

## IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Muhammad Iqbal Kalhoro, J.

Mr. Justice Mohammed Karim Khan Agha, J.

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

1. C.P. No.D-1657 of 2017 Sultan Qamar Siddiqi V National Accountability Bureau through its Chairman & another.  
Sultan Qamar Siddiqi s/o Late Qamarul Hasan Siddiqi (petitioner), through Mr. Khawaja Sham ul Islam, Advocate.
2. C.P. No. D-1008 of 2017. Nisar Ahmed Morai V National Accountability Bureau (NAB) through its Chairman & another.  
Nisar Ahmed Morai s/o Dr. Muhammad Bachal Memon, (petitioner), through Mr. Rashid Rizvi, Advocate.
3. C.P. No. D-347 of 2018 Haji Wali Muhammad V National Accountability Bureau through its Chairman & others.  
Haji Wali Muhammad s/o Haji Yousuf (petitioner)  
through Mr. Muhammad Haseeb Jamali and Mr. Rasheed Ashraf, Advocates.
4. C.P. No. D-1336 of 2018 Gul Munir Shaikh V. National Accountability Bureau (NAB) through its Director General.  
Gul Munir Shaikh s/o Haji Muhammad Shaikh (petitioner).  
through Mr. Mehmood A Qureshi, Advocate.
5. C.P. No.D-983 of 2018 Abdul Saeed Khan V. The State & another.  
Abdul Saeed Khan s/o Abdul Muqem Khan (petitioner), through Mr. Abdul Mujeeb Khazada, Advocate.
6. C.P.No.D-7831 of 2017 Zulfiqar Ali & another V. Federation of Pakistan & others.  
Zulfiqar Ali s/o Muhammad Alam (petitioner) & Amjad Iqbal s/o Manzoor Hussain (petitioner), through Mr. Khawaja Muhammad Azeem, Advocate.
7. C.P. No.D-323 of 2018 Riaz Ahmed V. The State & another Riaz Ahmed s/o Latif Ahmed Khan (petitioner)  
Through Mr. Tahir Iqbal Malik, Advocate.
8. C.P. No.D-836 of 2018 Abu Bakar Mariwala V. National Accountability Bureau through its Chairman & another  
Abu Bakar Mariwala s/o Haji Muhammad Mariwala (petitioner), through Mr. Muhammad Ashraf Kazi, Advocate.
9. C.P. No.D-2979 of 2017 Sultan Qamar Siddiqi & others V. National Accountability Bureau through its Chairman & others.  
Sultan Qamar Siddiqi s/o Qamaul Hasan Siddiqi (petitioner)  
through Mr. Khawaja Shams ul Islam, Advocate.
10. C.P. No.D-4860 of 2017 Imran Afzal V. Federation of Pakistan & others  
Imran Afzal s/o Afzal Hussain (petitioner), through Mr. Khawaja Muhammad Azeem, Advocate.

/s/

11. C.P. No.D-2104 of 2017 Shahid Hussain V. The State & another  
Shahid Hussain s/o Shabbir Hussain (Late) (petitioner),  
Through Mr. Muhammad Rafiq, Advocate.

**Counsel for the Respondents.**

Mr. Mohammed Altaf, Special Prosecutor, NAB.

Dates of Hearing: 28.03.2018, 29.03.2018, 30.03.2018,  
02.04.2018, 03.04.2018, 05.04.2018,  
06.04.2018 and 10-04-2018

Date of Order: 13.04.2018

**ORDER**

**Mohammed Karim Khan Agha, J.** By this common order we propose to dispose of the above mentioned petitions which have been filed by the petitioners some of which are for the confirmation of pre arrest bail earlier granted to them by various orders of this court and some of which relate to the grant of post arrest bail.

2. The brief facts of the case as per National Accountability Bureau (NAB) reference No.2/2018 **The State V Nisar Ahmed Jan Memon (Nisar Morai) and others** which was filed on 21-12-2017 before the accountability court in Karachi is that each of the petitioners whilst working for the Fisherman's Co-operative Society (FCS) in various different capacities committed acts of corruption and corrupt practices under the National Accountability Ordinance 1999 (NAO) between 2014 and 2015. Such acts of corruption ranged from their misuse of authority/failure to exercise authority which led to illegal appointments, illegal award of contracts and embezzlement of funds all of which caused a massive loss to the FCS and illegally benefited/favored other persons.

3. Turning to the cases of petitioners Riaz Ahmed (Ex manager Market FCS), Amjad Iqbal Warriach (Ex Assistant Manager Market FCS), Gul Munir Shaikh (Ex Assistant Manager Market FCS), AbuBakar Mariwala (Ex Assistant Manager Market FCS) and Zulfiqar Ali (Ex Assistant Manager Market FCS) all of whom as indicated were either Manager Market or Assistant Manager Market at the time of the offense.

4. In essence as per para's 13 and 21 of the reference the above petitioners in their capacity as assistants and managers of market embezzled funds of FCS. They allegedly did this by allowing vehicles to enter the FCS without a gate pass and then auctioning the trash fish to purchasers and

instead of taking a commission of 3.5% on each sale, which would have belonged to FCS, they took 2.5% in cash as a kick back instead. They allegedly covered their tracks by declaring that no trash fish was sold in the official landing sheets which they signed.

5. Learned counsel for petitioner Riaz Ahmed (Ex manager Market FCS) who was on pre arrest bail submitted he had no role to play in the sale of trash fish as his role was to supervise the affairs of the FCS and assign others tasks; that even otherwise no trash fish was sold by the FCS during the period of the offense as the Government of Sindh(GOS) had imposed a ban on trash fishing; that there was no material against him and that as such he was entitled to the confirmation of his pre arrest bail.

6. Learned counsel for petitioners Amjad Iqbal Warriach and Zulfiqar Ali both of whom were Ex Assistant Manager Market FCS and are on pre arrest bail submitted that they had nothing to do with the sale of trash fish since they were simply office workers; that those who had made S.161 statements implicating them had now resiled on the same through affidavits; that there was no material against them and as such they were entitled to the confirmation of their pre arrest bail.

