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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

C.P. No.D-3813/2015

Iqbal Ahmed Bablani

Vs.

The Chairman NAB & others

C.P. No.D-1219/2016

Mazhar Ali Mangi

Vs.

National Accountability Bureau

C.P. No.D-766/2016

Kashif Raza and Mansab Ali Khawaja

Vs.

The Chairman NAB & others

Date of hearing:	16-05-2016.
Date of Order	23-05-2016.
Petitioners:	Through Mr. Shaukat Hayat, advocate for petitioner in C.P.No.D-3813/2015, M/s. M. Zafar Alam & Shahnawaz Mallick, advocates for petitioners in C.P. No.D-766/2016 and Mr. Wazir Hussain Khoso, advocate for petitioner in C.P. No.D-1219/2016.
Respondents:	Through Mr. Noor Muhammad Dayo, Special Prosecutor NAB.

ORDER

Mohammed Karim Khan Agha, J. By this common order, we intend to dispose of the above bail petitions filed on behalf of the petitioners which all stem from National Accountability Bureau (NAB) Reference No.01/2016 State v. Iqbal Ahmed Bablani & others which is pending before Administrative Judge Accountability Courts in Karachi.

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2. The facts of the prosecution case as per reference No.01/2016 are that based on a complaint received from the office of Services, General Administration and Coordination Department, Government of Sindh regarding embezzlement/misappropriation of government funds in two schemes of Transport and Mass Transit Department (T&MT), Government of Sindh an inquiry was authorized by NAB which was subsequently converted into an investigation

3. The investigation revealed that in the year 2011-12, T&MT Department floated 2x separate tenders for the procurement of heavy vehicles and computerization of Provincial Transport Authorities/Regional Transport Authorities (PTAs/RTAs) respectively. T&MT Department later reported to the Chief Secretary and Additional Chief Secretary P&D that despite hefty payments to the respective suppliers a number of heavy vehicles/computer / IT items were missing. T&MT Department also reported that this scenario has left T&MT Department under-capacitated to launch both projects.

4. The investigation further revealed that accused No.1 to 3 (petitioners 1 and 2) with conscious knowledge and in connivance with Rajab Ali Daudpota of M/s Shaheer Enterprises misused their respective authorities in processing, approving and making illegal advance payment of Rs.20.475 million for the procurement of 11x heavy vehicles to Mr. Daudpota and Mazhar Ali Mangi (accused No.2/petitioner No.2) signed a bogus delivery challan dated 28.5.2011 purporting that Transport Department had already received the delivery of all 11x heavy vehicles from M/s Shaheer Enterprises. Whereas, M/s Shaheer Enterprises supplied only 6x heavy vehicles to Transport Department on 29.6.2011 while government funds for the remaining 5x heavy vehicles were misappropriated/embezzled. Accused No.1 to 3 (petitioners 1 and 2) received kickbacks from the said contractor (Rajab Ali Daudpota of M/s Shaheer Enterprises) for their role in the said misappropriation/embezzlement of government funds.

5. The investigation further revealed that Rajab Ali Daudpota, Proprietor of M/s. Shaheer Enterprises in connection with his short supply of heavy vehicles and resultant embezzlement availed the option of plea bargain (PB) for the amount of Rs.4,105,000/- as

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his crime proceed which was approved by the Hon'ble Administrative Judge Accountability Courts Sindh at Karachi vide order dated 1st December, 2015. He thereby stood convicted u/s 15 read with section 25(b) of NAO, 1999.

6. The investigation further revealed that in addition to the above, another embezzlement/misappropriation was unearthed in another set of government funds which were allocated to T&MT Department for the "Supply of Mini Buses & Mazda Trucks etc". The said misappropriation/embezzlement was also committed by the accused No.1 to 3 (petitioners No.1 and 2 in these petitions as accused No.3 (Mr. Ram Chand) has now entered into a plea bargain with NAB and is no longer an accused in the reference), as mentioned above and during the same time period.

7. The investigation further revealed that accused No.1 to 3 (petitioners 1 and 2) with conscious knowledge and in collusion with each other misused their authorities in processing, approving and making advance payment of Rs.15.38 million to M/s Mehran Associates for the "Supply of Mini Buses and Mazda Trucks etc". M/s Mehran Associates neither procured nor handed over any buses and trucks to T&MT Department and the entire amount was misappropriated/embezzled. Accused No.1 to 3 (petitioners 1 and 2) received kickbacks from accused No.4 and 5 (petitioners 3 and 4) for their role in the misappropriation/embezzlement of governments funds.

