

# 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-6761 of 2017 Syed Ali Raza V Federation of Pakistan & another.

Syed Ali Raza S/o Syed Hashim Raza (petitioner No.1),  
through Mr. Haider Waheed, Advocate.

2. C.P. No. D-6502 of 2017 Zubair Ahmed V Federation of Pakistan & others.

Zubair Ahmed S/o Muhammad Ijaz (petitioner No.2)  
through Mr. Muhammad Azam Chughtai, Advocate.

3. C.P. No. D-6705 of 2017 Muhammad Waseem Khan  
V Chairman NAB & others

Muhammad Waseem Khan S/o Sana Muhammad Khan  
(petitioner No.3)  
through Mr. Shah Khawar, Advocate.

4. C.P. No. D-6956 of 2017 Muhammad Imran Butt  
V Chairman NAB & others

Muhammad Imran Butt S/o Allauddin (petitioner No.4)  
Through Sahibzada Muzaffer Ali, Advocate.

## Counsel for the Respondents.

Mr.Yassir Siddiqui, Special Prosecutor, NAB.

Dates of Hearing: 31.10.2017, 21-11-2017, 14-12-2017  
and 22-12-2017

Date of Order: 28-12-2017

## ORDER

**Mohammed Karim Khan Agha, J.** Through these petitions, petitioners 1, 2, 3 & 4 (Syed Ali Raza, Zubair Ahmed, Muhammad Waseem Khan and Muhammad Imran Butt) all former or current officers of the National Bank of Pakistan (NBP/the Bank) seek bail after arrest in National Accountability Bureau (NAB) Reference No.13 of 2017 which was filed against them all by NAB for acts of corruption, whilst working for the NBP, under the National Accountability Ordinance 1999 (NAO). There petitions, along with others, for



pre arrest bail were dismissed by this Court vide consolidated order dated 27-09-2017 hence there petitions for post arrest bail.

2. The charge against the above named petitioners as enumerated in Reference No.13 of 2017 are that the investigation revealed that accused No.1, Ali Raza Ex-President of National Bank of Pakistan (NBP/the bank), misused his authority in connivance with other accused persons, so as to gain benefits and / or favour for him or to other persons and also willfully failed to exercise his authority to prevent the grant of undue favour to the other accused persons. He, being Bank President, misused his authority and issued certain orders whereby granted undue concessions and /or benefits and also failed to exercise his authority to prevent the grant or rendition of undue benefits and /or favours, in connivance with other accused persons consequent thereto a loss of approx US\$185 million had been caused to NBP during years 2001-2012.

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

4. During the course of investigation, it was revealed that the petitioner/accused Muhammad Wasim Khan, being Manager, Gulshan Branch, Bangladesh failed to carry out his responsibility to keep comprehensive check and balance in the branch rather he became instrumental and acted to benefit the defaulted parties. As General Manager (Acting) and in connivance with accused No.9, Muhammad Imran Butt, he sanctioned large number of L/Cs to Cotton Corporation Group beyond his discretionary power and without observing rules and regulations of bank's policy and procedure. This caused further loss to the bank for about BDT, 3.200 Billion.



Hence he committed offence of misuse of authority as Acting GM, NBP Bangladesh.

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

6. Learned counsel for petitioner No.1 Syed Ali Raza submitted that he has applied for post arrest bail on both medical grounds and merits. With regards to his medical condition he placed reliance on reports in connection with his cardiac and mental health conditions, which according to him entitled him to bail on medical grounds. He emphasized that the cardiac report needed to be read together with the psychiatric report as according to the petitioner his continued confinement would lead to the worsening of his cardiac condition. He also placed reliance on the following authorities. **(1) Haji Mir Aftab V. The State** (1979 SCMR 320), **(2) Malik Muhammad Yousufullah Khan V. The State and another** (PLD 1995 S.C. 58, **(3) Maqsood V. Ali Muhammad and another** (1971 SCMR 657), **(4) Ch. Zulfiqar Ali V. The State** (PLD 2002 SC 546) and **(5) Mawasi Khan V. The State** (1969

SCMR 289) and **Mian Manzoor Ahmed Watto V State** (2000 SCMR 107)

7. With regard to merits he submitted that that he was completely innocent of any wrong doing; that there was hardly any material to connect him to the commission of the offense; that NAB had no jurisdiction to file a reference in this case as it had not sought the permission of the Governor of the SBP to do so under S.31 (D) NAO which was a mandatory requirement; that the petitioner did not either misuse his authority or fail to exercise authority in connection with the affairs of the Bangladesh operations; that the petitioner had no idea that any illegalities were being committed in the Bangladesh operations; that the petitioner did everything within his power to safeguard the interests of the bank; that there are only suspicions against him which cannot take the place of solid material; that any financial wrong doings in Bangladesh were not brought to his attention; that it was a case of pick and choose; that the statement of Syed Shahid Hussain Gadezi exonerated him of any wrong doing; that it was not unusual to retain persons posted overseas for more than 5 years and thus it was a case of further inquiry and for all the above reasons he should be granted post arrest bail on merits.

8. Learned counsel for Petitioner No.2 Zubair Ahmed submitted that he was completely innocent of any wrong doing; that there was no material to connect him to the commission of the offense; that he was the original whistle blower; that Mr Goparig should have been made an accused rather than a PW and as such he had been discriminated against; that he was an old man of 70 years of age and thus for all the above reasons he should be granted post arrest bail.

9. Learned counsel for petitioner No.3 Muhammad Waseem Khan submitted that he was completely innocent of any wrong doing; that there was hardly any material to connect him to the commission of the offense; that the only



material against him was a supplementary statement by Mr. Gopang which was recorded after delay of around one year and 18 months; that any loans he had sanctioned was done strictly in accordance with the law, rules and relevant procedure and thus for all the above reasons he should be granted post arrest bail.

