

Order Sheet

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Constitutional Petition Nos.D- **363**, 364, 446, 467, 481, 487, 488,
504, 564, 795, 1308, 1372, 1422, 1573, 3272, 2135, 2065, 2066,
2067, 2068 and 1781 of 2017

Present:

Mr. Justice Abdul Malik Gaddi &
Mr. Justice Arshad Hussain Khan, JJ.

Petitioners:

Petitioners in custody.

Mirza Qurban Ali Baig (C.P No.D-2065 of 2017),
Aijaz Ali Khaskheli (C.P No.D-2066 of 2017),
Zulfiqar Ali Khaskheli (C.P No.D-2067 of 2017)
and Aftab Ali Khaskheli (C.P No.D-2068 of 2017)
through **Mr. Riazat Ali Sahar** advocate.

Abid Wali Khoso (C.P No.D-1372 of 2017 through
Mr. Nasrullah Kori advocate.

Pervez Dawood Rahpoto (C.P No.D-1573 of
2017) through **Mr. Ishrat Ali Lohar** advocate.

Petitioners present on interim pre-arrest bail.

Orangzeb Samo (C.P No.D-363 of 2017),
Muhammad Anwar (C.P No.D-364 of 2017,
Sarfraz Ali Soomro (C.P No.D-504) and Amjad
Ali Shah (C.P No.D-3272 of 2017) through
Mr. Tarique Aziz Memon advocate.

Ghulam Hussain Abbasi (C.P No.D-467 of 2017)
and Mumtaz Ali (C.P No.D-1781 of 2017) through
Mr. Riazat Ali Sahar advocate.

Imran Ahmed (C.P No.D-446 of 2017) and Abdul
Salaam Malik (C.P No.D-487 of 2017) through
Mr. Mazhar Hussain Kalwar advocate.

Ali Nawaz and Junaid Aziz Jatoi (C.P No.D-481 of
2017) and Kashif Aziz Jatoi (C.P No.D-504 of
2017) through **Mr. Ayaz Hussain Tunio**
advocate.

Khursheed Anwer Qureshi (C.P No.D-481 of
2017) through **Mr. Muhammad Aslam Bhatti**
advocate.

Danish Bughio (C.P No.D-488 of 2017) through
Mr. Muhammad Asif Shaikh advocate.

Abdul Rasheed Lund (C.P No.D-564 of 2017)
through **Mr. Ashfaq Nabi Kazi** advocate.

Aleemullah (C.P No.D-795 of 2017) through
Mr. Ghulam Asghar Mirbahar advocate.

Nizamuddin Shahni (C.P No.D-1308 of 2017) and Syed Malook Shah (C.P No.D-1422 of 2017) through **Mr. Zulfiqar Ali Abbasi** advocate.

Muhammad Khalid (C.P No.D-2135 of 2017) through **Mr. Kashif Hussain Agha** advocate.

Federation of Pakistan:

Through Mr. Lutfullah Arain, D.A.G.

NAB:

Mr. Jangu Khan Rajput Special Prosecutor NAB along with Investigating Officer Aslam Pervaiz Abro, NAB.

Date of hearing: 14.02.2018, 21.02.2018 & 07.03.2018.

Date of decision: 15.03.2018.

ORDER

ARSHAD HUSSAIN KHAN, J: Through this common order, we intend to dispose of above captioned petitions filed for quashment of proceedings / admission of the petitioners on pre-arrest as well as post arrest bail, arising out of one and the same National Accountability Bureau (NAB) Reference No. 07/2017 [The State v. Aijaz Ali Khaskheli and others], which is pending before the Accountability Court No.VI at Hyderabad.

2. All the petitioners have been admitted to interim pre-arrest bail by this Court except the petitioners namely Mirza Qurban Ali Baig (C.P No.D-2065 of 2017), Aijaz Ali Khaskheli (C.P No.D-2066 of 2017), Zulfiqar Ali Khaskheli (C.P No.D-2067 of 2017), Aftab Ali Khaskheli (C.P No.D-2068 of 2017), Abid Wali Khoso (C.P No.D-1372 of 2017) and Pervez Dawood Rahpoto (C.P No.D-1573 of 2017), who are confined in Jail.

3. The petitioners have been booked in NAB Reference No. 07/2017 with the allegations of embezzlement of government funds by making illegal payments to the contractors (who are also petitioners) through fake / fictitious vouchers for bogus works. In this regard an inquiry and investigation was conducted through Investigating Officer Aslam Pervaiz Abro, who is Assistant Director, National Accountability Bureau Karachi, who after inquiry / investigation found the misappropriation / embezzlement in government funds by the petitioners by misuse of their authority, hence, submitted a Reference bearing No.07 / 2017 against all the petitioners with the specific

allegations leveled during investigation mentioned against each petitioner as under:-

Aijaz Ali Khaskheli: - He was Accountant/Town Officer in Town Committee Manjhand in the year 2012/13 and 2013/14. He was overall in charge of the Town Committee matters. He made illegal payments to the accused contractors/ proprietor of companies existing on paper only, private persons namely accused Amjad Ali Shah, Kamaluddin Lakho, Muhammad Aslam Soomro, Accountant Kashif Aziz's two real brothers Junaid Aziz and Ali Nawaz, his own real brothers Zulfikar Ali Khaskheli and Aftab Ali Khaskheli, his cousin Muhammad Khalid and Town Committee Manjhand Computer Operator Imran Ahmed. It was his responsibility to control the funds, and prevent illegal payments. He misused his authority and issued cheques for the payment to his family members and contractors/proprietors without getting the work done in connivance with accused Accountant Kashif Aziz, Disbursing Officer Qurban Mirza, Engineer /TO (I&S) Khurshed Anwar, Being Town Officer, he was overall in charge and responsible for administrative and financial matters of Town Committees. He made payments for fake vouchers and bogus works, and without even preparing the bills since he had DDO powers.

Nizamuddin Shahani: - He was transition Officer in Town Committee Manjhand in 2012/13. He was overall in charge of the Town Committee matters. He made illegal payments to the accused persons namely Amjad Ali Shah, Aleemullah and issued bearer/open cheques for cash payment in favor of Computer Operator of Town Committee Manjhand Imran Ahmed. He misused his authority and issued cheques for the payment to the contractors without getting the work done and without even preparing the bills/vouchers/documents since he had DDO powers.