8. The investigation further revealed that Kashif Raza (accused No.4/petitioner No.3) in collusion with his brother, Khawaja Mansab Ali (accused No.5/petitioner No.4) used his firm namely M/s Mehran Associates to participate in a fake/dummy tender/quotation floated by T&MT Department for "Supply of Mini Buses and Mazda Trucks etc". In this regard, illegal advance payment of Rs.15.3 million was received by accused No.4/petitioner No.3 through his firm, namely M/s Mehran Associates. Instead of supplying the requisite "Mini Buses and Mazda Trucks" to T&MT Department, accused No.4/petitioner No.3, in collusion with accused No.5/petitioner No.4, withdrew certain amount in cash from his MCB, Sindh Secretariat account (in the name of M/s Mehran Associates) using cheques and online transferred the remaining amount into 4x other bank accounts. The said 4x

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accounts belong to his brother Mansab Ali Khawaja (petitioner No.4), Mrs. Rafat Mansab w/o petitioner No.4 Khawaja Mansab Ali (account title is M/s RM Traders & M/s Meesum-Zaigham and Co) and Khawaja Meesum Ali s/o petitioner No.4 Khawaja Mansab Ali (account title is M/s Meesum Brothers and Co).

9. The investigation further revealed that Khawaja Mansab Ali (accused no.5/petitioner No.4) is a government employee working as Head Draftsman (BPS-13), Irrigation Department, Government of Sindh. He with conscious knowledge and in collusion with his brother, Kashif Raza (accused no.4/petitioner No.3) Proprietor, M/s Mehran Associates and in connivance with accused no.1 to 3 (petitioners 1 and 2) obtained illegal advance payment of RS 15.3 million for the "supply of mini buses and trucks" project. Buses and/or trucks were neither procured nor supplied to T&MT Department. He in collusion with his brother (accused no.4/petitioner No.3) gave Rs.10 million in bribe to accused No.1 to 3 (petitioners 2 and 3).

10. The investigation further revealed that accused no.1/petitioner No.1 with conscious knowledge and in connivance with accused No.2/petitioner No.2 opened an HBL Account NO.09167900241103 in the name of Secretary and Section Officer (Gen), Transport Department at Sindh Secretariat Branch using a fake "permission letter" purportedly issued by Finance Department, Government of Sindh. Accused No.1/petitioner No.1 and 2 in collusion with accused No.3 (Mr. Ram Chand who has now entered into a PB) collected Rs.10 million in bribe from accused No.4/petitioner No.3 and accused No.5/petitioner No.4 and deposited the same into the said HBL account. Accused No.1 to 3 (petitioners 1 and 2) later withdrew Rs.1 million from the said account and could not justify its utilization. Finance Department intervened and blocked the said account but could not succeed in transferring the balance amount, Rs.8,996,365/- into Government of Sindh account. It was after the intervention of NAB during the course of this investigation that remaining balance of Rs.8,996,365/- lying in the said HBL account was transferred back to Sindh Government Bank account.

11. From the above position, according to the reference, it stands established that loss to national exchequer has been

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incurred to the tune of Rs.10,488,635/- (4,105,000/ + 6,383,635/) with respect to 2x separate tenders for the procurement of "11x Heavy Vehicles" and "Supply of Mini Buses and Mazda Truck etc". Whereas, misappropriating in computers/other IT related items has incurred loss to the national exchequer to the tune of Rs.1,862,000/-. Thus, the total loss incurred to national exchequer is, therefore (10,488,635 + 1,862,000). Rs.12,350,635/- i.e. Twelve Million Three Hundred Fifty Thousands Six Hundred and Thirty Five Rupees. Hence the petitioners 1 to 4 have committed the offence of corruption and corrupt practices as defined under section 9(a) of NAO, 1999 and punishable u/s 10 of Schedule thereto which lead to a reference being filed against them before the Accountability Court on 29-12-2015.

12. Learned counsel for petitioner No.1 (Iqbal Ahmed Bablani on ad interim pre arrest bail by order of this Court dated 26-6-2015) submitted that petitioner No.1 is completely innocent in connection with the purchase of any vehicles by the T&MT Department Government of Sindh and had not embezzled any amount in respect of such purchases.

