Goods Transport, while another departmental enquiry committee found that M/s. Shahmeer Tally submitted forged and bogus documents to get the tender.

8. That the Departmental Enquiry Committee of NFML ascertained the losses and responsibility of the NFML officers and **found that 1947.5 M. Tons of Urea is missing from Rasheed Godown and 700.85 M. Tons from Kohinoor Godown both of which were handed over without written contract but remained under the management and responsibility of M/s. Sindh Goods Transport (dummy of Inam & Company), which failed to hand over the Godowns duly accounted for Urea and caused shortage.** The committee found that accused No.7 abused his position as acting GM to force his subordinates at Karachi to give the contract to M/s. Sindh Goods and despite already quoted lower rates, which appears to have been tampered. That the

illegal possession of the company continued for months but Port Office Incharge (Accused No.8) failed to take legal action and kept discharging the Urea from Godowns.

9. That the investigation further revealed that Accused No.7 in collaboration with Accused No.1, 2, 3 and 4 got initiated the bogus/pseudonymous application apparently signed by a person "Jumair Shah" alongwith his CNIC, who denied any such submission or proprietorship during investigation. Accused No.7, 8 and 9 deliberately allowed a defaulting carriage contractor to appear as new bogus firm/ **namely M/s. Sindh Goods Transport Co** and also accepted their pseudonymous and false documentations without appearance and confirmation of real owner/representative, at the time of submission of documents and handing over of Urea possession at later stage. Accused No.8 & 9 issued an NOC/recommendation for award of a temporary contract with processing of the blank stamp paper. Even bogus authority letters were accepted to further transfer/shift the responsibility on someone else instead of beneficial owners/directors. The application was processed at NFML HQ by accused No.7 and 10.

10. That the investigation further reveals that Accused No.1 to 4 orchestrated a process of fraudulent registration / contracting in the name of their employees. Accused No.1 has registered various other companies and firms for his contracts in different departments including NLC, TCP, NFC and NFML for which he and his family are beneficial owners.

He frequently misappropriated government properties through contracting in pseudonymous names, printing fake letter heads, making fake/dubious stamps and placing front men to avail contracts. **In case of disclosure or blacklisting of said firms, he used to register other firms through misrepresentation of particulars/fraudulent use of identification papers of his employees, online NTN's or impersonations of other persons ultimately implicating them in an offence actually committed by him.**

11. As accused No.4 (Shoukatulah) is before us there is at this stage no need to go into the detailed allegations which can be found in the reference against accused No.1 to 3 who were in effect, as mentioned above, the beneficiaries of this scam by illegally arranging the grant of contracts to blacklisted dummy companies in connivance with the official accused (who misused their authority and/or failed to exercise their authority) and their front men accused No.5 and 6 in order to steal tons of urea which caused a massive loss to the national exchequer and in effect are the beneficiaries of this scam.

12. That investigation further reveals that a Court appointed Commission established the shortage of 755,30 M.T (15,106 Urea Bags) at Rakesh Godown Karachi after which NFML took over the possession on Court directions which caused a massive loss to the Government exchequer and hence the aforesaid reference was filed against the petitioners and the other co-accused by the NAB under the

NAO which is now proceeding before the concerned accountability court.

13. **Learned counsel for petitioner Gulsher Ahmed Chachar** who is on pre arrest bail and who at the time of the commission of the offense was Ex port in charge/regional manager/NFML Godown Karachi submitted that he was completely innocent of any wrong doing; that he was regional manager of six godowns; that in order to ensure that the urea was swiftly moved from the port to the Godowns after the termination of the Labor, Security and Tally contract to Afzal Enterprises he had recommended a choice of three companies and their bids for tally contract and Labor and security guards respectively to his superior petitioner Uzair Abu Bakar (whose case will be dealt with below) however his recommendations were ignored and he was told to consider awarding the contract for labor /security and tally to Sind Goods Transport Company (SGTC); that under pressure from his superior petitioner Abu Bakar he approved the same and awarded a verbal contract to SGTG without knowing that it was blacklisted and thus for all the above reasons he was entitled to the confirmation of his pre arrest bail.