7. Learned counsel for petitioner Gul Munir Shaikh (Ex Assistant Manager Market FCS) who had applied for post arrest bail admitted that the sale of trash fish was taking place at the FCS but he had no role to play in such sale since he was not posted at a shed where trash fish was being sold from; that the 4 PW's who had implicated him through their S.161 statements had resiled from the same through affidavits; that there was no material against him and as such he was entitled to post arrest bail. In support of his contentions he placed reliance on **Raja Muhammed Saeed Khan V Haji Nazir Ahmed** (PLD 2007 SC (AJ&K) 63) and **Tariq Bashir V State** (PLD 1995 SC 34)

8. Learned counsel for petitioner AbuBakar Mariwala (Ex Assistant Manager Market FCS) who had applied for post arrest bail submitted that he was completely innocent of any wrong doing; that he was an office worker and had nothing to do with the sale of trash fish; that there was no material against him and that for all the above reasons he was entitled to post arrest bail.

9. The main allegation in the reference against petitioner Haji Wali Mohammed who is currently in jail (who was Manager FCS) as per para 18

of the reference is that by misusing his authority/failing to exercise his authority he was involved in the award of fake contracts to fake companies which caused a loss of millions of rupees to the FCS and unduly benefited and favored those companies. At the outset his learned counsel submitted that he was only pressing his bail petition on medical grounds and **not** on merits and in this respect referred to various medical reports in support of his contentions that he had met the legal requirements which entitled him to bail on medical grounds. He also placed reliance on the case of **Mian Manzoor Ahmed Watto V The State** (2000 SCMR 107).

10. The main allegations in the reference against petitioner Abdul Saeed Khan who had acted as Acting Chairman FCS before petitioner Nisar Morai and is on pre arrest bail as per para's 16 and 17 of the reference is that (a) by misusing his authority/failing to exercise his authority he was involved in the illegal appointment of more than 155 person's in FCS which caused a loss to FCS and (b) by misusing his authority suspended the FCS commission charges on sales of trash fish and illegally awarded an exclusive contract to M/S Moon International which had no experience in the fishing industry at RS 300.000 per month who only went to the FCS for two months and thereafter failed to pay his monthly fee and thus caused a loss to FCS. Learned counsel for the petitioner submitted that he left FCS on 09-01-2014 where after Mr. Nisar Morai took over as Chairman and all the illegalities took place during his tenure; that there was no evidence against him and for all the above reasons his pre arrest bail should be confirmed.

11. The main allegations in the reference against petitioner Shahid Hussain (Ex Manager Finance) who is on pre arrest bail as per para 19 of the reference is that by misusing his authority/failing to exercise his authority he was involved in awarding fake contracts of millions of rupees to fake companies who did not even apply for contracts and never did any construction work at FCS which they were supposed to do as per contract and he also as manager finance gave the cheques of the fake companies to Imran Afzal and later on assisted in converting these crossed cheques into cash cheques through his signature and thereby caused a loss to the FCS. Learned counsel for the petitioner submitted that he was not involved in the award of any contracts; that he only issued and signed two cross cheques in respect of two employees salaries; that he had nothing to do with petitioner Imran Afzal and for all the above reasons his pre arrest bail should be confirmed.

12. The main allegation in the reference against petitioner Imran Afzal who was a private contractor and is on pre arrest bail as per para's 8,9,10,11,12, 18,19 and 20 of the reference is that he was the front man of petitioner Nisar Morai, Ex Chairman of FCS and was illegally awarded nearly all contracts of FCS, whilst working at FCS, against fake and forged documents in the names of M/S Bright and Associates which was awarded RS 22.35M worth of contracts and M/S Pak Corporation which was awarded RS 16.23M worth of contracts who were two construction companies who were paid by FCS despite carrying out no construction work for FCS; that he forged quotations for contracts for M/S Sohail Enterprises, M/S RB Construction company and M/S Venus enterprises and thus he was the main beneficiary of the contracts awarded to fake and bogus companies which did not carry out the work as per the contract. Learned counsel for the petitioner submitted that he was not the front man of Nisar Morai or anyone else; that he worked as head of security; that he was not illiterate as alleged; that he had nothing to do with any contracts that were awarded by FCS; that all the allegations against him were false and for all the above reasons his pre arrest bail should be confirmed.

13. The main allegations in the reference against petitioners Nisar Morai who was Chairman FCS and Sultan Qamar Siddiqi who was vice Chairman FCS (and Acting Chairman FCS for two different periods amounting to around 6 months) and who both are on pre arrest bail as per most of the para's in the reference is that they misused/failed to exercise their authority in making illegal appointments, awarding illegal contracts to fake companies run by Nisar Morai's front man petitioner Imran Afzal, paying millions of rupees in open cheques to these fake companies which did not carry out the agreed work, connived with other co-accused in not charging any commission on the sale of trash fish and embezzling the payments that were made by the fish buyers as mentioned earlier in this order and as such by failing to exercise their authority and/or misusing their authority caused a massive loss to the FCS.

14. In addition a separate reference **No.12/2017 NAB V Sultan Qamar Siddiqi** has been filed against petitioner Sultan Qamar Siddiqi dated 17-03-2017 under S.9 (a) (v) NAO for acquiring assets or pecuniary resources disproportionate to his known sources of income.