Mirza Qurban Ali Baig:- He was Accountant and Disbursement Officer. In this capacity he was empowered to maintain budget control and make payments after observing all codal formalities. But he ignored several illegalities, misused his authority and made illegal payments to the accused contractors/private persons without even preparing the bills. He issued bearer/open cheques for cash payment in favor of Computer Operator of Town Committee Manjhand Imran Ahmed. In connivance with accused Chief Officer Orangzeb Samo, TO Nizamuddin Shahani, Accountant Aijaz Ali Khaskheli, and TO (I&S) Khurshed Anwar, he made illegal payments to accused contractors and private persons namely Amjad Ali Shah, Aleemullah, Muhammad Anwar, Kamaluddin Lakho, Muhammad Aslam Soomro and accused Aijaz Ali Khaskheli's two real brothers Zulfikar Ali Khaskheli and Aftab Ali Khaskheli.

Orangzeb Samo:- He was Chief Officer in Town Committee Manjhand in the year 2012/13. He was overall in charge of the Town Committee matters. He made illegal payments to the accused contractors/private persons namely accused Amjad Ali Shah, Aleemullah, Muhammad Anwar, Kamaluddin, Muhammad Aslam Soomro, and issued

bearer/open cheques for cash payment in favor of Computer Operator of Town Committee Manjhand Imran Ahmed for fake and bogus works, and without even preparing the bills since he had DDO powers. It was his responsibility to control the funds, and prevent illegal payments. He misused his authority and issued cheques for the payment to contractors and private persons without getting the work done in connivance with accused Accountant Mirza Qurban Baig and Abdul Rasheed Lund. Being Chief Officer, he was overall in charge and responsible for administrative and financial matters of Town Committees.

Abdul Rasheed:- He was Accountant in Town Committee Manjhand in the year 2012/13. Being Accountant he was empowered to maintain budget control and make payments after observing all codal formalities. In connivance with accused government officials namely Orangzeb Samo he misused his authority and made illegal payments to the accused contractors/private persons namely M/s Amjad Ali Shah & Co., M/s Danish Bughio and M/s Muhammad Anwer, M/s Kamaluddin, M/s Aslam Soomro and computer operator Imran. If he had not signed the cheques, the contractors would have not been made payment, as such loss to the government funds would not have occurred.

KashifAziz:- He was Accountant in Town Committee Manjhand in the year 2012/13 & 2013/14. Being Accountant, he was empowered to maintain budget control and make payments after observing all codal formalities. He misused his authority and made illegal payments to contractors without getting the works done and preparing fake and bogus documents/vouchers/bills. He prepared fake documents in connivance with accused TO Aijaz Ali Khaskheli, TO Abid Wali Khoso, Engineer Khurshed Anwar and Recovery Clerk Malook Shah. He was co-signatory on cheque payments to the accused private persons/fake contractors namely Amjad Ali Shah, Danish Bughio, his brothers namely Junaid Aziz and Ali Nawaz, accused TO Aijaz Khaskheli's two real brothers namely Zulfikar Ali Khaskheli and Aftab Ali Khaskheli and his cousin namely Muhammad Khalid. In connivance with him, his brother namely Ali Nawaz forged the signature similar to that of him for bank account and gave him the cheque book to draw the town committee-transferred funds from his bank. If he had not signed the cheques, the contractors would have not been made payment, as such loss to the government funds would not have occurred.

Khurshed Anwar:- He was TO (I&S)/Engineer in Town Committee Manjhand in 2012/13. Being Engineer, he was responsible for executing all civil, mechanical and development works properly. He has prepared and processed the fake vouchers of bogus works in the name of contractors/private persons namely accused Royal Construction, Unique Enterprises, M/s Zulfikar & Co, Mehran Traders, M/s Muhammad Khalid & Co. in connivance with accused officials Aijaz Ali Khaskheli, Malook Shah, Kashif Aziz. If he had not prepared the fake vouchers of bogus works, loss to the government funds could be prevented.

Abdi Wali:- He was Town Officer in Town Committee Manjhand. He was overall in charge of the Town Committee matters. He made illegal payments to the accused contractors. It was basically his responsible to control the funds, and prevent illegal payments. In connivance with accused government officials namely Kashif Aziz, Abdul Salam Malik, Muzaffar Hussain Katpar, Ghulam Hussain Abbasi, Malook Shah, Pervaiz Dawood Rahpoto, he misused his authority and issued cheques for the payment to the contractors without getting the work done. Being Town Officer, he was responsible for administrative and financial matters of Town Committee. He made illegal payments for fake vouchers and bogus works, and without even preparing the bills/vouchers since he retained DDO powers.

Abdul Salam Malik:- He was Accountant in Town Committee Manjhand. Being Accountant he was empowered to maintain budget control and make payments after observing all codal formalities. He prepared fake vouchers/documents/bills in connivance with accused government officials namely Ghulam Hussain Abbasi, Malook Shah, Abid Wali, and Muzaffar Katpar. He misused his authority and made illegal payments to the accused contractors/private persons namely Amjad Ali Shah, Danish Bughio and M/s Sarfraz. If he had not signed the cheques, the contractors would have not been made payment, as such loss to the government funds would not have occurred.

Ghulam Hussain Abbasi:- He was Engineer in Town Committee Manjhand in 2014/15 and 2015/16. Being Engineer, he was responsible for executing all civil, mechanical and development works properly. He has prepared and processed the fake vouchers of bogus works in the name of contractors/private persons namely accused M/s Syed Amjad Ali Shah, M/s Danish Bughio, M/s Sarfraz Enterprises, M/s S.A. Khan Builders and M/s Ahsan & Co. in connivance with accused officials Abid Wali Khoso, Abdul Salam Malik, Malook Shah, Pervaiz Dawood Rahpoto, Mumtaz Hussain Korkani, and Muzaffar Hussain Katpar. If he had not prepared the fake vouchers of bogus works, loss to the government funds could be prevented.