10. Learned counsel for petitioner No.4 Imran Butt submitted that he was completely innocent of any wrong doing; that there was no material to connect him to the commission of the offense; that he was a junior officer and as such his case is on a better footing to that of petitioner Zubair Ahmed; that he only remained in charge for 9 months after petitioner Zubair Ahmed left his position; that it was the responsibility of the committee headed by Tahir Yaqub which had been appointed by the President of the NBP to look into the affairs of the Bangladesh operations and not his; that it was a case of further inquiry and thus for all the above reasons he should be granted post arrest bail.

11. Learned senior prosecutor for the NAB opposed bail on medical grounds to petitioner No.1 Syed Ali Raza as in his view the medical reports did not meet the legal requirements for the grant of bail on medical grounds primarily because the petitioner as revealed by the medical reports could be adequately treated within the jail hospital for his various ailments. In support of his contentions he placed reliance on **The State V Haji Kabeer Khan** (PLD 2005 SC 364) and **Khalid Humayun V NAB** (PLD 2017 SC 194). He also vehemently opposed all post arrest bail applications on merits and contended that there was sufficient material on record to connect all the petitioners to the offense for which they had been charged and in this respect took us through some relevant documents, S.161 statements and the findings on merit which had already been made in this court's order dated 27-09-2017 dismissing the pre arrest bail applications of the petitioners. With regard to petitioner No.1 Syed Ali Raza he stressed that in actual fact the statement of Syed Shahid



Hussain Gadezi actually went against the petitioner and was in favour of the prosecution. Thus for all the above reasons he submitted that the post arrest bail applications of all the petitioners should be dismissed.

12. We have heard the parties and have carefully gone through the record and considered the medical reports and various authorities relied upon by the parties in the light of the particular facts and circumstances of this case.

13. We would also like to make it clear that the findings in this order are only based on a tentative assessment of the material available on record and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

### **General**

14. 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.

15. The current case, as with many NAB cases, is more a case of a joint criminal enterprise whereby every accused plays their role in order to achieve a criminal object all of which they were aware of and could not have been achieved without the active participation of all involved, resultantly a colossal loss to the tune of \$185 million was caused to NBP.



16. 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 millions of \$US as in this case**) in the following terms at P.1154 para 7;

"Under the principle of law and justice, each bail petition is to be decided on its own merits and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well being of the poor people, is consistently embezzled / misappropriated at a large scale and why the majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. **It has become the foremost obligation of each and every institution, including the Judicator, to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply the Anti-Corruption laws somewhat rigidly, once in fact the case is made out, at bail stage, against the accused person.** Distinction, however, is to be drawn between the ordinary criminal cases and of corruption on the above analysis and grounds, while dealing with bail matter to an accused person, charged for such like crimes and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence."

**Turning to the case of petitioner No.1 Syed Ali Raza** in connection with his petition for **bail on medical grounds.**

17. In the case of **Kifayatullah V Federation of Pakistan** (2017 P.Cr.LJ 192) which fully considered the law of granting bail on medical grounds as per the earlier and latest decisions of the superior courts, when dealing with the question of medical bail and the difficulties in obtaining accurate and



reliable medical reports this bench of this court observed with great concern as under at Para's 29 to 31.

"29. In determining whether an accused is genuinely entitled to bail on medical grounds under the law is often a difficult decision for the Courts to make in our particular environment. We have observed on numerous occasions that a number of people who were quite fit and healthy and attending their offices before being involved in a NAB inquiry all of a sudden became quite unwell and often required hospitalization for various ailments which were either not present before or at least did not seem to trouble them unduly in their every day life prior to the NAB inquiry.

30. In this respect it is observed with great pain that from time to time the Courts do not appear to receive either entirely reliable or accurate medical diagnosis' or prognosis' from the concerned Doctors notwithstanding their hippocratic oath, expertise, experience and good standing in society. Under these circumstances we consider that the Courts need to be cautious in granting bail on medical grounds especially if it would disrupt the whole trial process through long delays and thereby in itself lead to the ends of justice being defeated especially in cases such as this where there are many accused. It appears to us that a balance needs to be struck between taking a humanitarian approach in accordance with the law and ensuring that the Courts are not duped into granting bail on account of sickness/ailment where one of the main objects behind the application is to delay and disrupt the trial to the benefit of the accused and to the detriment of the prosecution as opposed to genuine health reasons.

31. It would seem to us that the safest course in such cases is for the Court to convene a medical board with the specific terms of reference to opine (a) whether the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail and (b) whether some specialized treatment is needed and (c) whether the persons continued detention in jail is likely to affect his capacity or is hazardous to his life. Such opinion on these aspects would greatly assist the Court in determining whether bail on medical grounds may be applicable in the given case depending on its particular facts and circumstances".

18. Regrettably a year and a half after the passing of this order the position generally remains the same. Namely, that if you are a wealthy and/or influential person/accused you can



generally obtain medical certificates/opinions to meet your requirements in order to enable you to be transferred from prison to hospitals outside of the jail premises where you can enjoy much better facilities such as free access to mobile phones, air conditioning, cable television, better food, unlimited visitation rights, a greater level of freedom of movement within the hospital environment etc with the knock on effect of often delaying the trial due to your non appearance to the disadvantage of those who are locked up in jail whose bail has been declined. On a brief review of those accused who are confined in outside prison hospitals in Karachi in NAB cases, it appears that there are 4 such accused; the petitioner No.1 (former long term (almost 11 years) President of NBP, two Additional Inspector General's of Police and a sitting MPA. **Not a single poor or un influential prisoner is in hospital outside of jail.** This in our view tends to point prima facie to discrimination under A.25 of the Constitution and is a poor reflection of the Dr's and medical boards who are tasked with making honest and accurate assessments of a prisoner's health who claims to be unwell.