13. According to learned counsel for petitioner No.1 a purchase committee was established by Notification dated 26-3-2011 by the Transport Department Government of Sindh to purchase all items for the development schemes in accordance with Sindh Public Procurement Regulatory Authority Rules 2005 (SPPRA). That although he was chairman of the purchase committee under the Notification the primary responsibility for keeping accounts lay with the Section officer. Thus, if there was any shortfall in payments or non or overpayments this was the responsibility of the section officer i.e. petitioner No.2. In any event no illegalities had taken place and in this respect he pointed to the minutes of the purchase committee dated 28-3-2011 and the subsequent tender notices and work order which showed that all codal formalities had been carried out before the procurement of the vehicles and other items. He also stressed that an internal inquiry against him had been carried out and had cleared him of any wrong doing and that no specific role had been given to him in the reference apart from receiving a bribe for which there was no evidence.

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14. In support of his contentions learned counsel for petitioner No.1 placed reliance on the cases of **Muzammil Niazi v. The State** (PLD 2003 Karachi 526), **Muzaffar Ayaz Abid Baloch v. NAB, Sindh** (2008 SCMR 1316), **The State & others v. M. Idress Ghauri & others** (2008 SCMR 1118) and **Muhammad Nawaz v. The State through Chairman, NAB, Islamabad & another** (PLD 2008 S.C. 438).

15. Learned counsel for petitioner No.2 (Mazhar Ali Mangi currently in custody and seeking post arrest bail) submitted that the main allegation against petitioner No.2 is that he misused his authority. However according to him he had no authority to misuse and he was simply acting on the orders of his senior officers and as such he could not be liable under the NAO for misuse of authority. His signature on the delivery challan was fake and NAB had not submitted it to a handwriting expert. Even otherwise he was completely innocent and was entitled to be enlarged on bail.

16. Learned counsel for petitioners 3 and 4 (Kashif Raza and Mansab Ali Khawaja both in custody and applying for post arrest bail) submitted that petitioners 3 and 4 were entirely innocent and had not been involved in any misappropriation and there were many doubts in the prosecution case and as such the petitioners were entitled to be given the benefit of doubt at the bail stage. In his bail application he had specifically contended that petitioners 1 and 2 and Mr. Ram Chand (who had since entered in a plea bargain (PB) with NAB) were involved in the misuse of authorities and embezzlement where as petitioner No.3 is a private person and petitioner No.4 works for the Irrigation Department, Government of Sindh and both have nothing to do with the affairs of the T&MT Department which lies within the domain of petitioners 1 and 2 and Mr. Ram Chand. That the petitioner No.3 was unaware of the entire transaction as his company's letter head (Mehran and Associates) had been used without his knowledge and permission and the signature was false. In essence, learned counsel for the petitioners 3 and 4 shifted the blame to petitioners 1 and 2 and Mr. Ram Chand and submitted that their case was one of further inquiry which entitled them to the concession of bail.

17. Learned counsel for petitioners 3 and 4 in support of his contentions placed reliance on the cases of **Ch. Zulfiqar Ali &**

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others v. The State (2009 YLR 1637), **Ramzan Ali Hemani v. NAB** (2010 MLD 75 (Karachi)) and **Anwarul Haq Qureshi v. NAB & another** (2008 SCMR 1135).

18. Learned ADPGA for NAB has vehemently opposed the grant of bail to all the petitioners and has submitted that NAB has more than sufficient evidence to prove the guilt of all the petitioners beyond a reasonable doubt. That the petitioners have caused a heavy loss to the national exchequer by misusing their authority and they have approached this court with unclean hands, hence they are not entitled for concession of bail and all the petitions under reply are liable to be dismissed.

19. We have heard the learned counsel for the petitioners, ADPGA NAB, perused the record very carefully and the case law cited at the bar by them.

20. At the outset it is made clear that we have only made a tentative assessment of the material placed before us and this order shall not prejudice the case of any party at trial which shall be decided by the trial court based on the evidence before it.

21. It would seem that there are a number of separate inter linked crimes contained in the reference. In our view only one of these would need to be proved to the required standard to bring home a conviction. The crimes in the reference appear to break up into the following crimes (a) procurement of 11 heavy vehicles and embezzlement (b) procurement of IT items and embezzlement (c) procurement of mini buses and mazda trucks and embezzlement.

22. In this bail application we shall concentrate on (a) procurement of 11 heavy vehicles and embezzlement and (b) procurement of mini buses and mazda trucks and embezzlement.