Mumtaz Ali Korkhani:- He was Town Officer in Town Committee Manjhand in 2014/15 and 2015/16. He made illegal payments to the accused contractors. He was responsible to control the funds, and prevent illegal payments. In connivance with government officials namely Malook Shah, Ghulam Hussain Abbasi, Muzaffar Hussain Katpar and Pervaiz Dawood Rahpoto, he misused his authority and issued cheques for illegal payment to the private persons and fake contractors namely M/s Ahsan & Co, M/s S.A Khan Builders, M/s Syed Amjad Shah & Co, M/s Danish Bughio, M/s Sarfraz & Co, and to accused Administrator Muzaffar Hussain Katpar, without getting the work done. He made payments on illegal payments for fake vouchers and bogus works, and without even preparing the bills since he retained DDO powers.

Pervaiz Dawood Rahpoto:- He was Accountant in Town Committee Manjhand in the year 2014/15 & 2015/16. Being Accountant he was empowered to maintain budget control

and make payments after observing all codal formalities. He prepared fake vouchers/documents/bills in connivance with accused government officials namely Ghulam Hussain Abbasi, Malook Shah, Mumtaz Ali Korkani and Muzaffar Katpar, he misused his authority and made illegal payments to the accused contractors/private persons namely Amjad Ali Shah, Danish Bughio and M/s Sarfraz Enterprises, M/s Ahsan & Co. and M/s S.A Khan Builders. If he had not signed the cheques, the contractors/private persons would have not been made payment, as such loss to the government funds would not have occurred.

Syed Malook Shah:- The accused Malook Shah is Recovery Clerk in town committee Manjhand. He was instrumental in preparing fake vouchers by raising fake requisition for supply of material. He played his role in preparation of fake vouchers in the name of private persons and fake contractors namely M/s Syed Amjad Ali Shah, M/s Danish Bughio, M/s Royal Construction, M/s Unique Enterprises, M/s Sarfraz Enterprises, M/s S.A. Khan Builders and M/s Ahsan & Co. In addition to this, he received an amount of Rs. 846,000/- in cash from account of accused contractor namely M/s Syed Amjad Shah, and an amount of Rs.2,495,000/- has been transferred into his account # 0403-159537-1000 in Sindh Bank Kotri from accounts of accused contractors namely M/s S.A Khan Builders and M/s Ahsan & Co. Sindh Bank Gulshan-e-Maymar accounts.

Imran Ahmed:- The accused Imran Ahmed is computer operator in Town Committee Manjhand. He acted as front man of accused town committee Officials. Once funds were transferred into the accounts of accused contractors, he used to visit the banks along with open/bearer cheques and collected the cash from accused contractors' accounts for onwards disbursement among the officials. The evidences showed that he received in cash amount of Rs. 2,875,800.00 from accounts of accused Amjad Ali Shah, Rs. 528,000.00 from accused Aleemullah and Rs.1,335,000/- from accused Muhammad Anwar. Moreover, he also collected in cash Rs. 2,458,619/- from Town Committee Manjhand account in Sindh Bank, for which the open/bear cheques were issued in his favor by Town Committee Officials.

Amjad Ali Shah: - Accused Amjad Ali Shah posed as contractor and is proprietor of company namely M/s Syed Amjad Ali Shah and Co. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.44,825,824/- into account No. 04030129651000 Sindh Bank Kotri, causing loss to the national exchequer.

Aleemullah: - Accused Aleemullah is proprietor of company namely M/s Ali & Co. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.8,623,783 into his account No. 04030132321000 Sindh Bank Kotri, causing loss to the national exchequer.

Muhammad Anwar Khatian: - Accused Muhammad Anwar Khatian is proprietor of M/s Muhammad Anwar & Co. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.15,343,427/- into his A/c No. 04030141891000 Sindh Bank Sindh Bank Kotri, causing loss to the national exchequer.

Danish Bughio: - Accused Danish Bughio is proprietor of M/s Danish Bughio. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.9,153,091/- into his A/c No. 04030792981000 Sindh Bank Kotri, causing loss to the national exchequer.

Ali Nawaz: - Accused Ali Nawaz is proprietor of M/s Royal Construction. He is also real brother of accused accountant Kashif Aziz. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.4,161,850/- into his account A/c # 456140, in JS Bank Qasimabad branch causing loss to the national exchequer. He also forged the signature similar to that of his brother accountant Kashif Aziz and gave him the cheque book for onward withdrawal of Town Committee—transferred funds from his account.

Junaid Aziz: - Accused Junaid Aziz is proprietor of M/s Unique Enterprises. He is also real brother of accused accountant Kashif Aziz. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.3,758,888/- into his A/c # 455835, in JS Bank Qasimabad branch causing loss to the national exchequer.

Zulfikar Ali Khaskheli:- The accused Zulfikar Ali Khaskheli is proprietor of M/s Zulfikar & Co. He is also real brother of accused Town Officer Aijaz Ali Khaskheli. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.8,302,456/- into his A/c # 0138-006-0006213 in Faysal Bank Saddar Hyderabad branch causing loss to the national exchequer.

Aftab Ali Khaskheli: - The accused Aftab Ali Khaskheli is proprietor of M/s Mehran Traders. He is also real brother of accused Town Officer Aijaz Ali Khaskheli. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.6,330,844/- into his A/c # 0641625201001378 MCB Liaquat Road Kotri, causing loss to the national exchequer.

Muhammad Khalid: - The accused Muhammad Khalid is proprietor of M/s Khalid & Co. He is also real cousin of accused Town Officer Aijaz Ali Khaskheli. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs. 5,814,840/- into his

A/c # 0138-007-000000199 in Faysal Bank Saddar Hyderabad branch, causing loss to the national exchequer.

Sarfraz Ali Soomro: - The accused Sarfraz Ali Soomro is proprietor of M/s Sarfraz Enterprises. He has received illegal payments from Town Committee Manjhand without carrying out any work. In connivance with government officials, he received an amount of Rs.12,280,658/- into his A/c No. 0010031528780011 in Allied Bank Nasim Nagar Branch Hyderabad, causing loss to the national exchequer.