15. Learned counsel for petitioner Nisar Morai submitted that the malafide was that the so called invisible state comprising ISI, MI, IB and the Rangers wanted to fix him in false cases and in this respect they initially detained him for 90 days under S.11-EEEE of the Anti Terrorism Act 1997(ATA) in connection with alleged offenses relating to terrorism but had to release him after finding no material against him and that they had then turned to the NAB to malafidely fix him in this NAB reference in connection with false allegations relating to corruption; that all the allegations in the reference were completely false and had been malafide concocted; that the malafide of the NAB was further shown by using a pick and choose approach whereby former Chairman Mr.Marriwala had been malafidely excluded from the reference and this was also a discriminatory approach towards him; that in effect he was not Chairman for a large part of the period when the offenses were allegedly committed as he was under medical treatment either abroad or in Pakistan and that look after charge had been given to Vice Chairman Sultan Qamar Siddiqi as per by laws of the FCS; that he had not made any illegal appointments or awarded any contracts illegally as such awards of contract and appointments were made by the Board of Directors (BOD) as per bye laws, he also referred to minutes which showed that the appointments were all regularized by the BOD's and under the bye laws as Chairman he had no individual power to award contracts or make appointments; that the malafide of the NAB had further been shown by the fact that apart from Vice Chairman Sultan Qamar Siddiqi none of the other members of the BOD's had either been made an accused in the reference or cited as a PW; that it was common for sitting civil servants to be made Chairman FCS and as such his appointment was completely legal; that he had no control over the FCS even when he was present as it had been taken over by miscreants during the so called Lyari gang war; that most of the PW's were accomplices to the offense so their statements could not be safely relied upon; that this matter fell within the jurisdiction of the Co-operative Societies Act 1925 and not the NAB under the NAO and as such for all the above reasons he was entitled to the confirmation of his pre arrest bail. In support of his contentions he placed reliance on the cases of **Meeran Bux v. The State** (PLD 1989 SC 347), **Federation of Pakistan v. Muhammad Shafi Muhammadi** (1994 SCMR 932), **Asif Ali Zardai v. State** (2005 YLR 717), **Pir Mazharul Haq v. State** (PLD 2005 SC 63) **Abdul Aziz Khan Niazi v. State** (PLD 2003 SC 668), CPD 5668/2016 **Inam Akbar V State** (unreported) dated 25-10-

2017, WP.No.3765/2017 **NAB V Capt Rtd Safdar and Syed Ali Raza V Federation of Pakistan** in Civil Petition 194,298, 304 of 2018 (Unreported) dated 23-02-2018.

16. Learned counsel for petitioner Sultan Qamar Siddiqi submitted that he was already on both pre arrest bail and post arrest bail in Reference 02/2018 The State V Nisar Morai and in Reference 12/2017 State V Sultan Qamar Siddiqi (which we will consider later in this order) vide order of this court in **CMA 11837/2017 (unreported) Sultan Qamar Siddiqi V NAB** dated 21-04-2107. That the above two references concerned the same offense and as such only reference 12/2017 concerning assets beyond known sources of income was in the field. Since he had already been granted bail in that case even if reference 02/18 State V Nisar Morai remained in the field since he already had bail in reference 12/2017 State V Sultan Qamar Siddiqi as per S.167 Cr.PC and the case of **General (Rtd) Pervez Musharraf V The State** (PLD 2014 Balochistan 33) this bail would also be applicable to him in reference 02/18 State V Nisar Morai and others.

17. **With regard to reference 02/2018 State V Nisar Morai**, he made similar submissions to that of Nisar Morai; that there was no material against him on record either in the S.161 statements or the other documents on record; that he was only Acting Chairman for approx 6 months whilst Nisar Morai was away otherwise he was a director and Vice Chairman; that although some of his relatives had been appointed they were well qualified and had been appointed by the BOD's and not himself and that he did not know accused Abdul Mannan who was also appointed at the same time as his relatives and he had nothing to do with his appointment; that he had nothing to do with any illegal appointments or illegal award of contracts; that he signed cheques as per routine in his capacity as Acting Chairman when Nisar Morai was away; that under the Bye laws all powers vested in the BOD's and not him; that trash fishing had been banned and as such there was no question of any embezzlement in respect of the sale of trash fish as no trash fishing took place; that he was not a public office holder and as such did not fall within the ambit of the NAO; that the FCS was a Society and not a Government body and as such did not fall under the ambit of the NAO and as such even if his pre arrest bail had not been confirmed or he was not on post arrest bail his interim pre arrest bail should be confirmed in reference 02/18 State V Nisar Morai and others. In support of his contentions he placed reliance on the following authorities **State V**

**Ramesh M. Udeshi (PLD 2003 SC 891), Abdul Qadir V Federation of Pakistan (2002 SCMR 1487), Jamil.A Durrani V The State (PLD 2003 Kar 393), Sardar Amin Farooqui V Chairman NAB (SBLR 2014 Sindh 766) Shoaib Warsi V Federation of Pakistan (PLD 2017 Sind 243)** which was upheld by the Hon'ble Supreme Court in Civil Petitions No.67 and 68 of 2017 **NAB V Shoaib Warsi (unreported) dated 29-09-2017 Syed Ali Raza V Federation of Pakistan** in Civil Petition 194,298, 304 of 2018 (Unreported) dated 23-02-2018, Order in CP.D No.630 of 2016 **Aftab Ahmed Memon V Chairman NAB** dated 27-03-2018 (unreported)

18. With regard to Reference 12/2017 State V Sultan Qamar Siddiqi which concerned assets beyond known sources of income he submitted that there was absolutely no material against him on record; that the IO had deliberately with malafides concealed any information which was favourable to him; that it was a clear case of pick and choose as petitioner Nisar Morai at typed P.3 of the IR had also been accused by NAB of accumulating assets beyond his known sources of income but NAB had not filed a case against Nisar Morai for assets beyond known sources of income which made this a case of discrimination and as such for all the above reasons he was entitled to confirmation of his pre arrest bail if he was not already on post arrest bail.