23. Turning to the case of petitioner No.1 (Iqbal Ahmed Bablani who is on ad interim pre arrest bail).

24. It is to be noted that he is seeking confirmation of pre arrest bail. As is well known the conditions for the grant of pre arrest and post arrest bail are quite distinct and were well set out in the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009

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

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

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

25. During the hearing of his pre arrest bail petition petitioner No.1 did not plead any of the grounds mentioned in (a) (b) (d) and (e) with ground (f) not being applicable in this case and as such prima facie he has not made out a case for pre arrest bail.

26. With regard to the authorities cited by the petitioner No.1 in our view these are all distinguishable from the facts and circumstances of the present case. **Muzammil Niazi's case,**

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Muzaffar Ayaz Abid Baloch's case and M. Idress Ghauri's case largely concerned mens rea. In our view mens rea can generally be drawn from inferences which can be drawn from the evidence at trial. In our view based on the material which has been placed before us the scams as they unfolded prima facie show mens rea on the part of all the petitioners. **In Muhammad Nawaz's case** bail was granted largely on account of the fact that most of the evidence was documentary in nature and there was little chance of interfering with it. This is not the case here as although there are a large number of documents there are also important witnesses who the petitioner No.1 being a senior government officer with his own connections may attempt to interfere with. Likewise the two persons who entered into PB's may yet become prosecution witnesses and may be discouraged not to do so by petitioner No.1. Furthermore, in the cases cited above a project failure was involved which failed due to poor decision making whereas in this case the project could not take place due to the embezzlement by the petitioners through their misuse of authority for personal gain, there were also medial grounds which are lacking in this case and in one case a perception that the prosecution lacked evidence which is not so in this case as we will come to later in this order in a brief and tentative assessment of the material placed on record.

27. A specific role has been assigned to petitioner No.1 in the Investigation Report as under:

"a. Iqbal Ahmed Bablani, Ex-Secretary, Transport & Mass Transit Department (BPS-20).

(1) The accused with conscious knowledge and in connivance with the (a) Ex-Section Officer (Gen), Mr. Mazhar Ali Mangi, and (b) Accountant, Mr. Ramchand, misused his authority by making illegal advance payment of Rs.20.475 million to M/s Shaheer Enterprises for the procurement of 11x heavy vehicles. M/s Shaheer Enterprises supplied 6x heavy vehicles only while government funds for the remaining 5x heavy vehicles were misappropriated / embezzled. He received kickbacks from the said contractor for his role in the misappropriation/embezzlement of government funds.

(2) The accused with conscious knowledge and in connivance with the (a) Ex-SO (Gen), Mr. Mazhar Ali Mangi and (b) Accountant, Mr. Ramchand, misused his authority by making another illegal advance payment of Rs.15.3

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million to M/s Mehran Associates for the "Supply of Mini Buses and Mazda Trucks etc". M/s Mehran Associates neither procured nor handed over any buses and trucks to T&MT Department and the entire amount was misappropriated/embezzled. He received kickbacks from the said contractor for his role in the misappropriation/embezzlement of government funds.

(3) The accused, with conscious knowledge, and in connivance with Ex-SO (Gen), Mr. Mazhar Ali Mangi opened an HBL Account No.09167900241103 in the name of Secretary & SO (Gen), Transport Department at Sindh Secretariat Branch using a fake permission letter purportedly issued by Finance Department, Government of Sindh. He, in collusion with Ex-SO (Gen) and Accountant, Transport Department collected Rs.10M in bribe from M/s Mehran Associates. He later in cash withdrew Rs.1 million from the said account and could not justify its utilization.

28. At the time of the scams petitioner No.1 was Secretary Transport. It appears from the earlier referred to Notification dated 26-3-2011 that he as Secretary Transport appointed himself as chairman of the purchasing committee which contains a rider aimed to place the blame on the SO in the event that any irregularities take place. He however in our view as Chairman of the committee must take most of the responsibility for its working no matter how the notification is drafted. As per minutes of the meeting which he headed on 28-3-11 during the procurement process the SPPRA Rules were to be complied with.

29. It is observed that advertisements dated 14.04.2011 for the required heavy vehicles were placed in one English newspaper the "Daily National Courier" and one urdu newspaper, "Daily K-2" both of which are relatively unknown and with a low circulation compared with other leading English and urdu newspapers.