4. Learned counsel for the petitioners during the course of their arguments while reiterating the contents of petitions, have argued that the petitioners are innocent, respectable and have been falsely implicated in the reference and the charges against the petitioners are motivated with mala fide intention of the NAB authorities; that the petitioners who are officials of Town Committee Manjhand have performed their lawful duties and acted in accordance with law whereas, the petitioners who are contractors have properly performed on their part, which was done in accordance with law and in this respect, no rule has been violated as alleged; that in the instant case, an authorization for inquiry was given to Mr. Aslam Pervaiz Abro, Assistant Director NAB on 27.11.2015 for inquiry, whereas investigation was entrusted to him on 18.05.2016 and total amount is shown as Rs.232,427,606.00. During course of arguments, the learned counsel for the petitioners while raising objection regarding investigation conducted by the NAB have submitted that the I.O has failed to establish the allegation of fictitious vouchers for bogus works; the site inspection of all those alleged bogus works was not made under proper manners and fulfillment of legal formalities; and further the I.O has also failed to establish that entire record like as PC/complete file in connection with each and every bill and issuance of cheque pertains to the years 2012-2013 & 2013-2014 was recovered/collected from the officer of TMA or any individual custody. In this regard, learned counsel have also pointed out that two site inspections were allegedly conducted by Investigating Officer on 10.04.2016 and 11.11.2016 and such technical inspection report was prepared hypothetically as the said report reflects that no memo of site inspection was prepared at the site of work in question; that the report does not reflect the signatures of all incumbents of Town Committee Manjhand and relevant contractors; that according to Para A of the report, the NAB team and other officials visited the site on 10.04.2016 but subsequently in the report it has been mentioned that "Detail of 1st Visit made on 07.04.2016 to 12.04.2016", therefore, the period of

alleged site inspection is self-contradictory and hypothetical. Further, learned counsel pointed out that similarly as per para-B of the report, the NAB team visited the site on 11.11.2016 but subsequently in the report it has been mentioned that "Detail of 2nd visit made on 07.11.2016 to 12.11.2016", hence, this period of alleged site inspection is also self-contradictory to the version mentioned above in which the date has been specifically mentioned only 11.11.2016 for the purpose of site inspection, meaning thereby the alleged inspection report is self-contradictory and hypothetical. It is further pointed out that the I.O and his team have visited only nine (09) works in question out of more than 100 works; that the cost of such nine works is not more than nine lac, therefore, I.O failed to establish the allegation of embezzlement of government amount of Rs.232,427,606.00. Learned counsel have contended that entire investigation only depends upon the Technical Inspection Report, which is baseless, self-contradictory, without justification and has been carried out improperly, and this is sufficient ground for the case to be of further inquiry. All the subject cheques were issued by the petitioners after completion of codal formalities and as per law after pre-audit bill by the Assistant Director Local Fund Sindh District Jamshoro and the Assistant Director Local Fund Sindh District Jamshoro, but they have not been made as an accused by the Investigation Officer in the present matter therefore, the case of petitioners falls within the ambit of malafide and the case requires further inquiry.

5. Further, during course of arguments, learned counsel have also raised questions on the investigation conducted by the National Accountability Bureau that in the alleged embezzlement, there are three stake holders ought to have been examined, which are (i) Finance Department Government of Sindh;(ii) Local Funds Audit Department Jamshoro/ Dadu; and (iii)Town Committee officers/officials and contractors of Town Committee Manjhand. According to learned counsel, these three stake holders are interlinked with each other and nothing could be misappropriated or embezzled without joint consent of each other; that the Finance Department provides funds to every Town Committee of Province of Sindh and is duty bound to make check over the all Town Committees of Province of Sindh whereas, the Local Fund Audit Department for every District is under obligation to make pre and post audit of every development and maintenance work in question as well as requisite purchase. They further argued that without examining all the stake

holders by fixing liability of allegedly embezzled amount is unjustified and contrary to law. In this regard, learned counsel have referred to a letter dated 20.02.2017 addressed to Assistant Director Investigation NAB Sindh Karachi written by Mr. Muhammad Buksh Pathan, Assistant Director Local Funds Audit, Jamshoro/Dadu and contended that according to the rules and procedure, the bills of the Local Councils are produced to the Local Fund Audit Department for day to day audit by hand and same are returned back after scrutiny and pre-audit. Per learned counsel for the petitioners, at the first instance the bills were pre-audited by Assistant Director L.F.A Sindh District Jamshoro and then the cheques were issued on the basis of such pre-audited contingency/quotation bills. They have also contended that there is no certainty as to whether the trial would be concluded within a shortest period as sixteen prosecution witnesses are to be examined and the case is completely based on documents, hence, the petitioners are also entitled for their confirmation of bail and grant of post arrest bail on this score also.

6. M/s. Riazat Ali Sahar, Ishrat Ali Lohar and Nasrullah Korai advocates have added their contentions that on 02.02.2016, the NAB authorities appointed one Investigation Officer namely Aslam Parvaiz Abro Assistant Director (Investigation) regarding the visit the office of TMA Manjhand for the purpose inquiry; that the office of TMA Manjhand was closed after the raid of Inquiry Officer Aslam Parvaiz Abro and he had also taken away whole record of concerned office, such fact is corroborated from news published in Daily 'Ibrat' and 'Jeejal' newspapers. They have further contended that the office of the Director General Audit, (Local Councils), Sindh, Karachi issued report of Audit year 2016 to 2017 and Financial Year 2015 to 2016, in which it was stated that the Administrator, Town Committee, Manjhand, District Jamshoro, during 2015-2016, earned revenue and incurred expenditure under various heads of accounts of Salary, Non-Salary & Development, but failed to provide access of record to audit because the same was taken away by the NAB up to 19.04.2016, in violation of the rules. They further pointed out that the Investigating Officer did not prepare any mashirnama of recovery / seizure memo as well as mashirnama of place of incident; that on 23.08.2016, one Circle Officer namely Ali Akbar Brohi under the supervision of concerned Civil Judge & Judicial Magistrate Kotri raided at the office of TMA Manjhand and checked the whole record except record room which was locked due to non-availability of key of record room, the raided team seized the