19. Of course if a prisoner needs to be treated in an outside Government Hospital **on genuine medical grounds** this is his right as enshrined in Article 9 of the Constitution and it must not be denied to him provided that he meets the legal requirements of medical bail. Namely, (a) whether the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the premises of jail **and** (b) whether some specialized treatment is needed **and** (c) whether the persons continued detention in jail is likely to affect his capacity **or is hazardous to his life.** Or if he requires a few days emergency treatment which cannot be provided within the jail premises he may be taken for the required treatment and then returned to jail.

20. In our view, the current case of petitioner No.1's application for bail on medical grounds appears to be a classic case of the petitioner attempting to engineer a medical



board in his favour so that he could avoid being sent to prison and instead be sent to a hospital outside of the jail. Hearings in the pre arrest bail case of the petitioner continued for a number of weeks and the petitioner was busy moving around the court and instructing his counsel without any impediment. He never during his submissions made any reference to any illness that was at that time causing him any difficulty. However, when his pre arrest bail was recalled he surrendered to NAB, he was produced before the accountability court the next day **and on his counsels own admission without spending a single day in prison he was sent as an emergency case to the National Institute of Cardiovascular Diseases (NICVD)** who also referred him to the Department of Psychiatry and Behavior Sciences Jinnah Post Graduate Medical Centre (JPMC) where he was seen by a Professor of Psychiatry who gave a one page expert opinion opining that petitioner No.1 was a suicidal risk on 02.10.2017. It then seems that on the next day i.e 03.10.2017 petitioner No.1 was taken back to the NICVD **where quite illegally without any court order** a senior Professor of cardiology constituted a medical board for 2 days later. On 05-10-2017 it appears that the medical board consisting of senior cardiologists of petitioner No.1's choice was constituted (all of whom were Professors or senior Dr's of cardiology of NICVD which is a government hospital). This medical board had no specific terms of reference but was simply constituted to examine the petitioner. It followed the opinion of the JPMC psychiatrist who was not a member of the board, recognized that the petitioner had had a heart condition in the past and since he was complaining of chest pains he should undergo a Myocardial perfusion scan to assess his symptoms and risks of further cardiac events. Since this time petitioner No.1 has remained in Hospital outside the jail. **Interestingly none of these alleged illnesses were raised during the petitioners pre arrest bail hearing.** The petitioner then applied for bail on medical grounds based on the above reports. A so called *fait accompli*. When counsel was asked under what lawful authority such boards had been constituted he produced a



number of authorities on reports of medical boards however in all such authorities **the medical board had been constituted either on the orders of the trial court or of the high court and not by any other authority and as such were of no assistance to him.** Under these circumstances where the medical boards were constituted without the knowledge of the trial court let alone pursuant to an order to constitute such a board we find that this medical board to have been **illegally constituted and most probably engineered by the petitioner to achieve the desired result.** Thus we were of the view that these medical reports were of no legal value and could not be safely relied upon.

21. This is not a common problem being faced by the Courts as alluded to earlier in the case of **Kifayatullah** (Supra). In one pre arrest bail petition before this bench a petitioner from Lahore who had been regularly attending the bail hearings relied on medical certificates to justify his absence once his part of the bail hearing was over and when his bail was recalled despite orders of this court to be present on the next date when the order was announced he remained absent and was not even in the hospital where he was allegedly admitted on the basis of medical reports or at his house on bed rest when his arrest was sought to be made. Instead he had absconded and went underground and thereafter approached the Hon'ble Supreme Court for bail on merits.

22. The accountability courts have no power to grant bail to any accused since offenses under the NAO are non bailable. It appears therefore by using such tactics the accused/prisoner by remaining for months on end in hospitals outside of jail is circumventing the settled principle of law that what cannot be done directly cannot be done indirectly. In essence, without duly constituted medical boards accused/prisoners in NAB cases are remaining in hospitals out side of jail for months on end and are in effect



on medical bail except confined to a hospital outside of jail which as discussed earlier has much better personal facilities. We will return to this aspect of the case later in this order

23. In the light of the above background this court attempted to obtain honest, accurate and reliable medical reports in respect of the cardiac and mental health issues of the petitioner, and with the consent of his counsel, constituted a medical board by our order dated 23-11-2017 which sated as under:

"By consent a Medical Board is hereby constituted comprising (i) Professor Riffat Moazzam (Psychiatry) of Aga Khan University Hospital, Karachi, as Chairman, whereas Professor Khawar Abbas (Cardiologist), AKUH and Muhammad Isha (Cardiologist) AKU as members of the Board. The above Board shall thoroughly examine the petitioner at Aga Khan University Hospital, Karachi, and carry out all necessary tests in respect of cardiology and mental health issues of the petitioner. The Chairman of the Board shall give her independent expert opinion in black and white on the following two (2) aspects:-

- (a) Whether the sickness or ailment with which the petitioner is suffering is such that it cannot be properly treated or cured inside the jail premises hospital and
- (b) Whether continuous detention of petitioner in jail is likely to affect his capacity or is hazardous to his life.

Likewise, Professor Khawar Abbas and Muhammad Isha shall also give their respective independent expert opinions in respect of cardiac issues, if any, faced by the petitioner in black and white on the following two (2) aspects:-

- (a) Whether sickness or ailment with which the petitioner is suffering is such that it cannot be treated or cured inside the jail premises hospital and
- (b) Whether the petitioner's continuous detention in jail is likely to affect his capacity or is hazardous to his life"

24. Learned counsel for petitioner No.1 did not raise any objections to the constitution of this board and rather expressed his satisfaction with its composition and its terms of reference



25. The findings of the Board with respect to the **cardiac condition** of the petitioner are reproduced as under:

Khawar Kazmi  
Professor of Medicine (Cardiology)  
Aga Khan University Hospital  
Karachi  
Dated:08.12.2017"

- "a) **His sickness/ailment can be managed within jail premises hospital.**
- b) There is a risk of worsening of his coronary artery disease as stress and improper diet can not only lead to progression of disease but also increases the risk of acute event e.g. Acute Myocardial infraction. (bold added)

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Dr. Muhammad Ishaq  
Consultant Cardiologist  
The Aga Khan University Hospital  
Karachi  
Dated:8-12-2017

- a) **There is no need for hospitalization at present and he can be managed in the current setup provided he takes his medications regularly.**(bold added)
- b) Since he is a cardiac patient his symptoms and in fact the disease may progress under a state of stress and in appropriate medications and faulty diet.