30. The advertisements read as under:

"No.SO(V)/ADP/2010-11(RDTS)
GOVERNMENT OF SINDH TRANSPORT
DEPARTMENT Karachi, dated 14th April
2011

TENDER NOTICE

Interested firms are invited to quality their machineries within
15(Fifteen) days details of which are as under:-

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Offer forms may be obtained from the office of undersigned.

- 1- One Multimedia Projector
- 2- Three Cranes
- 3- Three Fold Lifters (sic)
- 4- Two Dumpers
- 5- Two Bulldozers

(MAZHAR ALI MANGI)
SECTION OFFICER(GEN/T-1)
For Secretary to Government of Sindh"

INF/KRY No.1259/11

31. The lack of specificity of the vehicles/equipment required in the advertisements is quite startling and tends to indicate that little, if any, thought went into the specifications of the required vehicles/machinery such as engine capacity, make, model etc which such machinery would require for the work to be undertaken. This from the start therefore raises suspicions as to the bona fides of the transaction. The work order dated 6-5-2011 given to M/S Shaheer enterprises which presumably responded to the advertisements and offered the lowest bid and hence were awarded the supply contract however does not conform to the advertisements. For example, **in the advertisements two bulldozers are needed however in the work order 3 bulldozers are to be supplied. Likewise in the advertisements 2 dumpers are required however in the work order 4 dumpers are to be supplied.** In essence the advertisements do not bear any correlation to the work order which itself raises even more suspicions as to the bona fides of the transaction. **For example, 3 cranes are advertised but none form a part of the work order.**

32. In total 11 vehicles/heavy machinery was to be supplied by M/S Shaheer enterprises for which it had been given full advance payment to the knowledge of petitioner No.1. However only 6 vehicles/ machinery were delivered and the petitioner No.2 gave a false receipt for 11 vehicles knowing full well that only 6 had been delivered. There seems also to be no justification for any advance payment to be made in a tender of this nature let alone for the full amount i.e. for the supply of heavy vehicles where payment on delivery ought to be the preferred/usual course.

33. It appears that the balance of the advance payment, which was not spent on the 6 delivered heavy vehicles, was to be split between the petitioner No.1, petitioner No. 2 and Mr. Ram Chand (Incharge of Accounts who was accused No.3 in the reference and

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has now entered into a PE with NAB) and M/S Shaheer enterprises. In acknowledgment of their guilt Mr. Ram Chand and M/S Shaheer enterprises have already entered into plea bargains (PB) with NAB and paid back their shares of the ill gotten gain which they received. In our view the material placed before us leads us to the only reasonable inference as would appeal to a prudent mind that this scam was carried out by petitioner No1 and 2 and Mr. Ramchand and M/S Shaheer enterprises in connivance and collusion with each other.

34. This is further fortified by the role of petitioner No.1 in the second scam concerning the purchase of mini buses and mazda trucks and his connection with the HBL account in which he allegedly received bribes. Again an unjustified advance payment of RS 15.38 Million was made except in respect of the delivery of mini buses and Mazda trucks to M/s Mehran Associates which were neither procured nor supplied to the T&MT Department and the entire amount of the advance payment was misappropriated / embezzled.

35. In this case the material placed before us shows that petitioner No.1 in connivance with petitioner No.2 managed to open an account in the name of Secretary & SO(Gen), Transport Department at Sindh Secretariat Branch using a fake permission letter issued by Finance Department, Government of Sindh in which RS 10M was deposited from M/s Mehran Associates. Petitioner No.1 and 2 and Mr. Ram Chand withdrew Rs.1 million in cash from the said account and could not justify its utilization in their department. In our view therefore the only reasonable inference is that this 10M was paid as a bribe by M/s Mehran Associates as a reward for the petitioners No.1 and 2 making the advance payment to M/s Mehran Associates for trucks and vehicles which were never supplied and which enabled the advance payment to be embezzled by them. It is notable that in both the scams (heavy vehicles and supply of mini buses and Mazda trucks) that most of the key documents were signed by petitioners 1 and 2. **Furthermore** in the case of the supply of mini buses and Mazda trucks no tenders were advertised rather only quotations were called for, which creates further suspicions as to the award of the supply contract of the mini buses and Mazda trucks to M/s

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Mehran Associates especially as we shall see later the offers for quotations seemed to be contrived and done on a dummy basis whereby all the petitioners were involved.

36. In addition the S.161 statements, minute sheets and other associated documents especially the banking documents which have been placed before on a tentative analysis show that the petitioner No.1 is linked to the offenses for which he has been charged.