concerned record room and prepared seizure memo in the presence of Mashirs Javed Ali Khaskheli and ASI Faisal Baloch, such facts also published in Daily Kawish and Sindh Express newspapers on 04.08.2016; that on 12.11.2016 the Town Officer Javed Jatoi produced record of office of TMA Manjhand before the Investigating Officer regarding Sarfaraz Enterprises & Company but on 02.05.2016, he issued letter to the Assistant Director Local Government Jamshoro regarding not handing over the possession of office record of TMA Manjhand to him by Ex-T.O, which shows malafide on the part of prosecution that after lapse of 165 days the Investigating Officer in collusion with the T.O Manjhand namely Javed Jatoi managed the whole false and fictitious record against the petitioners; that the Investigation Officer Aslam Parwaiz in collusion with Javed Ahmed Jatoi and others visited the office of TMA Manjhad in different times for the purpose of making the Technical Report. He further pointed out that how it is possible that on 12.11.2016 the Investigating Officer Aslam Parwaiz and Javed Ahmed Jatoi were present at place of incident /TMA Manjhad regarding the visit of TMA Manjhand for preparation of Technical Report but on the same day the Javed Ahmed Jatoi recorded his statement before the I.O at Karachi, which shows that the petitioners are innocent and have been falsely implicated by the Investigation Officer on the instigation of Javed Ahmed Jatoi without any cogent and reasonable material therefore they are entitled for the relief of bail. It is also pointed out that petitioner Ghulam Hussain Abbasi was/is Sub-Engineer who never remained as an Engineer, as alleged, in Town Committee Manjhand having no qualification of qualified Engineer, therefore, he doesn't responsible for execution of development works as per specifications for judicious utilization of funds in any manner; that the I.O in order to establish the allegation of fictitious vouchers for bogus works, has failed to visit the site of all those alleged bogus works; that the entire record like PC/complete file in connection with each and every bill/work and issuance of cheque pertains to the year 2012-2013 & 2013-2014 has not been recovered / collected from the office of TMA; that the site report does not reflect the signatures of all incumbents of Town Committee Manjhand and relevant contractors. They have contended that these are the sufficient grounds being tentative assessment at bail stage for granting concession of post-arrest bail as the petitioners in custody who are behind the bars for about one year. If any other question arises on the part of prosecution regarding any alleged documentary evidence which will be determined at the trial

because the alleged documentary evidence has already been collected by the prosecution and no fruitful purpose would be served if the petitioners in custody remain behind the bars for indefinite period. They have relied upon the cases of 'Sardar Amin Farooqui v. chairman NAB & another' (SBLR 2014 Sindh 766), 'Mst. Maya Fakhri v. The State' (SBLR 2014 Sindh 780), 'Abdul Aziz Qazi v. NATIONAL ACCOUNTABILITY BUREAU through Chairman, Islamabad and 2 others' (MLD 2012 777), 'ISLAMIC REPUBLIC OF PAKISTAN THROUGH SECRETARY, MINISTRY OF INTERIOR AND KASHMIR AFFAIRS, ISLAMABAD v. ABDUL WALI KHAN, M.N.A., FORMER PRESIDENT OF DEFUNCT NATIONAL AWAMI PARTY' (PLD 1976 Supreme Court 57), 'Muhammad Saeed Mehdi v. The State & 2 others' (2002 SCMR 282), 'Brig. Retd. Aslam Hayat Qureshi v. The State' (2002 MLD 695 Karachi), 'Aga JEHANZEB v. N.A.B. and others (2005 SCMR 1666), 'AYAZ YOUNUS v. THE STATE through chairman National Accountability Bureau and another' (2006 MLD 452) and 'Syed QASIM SHAH v. THE STATE' (2009 SCMR 790), 'Ali Anwar Rukv. NAB through Chairman (Reported)' (2015 YLR 216, [Sindh]), 'Syed Mehdi Ali Shah v. NAB. (Un-reported)' (Constitutional Petition No. D-4047 / 2016, [Karachi]), 'Shahnawaz Soomro v. Federation of Pakistan (Un-reported)' (Constitutional Petition No. D-512 / 2017, [Hyderabad]).

7. Mr. Mazhar Hussain Kalwar, advocate has added his contentions that the Quotation Work is of limited expenses within Rs.1,00,000/-(one lac) and after deduction of Income tax at the rate of 7% , the remaining amount Rs: 93000/- (Ninety three thousand) were used on urgent bases which are mentioned at page No: 15 of Investigation pages, whose maximum work life (Warranty) is no more than 3 months; such Work Orders whose inspection was carried on by I.O mentioned at page No: 11 & 12 were completed in the year 2013 but I.O visited the site in the year 2016, how such work could exist after passing of three years, while maximum warranty of Quotation for the said Works were for three months only. He has contended that the procedure for issuance of Cross cheque has been fully adopted and his client (accountant) cannot be made responsible for any liability/illegality, if committed as all the documents are being signed by the Engineers, Town Officer and Audit Stamp over the documents are affixed / available, hence, his clients have discharged their liability and followed each and every legal formality, which cannot be questioned for fake and illegal payments, therefore, the allegations

against the petitioners are baseless which seriously create doubt, hence, the case require further enquiry.

8. Mr. Ashfaqe Nabi Qazi, advocate while reiterating the contents of their petition invited the attention of Court towards statement dated 12.11.2016 of PW Javed Jatoi, Town Officer, Town Committee, Manjhad under section 161 Cr.P.C. and the seizer memo dated 12.11.2016, wherein certain contradiction are pointed out besides this he also referred law and rules relating to payments under local government ordinance and has also relied upon the cases 'Syed QASIM SHAH v. THE STATE' (2009 SCMR 790), 'ISLAMIC REPUBLIC OF PAKISTAN v. ABDUL WALI KHAN' (PLD 1976 SC 57), 'SINDH HIGH COURT BAR ASSOCIATION V. FEDERATION OF PAKISTAN through Secretary, Ministry of Law and Justice, Islamabad and others' (PLD 2009 SC 879) and [unreported] Order, dated 19.04.2016, passed by the earlier Division Bench of this Hon'ble Court in the case of Riaz Ahmed Wagan versus State through Chairman National Accountability Bureau (Sindh).

9. Lastly, all the learned counsel have contended that there are the sufficient grounds for believing that no offence has been committed by the petitioners; they are entitled for pre-arrest as well as after arrest bail on the ground that there would be no fruitful purpose if the petitioners remain in custody for an indefinite period or apprehension of tempering in the evidence as whole case of prosecution is based on documentary evidence, which will be determined at the time of trial because the alleged documentary evidence has already been collected by the prosecution. Further, the offence is not punishable with death penalty or imprisonment for life, hence, this is a fit case of further inquiry.