Sd/-"

26. So far as the cardiac reports are concerned these are self explanatory and would **not** qualify the petitioner for the grant of bail on medical grounds as they clearly opine that he can be treated in jail hospital or in one case no hospitalization was required. Thus, on this ground bail on medical grounds is not available to the petitioner in respect of his cardiac problems

27. The findings of the Board with respect to the **mental health condition** of the petitioner are reproduced as under:

Dr. Riffat Moazam Zaman Ph.D  
Professor & Clinical Psychologist  
Department of Psychiatry  
The Aga Khan University Hospital  
Karachi.



1. **Whether the sickness or ailment with which the petitioner is suffering is such that it cannot be properly treated or cured inside the jail premises hospital.**

My examination of Mr. Raza revealed that he is suffering from **anxiety and depression**, and is **traumatized** by the ordeals he suffered after his bail was cancelled. **His current confinement in a room has also caused a marked increase in his claustrophobia, and he describes having lost his will to live.** Although he is on psychotropic medication that can be administered anywhere - including a hospital in the jail premises - his symptoms will not improve unless there is a change in his physical environment. Keeping him confined will significantly diminish the effect of medication. (bold added)

2. **Whether continuous detention of petitioner in jail is likely to affect his capacity or is hazardous to his life.**

**Continued confinement is detrimental to Mr. Raza's mental health and his symptoms will continue to worsen if he is sent to jail.** It is also my professional opinion that Mr. Raza should continue his psychiatric treatment under Dr. Afridi's care."

28. With regard to the opinion regarding the mental health of the petitioner we find this more problematic. It appears that he is suffering from anxiety, depression, trauma and claustrophobia brought on **by the recalling of his pre arrest bail** and whilst recognizing that these illnesses are serious we consider that such symptoms/illnesses would be common amongst many persons confined in jail and if medical bail was granted on these grounds alone then most of the jail population would be granted bail on medical grounds. Such symptoms are also easy to feign and are based more on the personal views of the patient as narrated to his doctor. **The petitioner says that he became unconscious due to panic and anxiety when he was moved to jail yet surprisingly by his counsel's own admission he never spent a day in jail and even more surprisingly he was sent straight to a specialist cardiac hospital rather than for a psychiatric assessment and he still remains in that cardiac hospital**



despite his cardiac reports opining that he can be treated in jail hospital or without hospitalization at all with respect to his cardiac issues. It is also informative that the petitioner's mental health issues by his own admission only started when his bail was recalled i.e. he had no prior history of anxiety, depression or claustrophobia. **Significantly the medical opinion states that he can be treated in jail with the same medication** however his symptoms will not improve **unless** there is a change in his physical environment and such symptoms will worsen if sent to jail and continued confinement is detrimental to his health. We find the expression "continued confinement" rather odd as the petitioner has never been confined in jail and he can if he returns to jail, and so desires, be moved to a jail barrack where he can have the company of many other prisoners and can from time to time, in accordance with the jail rules, move around within the confines of the prison which is quite spacious.

29. Granting bail on medical grounds on the basis of the mental health issues which the petitioner is suffering from i.e. anxiety, depression, trauma and claustrophobia would in our view be a very dangerous precedent to set as such illnesses are easy to feign, would be common to most prisoners confined in jail and difficult to accurately and precisely diagnose in terms of severity vis a vis being possible for treatment in jail and being hazardous to life. If the opinion of the medical experts especially psychiatric in this case were to be accepted in its entirety without applying our independent judicial mind and considering the background facts and circumstances of the case and the ground realities surrounding the difficulties of prison life it would tend to imply that prisoners confined in jail suffering from anxiety, depression, trauma or claustrophobia (depending on its severity) could in effect never be sent to jail as such persons would be confined which would aggravate their illness or be detrimental to their health especially if they had a prior cardiac history (however minor) and they would be entitled to



bail on medical grounds as their case would in effect be on the same footing as petitioner No.1's case. Indeed, in our view there is little doubt that even for the most hardened criminal being in jail is most likely to be detrimental to most prisoners mental health as the prisoner is confined and kept away from his loved ones in a difficult environment (especially for those lucky enough to be used to a life of relative luxury/comfort) **but** the real question in our view is whether such anxiety, depression, trauma and claustrophobia which is caused on account of the confinement in jail as in the petitioners case can be treated/managed in jail through the use of the correct medication.

**30. In our considered opinion bail on medical grounds can only be granted in cases relating to mental health issues in exceptional cases and under exceptional circumstances. In our view this case does not qualify as such a case based on the medical reports and the particular ailments suffered by the petitioner which are common to most prisoners and the particular facts and circumstances of this case whereby he had no previous history of mental illness (has attempted initially to engineer reports in his favour without lawful court orders) and most importantly his illness can be managed and treated in the jail hospital with the necessary medication as opined in the psychiatric medical report. Thus taking into account the medical reports and the above discussion the petitioners petition in so far as it relates to bail on medical grounds is hereby dismissed.**

**31. As such we hereby direct** that the petitioner be immediately moved from his present location to the hospital within the confines of central prison Karachi and that he may be treated by a psychiatrist of his own choice at his own expense in jail hospital who shall check on his condition and control his medication as often as need be. He may also provide the required counseling if he considers that this would be beneficial to the petitioner's condition and assist in



his recovery. His medication shall be kept with the jail doctor who shall administer the prescribed dosages at the required times.