37. As such in our view based on the material placed before us, when read in a holistic manner, there are reasonable grounds as would appeal to a prudent man to connect the petitioner No.1 to the offense and as such his bail petition is dismissed and his ad interim pre arrest bail order dated 26-06-2015 is hereby recalled.

38. Turning to the post arrest bail petition of petitioner No.2 Mazhar Ali Mangi EX SO (Gen) Transport and Mass Transit Department.

39. A specific role has been assigned to him in the investigation report as under:

"b. Mazhar Ali Mangi, Ex-Section Officer (Gen), Transport & Mass Transit Department (BPS-17)

(1) The accused with conscious knowledge and in connivance with the (a) Mr. Iqbal Ahmed Bablani and (b) Accountant, Mr. Ramchand, misused his authority by signing a bogus Delivery Challan dated 28.5.2011 purporting that Transport Department had received the delivery of all 11x heavy vehicles from M/s Shaheer Enterprises. He, *being DDO of the department, again misused his authority by making illegal advance payment of Rs.20.475 million to M/s Shaheer Enterprises for the procurement of 11x heavy vehicles. M/s Shaheer Enterprises provided 6x heavy vehicles only while government funds for the remaining 5x heavy vehicles were misappropriated/embezzled. He received kickbacks from the said contractor for his role in the misappropriation/ embezzlement of government funds.*

(2) The accused with conscious knowledge and in connivance with the (a) Ex-Secretary, Mr. Iqbal Ahmed Bablani and (b) Accountant, Mr. Ramchand, misused his authority by making another illegal advance payment of Rs.15.36 million to M/s Mehran Associates for the

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procurement of buses. M/s Mehran Associates neither procured nor handed over any buses to T&MT Department and the entire amount was misappropriated/embezzled. He received kickbacks from the said contractor for his role in the misappropriation/embezzlement of government funds.

- (3) The accused with conscious knowledge and in connivance with Ex-Secretary, Mr. Iqbal Ahmed Bablani opened an HBL Account No.09167900241103 in the name of Secretary & SO(Gen), Transport Department at Sindh Secretariat Branch using a fake permission letter purported to be issued by Finance Department, GoS. Rs.10 million were deposited into this account after collecting cash from M/s Mehran Associates. He later withdrew Rs. 1 million cash from the said account and could not justify its utilization."

40. As already discussed in the case of petitioner No.1 the material placed before us tends to show that petitioner No.2 was fully implicated in both the scam of the non supply of 5 vehicles/heavy machinery from M/S Shaheer enterprises despite the payment in advance and the non supply of the mini buses and Mazda trucks from M/s Mehran Associates again despite the payment in advance. He is also fully implicated in the opening of the HBL Account from where his share of the bribe was hidden and signing the two cheques along with petitioner No.1 (since it was a joint account) whereby RS one million was withdrawn for which he could not account for vis a vis utilization by his Department. He was a member of the purchasing committee the Notification of which put him on notice that he had to take extra care in respect of financial matters. He was involved in the advertisement, award of contract to Ms Shaheer enterprises and even signed off the delivery note stating that 11 vehicles/pieces of heavy equipment had been received when in fact only 6 vehicles had been received and he was personally present when the 6 as opposed to 11 vehicles were received and therefore must have known that 5 were missing yet he does not appear to have raised any objections to the non supply of vehicles or chased up for their supply by M/S Shaheer enterprises. The fact that the other Government official involved in the scams Mr.Ram Chand by way of a PB has already admitted his guilt in this case like wise Ms Shaheer enterprises also goes against him. The mere defense of following the orders of

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his superiors is no defense at all in the eyes of the law. Time and time again the superior judiciary has stressed that it is no defense to follow illegal orders. It appears to us that petitioner No.1 would not have been able to carry out either of the scams without the active connivance and participation of petitioner No.2 who played a pivotal role in the commission of the offenses and seemed to be petitioner No.1's right hand man.

41. As with petitioner No.1 S.161 statements, minute sheets and other associated documents especially the banking documents which have been placed before us on a tentative analysis show that the petitioner No.2 is linked to the offenses for which he has been charged.

42. Thus, based on the material before us we are of the considered view that there are reasonable grounds, as would appeal to a prudent man, to connect the petitioner No.2 to the offense and therefore his application for post arrest bail is dismissed.

43. Turning to the post arrest bail petition of petitioner No.3 Kashif Raza proprietor of Ms Mehran Associates and petitioner No.4 Mansab Ali Khawaja head draftsman BPS 13 Irrigation Department Government of Sindh both of whom are in custody and have applied for post arrest bail.