14. **Learned counsel for petitioner Uzair Abu Bakr** who is on pre arrest bail and who at the time of the commission of the offense was Ex DGM/AGM (Distribution) NFML HQ Lahore submitted that he had recommended the use of SGTC however as soon as he became aware of the illegalities being committed by it he reported the same to the higher

authorities and in effect he was a whistle blower and as such was completely innocent of any wrong doing and therefore he was entitled to the confirmation of his pre arrest bail.

15. **Learned counsel for petitioner Amjad Iqbal** who is on pre arrest bail and who at the time of the commission of the offense was store Incharge NFML submitted that he was completely innocent of any wrong doing; that at the time of the offense he was not posted at the Godown in Karachi and as such could not have been responsible for any offense in the reference; that even when he was posted at the Godown he had written two letters to petitioner Gulsher Ahmed Chachar who was his immediate superior complaining about the theft and shortages of urea which was being caused by SGTC and as such he had done every thing within his power to prevent the commission of the offense; that the security of the Godown was the responsibility of SGTC and not him and thus for all the above reasons his pre arrest bail should be confirmed.

16. **Learned counsel for petitioner Mushtaq A.Qaiser** who has applied for post arrest bail and who at the time of the commission of the offense was manager (distribution) NFML HQ Lahore submitted that he was innocent of any wrong doing; that there was no material on record against him; that he had moved a note dated 27-05-2013 seeking the approval of SGTC as contractors for labor, security and tally purposes to replace Afzal Enterprises whose contract had recently been terminated on the same terms and conditions but although



his note was approved by petitioner Abu Bakar it was not approved by the then managing director and as such he played no part in the ultimate award of the contract to SGTC. In this respect he relied on the S.161 statements of Tariq Shafiq Khan and Tanvir Ahmed; that he had put the note up because petitioner Abu Bakar had asked him to; that since he was at HQ in Lahore in a management role he had nothing to do with any illegalities which may have been taking place on the ground at the godowns and thus for all the above reasons he should be granted post arrest bail.

17. **Learned counsel for petitioner Shoukatullah** who has applied for post arrest bail and who at the time of the commission of the offense was a Director of Inam and Co, Shamsheer Tally and Labor and security and SGTC admitted that he was a director of Inam and Co and SGTC but he was completely innocent of any wrong doing; that for most of the time he was a humble employee of Inam and Co and that he simply followed the instructions of accused No.1, 2 and 3 who have all absconded who were the Directors who had actual control of Inam and Co and SGTC and he was merely a pawn in the affairs of the said companies; that there has been no misappropriation by him; that there was not a shred of evidence against him and that for all the above reasons he was entitled to be granted post arrest bail.

18. Learned special prosecutor NAB vehemently opposed the confirmation of pre arrest bail to each of the petitioners who had applied for the same which he submitted should be

recalled and also submitted that the petitions for post arrest bail filed by the respective petitioners should also be dismissed as there had been no malafide on the part of NAB and that there was more than sufficient material on record to connect each of the petitioners to the offense for which they had been charged under the reference. In support of his contentions he took the court through various documents on record.

19. We have heard the parties and have carefully gone through the record with their able assistance.

#### **General**

20. 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.

21. 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.

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 fiduciary duty to protect and safeguard government property and to ensure that the tax payers money and property 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 RS10's of millions in this case**) and as such we have adopted the said approach.

#### **Mens rea**

24. With regard to the question of mens rea this can very often be inferred from the facts and circumstances of the case and based on the material before us prima facie it can be inferred that 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. 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.

**Findings on malafides.**

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 investigating agency which in this case is the NAB. In this regard reference may be made to the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) and the more recent Supreme Court case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066).

26. In this case none of the petitioners who are on pre arrest bail have alleged any malafides on the part of the NAB and from the record we have not seen any material on record to show any malafides on the part of NAB

**Findings on Merit.**

27. **Turning to the case of petitioner Guisher Ahmed Chachar who is on pre arrest bail** and who at the time of the commission of the offense was Ex port in charge/regional manager/NFML Gowdown Karachi. As mentioned above he has not claimed any malafides on the part of NAB.