19. 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. In support of his contentions he took the court through various documents on record which in his view fully connected all the petitioners to the offenses for which they had been charged and submitted that there had been no malafides on the part of the NAB. With regard to the grant of bail on medical grounds to petitioner Haji Wali Mohammed he opposed the same but in the alternate contended that based on the medical reports he would be satisfied if the petitioner was ordered to be kept in custody in a hospital which could care for his needs. In this respect he placed reliance on **The State V Haji Kabeer Khan (PLD 2005 SC 364)** and **Khalid Humayun V NAB (PLD 2017 SC 194)** and in respect of assets beyond known sources of income case placed reliance on **Muhammed Hashim Babar V The State (2010 SCMR 1697), Ghani Ur Rehman V NAB (PLD 2011 SC 1144), Ali Ahmed Lund V State (2016 P.Cr.LJ**



1921) and in other respects on **Jamil.A Durrani V State** (MLD 2002 1344), **Noor Muhammed V State** (2015 P.Cr.LJ 1569) as was upheld by the Hon'ble Supreme Court in Civil Petition's 298K, 309K, 2310K, 315K of 2015 in the case of **Noor Jahan Mangi and other V Federation of Pakistan** (unreported) dated 10-06-2015, **Zahid Hussain V State** (2013 P.Cr.LJ 904), **Kamran Saeed V Chairman NAB** (PLD 2017 P.Cr.LJ 340) **Mohammed Khalid V NAB** (2017 SCMR 1340), **Shahnawaz V State** (2016 YLR 2842) and **Khan Asfandyar Wali V Federation of Pakistan** (PLD SC 2001 607), FCS Recruitment Rules and FCS Bye laws.

20. We have heard the parties and have carefully gone through the record and considered the case law cited by them.

21. With regard to the authorities cited by the petitioners **Inam Akbar's Case** (Supra) made observations about different practices concerning bail before arrest being used by different provinces which matter is currently before the Hon'ble Supreme Court, **Capt (Rtd) Safdar's case** (Supra) is a case of the Islamabad High Court which concerned pre arrest bail and taking a bond and another Divisional Bench of this Court has already held that taking a bond in NAB cases was not applicable once pre arrest bail had been applied for, **Syed Ali Raza's case** concerns the petitioners not making any illegal gain whilst the case in hand concerns loss to the FCS and undue benefit to others through misuse of authority/failing to exercise authority, **Meeran Bux's case** (Supra) concerned the court not considering a pre arrest bail case on merits whilst we shall be deciding this case on the established principles of pre arrest bail namely whether malafides was present on the part of the complainant or the investigating agency and merits; **Muhammed Shafi's case** (Supra), **Asif Ali Zardari's case** (Supra) and **Pir Mazhar's case** (Supra) mainly stand for the proposition that accomplice evidence needs to be corroborated and in this respect we do not find all the persons who have given S.161 statements to be accomplices and even otherwise a number of the S.161 statements have been corroborated by documentary evidence, **Abdul Aziz Khan's case** (Supra) largely concerns the proposition that bail cannot be denied on assumptions or presumptions however in this case there appears to be solid material on record and not just presumptions and assumptions, the case of **Ramesh M. Udeshi** (Supra) concerns the joinder of similar offenses but we do not find the argument that the references No. 2/18 and No.12/17 being joined under S.17 (d) appealing as discussed later the offense of assets disproportionate

to known sources of income and misuse of authority are separate and distinct offenses under the NAO, **Shoaib Warsi** (Supra) which was upheld by the Hon'ble Supreme Court in Civil Petitions No.67 and 68 of 2017 **NAB V Shoaib Warsi** (unreported) dated 29-09-2017 largely concerns prolonged periods in custody by first the rangers and then by the NAB which we consider is distinguishable from the facts and circumstances of this case. It is true that petitioner Sultan Qamar Siddiqi was initially picked up by the rangers under S.11-EEEE ATA and then was tried before a military court for offenses under the ATA but this had nothing to do with the NAB. The petitioner was acquitted and now he is on pre arrest bail. The cases referred to also related to post arrest bail and not pre arrest bail and the petitioner has been at liberty on such bail for quite some time now, **Sardar Amin's case** (Supra) is not relevant as it concerns the same charges whereas these references concern two distinct charges, **Abdul Qadir's case** (Supra) concerns giving the grounds of arrest at the time of arrest and since the petitioner's are not under arrest and know the case against them as references have been filed this case is not relevant to the facts and circumstances of this case as all the petitioners are on pre arrest bail, **Aftab Ahmed Memon's case** (Supra) concerned a case of pick and choose by NAB whereby a secretary was by board resolution empowered to buy a piece of land by the BOD's and none of the BOD's had been included in the reference. The instant case is distinguishable on facts however because as explained later the other directors were dummy directors and the real powers vested in the Chairman (petitioner Nisar Morai) and in his absence the Vice Chairman who became Acting Chairman (petitioner Sultan Qamar Siddiqi) and as such the above cited cases are of little, if any, assistance to the petitioners based on the particular facts and circumstances of this case and the material on record.

### **General**

22. **We make it clear that the findings in this order are only based on a tentative assessment of the material available on record and not on a deep appreciation of the same and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.**

23. With regard to the officials of the FCS we have also taken into consideration that they are paid and employed to serve the FCS and have a special fiduciary duty to protect, safe guard and ensure that the funds

generated by the FCS is well spent and not squandered needlessly or misappropriated through corruption in performing their duties/functions.

24. 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 10's of millions as in this 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 investigating agency. 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. Only petitioners Nisar Morai and Sultan Qamar Siddiqi who are on pre arrest bail have claimed malafides. According to learned counsel for Nisar Morai the so called invisible state as mentioned earlier after failing to fix him in other ATA cases had got the NAB to malafide fix him in false allegations of corruption in this reference; further malafide was shown by NAB's pick and choose exercise by only including him and Sultan Qamar Siddiqi in the reference and letting off all the other members of the BOD's who, if there had been any wrong doing, were equally liable. We find no force in these submissions as the petitioner was originally detained legally by the Rangers under S.11-EEEE ATA and was then released in respect of ATA matters and **not** corruption matters. Such detention had nothing to do with the NAB. The name of the petitioner cropped up after NAB had seized documents from the FCS which implicated the petitioner and the other co-accused which after inquiry, investigation and the gathering of material against him and the other co-accused led NAB to file the reference against him under S.18 (g) NAO. The reason why the other members of the BOD have not been included in the reference is because they had no real powers. They were in effect dummy members on the BOD with all the powers vesting in the Chairman and Vice Chairman especially keeping in view that the Vice Chairman in the absence of Nisar Morai became Acting Chairman with full powers of Chairman under the By Laws. For example, it was only

the signatures of the Chairman (Nisar Morai) and Vice Chairman/Acting Chairman (Sultan Qamar Siddiqi) which enabled the cross cheques which were issued to petitioner Imran Afzal to be converted into cash cheques which were payable and were paid directly in cash to Imran Afzal who got awarded contracts to fraudulent companies and was paid vast amounts through those companies which had done no work as per contract. There is no board resolution in support of appointments of persons, award of contracts or payment of cash cheques only the unauthorized signatures of petitioners Nisar Morai and Sultan Qamar Siddiqi are present. With regard to the former Chairman Mr. Mariwala being excluded from the reference we note from the landing reports that during his tenure trash fish was being received and was duly recorded which was not the case in the tenure of petitioner Nisar Morai. As such in our view there has been no malafides on the part of the NAB in respect of petitioner Nisar Morai.