44. Both petitioners 3 and 4 have been assigned specific roles in the investigation report as under:

"d. **Kashif Raza** (petitioner No.3 and brother of petitioner No.4), **Proprietor, M/s Mehran Associates, Private Person.**

He in collusion with his brother **Mr. Mansab Ali Khawaja** (petitioner no.4) used his firm namely M/s Mehran Associates to participate in a fake/dummy tender/quotation floated by T&MT Department for "Supply of Mini Buses and Mazda Trucks etc". In this regard, illegal advance payment of Rs.15.380 million was received by him through his firm, namely M/s Mehran Associates. M/s Mehran Associates neither procured nor supplied any buses and trucks to T&MT Department. Instead, kickbacks were distributed and the entire amount was embezzled/misappropriated. He willfully signed his cheques to cash withdrew certain amount from the said embezzled/misappropriated govt.

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funds. He also consciously used his bank account to online transfer remaining amount into 4x other bank accounts. The said 4x accounts **belong to his brother (i) Mansab Ali Khawaja**, (petitioner No.4) (ii) **Mrs. Rafat Mansab w/o Khawaja Mansab Ali** (petitioner No.4)(account title is M/s RM Traders & M/s Meesum-Zaigham & Co) and (iii) **Khawaja Meesum Ali s/o Khawaja Mansab Ali** (petitioner No.4)(account title is M/s Meesum Brothers & Co).

- d. **Mansab Ali Khawaja**, (petitioner No.4 and brother of petitioner No.3) **Head Draftsman (BPS-13) Irrigation Department, Government of Sindh.**

He is a government employee working in the capacity of Head Draftsman, Irrigation Department, Government of Sindh. He with conscious knowledge and in collusion with his brother, Kashif Raza (petitioner No.3), Proprietor, M/s Mehran Associates and in connivance with the above mentioned accused officers/officials of Transport Department (petitioners 1 and 2) obtained illegal advance payment of Rs.15.380 million for the supply of buses and trucks. Buses and/or trucks were neither procured nor supplied to T&MT Department. He gave Rs.10 million back to the accused officers/officials (petitioners 1 and 2) in bribe for not supplying any mini bus or mazda trucks to the department.

Moreover, he is also involved in obtaining kickbacks for himself through online transfer in 4x bank accounts. **One of these bank accounts is in his own personal name** (account title: M/s Mansab Ali Khawaja) while the others are in the name of M/s Meesum Brothers & Co (**Account holder is his son - Mr. Khawaja Meesum Ali**) and the third and fourth bank accounts are in the name of M/s RM Traders and M/s Meesum-Zaigham & Co (**Account holder is his wife --- Mrs. Rafat Mansab**)."

45. The case relating to petitioners 3 and 4 only relates to the non supply of mini buses and Mazda trucks in which they received an advance payment which was embezzled. Their role prima facie appears to be that of beneficiaries although the material placed before us in our view also shows that they were in collusion and connivance with petitioners 1 and 2.

46. At the outset we would like to observe that the authorities cited by the petitioners 3 and 4 are of little, if any, assistance to them since these cases relate to situations where the petitioner has

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been in custody for around 4 years, the question of remand and the slowness in the progress of the trial which are distinguishable from the current case where the petitioners were arrested only around 4 months ago. In this case the reference was filed on 29-12-2015 and the charge framed on 12-02-16 and thus there appears to be no unnecessary or prolonged delay in proceedings since the arrest of petitioners 3 and 4

47. Petitioner No.3 Kashif Raza, Proprietor, M/s Mehran Associates, is a private person who through offering dummy competitive quotations to provide mini buses and mazda trucks was selected to supply the same to the T&MT Department. Again he was paid an unjustified advance of RS 15.38M which he subsequently embezzled through his company M/s Mehran Associates.