28. The petitioner has been given a specific role in the reference at Para 21 which reads as under:

“That the accused No.8 **Gulsheer Ahmed Chachar** (Regional Manager) having additional charge of Port Office Karachi has recommended the tender of M/s. Sindh Goods despite his earlier submissions and knowing the fact that M/s. Sindh Goods (dummy) has actually worked as Inam & Company (defaulter) owned/controlled by Haji Imam Din and his collaborator. He as Incharge (Port Office) misused his authority and facilitated the culprits in getting the contract from NFML. He also failed to ensure the particulars and identity of the contractor and processed the documents of M/s. Sindh Goods without any verification. He maliciously and deliberately avoided to lodge an FIR for theft with police. The accused endorsed the undated / unnumbered application for a fake / dummy company M/s. Sindh Goods signed by Jumair Shah without verification and submitted the relevant documents twice to accused No.7 Uzair Abu Bakar. He failed to ensure the safe custody of the Urea and allowed it to be handed over to the accused Haji Imam Din and his representatives without documentation and confirmation of agreement and work orders. He while part of the nexus of accused persons benefited through appointments of his relatives, one known as his nephew Ahsan Chachar, who later helped him in exerting undue influence over other employees”.

29. The petitioner knew that rules had to be followed in order to appoint a new contractor. This is shown by the fact that although the petitioner did not follow the required rules and had no legal authority to evaluate companies for appointment he attempted to do so. The record reveals that by letter dated 13-05-2013 to his superior petitioner Abu Bakar he sent recommendations of 3 companies for both Tally and labour and security for consideration. However on 14-05-2013 (one day later) he received a letter from his superior petitioner Abu Bakar “to consider” appointing SGTC the contract of Labour/security **and Tally as a stop gap measure for the forthcoming shipment at higher rates than were**

**recommended by himself** one day earlier. There was no "direction" to appoint SGTC but rather only to "consider" it for appointment on the attached request sent by SGTC for the contract. Instead of writing back to petitioner Abu Bakar at a minimum to find out what had happened to his own recommendations or seeking confirmation that the rules had been followed and the high ups had approved the award of the contract to SGTC two days later he approved the appointment of SGTC on 16-05-2013. This was a clear misuse of authority and failure to exercise authority on his part which lead to the illegal favoring of SGTC which was a black listed company which caused a loss to the exchequer. Apart from approving the contract with SGTC the petitioner also failed to enter into any formal written agreement with SGTC and allowed it to operate on a verbal basis. Thereafter he seems to have quietly gone along with the arrangement without even carrying out proper checks on the Godowns where the urea was being stolen from. He claims to have been pressurized to appoint SGTC by petitioner Abu Bakar but even if this was so this was no excuse for him misusing/failing to exercise his authority.

30. An internal inquiry dated 30-06-2014 concerning these urea shortages ordered by NFML found as under in respect of the petitioner's involvement in the scam:

.....The fact that M/s Sindh Goods continued operation for months without written contract and without proper check and balance is **beyond negligence on part of NFML officials and falls into the domain of criminality. The Port in-charge Mr. Gulsher Chachar claimed to have repeatedly informed the Head Office Lahore about it but failed**

to take any legal action having himself visited the go-down on 20<sup>th</sup> June, 2013 and without actual stock taking kept discharging the urea from the go-downs, at least he should have lodged a police complaint the moment he would have known of the instance of missing urea so that the representative of M/s Sindh Goods present at that time could have been dealt under relevant law and urea should have been brought into countable position. During the inquiry proceedings the inquiry committee has learnt other gross violations against company policy like that the keys of the store locks remained with the contractor and that after stated closing operations on 25<sup>th</sup> July, 2013 old locks were used and no proper daily sealing de-sealing of store was done.