27. With respect to petitioner Sultan Qamar Siddiqi who has raised similar grounds of malafides as Nisar Morai. He has also placed reliance on the order in **CMA 11837/2017 (unreported) Sultan Qamar Siddiqi V NAB** dated 21-04-2107 whereby he was released by this court from custody in a reference for which he was not on pre arrest bail at the time as the court it appears mistakenly thought he was on pre arrest bail and had violated its order which was not the case and as such at this point in time we do not consider that order to be of much relevance now that the references have been filed against the petitioner in terms of malafide **bearing in mind the extent of the material against the petitioner in each reference**. As such we are of the considered view that there has been no malafide on the part of NAB in respect of the petitioner Sultan Qamar Siddiqi in either reference 12/17 (assets case) or reference 2/18 (misuse of authority case)

**Turning to the case of the petitioners on merits.**

28. **Turning to the case of petitioners Riaz Ahmed (Ex manager Market FCS), Amjad Iqbal Warriach (Ex Assistant Manager Market FCS), Gul Munir Shaikh (Ex Assistant Manager Market FCS), AbuBakar Mariwala (Ex Assistant Manager Market FCS) and Zulfiqar Ali (Ex Assistant Manager Market FCS) all of whom as indicated were either Manager Market or Assistant Manager Market at the time of the offense.**

29. None of these petitioners who are on pre arrest bail have claimed any malafides on the part of NAB or the complainant.

30. The role of the petitioners as assistant market managers and market managers was to sell the trash fish and receive a commission for the same which would be a source of income for the FCS. Their main argument is that no trash fish was sold during the time when the offense was allegedly committed and they had no role in the sale of the trash fish. The material placed before us shows that all the petitioners were aware that trash fish was being sold at the FCS as despite the signatures of all the petitioners which they have not disputed being shown on the landing sheets showing that zero trash fish were sold up to 17-06-2015 this position however is completely belied by the S.161 statements of Inayat Ali Kara of Kanpa International Sales, Gul Nabi of Master Poultry Protein, Mukesh Kumar of One Fish Meal, Rafiq Jandani of Pioneer Protein Pvt Limited, Tanzeel Ur Rehman of Poultry Protein Product, Mazhar Ali Mazhar of M. A .Proteins etc. all of whom were trash fish purchasers who have corroborated each other and have stated that they purchased large quantities of trash fish during the time frame when the offense was committed. Furthermore, immediately after 17-06-2015 after the main accused Chairman FCS Nisar Morai and Vice Chairman Sultan Qamar Siddiqi (under whose behest they were acting) were arrested the sale of trash fish was duly noted on the landing sheets all of which have been signed by the petitioners whose signatures have not been disputed which we do not consider to be a coincidence. Reliance is also placed on the S.161 statement of Syed Akhtar Ali. As per **Raja Muhammed Saeed Khan's case** (Supra) such documentary evidence will take precedence over oral evidence. With regard to the S.161 statements made by persons who originally implicated them in the offense but later withdrew the same by affidavit, we hold such withdrawal as being of little relevance **at the bail stage** and such conduct has been deprecated by the Hon'ble Supreme Court in the cases of **Naseer Ahmed V State** (PLD 1997 SC 347) and **The State V Khalid Sharif** (2006 SCMR 1265). Thus, from the material placed on record it is apparent that the petitioners were aware of the sale of trash fish during the period when the offense was committed and that they illegally did not deduct and pay to the FCS any commission on such sales and thus in our view there is prima facie material on record to connect the petitioners to the offense for which they have been charged in the reference and as such the pre arrest

bail granted to the petitioners is recalled with immediate effect and the post arrest bail petitions of the petitioners are dismissed as the case may be.

31. **With regard to the case of petitioner Haji Wali Mohammed** who has applied only for **bail on medical grounds** based on the opinion of a medical board constituted by this court with two Dr's of the Agha Khan University Hospital Karachi dated 20-03-2018 who have opined that the petitioner's (a) sickness/aliment should be treated in a specialized cardiac unit and (b) in this current condition until revascularization is done, his detention may effect his capacity or may be hazardous to his life we find that that the legal grounds for the grant of bail on medical grounds as laid down in the case of **Muhammed Yousafullah Khan V State** (PLD 1995 SC 58) have been made out as such he is granted bail on medical grounds subject to him furnishing two solvent sureties in the sum of RS 1 Million (Ten lacs) each and PR Bond in the like amount to the satisfaction of the Nazir of this court and the ministry of interior placing his name on the ECL.