32. On account of the above discussion, concerning jailed prisoners and the medical issues which they may have during their confinement in jail we consider it appropriate to set out some guidelines for medical treatment for those prisoners in jail in NAB cases since a consistency in approach appears to be lacking and all prisoners suffering from any ailment must be treated equally.

33. **As such we hereby lay down the following guidelines** (although **flexible and non exhaustive** as much will depend of the nature and seriousness of the particular illness and the particular facts and circumstances of each case) for all NAB cases which should be followed by the jail authorities, concerned Doctors, hospitals and accountability Courts

- (a) if an accused whilst in jail requires urgent medical treatment which cannot be provided within the jail premises and is potentially an immediate threat to his life the jail superintendent under signature of the jail doctor shall send the accused under guard to the nearest government hospital for his check up with intimation to the accountability court.
- (b) the concerned specialist Dr shall then give a check up to the accused and shall return him to the jail premises under guard the next day if the check up finds no serious life threatening illness and such illness can be treated in jail premises with the appropriate medication. On return to the jail the superintendent shall immediately intimate the accountability court.
- (c) If however in the opinion of the Dr further tests etc are required the hospital may admit the accused and complete such tests within 7 days. If the results are similar to (b) above the hospital shall act in the same manner as per (b) above.
- (d) If however, the concerned Dr is of the view that the illness is more serious the Dr. may under intimation to the jail superintendent and accountability court keep the accused under treatment and observation for a further 7 days.



- (e) After the expiry of this further 7 day period the hospital shall return the accused as per (b) to jail under intimation notice to the jail superintendent and the accountability court subject to (f) below."
- (f) If, however after this further 7 day period, the Dr. is of the view that due to the serious nature of the accused ailment it is necessary for the accused to remain admitted in hospital he shall intimate the same to the accountability court setting out the nature of the illness.
- (g) The accountability court shall then establish a medical board to assess the extent of his illness.
- (h) An accountability court when establishing a medical board shall **generally** request the secretary health to constitute a medical board consisting of the required experts in most cases from a Government hospital which will be directed through the order constituting the board to:

"give their independent expert opinions in respect of the given illness of the petitioner in black and white on the following two (2) aspects:-

- (i) Whether the sickness or ailment with which the petitioner is suffering is such that it cannot be treated or cured inside the jail premises hospital **and**
  - (ii) Whether the petitioner's continuous detention in jail is likely to affect his capacity **or is hazardous to his life.**
- (i) In such cases the secretary health will be directed to constitute such a board within 5 to 7 days of the order of the Court and the board shall submit its report to the Court within 15 days of its constitution.
  - (j) **However in exceptional cases** where the court is of the view that it would not be appropriate after recording reasons for a medical board to be constituted by the secretary health consisting of Dr's from Government hospitals. For example, if the accused was deemed to be an influential person on account of his position, status in life, wealth, relationships with influential personalities etc the court shall be at liberty through exercising its discretion to constitute its own board of medical experts on the given illness from experts from non government hospital such as Aga Khan University Medical hospital, Liaquat National Hospital, South city Hospital, PNS Shifa etc from a list of Dr's provided by the NAB along with their expertise, experience and specialization from such hospitals



having the required expertise or even from outside the province e.g. PIMS under the same terms of reference at the cost of the petitioner.

- (k) In any case if the court has any doubt or concerns or lack of clarity about the medical report so furnished it will be open to the court to call the members of the board to seek explanations and fully satisfy itself as to the its next course of action vis a vis the petitioners medical treatment/place of hospitalization which it shall keep under review through calling for periodic reports on the petitioners medical condition.
- (l) If it is found that any Dr or hospital has filed an inaccurate, misleading incorrect or false report/opinion then that Dr/and or hospital shall be subject to the consequences under the law.

34. By setting out the above guidelines, **which we stress are flexible and non exhaustive**, based on the particular facts and circumstances of each individual case it is hoped that only genuine sufferers of serious ailments will be hospitalized outside of prison based on the principles governing bail on medical grounds and that such relief shall be available to all those prisoners confined in jail with medical problems who meet the relevant legal requirements **regardless of their status, standing or position in society or their financial means.**

#### **Dealing with the petitions on merit.**

35. When we recalled the pre arrest bail of the petitioners vide out order dated 27-09-2017 we dealt with each case of the petitioners in detail on merits and found that there was sufficient material on record to connect the petitioners to the offense for which they had been charged. Following the case of **The State v Zubair (PLD 1986 SC 173)** the petitioners must show some new ground for their bail application or a ground which was not available at the time when their pre arrest bail was argued.

36. It is extremely doubtful whether the petitioners have been able to produce any new ground or rely on any material which they were not aware of at the time when their pre



arrest bail was recalled (apart from petitioner No.1's medical ground which we dealt with earlier in this order) but have simply repeated in large part their arguments at the pre arrest bail stage. All the petitioners have been given a specific role in the reference which was mentioned earlier in this order and shall not be reproduced here in order to avoid repetition. In any event we are of the view that no material has been brought on record to persuade us that our original findings in respect of each of the petitioners to connect them to the commission of the offense for which they have been charged requires interference. Our order dated 27-09-2017 recalling the petitioners' pre arrest bail should be read as part and parcel of this order and for the sake of brevity we reproduce our findings on merit in respect of each petitioner.