**That role of port in charge** (the petitioner) **and store in-charge(s) (petitioner Amjad Iqbal whose case is dealt with below)** posted since appointment of M/s Sindh Goods to dispatch till 5<sup>th</sup> July at Rasheed go-down and till 25<sup>th</sup> July at Kohinoor go-down is therefore not up to mark (the dates when the urea theft/embezzlement has been pointed out by the store in charge), they appear to have failed to discharge their duties diligently for safe keeping the company stock as per company rules. Departmental action after regular inquiry may also be initiated against them under rules. The role of NFML staff/Management involved in any possible collusion, abetting, and facilitation of the misappropriation / embezzlement of NFML urea stocks may also be determined through proper inquiry/investigation as per company policy/Government rules.”

31. It also appears that in return for illegally appointing SGTC the petitioner received illegal favors/benefits. For example, through the appointment of his relatives, one known as his nephew Ahsan Chachar, who later allegedly helped him in exerting undue influence over other employees.

32. **He is also fully implicated along with the other petitioners by the S.161 Statement of Mr.Jai Parkash** which sets out the complete modus operandi as under:

“I Jai Parkash S/o Lal Chand CNIC No.42201-3102848-7 Office Address 614 Hussain Trade Centre, Altaf Husain Road New Challi Karachi, Mobile No.0300-2199114 office No.021-32275692-93 states that, I have

a firm namely Anmol enterprises which is working as a brokerage firm. I have been doing Urea business with Inam & Company for about two (02) to three (3) years. We have bought Urea from Haji Inam Din who in my view is the owner of Inam & Company. This Urea has been sold after deducting the brokerage fees in various areas on the basis of our contacts / market relations. The payments against these transactions were given to the **Manager Shoukat Khan** with the permission of Imam Din.

The Urea dealings were sometime done by Imam Din and at times by **Shoukat Khan**. They would sometimes get the payments through online transactions and at times through cheques. After finalization of a deal for the sale of Urea sometimes they would deliver us the consignment directly from the (Ship) at Port and sometimes they would get us the delivery of Urea (Loadings) from NFML Godowns. In this process they had their own transporters were directed by them to give Urea bags as per the deal to dealers like Jai Parkash. So the bags would be delivered at the site where the purchaser wanted. Mostly our deals with Haji Imam Din were conducted through telephone and personal meetings but no documentary process were carried out as far as I recall. Upon their instructions transporter would used to call us that where the (PO) of the consignment is to be delivered and after the delivery they would collect the transportation charges from us. Sometime we would send our own vehicles for the loading (delivery).

**Once, I visited NFML office for getting my personal dealership, meaning NFML (membership) in my name there were queues of dealers. After waiting for about two hours, on my turn I met with Mr. Gulsher Chachar. He asked for commission for the grant of dealership in order to avoid the delay. I was told that if I followed the process then my dealership would be the delayed and the work accordingly Chachar sab used to allow the dealers more Urea than the allowed limit after taking commission from the dealers as the dealer could not be allowed to uplift the Urea more than the allocated quotas. But with the payment of commission to Mr. Chachar any quantity of Urea could be uplifted. Once due to these reasons we were called by FIA, where the Urea theft was caught at the spot and after the arrest of one dealer all dealers were called. Mr. Chachar was involved in this transaction also.**

Once Mr. Inam visited my office saying that he was looking for an office to shift his office from YMCA ground to New Challi. As I have mentioned we would usually come to know about the arrival of the Urea through the tenders in the newspapers or from the



telephone calls of Imam Din and at the time from the phone calls of **Shoukat** then we would use to decide the rates as per market situation and finalize the deal.