32. **With regard to the case of petitioner Abdul Saeed Khan** who was Chairman/Acting Chairman FCS and is on pre arrest bail he has not pled malafides and was in a position of considerable authority and responsibility as Chairman/Acting Chairman. We find little, if any substance, to his submission that all the illegalities were carried out by petitioner Nisar Morai once he left office. The documents on record reveal that 155 persons were appointed illegally during his tenure against the recruitment rules of FCS, no adverts were placed for such appointments; most of the appointees lacked the minimum educational criteria/qualifications for the jobs where no written tests were conducted and that they were appointed on the orders of the Chairman (i.e. the petitioner) during his tenure. There was no BOD's resolution or approval. This misuse of authority caused a massive loss to the FCS through the payment of salaries to illegally appointed unqualified persons. Further support for such illegal appointments can be made by reference to the S.161 statement of Abdul Mateen Admin officer FCS. With regard to the second allegation that he stopped the commission payment and illegally awarded a contract to M/S Moon International it is clear from the record that there was no transparency in the award of the contract; no adverts were placed; no bids received; no approval of the BOD was received or any Board resolution was passed to appoint M/S Moon International which had no experience in the fishing industry and was

unduly favored and illegally appointed by the petitioner; the documents on record show that the said company did not carry out its work as per contract and all the money which it was meant to be collecting by way of commission on the sale of trash fish was embezzled by the management. It does not appear to be a co-incidence that the contract of the said company was awarded in the petitioner's tenure and was terminated when he left office. Reliance is placed on the S.161 statement of Syed Tanvir Akhtar who was the owner of the said company. 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 since there has been no malafides on the part of the NAB the petitioner's pre arrest bail is recalled with immediate effect.

33. **With regard to the case of petitioner Shahid Hussain** (Ex Manager Finance) who is on pre arrest bail and has not pled malafides. The submission that he was not involved in the award of the illegal contracts is completely belied by the contracts illegally awarded to M/S Bright Associates and M/S Pak Corporation which both bear his signature. Material to show that these proprietorships had never entered into such contracts can be found in the S.161 statements of Syed Muhammed Rehan Abbass (the owner of Bright and Associates) and Riaz Ahmed Awan (the owner of Pak corporation). We have also seen numerous crossed cheques signed by him in the name of these companies for millions of rupees for work which was never carried out and which in fact were converted into cash cheques and paid to petitioner Imran Afzal whose case is dealt with below. The petitioner has not challenged the authenticity of any of his signatures before the trial court. The payments to these illegally appointed companies caused a huge loss to FCS. 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 since there has been no malafides on the part of the NAB the petitioner's pre arrest bail is recalled with immediate effect.

34. **With regard to the case of Imran Afzal** who was a private contractor and is on pre arrest bail we find that at the time the award of the illegal contracts he was also an employee of FCS holding a position in security which had been specially and illegally created for him by petitioner Nisar Morai and Sultan Qamar Siddiqi as the position does not exist in the recruitment rules. That the material on record establishes that he set up the

fake companies and got the contracts illegally awarded to them through petitioners Nisar Morai and Sultan Qamar Siddiqi who enabled him to encash the cheques for cash at the bank by signing on the top of the cheques. We have seen such duly signed cheques and documents from the bank which show that these above signed cheques by petitioners Nisar Morai, Sultan Qamar Siddiqi and Shahid Hussain were encashed at the banks and that cash payment was made to the petitioner (a copy of his CNIC was made at the time of encashment) in respect of all the fake companies which he illegally created through forged documents and were illegally awarded contracts for which they did little if any work to the tune of RS 4.5 crores. When asked to read from the reference in court it was quite apparent that the petitioner was at best a semi literate person in the English language who would hardly have been able to read let alone understand a contract written in English and in our view the material on record supports the conclusion that he was the front man of Nisar Morai and Sultan Qamar Siddiqi. S.161 Cr.PC statement of Riaz Ahmed Awan specifically state that the petitioner misused his companies name in acquiring contracts at FCS which he was completely unaware of. 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 since there has been no malafides on the part of the NAB the petitioner's pre arrest bail is recalled with immediate effect.

35. **With regard to the case of petitioner Nisar Morai** who was Chairman and is on pre arrest bail we do not find that he was illegally appointed to the FCS however it does raise eyebrows as to how a BPS 18 Medical officer working in the health department GOS with a patchy service record was given such an important post which in the past had been filled by many illustrious seasoned bureaucrats. In our view the NAO which is a special law and on account of S.3 takes preference over the Co-operative Societies Act 1925 and as such NAB has jurisdiction to proceed against the petitioner and the co-accused under the NAO. In any event it is apparent from the material on record that the petitioner was involved in illegally appointing 100's of persons at FCS. He followed no guidelines for recruitment; there were no adverts; no written tests and most of the appointees were unqualified; that there was no board resolution or approval from the BOD to allow him to randomly recruit all these personnel; his signature appears on many of the appointment letters and at best he only sought ex post facto approval from the BOD's after the recruitment had



been made. Further reliance is also placed on the S.161 statement of Mr. Anwar Hussain Umri. Such illegal appointments on account of the petitioners misuse of authority caused the FCS a massive financial loss; likewise with the award of contracts to M/S Bright and Associates and M/S Pak corporation which were companies which never applied for contracts he illegally awarded the contracts to them worth millions of rupees; there were no adverts; no bidding process; no BOD's approval for these contracts and no Board resolution authorizing the contracts; we have seen his signature approving the illegal award of these contracts and his signature authorizing payment to M/S Pak corporation in the name of petitioner Imran Afzal who he had personally recruited as chief of security and thus would have known that the company could not have belonged to Imran Afzal and was a misrepresented company; that these companies which were illegally awarded contracts carried out little, if any, work which they were meant to do which caused millions of rupees loss to the FCS through the petitioners misuse of authority; furthermore he along with Sultan Qamar Siddiqi counter signed the cheques payable to these companies which were all given to his front man Imran Afzal which enabled him, as discussed above in Imran Afzal's case, to encash these cheques for cash at the bank which was a complete misuse of authority on the part of the petitioner. There was no explanation as to why all the cheques were given to Imran Afzal instead of the companies representative or paid into the companies account and no explanation as to why such crossed cheques were converted into cash cheques by the petitioner for which he had no BOD's approval or Board resolution. The argument that he was powerless and that every thing was done through the BOD's is not sustainable based on the facts and circumstances of the case. Rule 45 of the By laws specifically authorizes him at (g) to supervise and look after the general administration of the society and at (k) to control the salaried staff of the society and to assign or take work from them. The reason why the other members of the BOD's have not been included in the reference or asked to act as PW's is quite apparent from the material placed on record; namely that they played little, if any, meaningful role in the running of the affairs of the FCS which was being run almost exclusively by the petitioner and the Vice Chairman Sultan Qamar Siddiqi in his absence and in effect the other board members were dummies. Even the minute sheet which the petitioner relied on where the Board approved appointments was ex post facto approval **after** the petitioner without any authorization of the BOD had illegally recruited his