10. Conversely, learned Special Prosecutor, NAB, argued that there is sufficient evidence against all the accused persons including the present petitioners to prove that they have committed the offence with which they have been charged in NAB Reference beyond a reasonable doubt. Furthermore, though the evidence in the case has not been started, yet the PWs in their statements recorded u/s 161 Cr.P.C. have fully supported the case of Prosecution and there is sufficient material available on record against each accused with specific allegations; that there is no delay in concluding the trial on the part of prosecution side as the trial could not be concluded within the stipulated period because some of the accused have remained

absconder and sufficient time was consumed in their arrest as well as proceedings under section 87 and 88 Cr.P.C. against the absconders. He pointed out that during inquiry / investigation, no work order was found. The petitioners are fully involved in the crime and their role is specifically mentioned in the reference as they have caused loss to the national exchequer, as such, the petitioners are not entitled for any relief in the present petitions which are liable to be dismissed. In support of his contentions, he has relied upon the cases of 'JAMIL A. DURRANI v. THE STATE' (2002 MLD 1344), 'TARIQ SHAHBAZ v. CHAIRMAN, NAB and others' (2008 YLR 2561), 'ISRAR KHAN v. NATIONAL ACCOUNTABILITY BUREAU (NAB) SINDH through Director General' (2016 PCr.LJ1298), 'MOHAMMAD AZAM BROHI and others v. The STATE through Chairman, National Accountability Bureau and others' (2016 P Cr. LJ 1417), 'Ali Ahmed v. NAB' (Un-reported case law in C.P No.D-3032 of 2013).

11. Mr. Lutfullah Arain, learned Deputy Attorney General representing the Federation of Pakistan has vehemently opposed the prayers of the petitioners on the ground that they have caused loss to the national exchequer.

12. In rebuttal, all the learned counsel for the petitioners have pointed out that every voucher is available for each work; Work Orders were issued; inventory is mentioned in the record. However, the Investigation Officer has failed to make proper investigation in the matter, had he investigated the case properly, perhaps the subject NAB reference would not have been filed. Furthermore, the petitioners have been falsely implicated in the instant case at the insistence of Javed Jatoi Town Officer, Manjhand.

13. We have considered the contentions raised by learned counsel for the parties, perused the record, the law on the point as well as the case law cited at the Bar.

14. Before going into any discussion in the instant case, we have observed that whole case is based on documentary evidence as collected by the Investigating Officer, National Accountability Bureau. NAB authorities have claimed that all the petitioners have been found involved in the instant case causing loss to the national exchequer, whereas, on the other hand the petitioners have claimed themselves to have been implicated falsely as they have performed their lawful

duty in accordance with law and no illegality or irregularity is made on their part which has caused loss to the national exchequer.

For the sake of convenience, section 9 and 18 of National Accountability Ordinance, 1999 are reproduced as under: -

“9. Corruption and Corrupt Practices:-

- (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices.
- (i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive of reward such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860) for doing or for-bearing to do any official act, or for showing or for-bearing to show in the exercise of his official functions, favour or disfavor to any person, or for rendering or attempting to render any service or disservice to any person; or
 - (ii) if he accepts or obtains or offers any valuable thing without consideration, or for offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or
 - (iii) if he dishonestly or fraudulently misappropriation or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or willfully allows any other person so to do; or
 - (iv) if he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or depends or any other person, or any property, valuable thing, or pecuniary advantage; or
 - (v) if he or any of his dependents or benamidars owns, possesses or has [acquired] right of title in any [assets or holds irrevocable power or attorney in respect of any assets] or pecuniary resources disproportionate to his known sources of income, which he cannot [reasonably] account for [or maintains a standard of living beyond that which is commensurate with his sources of income]; or
 - (vi) [if he] misuses his authority so as to gain any benefit or favour for himself or any other person, or [renders or attempts to render] [or willfully fails to exercise his authority to prevent the grant, or rendition or any undue benefit or favour which he could have prevented by exercising his authority];
 - (vii) if he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or [attempts to grant] any [undue] concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar [or any other person] [or]
 - (viii) if he commits an offence of willful default [; or]
 - (ix) if he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security or to any person; or
 - (x) if he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan Penal Code, 1860 (Act XLV of 1860) with regard to any property including money or valuable security entrusted to him by members of the public at large;
 - (xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust as provided in section 409 of the Pakistan Penal Code, 1860 (Act XLV of

1860) in respect of property entrusted to him or over which he has dominion; and

(xii) if he aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clause (i) to (xi),

- (b) All offences under the Ordinance shall be non-bailable and, notwithstanding anything contained in section [426, 491] 497], 498 and 561-A or any other provision of the Code, or any other law for the time being in force no Court shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance.
- (c) if after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody.”

Section 18. Cognizance of offences:

- (a) The Court shall not take cognizance of any offence under this Ordinance except on a reference made by [the Chairman NAB or an officer of the NAB duly authorized by him].
- (b) A reference under this ordinance shall be initiated by the National Accountability Bureau on-
- (i) a reference received from the appropriate government; or
 - (ii) receipt of a complaint; or
 - (iii) [its] own accord.
- (c) Where the Chairman NAB, or an officer of the NAB duly authorized by him, is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, he shall refer the matter for inquiry or investigation].
- (d) The responsibility, for inquiry into and investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman [NAB] [or by an officer of the NAB duly authorized by him] NAB.
- (e) The Chairman NAB and such members, officers or servants of the NAB shall have and exercise, for the purpose of an inquiry or investigation the power to arrest any person, and all the powers of an officer-in-charge of a Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, police officer or any other official or agency, as the case may be, is sought by the NAB such official or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman [NAB] or any officer [of NAB] duly authorized by the Chairman NAB.
- (f) Any inquiry [or] investigation under this ordinance shall be completed expeditiously [Omitted] as may be practical and feasible.
- (g) The Chairman NAB or for an officer of the NAB duly authorized by him] shall appraise the material and evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further [and there is sufficient material to justify filing of a reference], he shall refer the mater to [a] Court.
- (h) If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any person, the Chairman [NAB] or Deputy Chairman NAB or [an officer of the NAB duly authorized by the Chairman NAB], may refer the matter to the Court, and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.”