I would use to meet Haji Imam Din either at his office situated at YMCA Ground or in the Qasr-e-Naz (hostel) where I would meet him in the presence of **Shoukat**. In his office I had met Javed Sab, Saidan Shah, **Shoukat Khan** and Abdul Ghaffar. Haji Imam Din would not often meet me. In their office I met Inam Khan sab the son of Haji Imam Din in whose name the company is named. Once Inam Khan visited my office also. **I had also met Zaheer (Tally and Labour contractor) in the office of Haji Imam Din, while his (Zaheer) own office was in Khadda Market Karachi. He (Zaheer) also used to do dealing of Urea with Haji Imam Din used to contact and do all give and take with various Store Incharges and NFML Karachi office Incharge Mr. Gulsher Chachar while conducting all his deals of NFML. He would get the Urea allocations from NFML and then sell the Urea in the market.**

Sir, we knew that the NFML is a government organization and the Urea (Fertilizer) is the property of the Government but we never knew that Imam Din is a corrupt person and he while getting the price of the Urea from us do not deposit the actual cost (initial) to the government and embezzled the same.

Sometime when we would question him that if STN (Stock Transfer Note) of the stocks that he sold us have been cleared. He would tell us about his dealership and deceive us by claiming that he is selling us the sock of Urea from his dealership. He has defrauded us and sold us the stocks for which he had taken advance payments from us and by reducing price only by Rs 10 to 20. Even there are still balance payments which he has to return us, as he claimed to be a powerful person he used to change his numbers **and direct us to deal with Shoukat** and would not entertain us. However, he has never provided us any STN or the details of any dealership.

**Once, when I visited Godown I met with Amjad Iqbal who was Incharge there. During my meeting with him I asked him that why my loading Urea has been stopped on which he informed me that an NFC team is visiting and as soon as they leave your loading would be resumed. He knew that I am not a dealer and where this Urea.**

As far as I recall whatever payments we had given to Inam & Company have been done from the two (2) Accounts of Anmol Broker (1000838) and of Anmol Enterprises (1001230) and deposit in MCB Account.

I have checked the Urea entries made in the Cash Register of Inam & Co in the presence of **Shoukatullah** at the NAB Karachi office, shown to me by the Investigation Officers. **I have also recognized Shoukat who recognized me, as there have been many dealings of Urea purchases with him.** However, if I am given opportunity of some days I will produce complete record of my dealings with Inam & Co and whatever has been given or taken from Inam & Co, that will reflect the payments made to Haji Imam Din against the purchased Government Urea. In this regard I will also submit the bank accounts and details of the cheques. Read over to me and admitted as correct". (bold added)

33. By a subsequent S.161 Cr.PC statement such complete record concerning transactions with Inam and Co. was produced and given to the IO which supported his above contentions.

34. It is also pertinent that the contract was verbal, was on higher rates and was only meant as a **stop gap measure for the forthcoming shipment.** Instead the petitioner allowed SGTC to continue working as a contractor **after** the forthcoming shipment **and even after** he became aware that urea was being stolen from its godowns under his watch. Thus he did nothing to even minimize the loss which was being caused to the exchequer and instead allowed it to continue under his nose which was a clear failure to exercise his authority which caused loss to the exchequer. The material before us in our view shows that once petitioner Abu Bakar asked him to "consider" SGTC the two became hand in glove in awarding the illegal verbal contract to SGTC and allowing the loss.

35. The petitioner has not pled malafides on the part of NAB and we have not found any malafide from the record. A

tentative assessment of the record available before us reflects that prima facie there is sufficient material to connect the petitioner to the commission of the offense for which he has been charged in the reference and as such his pre arrest bail is recalled with immediate effect.

36. **Turning to the case of Uzair Abu Bakar who is on pre arrest bail** and who at the time of the commission of the offense was Ex DGM/AGM (Distribution) NFML HQ Lahore. He did not plead malafides.