favorites without any transparency or merit. Former Chairman Mr. Mariwalla was not included in the reference as during his tenure the landing reports clearly show that trash fish was being sold and as such there has been no pick and choose and/or discrimination on the part of NAB. With regard to embezzlement on account of the sale of trash fish he was a part of such embezzlement along with the assistant market managers and market managers being petitioners Riaz Ahmed, Amjad Iqbal Warriach, Gul Munir Shaikh, AbuBakar Mariwala and Zulfiqar Ali whose case we have discussed above. It completely beggars belief and does not appeal to any kind of reason that as Chairman of the FCS who was in charge of all salaried employees and assigned them work and the overall supervision of the FCS that he did not know about the trash fish scam namely that none were being sold when in fact as shown by the purchasers mountains of trash fish was being sold on his watch. It may be true that he was away some of the time on account of his medical condition but the material on record shows that he was present long enough to be fully involved in the misuse of authorities and embezzlement as discussed above. Furthermore, the record shows that only after his arrest in June 2015 was some amount of trash fish shown in the landing reports and also a much larger amount for the year 2016. The record shows that prior to his arrest as per landing reports and the Investigation report no trash fishing sales were made which is completely belied by the landing reports and S.161 statements of the fish purchasers. Thus, we are of the view that the petitioner has not been able to make out a case of malafides and since there is prima facie sufficient material on record to connect him to the offenses for which he has been charged in the reference his pre arrest bail is hereby recalled with immediate effect.

36. **With regard to the case of petitioner Sultan Qamar Siddiqi.** We would firstly like to point out that in our view **Reference 12/2017 State V Sultan Qamar Siddiqi is a distinct and separate reference from reference 02/2018 State V Nisar Morai since both references relate to separate and distinct offenses under the NAO.** Para 4 of reference 12/2017 provides as follows, "That the accused is prima facie involved in commission of offence of corruption and corrupt practices, **accumulation of assets of Rs.47.6 million which are found beyond his known source of income for which accused could not account for,** and that the accused maintained a standard living beyond that which is commensurate with his source of income. So there are incriminating evidences of corruption &

assets beyond known source of income surfaced against the accused person, which is cognizable **under section 9(a) (v)**, punishable under section 10 of National Accountability Ordinance, 1999 and schedule thereto." This in essence is the offense of having assets disproportionate to your known sources on income. **Where as reference 02/2018 State V Nisar Morai** states at para 25. "That in view of the above mentioned facts; it has been established that **accused persons have misused their authority being public office holders which resulted into loss to the tune of Rs.343.796 million to Fishermen Cooperative Society.** Thus they have committed the offence of corruption and corrupt practices as defined under Section 9(a) of the National Accountability Ordinance, 1999 punishable under Section 10 of the Ordinance and Schedule thereto." This is the separate and distinct offense of misuse of authority and or failure to exercise authority in order to gain benefit for himself or any other person under the NAO. Thus, they are distinct offenses under two separate references which may be tried separately. In this respect reliance is placed on the case of **Noor Muhammed (Supra)** as was upheld by the Hon'ble Supreme Court in Civil Petition's 298K, 309K, 2310K, 315K of 2015 in the case of **Noor Jahan Mangi and other V Federation of Pakistan** (unreported) dated 10-06-2015.

37. Whether or not the petitioner is a holder of public office, which we consider him to be since he was being paid by the GOS and S.65(B) of the Co-operative Societies Act 1925 provides that officers of societies are public servants within the meaning of the PPC, is of little, if any, relevance concerning the applicability of the NAO in NAB cases as it was held by the Hon'ble Supreme Court in the case of **Abdul Aziz Memon V State** (PLD SC 2013 594) that the NAO applied to any person and he did not need to be a holder of public office. In any event the NAO being a special law will prevail over the Co-operative Societies Act 1925. The FCS will also be covered under the NAO in terms of S.5 (m) NAO definition of "Holder of Public Office" and S.5 (o) NAO definition of "Person."

38. **With regard to reference 02/2018 State V Nisar Morai** the petitioner (Sultan Qamar Siddiqi) it appears was a private car show room owner and involved in the arms and ammunition business so it is unclear why the GOS in its wisdom considered him qualified to be appointed as a Director in FCS in the first place. In any event not only was he a Director but he was also Vice Chairman FCS and for significant periods of time

when Chairman Nisar Morai was on medical leave he was Acting Chairman FCS (periods amounting to around 6 months) who had the full powers of Chairman under Bye law 46. We find that based on the documents on record that for the periods of time when Nisar Morai was away and he was Acting Chairman the same considerations above which applied to Nisar Morai apply to him. For example, he regularized both his brother and brother in law despite them being unqualified and no such position of member of special task force being available in the Recruitment Rules 1964, no adverts were made for their initial appointment. Whilst he was Acting Chairman in the absence of Nisar Morai as per record he illegally regularized more than 100 person's some of whom were regularized/confirmed on his signed directions. With regards to contracts we have seen documents which show that on the same day, whilst he was Acting Chairman in Nisar Morai's absence, that he approved 3 contracts to the same party for the similar works and approved payment to these fictitious companies none of which carried out any work i.e. Bright and Associates as referred to earlier in this order. He also signed crossed cheques in the name of the fake companies which converted them into cash cheques which cash was paid by the bank to Nisar Morai's front man petitioner Inram Afzal who was responsible, as mentioned earlier in this order, for creating the fake companies which did no work. With regard to the sale of trash fish when he was Acting Chairman as with Nisar Morai's case prior to his arrest zero trash fish was shown on the landing reports but after his arrest on 17-06-2015 the sale of trash fish was disclosed on the landing reports when in fact such sales had been going on throughout his tenure as is shown by the statements of the trash fish buyers mentioned above. Thus, as mentioned above we are of the view that the petitioner has not been able to make out a case of malafides in respect of this reference and since there is prima facie sufficient material on record to connect him to the offenses for which he has been charged in the reference his ad interim pre arrest bail is hereby recalled with immediate effect in respect of reference 02/2018 State V Nisar Morai and others.