37. **Turning to the case of petitioner No.1 Syed Ali Raza** in connection with his petition for post arrest bail on merits (as opposed to medical bail which has been dealt with earlier in this order) we have already held as under whilst dismissing his case for pre arrest bail at Para's 30 to 36:

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

31. We find no force in the contention by learned counsel for the petitioner that this is a case which falls within the ambit of S.31 (D) NAO which concerns inquiry, investigation of proceedings in respect of imprudent bank loans. From a bare reading of the reference it is clear that this case is one which falls under the ambit of S.9 NAO which primarily in this case concerns a misuse of authority and failure to exercise authority which led to undue benefit and favors to others and a loss to the National Exchequer. In our view this case is similar to the reference which the NAB filed against the Bank of Punjab (BOP) whereby numerous bank officials through their connivance and deliberate misusing and failing to exercise their authority had caused a colossal loss to the BOP. As in that case the President, Directors, Senior Officials of the BOP and beneficiaries were all accused in the reference. A



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

32. We would also point out that in this case we have taken into account that in our view bankers, all of whom are accused in this reference, have a special fiduciary duty of trust to their depositors and in this case as well the national exchequer which cannot be taken lightly

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



the net profit being made by the NBP which may have been even greater had the petitioner taken measures to exercise his authority to prevent losses which were illegally caused by a failure to exercise authority/misuse of authority by him and other co-accused in the reference who were also employees of the NBP all of whom like petitioner No.1 owed a fiduciary duty of care to the bank, its depositors and the national exchequer. In particular in 2009 and 2010 audit report the issue of non-performing loans in Bangladesh operations was clearly mentioned and was also pointed out in its overall conclusions raising alarming concerns about the Bangladesh operations on which no effective action was taken. Like wise the audit report of 2011-12 raised particular concerns about the operations of the bank in Bangladesh. 25 irregularities were noted in the audit report but again no action was taken. However despite these all being within the petitioner's knowledge he failed to exercise his authority and misused his authority in allowing the situation to continue. S. 161 Cr.P.C. statement of Shakeel Hayat also shows the huge irregularities being carried out in the Bangladesh operation of the bank which had also been highlighted in the audit report which petitioner No.1 was fully aware. Notwithstanding such knowledge there is no material on record to show that the petitioner No.1 in his capacity as Chairman of the Board in his ten and half years as President of NBP ever even held any meeting to discuss the operations of the overseas branches of the bank (including in Bangladesh) notwithstanding his knowledge concerning the illegalities being carried out in the Bangladesh Operation which was continuing right under his nose. In our view not only did petitioner No.1 misuse his authority/failed to exercise his authority but his inaction(s) prima facie amount to criminal negligence on his part bearing in mind his vast experience as a Senior Banker, especially as President of the NBP over such a long period of time. The document at F 336 headed Presidents Note by a NBP internal investigation team is particularly damning of the Presidents running of the bank and goes along way in explaining how this illegality in Bangladesh was able to flourish under the nose of the President. (See also S.161 statement of Syed Shahid Hussain Gadezi)

34. With regard to the allegations that he was unaware of the HR policy on overseas tenure and posting we find such a argument quite incredible bearing in mind that he had been the President of the NBP for over ten and half years. Such lack of knowledge about such important bank policy issues beggars belief. We are the view that he was fully aware of the non-extension policy but malafidely and deliberately ordered it to be violated in the cases of the accused No.2 Zubair Ahmed who was Regional Chief Executive NBP based in



Bahrain who served overseas for around 18 years and who was also responsible for the Bangladesh operations who by his own admission he met quite regularly. Likewise he allowed accused No.11 SQM Jehanzeb who remained posted in Bangladesh for more than five and was committing a great deal of the illegalities which was causing heavy loss to the bank to remain posted in Bangladesh for frivolous and unjustified reasons in clear violation of the overseas posting policy. In our view to allow these two officers to remain posted overseas in violation of the overseas posting policy was a deliberate attempt by petitioner No.1 to shield these officials from potential criminal liability and at a minimum from disciplinary proceedings. (see SBP letter dated 10-04-2015 seeking an explanation from the NBP President on this issue). Accused No.11 therefore never returned to Pakistan to be held accountable for his illegal conduct and retired overseas and is an absconder in this case. Likewise Zubair Ahmed was continuously extended without reason. According to petitioner No.3 Zubair Ahmed who was in regular contact with petitioner No.1 and as Regional Chief for the Bangladesh Operations carried out two inquiries into the Bangladesh operations which were both aborted and again it does not seem believable to a reasonable man that Zubair Ahmed being an experienced senior banker would not have mentioned the substance of these inquiries or the problems which were being faced in the Bangladesh operations to petitioner No.1 who he directly reported to. What is more surprising is that Zubair Ahmed petitioner No.3 aborted both these inquiries despite knowing of the wrong doing taking place in the Bangladesh operations by NBP officials posted in Bangladesh within days. We will return again to this aspect of the case when we come to the case of petitioner No.3 Zubair Ahmed.

35. With regard to petitioner No.1's contentions that as President of the Bank he had absolute discretion to relax the overseas policy unilaterally we find this argument to be unsustainable keeping in view the overseas posting policy. The President of the NBP is not a king exercising a royal prerogative by acting according to his own whims and wishes in running a bank. The bank has a structure with a Board of Directors, a management committee and various sub-committees. The policy of non-extension is absolute and allows relaxation in only two situations at the Presidents discretion one of which is age and the other is family and even then subject to the ratification of the HR Sub committee. (see Overseas posting policy) The reasons for relaxation have not been met in this case (Zubair and Jehanzeb) and no where are such reasons for relaxation specifically found in writing. Likewise no ratification by the HR Sub committee has been placed on record. Thus we are of the view that the petitioner No.1 also misused



his authority/ failed to exercise his authority for malafide reasons in allowing both Zubair Ahmed and Jehanzeb to remain in Bahrain and Bangladesh respectively beyond the non-extension period as provided in the bank's overseas policy on frivolous grounds in order to shield them from potential criminal liability or at a minimum disciplinary proceedings and did not even take any action once against such postings once this came to his attention. Even otherwise under the overseas posting policy before an extension could be granted both the extendees (Zubair Ahmed and Jehanzeb) had to **first** return to Pakistan before they could be extended which they failed to do and thus there extension was also illegal on this count. Petitioner No.1 did not raise the ground of any malafides on account of the NAB for filing the reference against him, apart from it being under S.31 (D) and being without jurisdiction, and we have not seen any such malafides on behalf of NAB from the record.