37. The petitioner has been given a specific role in the reference at Para 20 which reads as under:

That accused No.7 a contract employee (Consultant) became DGM (Distribution) in NFML and **played main role in facilitation of shortages and dumping by the accused contractors.** He managed to manipulate the contracting of the M/s. Sindh Goods (M/s. Inam & Company) which was controlled by accused No.1, 2, 3, & 4. He arranged the fictitious and forged documents, tampered with letters and also facilitated in concealment of identification of actual owners behind the dummy firm. He exerted influence upon his juniors to recommend the tenders of M/s. Sindh Goods, M/s. Shahmeer Tally against rules and regulations. He processed the approval note through his section to MD NFML. He also forged letters/approvals and documents to grant the tender and even possession of govt. owned Urea warehouses to blacklisted contractors, while taking care of their affairs at NFML HQ. He was dismissed from service and got reinstated but was again terminated due to the dubious/unrecognized (MBA) degree on which he got employment. He has committed misuse of authority and abetted misappropriated, embezzlement of government property (Urea). The noting portion of the note sheet bears no such approval of the MD and has been denied by the then MD. The record reveals a modus operandi of accused No.7 of creating false documents/record through backdated letters and falsification to save his skin and to implicate/frame others for his own actions. The accused No.7, 8, 9 issued outdated instructions to each other in an attempt to absolve themselves of their responsibility and shift the burden on others. They tried to fill the gaps in documentation through post/undated

letters/observations, crisscrossing the correspondence without any substantial action/result against accused contractors”.

38. From the material before us it appears that however imperfect/illegal the recommendations made by petitioner Gulsher Ahmed Chachar (whose case we dealt with above) were these were completely ignored by the petitioner. The petitioner was a senior officer and would have been well aware that for the appointment of contractors the PPRA Rules had to be followed through the constitution of a five member committee. We have been shown documents which show that the job of contractor is advertised, bids are invited and considered by a 5 member committee which puts up its recommendations for approval in accordance with the PPRA Rules. These rules were completely ignored by the petitioner. There were no advertisements in the news papers, no bids requested, no consideration of any bids. It even appears that the petitioner terminated the contract of M/S Afzal Enterprises on 08-05-2013 and directed the petitioner Gulsher Ahmed Chachar to “consider” SGTC only 6 days later on 14-05-2013 on the same day that SGTC had requested for the contract to be granted to them which was a blacklisted company and thereafter the petitioner Gulsher Ahmed Chachar awarded the contract to SGTC which suggests that this was a pre planned scam between Abu Bakar, SGTC which petitioner Chacher also joined. In fact instead of awarding two separate contracts one for tally **and** one for labor and security guards to two separate firms the petitioner awarded the entire contract of tally, security and labor to one

firm SGTC on higher rates without open competition which not only was black listed but did not have a proven track record because in effect it was a dummy company set up and controlled by Inam which was blacklisted which the petitioner was aware of. The time line of the termination of M/S Afzal Enterprises to the appointment of SGTC and the manner of SGTC's appointment is a clear indication that the petitioner misused his authority by ensuring that SGTC were favored by getting the contract along with his illegally not applying the PPRA Rules and by illegally by passing the required approval of the MD. He made no complaint about the award of the contract or petitioner Gulsher Ahmed Chachar in connection with the contract and in our view only became an alleged whistle blower in order to camouflage his own illegal involvement in the award of the contract to SGTC. Even the internal inquiry dated 30-06-2014 concerning these urea shortages ordered by NFML found as under in respect of the petitioner's involvement in the scam at Para 3 which is set out as under:

**"3. The committee found that Mr. Uzair Abu Bakar ex-AGM abused his position as Acting General Manager and misused his authority to force his subordinate staff at Karachi to give the contract of labor, tally and security services to M/s Sindh Goods and pressurized them to recommend the same in presence of already quoted lower rates which appear to have tampered with as provided by Mr. Uzair Abu Bakar ex-AGM his statement dated 28.5.2014 (Annexure 34). It is also apparent that there was no approval of Competent Authority i.e. MD/Chairman for award of labor, tally and security contract therefore Mr. Uzair Abu Bakar has assumed authority in violation of rules to grant the contract to M/s Sindh Goods.(bold added)**

39. Based on the above discussion we are of the view that there is sufficient material on record to prima facie connect the petitioner to the offense for which he has been charged in the reference and since there has been no malafide by the NAB his pre arrest bail is recalled with immediate effect.

40. **Turning to the case of petitioner Amjad Iqbal who is on pre arrest bail** and who at the time of the commission of the offense was store Incharge NFML. He has not pled malafides.