It would also be advantageous to reproduced Rule 69 of Sindh Local Councils (Accounts) Rules, 1983:-

“Procedure for payment

69. (1) No payment shall be made from the Local Fund except in the manner provided in these rules.

(2) The bill or voucher presented as a claim against the council shall be recorded and entered in the Register of Bills in Form No.60 immediately as it is received. The serial order of bill shall be for a finance year.

(3) Unless received from other department or branch of the council the presenter of the Cheques prepared by the Accounts Officer alongwith the passed bills or vouchers on the basis of which the cheques were prepared shall be sent to the Author, who shall after verifying the correctness of the cheques of the cheques prepared will initial on the counterfoil of the cheques in token of their correctness.

(4) After the cheques have been signed by the Mayor and Chairman and the Chief Executive or by the authorized Officers, the Cheque Book and the Cheque Registrar shall be returned to the Accounts Officer for posting full particular of the payment in the General Cash Book, Classified Register of Expenditure and relevant books of accounts.

(5) Intimation of the cheque being ready for delivery shall at once be given to the person in whose favour the cheque has been drawn unless the payee himself presents in person or through authorized nominee to receive the cheque if the payee does not turn up in a week to collect the cheque, the Accounts Officer shall cause the cheque to be mailed at the known address of the payee in registered cover, unless the payee himself present.

(6) The bill when paid shall be stamped “Paid by cheque No..... dated..... and the voucher defaced numbered consecutively and filled for audit a long with the payee acknowledgment receipt on revenue stamp of appropriate value.”

15. There is no cavil with the proposition that the exercise for the accountability of holders of public office is a commendable endeavor. Notwithstanding the noble objectives reflected in the preamble of the NAB Ordinance, if the exercise is to inspire confidence it must be across the board, transparent and regulated by canons of natural justice and the law declared by the superior Courts. An accused is presumed to be innocent unless proved otherwise. In a trial under the NAB Ordinance the initial burden of proof continues to be on the prosecution and it is only when it has rendered a reasonable proof before the trial Court in respect of the guilt of an accused that the onus shifts on the accused to prove his innocence by showing that the properties were acquired through lawful means.

16. It is well settled law that while deciding bail plea only tentative assessment is to be made; it is to be seen whether prima facie, existence of reasonable grounds are available against the

applicants for the offence falling within the prohibitory clause of section 497, Cr.P.C., or otherwise.

17. It is for the prosecution to prove the reasonable grounds to believe that accused have committed the crime, in other words it can be said that liberty of person is prime consideration as envisaged by all laws, only subsection (1) of section 497, Cr.P.C, prohibits the release of accused in certain conditions, such conditions must be proved by prosecution, else every citizen has right of liberty and cannot be put in jail without reasonable grounds.

18. From perusal of the record it appears that in the present case pursuant to an authorization dated 27.11.2015 to hold a formal inquiry, the I.O of the case on 02.02.2016 conducted a raid in the office of the Administrator, Town Committee, Manjhand and confiscated the record of the TMA. Whereas the Mashirnama (memo of recovery) was admittedly prepared on 12.11.2016 after the lapse of approximately nine (9) months, by the I.O upon receiving authorization of investigation in his favour by the NAB on 18.05.2016. And subsequently recorded statement of prosecution witnesses. No justification was placed by the learned Special Prosecutor NAB for this delay, which has made out the case of petitioners for further inquiry. In case of Abdul Khaliq v. State (1996 SCMR 1553), the Hon'ble Supreme Court held that late recording of a statement of prosecution witness under section 161, Cr.P.C. reduces its value unless delay is plausibly explained. From the perusal of the record it also appears that the I.O of the present case in respect of subject allegations, out of 100 works, inspected only nine (9) works total amount of said works comes to rupees below nine million, whereas the alleged embezzlement calculated by NAB against the petitioners is Rs.23,24,27,606/- including gains/KIBOR. From the record, it also appears that the subject works were exigency works, having limited work life and were carried out within the expenses under Rs.1,00,000/-(rupee one lac only) in the year 2012-13 and 2013-14 whereas, the inspection for the purposes of the present case was carried out in the year 2016, thus, the possibility of non-existence of these works could not be ruled out. Furthermore, in respect the alleged embezzlement, there appears three stakeholders viz.; (i) Finance Department Government of Sindh; (ii) Local Funds Audit Department Jamshoro / Dadu; and (iii) Town Committee officers/officials and contractors of Town Committee Manjhand, who

ought to have been examined as they are interlinked with each other and nothing could be misappropriated or embezzled without joint consent of each other. However, the tentative assessment of the record shows that all the stake holders have not been examined in the case. The record also reflects that no recovery or assets have been shown against the petitioners. Furthermore, from the record, it also appears that out of 28 accused persons arrayed in the NAB Reference, six accused persons are in jail custody since February 2017 and the Charge in the subject NAB reference has been framed on 05.03.2018 after the lapse of more than a year. There is no allegation that adjournments were sought by the petitioners or their learned counsel. It is also an admitted fact that no witness out of sixteen (16) witnesses has been examined so far and naturally for recording evidence of prosecution witnesses, considerable time will be consumed. Keeping in view the present speed, velocity and pace of trial, there is no likelihood that the trial will be concluded in near future. Object of trial is to make an accused to face the trial and not to punish an under-trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bars. Accused is entitled to expeditious access to justice, which includes a right to fair and expeditious trial without any unreasonable delay. Reliance in this regard is placed in the case of 'HIMESH KHAN v. The NATIONAL ACCOUNTABILITY BUREAU (NAB), LAHORE and others' (2015 SCMR 1092) wherein the Honourable Supreme Court has held under:

"The grant of bail on account of inordinate delay in prosecution was discussed and guiding principle was laid down by this Court in the case of Riasat Ali v. Ghulam Muhammad and the State (PLD 1968 SC 353), which is to the following effect:-

"Criminal Procedure Code, S.497---Grant of bail in non-bailable offences:-

Delay in prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out accused however, delay in prosecution of each case as a ground for bail is to be weighed and judged, in each case on its merits."

There is also a long chain of authorities and dicta of this Court where bail has been granted on account of shocking delay in the conclusion of trial in cases falling under the NAB laws. Reference in this regard may be made to the case of Anwar Saifullah Khan v. The State (2001 SCMR 1040) where it was held that bail cannot be withheld as a punishment on the ground that the offences, the accused is charged for, are not bailable or grant of bail therein was falling within the prohibition."