39. **With regard to Reference 12/2017 State V Sultan Qamar Siddiqi** which concerns assets disproportionate to the petitioner's known sources of income under S.9 (a) (v) NAO. It is apparent that during the period of the reference that the petitioner and his wife and mother had millions of rupees paid into their respective bank accounts which they could not account for. The petitioner's wife and mother were both household ladies with no

source of income as disclosed in the bank account opening forms. The petitioner's only source of income was a monthly salary of RS 40,000. Rather unsurprisingly some of these deposits into the accounts of the petitioner and his family were made by Abdul Mannan who was appointed by the petitioner and is a co-accused in the misuse of authority case who has now absconded which completely belies the petitioners statement that he did not know Abdul Mannan who became his personal assistant and as per reference looked after his financial affairs. He has also signed cheques which were converted into cash and paid to petitioner Imran Afzal Nisar Morai's front man. Large amounts were paid into his and his family's accounts whilst he was with the FCS which he has not been able to account for. From the material on record it appears that prima facie he had nothing to do with any car show room business which appears to be a front. Furthermore, 80% of the deposits were paid by cash into his accounts during his time at FCS which he could not explain. In **Hashim Babar's case**(Supra) and **Ghani Ur Reman's case** (Supra) it was held that the following ingredients must be proved to make out the offense of assets beyond known sources of income under the under S.9(a) (v) NAO. Firstly it must be shown that the accused is a holder of public office (probably less relevant now following **Abdul Aziz Memon's case** (Supra)) which we have already found the petitioner/accused to be in this case. Secondly, it must be shown that the NAB has uncovered the pecuniary resources and property which the accused/petitioner had lawfully acquired and what were his known sources of income which NAB has done and thirdly it must be shown that such resources or property found in the possession of the accused were disproportionate to his known sources of income which NAB has done. **The petitioner has not been able to satisfactorily account for the assets in his or his families' possession during his time at FCS.** Thus, in our view we have seen sufficient documentary material on record to connect the petitioner with the offense for which he has been charged, namely assets disproportionate to his known sources of income and as such the interim pre arrest bail earlier granted to the petitioner in respect of **reference 12/2017 State V Sultan Qamar Siddiqi** is hereby recalled with immediate effect.

40. Whilst considering all these petitions for pre arrest bail and post arrest bail we have also kept in view the fact that reference 2/2018 does not solely revolve around documentary evidence. That there are a number of PW's and we have noted that whilst the some of the petitioner's have been

on pre arrest bail a number of those PW's, as mentioned above, have rather conveniently for the accused in reference 2/2018 resiled on their S.161 statements through affidavits and thus in our view in this particular case which also took place in the background of the Lyari gang war we cannot rule out the possibility that other PW's will not be intimidated and/or induced into resiling on their statements.

### Summary

41. Pre arrest bail is recalled with immediate effect with respect to:
1. Riaz Ahmed
  2. Amjad Iqbal Warriach
  3. Zulfiqar Ali
  4. Abdul Saeed Khan
  5. Shahid Hussain
  6. Imran Afzal
  7. Nisar Morai
  8. Sultan Qamar Siddiqui (In reference No.12/17) **and** (In reference 2/2018)
42. Post arrest bail is dismissed in respect of:
1. Gul Munir Shaikh
  2. AbuBakar Mariwala
43. Bail on medical grounds is granted to **Haji Wali Mohammed** on the following conditions (a) that he furnishes two solvent sureties in the sum of RS 1Million (Ten lacs) each and PR Bond in the like amount to the satisfaction of the Nazir of this court **and** (b) he be placed by the Ministry of Interior on the ECL.
44. A copy of this order shall be sent immediately to the Secretary Ministry of Interior for information and compliance with regard to placing the name of Haji Wali Mohammed on the ECL
45. These are the reasons for our short order dated 10-04-2018 which reads as under:

“We have heard learned counsel for the parties in the above petitions set out below as well as Special Prosecutor, NAB. For reasons to be recorded later-on, we hereby hold as follows:-

In CP No.D-1657/2017 pre-arrest bail is recalled with immediate effect in respect of Sultan Qamar Siddiqui and also in

respect of CP No.D-2979/2017 in respect of Sultan Qamar Siddiqui in respect of both References 12/2017 and 02/2018. With respect to CP No.D-1008/2017 Nisar Ahmed Morai his interim pre-arrest bail is recalled with immediate effect. With respect to CP No.D-2104/2017 Shahid Hussain his interim pre-arrest bail is recalled with immediate effect. With respect to CP No.D-4860/2017 Imran Afzal his interim pre-arrest bail is recalled with immediate effect. With respect to CP No.D-7831/2017 both Zulfiqar Ali and Amjad Iqbal's interim pre-arrest bail is recalled with immediate effect. With respect to CP No.D-323/2018 Riaz Ahmed his interim pre-arrest bail is recalled with immediate effect. With respect to CP No.D-386/2018 Abubakar Mariwala his petition for post arrest bail is dismissed. With respect to CP No.D-983/2018 Abdul Saeed Khan his interim pre-arrest bail is recalled with immediate effect. With respect to CP No.D-1336/2018 Gul Munir Shaikh his petition for post arrest bail is dismissed. With regard to CP No.D-347/2018 Haji Wali Muhammad, he is granted post arrest bail on medical grounds subject to furnishing two solvent sureties in the sum of Rs.10,00,000/- (Rupees ten lacs) each and P.R Bonds in the like amount to the satisfaction of the Nazir of this Court. The name of the petitioner Haji Wali Muhammad shall be placed on E.C.L. The above petitions stand disposed of in the above terms.

A copy of this short order shall be facsimiled to Secretary, Ministry of Interior, Islamabad for information and compliance with regard to petitioner Haji Wali Muhammad s/o Haji Yousuf."