41. The petitioner has been given a specific role in the reference at Para 22 which reads as under:

“Para 22. That accused No.9 **Amjad Iqbal** as Godown Incharge in connivance with accused No.7 & 8 facilitated award of contract of Tally Labour & Security without proper approval of competent authority / MD by misusing his authority and recommended the application of fake contractor M/s. Sindh Goods Transport without verification for an informal contract. He handed over the possession to M/s. Sindh Goods controlled by accused Haji Imam Din and other directors of Inam and Company without legal authority and documentation in violation of his job description. He failed to ensure the protection and safe custody of Urea at Godowns of Karachi Region and omitted his official responsibility. He illegally benefited the accused persons and falsely reported and manipulated DTRs ”

42. The record reveals that petitioner Amjad Iqbal was posted as store in charge of the Godowns at least for a period when the commission of the offense took place and as such this belies his contention that he was not posted at the relevant time. He has been godown in charge at Karachi since 2010 prior to his transfer on 27-07-2013 i.e. for over 3 years and thus was well aware of his job and its responsibilities and would have known the relevant contractors. He also as per

record initially requested that an informal contract be approved and awarded to SGTC which was later approved by petitioner Abu Bakar which was never reduced into writing. Whilst he was on post the contract was illegally awarded to SGTC and during this period RS 8 crore worth of urea was stolen by SGTC which as per record he attempted to cover up by filling out and signing fake daily transaction reports (DTR's) at the godown. Although he wrote to petitioner Gulsher Ahmed Chacher who was his immediate superior concerning the illegalities committed by SGTC in our view these letters were just made in order to camouflage his illegalities. When petitioner Chacher took no action then this begs the question as to why he did not bring these illegalities to the attention of HQ in Lahore or register an FIR against SGTC. The answer to the question is that he was fully on board with the other official co-accused/petitioners in misusing his authority/failing to exercise his authority and thereby enabling the SGTC to misappropriate crores of Rupees by stealing urea from the Godown which he was supposed to safe guard. **This is amply illustrated by the S.161 statement of Jai Prakash which sets out the modus operandi of the scam and implicates the official petitioners which has been reproduced earlier in this order.**

43. Based on the above discussion we are of the view that there is sufficient material on record to prima facie connect the petitioner to the offense for which he has been charged in

the reference, besides since there has been no malafide by the NAB his pre arrest bail is recalled with immediate effect.

44. **Turning to the case of petitioner Mushtaq A.Qaiser who has applied for post arrest bail** and who at the time of the commission of the offense was manager (distribution) NFML HQ Lahore.

45. The petitioner has been given a specific role in the reference at Para 23 which reads as under:

“23. That accused No.10 **Mushtaque A. Qaiser** on 27.5.2013 processed a note bearing No.D-4039 thereby initiated / processed the temporary appointment of M/s Sindh Goods Transport Co for labor (loading/unloading), security and tally services at Karachi Godowns against the law and without proper documentation and verification of ownership details from back date as 16.5.2013. While submitting this note the commercial departments was not consulted nor were applicable tendering/bidding rules followed by the accused no.7 and 10. He ignored rules and regulations, Public Procurement Regulation Ordinance requirements and worked on the behest of AGM Uzair Abu Bakar and processed the fake/pseudonymous applications based on incomplete and false particulars of owner in violation of rules and regulation for the approval of MD. **Thereby he has committed an act of omission of official duty and facilitated the accused in getting the illegal contract of M/s Sindh Goods Transport as well as M/s Shahmeer Tally labour. The accused officials of NFML namely Uzair Abu Bakar, Gulshar Chachar, and Amjad Iqbal who has jointly and severally inducted the dummies of Inam and Co in NFML leading to misappropriation of government property (Import Urea). Accused have committed omission and misuse of authority in the case and caused loss to government exchequer.**” (bold added)