19. All above peculiar factors bring the case of the petitioners within the ambit of further inquiry which is only possible when the case is tried and concluded. In case of 'Sardar AMIN FAROOQUI through his real brother v. THE CHAIRMAN (NAB) and another'(2014 PCr.LJ 186), it was held that further inquiry is a question which must have some

nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. In case of 'Muhammad Ismail v. Muhammad Rafiq another' (PLD 1989 SC 585), the Hon'ble Supreme Court observed that normally bail is not granted if the trial is likely to commence shortly, but in case calling for further inquiry the bail cannot be denied. Deeper appreciation is not permissible and only tentative assessment can be made. Furthermore, conceptually, 'bail' means to procure release of one charged with an offence by ensuring his future appearance in Court and compelling him to remain within the hands of the Court through sureties. The person, who is released on bail is known 'principal' while the person who gives security is known as 'surety'. The security, to be furnished, may be in the form of bond or cash. The criminal administration of justice has inherited this concept from times immemorial. In addition to the above, the concept of pre-trial release of the accused was developed on three presumptions: firstly, the accused was presumed to be innocent till he was found guilty; secondly, the accused should have a right to prepare his defence and prove his innocence before the Court of trial; and thirdly, the accused should not be punished before the finding of his conviction was rendered by the Court. These rules were developed by the contribution of Jurists and Courts. Reliance in this regard is placed in the case of 'ANWAR SAIFULLAH KHAN v. THE STATE and 4 others' (PLD 2000 Lahore 564).

20. Reverting to the case in hand from the record it appears that the entire case of prosecution revolves around documentary evidence, which is already in their possession, whereas the present petitioners are no more required for further investigation. There is no likelihood of tempering with the evidence by petitioners as the same are already collected by the NAB authorities. We are fortified in our view on this point by the judgment reported in the case of 'SAEED AHMED V. STATE' (1995SCMR 1070) and 'EJAZ AKHTAR v. STATE' (1978 SCMR 64) wherein it is held that;

“when the relevant record is already in possession of the NAB authorities and there is no possibility of the accused tempering with the documentary evidence, and the main allegation of misuse of authority requires further probe, the petitioners were admitted to bail”

The prosecution has also not been able to bring on record any evidence direct or circumstantial in proof of the fact that the petitioners

acted in connivance with anybody by indulging in corruption and corrupt practices, extended undue favour to anyone for some personal gain or pecuniary advantage. Even otherwise, any procedural irregularity, if found does not attract the provisions of Section 9(a) (iv) of National Accountability Ordinance 1999 without establishing the mens rea on the part of the petitioners. Reliance in this regard can be placed to the case of 'THE STATE and others v. M. IDREES GHOURI and others' (2008 SCMR 1118) wherein the Honourable Supreme Court has held that;

“in order to prove charge of misuse of authority, at least two basic ingredients i.e. mens rea and actus rea of crime have to be necessarily established and in case any one of them is found missing, offence is not made out”.

21. Needless to mention that heinousness of offence or embezzlement of huge amount would not be a good ground for refusal of bail on the ground of non-conclusion of case within statutory period. Section 16-A of the National Accountability Ordinance, circumscribe a limit for conclusion of trial within 30 days from its commencement.

22. At this juncture, from the documents collected by the I.O and stance taken by the petitioners, we are unable to ascertain as to whether the petitioners are involved in the alleged offences as it can only be determined at the trial after recording of evidence. Furthermore, Course of investigation on the part of Investigating Officer has been completed, there would be no purpose to serve out if the petitioners are kept behind the bars for an indefinite period or the petitioners on interim pre-arrest bail are sent to Jail. Furthermore, since the whole case of prosecution rests upon the evidence of NAB authorities or their employees, therefore, their evidence is required to be thoroughly / minutely scrutinized at the time of trial whether the offence as alleged in NAB reference allegedly committed by petitioners in a fashion as alleged or otherwise or it has not been done at all as asserted by petitioners in their petitions. This aspect of the case requires probe at the time of trial. There is nothing on record to show that petitioners are previous convict or have been arrested in a case of similar nature in past.

23. In view of above facts and circumstances of the case, we are of the opinion that prayer for quashment of the reference in question is not sustainable under the law, which is dismissed. However, the petitioners have made out a case of further inquiry whereas, the prosecution story cannot be considered as free from doubt. Moreover, there is an inordinate delay in the completion of trial which has not

been explained properly. The case law relied upon by the learned Special Prosecutor NAB are quite distinguishable and has no relevancy with the facts and circumstances of the present case. It is well settled law that each case is to be decided on its own merits. Accordingly, the interim pre-arrest bail granted to the petitioners earlier is hereby confirmed on the same terms and conditions laid down therein whereas, the petitioners namely Aijaz Ali Khaskheli, Mirza Qurban Ali Baig, Zulfiqar Ali Khaskheli, Aftab Ali Khaskheli, Abid Wali Khoso and Pervez Dawood Rahpoto, who are confined in the Jail are admitted to post arrest bail, subject to their furnishing a solvent surety in the sum of Rs.5,00,000.00 (rupees five hundred thousand only) each and PR bond in the like amount to the satisfaction of learned trial Court. The said petitioners shall also surrender their latest Passport to the learned trial Court which shall be kept in safe custody till the conclusion of trial. The NAB authorities are directed to approach the Ministry of Interior for placing the name of petitioners on the Exit Control List [ECL].

24. From the record, it appears that there are sixteen (16) prosecution witnesses; charge has recently been framed and no witness has been examined. In order to prevent any undue delay in the trial, the Accountability Court hearing this matter is directed to conclude the trial as early as possible preferably within a period of four months and no un-necessary adjournment should be granted to either side. The office is directed to send a copy of this order to the Accountability Court hearing the reference, for compliance which shall also submit fortnightly progress reports to this Court through Additional Registrar of this Court.

25. Before parting with this order we would like to make it clear that our findings are based only on a tentative review of the material before us and shall not prejudice the case of either party at trial which will be decided by the accountability court on merits based on the evidence before it.

All petitions stand disposed of in the above terms.

JUDGE

JUDGE

Abdullah Channa/PS
Hyderabad
Dated:-15.03.2018.