48. From the record it is apparent that Ms Mehran Associates received the required advance through 4 separate cheques signed by petitioners No.1 and 2 which it acknowledged receipt of payment on its letter head dated 13-6-11. Prior to this it had also chased for payment of the advance payment on its letter heads dated 4-6-2011 and 30-4-11. It is also apparent that despite receiving the advance no buses or mazda trucks were supplied by Ms Mehran Associates to T&MT Department. According to petitioner No.3 the letter head of Mehran Associates was fake and he had nothing to do with the scam and the whole scam was carried out exclusively by Petitioners No.1 and 2. This defense however is belied by the fact that the advances were received by M/s Mehran Associates and paid into its bank account and were transferred into the accounts of his brother (petitioner No.4) or persons related to his brother i.e One of these bank accounts is in his brothers own personal name (account title: M/s Mansab Ali Khawaja) while the others are in the name of M/s Meesum Brothers & Co (Account holder is his son - Mr. Khawaja Meesum Ali) and the third and fourth bank accounts are in the name of M/s RM Traders and M/s Meesum-Zaigham & Co (Account holder is his wife --- Mrs. Rafat Mansab).

49. If Ms Mehran Associates had not received the advance payment then how could it have been transferred on to other accounts? In our view the explanation provided by petitioner No.3

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is not credible and is contrary to the material placed before us. The material placed on record indicates that Mehran Associates did receive the advance payment and petitioner No.3 has not been able to explain why these advance payments were received and why they were transferred on to his brother and other close family members. The fact that these advance payments were then transferred into accounts of relatives mainly in company's names also shows that the transferees were at a minimum benamidars if not beneficiaries and even colluded in the embezzlement.

50. In our view the documents on record especially the banking documents which have been placed before us on a tentative analysis show that the petitioner No.3 is linked to the offenses for which he has been charged.

51. Thus, based on the material before us we are of the considered view that there are reasonable grounds, as would appeal to a prudent man, to connect the petitioner No.3 to the offense and therefore his application for post arrest bail is dismissed.

52. With regard to petitioner No.4 it appears at first glance that he was at a minimum a benamidar and possibly a beneficiary since he was not officially a part of Mehran Associates. However it appears after a closer look at the record that when quotations for the supply of mini buses and Mazda trucks were sought the following companies submitted quotations: Mehran Associates (whose quotation was accepted and was his brother's/petitioner No.3's company), Meesum Brothers & Company and R.M.Trader. As mentioned above Meesum Brothers is owned by the son of petitioner No.4 and R.M.Trader is owned by the wife of petitioner No.4. Thus, it appears that both Meesum Brothers and R.M.Trader made dummy bids to enable Mehran Associates (which was owned by petitioner No. 3 his real brother) to get the award of the contract of supply of the mini buses and mazda trucks. Thereafter once the contract of supply was awarded and advance payments received by Mehran Associates parts of the advance payments made to Mehran Associates were paid into petitioner No.4's personal account and accounts of Meesum Brothers (owned by his son) and R.M Traders (owned by his wife), Ms Meesum -Zaigham (also owned by his wife).

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Petitioner No.4 has not been able to satisfactorily explain why these amounts were received from Mehran Associates.

53. Thus, in our view the material on record right from the very outset when quotations were requested for the supply of mini buses and mazda trucks to the advance payment being made to Mehran Associates of which large chunks were transferred to from his brother to him, his wife and son it seems apparent that petitioner No.4 was not only a beneficiary but was also a part of the scam. In our view had he been only a beneficiary as opposed to being a part of the scam right from the start the companies which his wife and son were concerned with would not have made the dummy bids to enable his brothers company Mehran Associates to obtain the supply contract nor would they have received funds in their account out of the advance payment once it was received by Mehran Associates.

54. In our view the documents on record especially the banking documents which have been placed before us on a tentative analysis show that the petitioner No.4 is linked to the offenses for which he has been charged.

55. Thus, based on the material before us we are of the considered view that there are reasonable grounds, as would appeal to a prudent man, to connect the petitioner No.4 to the offense and therefore his application for post arrest bail is dismissed.

56. In summary:

- (a) The ad interim pre arrest bail petition of petitioner No.1 Iqbal Ahmed Bablani is dismissed and the order of this Court dated 26-6-2015 granting him ad interim pre arrest bail is hereby recalled.
- (b) The post arrest bail application of petitioner No.2 Mazhar Ali Mangi is hereby dismissed.
- (c) The post arrest bail application of petitioner No.3 Kashif Raza proprietor of Mehran Associates is hereby dismissed.
- (d) The post arrest bail application of petitioner No.4 Mansab Ali Khawaja is hereby dismissed.

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57. The Accountability Court hearing this reference is however directed to proceed with the trial expeditiously keeping in view S.16 (a) NAO and complete the same preferably within 4 months of receipt of this order. The office is directed to forthwith supply a copy of this order to the concerned Accountability Court for compliance

Dated: 23-05-2016