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

38. Para 27 and 28 also reads as under with respect to S.31 (D).

27. Certain of the petitioners have claimed malafides on account of NAB and the complainant because this case falls under S.31 (D) and no permission of the Governor of the SBP was received.....

28. With regard to NAB failing to get the permission of the Governor of the SBP to authorize the inquiry under S.31 (D) NAO we are of the view that this does not amount to malafide on the part of NAB as this reference has not been charged under S.31 (D) of the NAO and hence the question of permission or not is irrelevant. This reference has been charged under S.9 NAO which deals with misuse of authority and failure to exercise authority in order to benefit others and fraud and criminal breach of trust all of which elements appear to be present in this case as it was in the 2010 case of the Bank of Punjab as will be discussed later which in our view is on similar footing to this case namely illegal loans being sanctioned through the misuse of authority/failure to exercise authority through fraud by bank officials".



39. With regard to the case of petitioner No.1 we would reiterate that this is **not** a case under S.31 (D) NAO in respect of imprudent bank loans but a case on his part of misuse of authority and/ or a case of failure to exercise authority which lead to a loss of millions of US\$ to the bank on account of the reasons mentioned above. In our view the statement of Syed Shahid Hussain Gadezi also fully implicates the petitioner No.1 in his illegal acts

40. Thus, for the reasons mentioned above we find that prima facie there is sufficient material to link petitioner No.1 Syed Ali Raza to the commission of the offense for which he has been charged and as such his petition for post arrest bail is hereby dismissed.

41. **Turning to the case of Petitioner No.2 Zubair Ahmed** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 37 to 40:

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

**"REGIONAL CHIEF EXECUTIVE:** Regional Chief Executives will exercise business **and financial powers** and administrative powers in accordance with their respective grades. **They will be responsible for affairs of branches and offices falling under their jurisdiction** as detailed at annexure "C" and carry full administrative authority over these Branches and offices accordingly. They will have direct administrative reporting line to the President.

**To facilitate mobility for business purposes, RCEs are authorized to travel within their region,** (all Cities and States) and Pakistan with pre-advise to Head Office. Similarly inter regional visit with mutual concurrence and consultation amongst the concerned RCEs is also authorized in the same manner. They are also authorized to



depute any staff in their region for official visits in the same manner. **It is understood and required that RCEs will exercise this authority with diligence and specifically for purpose of monitoring branches and business opportunities in other Cities and States. RCEs are also authorized to transfer staff within their respective Region and depute any staff within their Region for additional support.** Head Office will be informed of such transfers accordingly.

38. It is quite apparent from the above that petitioner Zubair Ahmed had control of the branches in Bangladesh and was not a mere powerless spectator to the wrongs, illegalities and irregularities being committed in such branches. He was a very senior Banker being Regional Head with years of experience behind him. He visited Bangladesh 21 times over a 3 year period and claimed TA/DA of US\$69,000 (yet made no report/note of such visit) and as such it was inconceivable that he was unaware of the illegalities being committed in the Bangladesh operations. During oral arguments by his own admission he started two inquiries in the alleged wrong doing in the Bangladesh branches where he had even taken away certain powers of the officials who were allegedly committing illegalities but for reasons best known to himself the 2 inquiries were aborted and after 3 days the powers were returned to the concerned officials. In our view this shows that petitioner No.3 Zubair Ahmed was fully aware of the wrong doings/illegalities in the Bangladesh branch **and had the power and authority to prevent it** but he did nothing to prevent it which was a complete failure to exercise his authority and in fact by aborting the inquiries and handing back the powers it is apparent that he was a part of the cover up to deliberately hide the illegalities in the Bangladesh banking operations and **shield** those responsible for liability (Refer Zubair Ahmed's letter dated 16-03-2009 to Jehanzeb taking away his discretionary powers and letter dated 19-03-2009 restoring those discretionary powers after 3 days only). He had the power as indicated in the re organization of overseas operations to transfer the delinquent officials and commence disciplinary proceedings. He also by his own admission reported directly to the President so in our view it is inconceivable that he did not report this matter to the President who he was in regular contact with. If he did not do so this in our view would amount to a clear failure to exercise his authority to prevent the losses which later occurred (Reference is made to S.161 statement of Khalid Mahmood and his Report).

39. Once this debacle came to light and could no longer be concealed 3 inquiries were authorized by the



bank. The Khalid Mahmood Report at P.47 found that petitioner No.3 failed to exercise his authority. See also S.161 statement of Munawar Hussain Gopang dated 07-07-2015

40. Petitioner No.3 was also the beneficiary of the illegal actions of accused No.5 Mirza Abrar Baig and accused No.10 Imran Ghani who through both there misuse of authority/failure to exercise authority violated the HR overseas policy by extending the petitioner's stay overseas beyond the limit of 5 years and allowed him to remain outside of Pakistan for **18 years** which can hardly be seen as a small oversight especially as petitioner No.3 had 3 negative reports against him which was completely in violation of such rules so that he could continue the illegalities in Bangladesh operations unabated and cover up the same. Such illegal extension was also approved by the President of the bank without any justification whatsoever and completely in violation of the non extension policy on overseas postings which we have already found that he was aware of and that he had no unilateral powers to relax arbitrarily based on his own whims and wishes. As such we find that there is sufficient material on record to prima facie connect the petitioner No.3 Zubair Ahmed to the offense for which he has been charged and accordingly his pre arrest bail is hereby immediately recalled especially as there has been no malafide on the part of the NAB.

42. Thus, for the reasons mentioned above we find that prima facie there is sufficient material to link petitioner No.2 Zubair Ahmed to the commission of the offense for which he has been charged and as such his petition for post arrest bail is hereby dismissed.

43. **Turning to the case of petitioner No.3 Muhammad Waseem Khan** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para's 43 to 46.