46. It is an admitted position that petitioner Mushtaq A.Qaiser initiated the note for the appointment of SGTC which he had no lawful authority to do. The record reveals that **this note was acted upon** and ultimately led to the



award of the contract to SGTC. In this regard the S.161 Statement of Tariq Shafiq Khan and Tanvir Ahmed are of no assistance to him as these relate to the contract which was awarded to Shamsheer and **not** to SGTC. These statements also underline the fact that the contract had to be awarded in accordance with the PPRA Rules which further goes against the petitioner and other official petitioners mentioned earlier in this order since these rules were deliberately not followed. He knew that he had no lawful authority to initiate such a note but he illegally did so at the request of petitioner Abu Bakar which ultimately led to the illegal award of the contract to SGTC which caused a massive loss to the exchequer. The fact that he illegally moved the note on the request of petitioner Abu Bakar also shows that he was fully involved in the scam as he had no lawful authority to move this note and by doing so misused his authority in order to favour SGTC. It is pertinent to note that he also offered to become an approver against the other petitioners by exposing the whole scam and in particular implicating petitioner Abu Bakar but his application was rejected by the NAB.

47. Based on the above discussion we are of the view that there is sufficient material on record to prima facie connect the petitioner to the offense for which he has been charged in the reference and as such his petition for post arrest bail is dismissed.

48. **Turning to the case of petitioner Shoukatullah who has applied for post arrest bail** and who at the time of the commission of the offense was a Director of Inam and Co,

Shamsheer Tally and Labor and security and SGTC. He has admitted that he was a director of Inam and Co and SGTC.

49. The petitioner has been given a specific role in the reference at Para's 3, 5, 8, 9, 10, 11,13, 14, 16, 19, 20 ,22 and in particular 17, which can be found in the reference one of which para's (para 17) is reproduced below for ease of reference which reads as under:

"17. That accused No.4 Accounts Manager/Cashier/Director was mainly responsible for the operations of M/s. Inam & Co, M/s. Sindh Goods and M/s. Shahmeer Tally and worked under the direction of accused No.1 & 2. As a front man he remained privy to the fraudulent proceedings from the award of the contract to M/s. Inam & Co, M/s. Sindh Goods and M/s. Shahmeer Tally. Being the accessory/Supervisor accused directed the employees, labor and other supervisor on the instructions of owners and disbursing remuneration and contract payments to carriage contractor and other dealers. Accused has been running the business as an accessory/agent of Accused No.1 to 3 operated the company accounts for the misappropriations and wrongful gains. He managed to prepare documents, bogus/fictitious entries and other essential documents claiming transportation bills/charges and misappropriating the Urea bags.

50. In essence, although later made a director the petitioner was the engine behind the scam who was working for the main accused being accused 1,2 and 3 (Iman-ud-din Marwat s/o Sahib Din Marwat, Iman-ud-din Marwat s/o Iman-ud-din Marwat and Afaq-ud-din Marwat s/o Iman-ud-din Marwat) all of whom were blood relatives and were the brains behind the illegalities through the creation of fake and bogus companies which could steal urea after Inam and Co was blacklisted. The material on record shows that he operated 4 Bank accounts on behalf of accused 1 to 3 which were used in this scam. Approx RS 1 Billion was moved by him between the

various accounts of accused 1 to 3 and their companies and he even used his own account to route some of these monies in order to hide the source of funds which were a result of the scam. When his office was raided cheque books in the name of Inam & Co. containing blank cheques which he had already signed were recovered via a seizure memo which fully link him to Inam and Co and its accounts of which he is a director and thus in our view is fully connected to the scam through the banking documents on record. In essence he was the front man of accused 1, 2 and 3 in connection with this urea scam and **has been fully implicated by the S.161 statement of Jai Parkash which has been reproduced earlier in this order.**

51. Based on the above discussion we are of the view that there is sufficient material on record to prima facie connect the petitioner to the offense for which he has been charged in the reference and as such his petition for post arrest bail is dismissed.

**In summary.**

Pre arrest bail is recalled with immediate effect in respect of:

- (a) Gulsher Ahmed Chachar
- (b) Uzair Abu Bakar
- (c) Amjad Iqbal.

Petitions for post arrest bail are dismissed in respect of:

- (a) Mushtaq A. Qaiser.
- (b) Shoukatullah.