43. **Turning to the case of petitioner No.9 Mohammed Wasim Khan.** He has been given a specific role in the reference at Para 10 of this order. At the time when the offense was committed he was Manager, Gulshan Branch, Bangladesh where most of the illegalities were taking place. He was posted at the branch on 11-12-2010 and became general manager from **23-02-012** in place of accused Jehanzeb. Instead of exercising his authority to prevent any illegalities being carried out at the branch he continued and



allowed the same illegal practices to flourish which had been carried out by his predecessor Accused No.11 Jehanzeb knowing that such practices were illegal and in violation of the relevant rules and regulations. Although Accused No.11 Jehanzeb has absconded for ease of reference his role as set out at Para 13 in the reference is set out as under to show the continued illegalities/irregularities;

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

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

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

*"Para 4. As mentioned above, the Branch did not exercise due diligence while opening the said L/Cs and the Branch also failed to take any effective steps to recover the dues from the clients against those accepted bills, Identify the officers who are responsible for extending undue and irregular credit facilities to the clients and take punitive measures against them". (italics added)*

46. Again petitioner No 9 failed to comply with such directives and instructions and thus the petitioner deliberately misused his authority/failed to exercise his authority despite being on notice from



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

44. Thus, for the reasons mentioned above we find that prima facie there is sufficient material to link petitioner No.3 Muhammad Waseem Khan to the commission of the offense for which he has been charged and as such his petition for post arrest bail is hereby dismissed.

45. **Turning to the case of petitioner No.4 Imran Butt** in connection with his petition for post arrest bail on merits we have already held as under whilst dismissing his case for pre arrest bail at Para 41 which should be read together with the case of Zubair Ahmed (who he succeeded in office) whose case we have already discussed earlier in this order

**41. Turning to the case of petitioner No.8 Mohammed Imran who succeeded Zubair Ahmed as Regional Acting Chief Executive.** He has been given a specific role in the reference as set out at Para 9 of this order. In essence the same discussion of material on record applies to him as it does to petitioner No.3 Zubair Ahmed as mentioned above whose pre arrest bail



we have already recalled save that he was not involved in the extension of any one in Bangladesh. Yes, he was initially a whistleblower but he did absolutely nothing to follow up on the so called whistle blowing. Instead he allowed the same illegalities to continue right under his nose in Bangladesh for which he was in charge of all branches. (see Folder (B) P 209-210 setting out his responsibilities). His arguments concerning malafides in choosing Munawar Gopang as a PW instead of an accused have already been dealt with earlier in this order. Thus, prima facie we find sufficient material on record to connect petitioner No.8 to the offense for which he has been charged and as such his pre arrest bail is hereby recalled"

46. We with respect to this being a pick and choose exercise this was dealt with at Para 27 and 28 of our pre arrest bail order which is set out below:

27. Certain of the petitioners have claimed malafides on account of NAB and the complainant because ..... Munawar Gopang should have been an accused rather than a PW and that the whole reference was based on a pick and choose basis.....

28. ....With regard to this being a pick and choose exercise by NAB as to who should be an accused and favoring Munawar Gopang by allowing him to be a PW as opposed to an accused we find no substance to the argument. It appears that to some extent over 60 bank officials were attributed some element of blame in the Bank's internal inquiry. The reality is that for a prosecution to succeed it is not possible for 60 accused to be put in one reference. This is because it may entail 60 different cross examinations by 60 separate lawyers of each PW. What with absence of senior counsel, accused not turning up, lawyers strikes etc the result would be that such a trial would virtually be never ending and would probably end in the death of most of the accused before judgment was announced. The trial in effect would be an exercise in futility. One of the objects and purposes of the NAO as set out in its preamble and made specifically clear in S.16 (a) is that trials under the NAO must be expeditious. By putting 60 persons in a reference this object of the legislation would be defeated. Thus, NAB using its expertise, experience and prosecutorial discretion must be left to determine who and who does not go into a reference based on who the best evidence is against, who are the major/most senior players in the scam, who it can make as a PW instead of an accused in order to strengthen or expedite its case or who may be an approver. Such a process in essence amounts to good case/trial management



provided that it is made on bona fide considerations which it appears to be in this case. In our view only when obvious and blatant and potentially malafide omissions from the reference especially in respect of very senior persons whom there is strong evidence against is present may be one of the reasons for a case of malafide being made out especially if it appears that prima facie there is strong tangible material against him. In our view the fact that Munawar Gopang has been made a PW will only shorten NAB's prosecution and enable it to bring on record compelling evidence in order to strengthen the prosecution's case which may not have been available otherwise. Thus, in this case we are of the view that only 16 of the approximately 60 identified in the NBP inquiry report being placed in the reference is not malafide on the part of the NAB based on the facts and circumstances of this case where it appears that only the most senior, most responsible officers and thus against whom the best evidence lies have been included in the reference".(bold added)

47. Thus, for the reasons mentioned above we find that prima facie there is sufficient material to link petitioner No.4 Muhammad Imran Butt to the commission of the offense for which he has been charged and as such his petition for post arrest bail is hereby dismissed.

48. In summary all the petitions (Syed Ali Raza, Zubair Ahmed, Muhammad Waseem Khan and Muhammad Imran Butt) for post arrest bail are hereby dismissed. It is directed that petitioner Syed Ali Raza be taken immediately from his current location to the jail hospital in central prison Karachi for his further treatment and compliance shall be intimated to this court through MIT II within two days from the date of this order.

49. A copy of this order shall be sent to all jail superintendents in Sindh, all accountability courts in Sindh, all Administrators of all Government or semi Government hospitals in Sindh, the chairman NAB and DG NAB Karachi and Sukkur for information and compliance with respect to the paragraphs which relate to them and in particular para 33 of this order concerning guidelines on medical treatment



for persons under custody in NAB cases and to Jail superintendent Karachi and the concerned accountability court to ensure compliance with para's 31 and 48 of this order concerning petitioner No.1 Syed Ali Raza's removal from his current location to the hospital within central jail Karachi.

50. The petitions are disposed of in the above terms.