

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

C.P.No.D- 229 of 2018
C.P.No.D- 295 of 2018
C.P.No.D- 919 of 2018

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Shamsuddin Abbasi.

Date of hearings: 02.05.2018 & 08.05.2018.
Date of decision: 15.05.2018.

Mr. Muhammad Yousuf Leghari, Advocate for petitioners in
C.P.No.D-229/2018.

Mr. Muhammad Jameel Ahmed, Advocate for petitioner in
C.P.No.D-295/2018.

Mr. Abdul Majeed Khoso, Advocate for petitioner in
C.P.No.D-919/2018.

Mr. Jangu Khan, Special Prosecutor NAB alongwith Faiz
Ahmed, I.O NAB.

Mr. Lutufullah Arain, D.A.G.

ORDER

NAIMATULLAH PHULPOTO, J: By this single order, we intend to
decide the above constitution petitions filed by the petitioners in
Reference No.2/2018 pending before the learned Judge, Accountability
Court No.VI, Hyderabad.

2. Pir Bux, Prince Ali, Mustansar Ali and Muzafar Ali, all by caste
Samoon are the petitioners in C.P.No.D-229/2018, Syed Khadim
Hussain Shah is petitioner in C.P.No.D-295/2018 and Sikandar Ali is
petitioner in C.P.No.D-919/2018. Petitioners are seeking post arrest bail
in the above Reference.

ROLE OF ACCUSED PERSONS:-

a. **Peer Bux Samoon**

Petitioner/accused Peer Bux Samoon was Office Superintendent at Bureau of Curriculum & Extension Wing (BC&EW) Sindh at Jamshoro. He used to carry fake / bogus PLA Cheques issued in the name of dummy contractors i.e. accused Prince Ali Samoo, accused Mustansar Ali Samoon and accused Muzaffar Ali Samoon to Treasury Office for endorsement. These fake / bogus PLA cheques were then presented either to accused Mushtaq Ahmed Shaikh or accused Sikandar Ali Abro, who fraudulently endorsed and passed these fake and bogus PLA cheques in the name of dummy contractors. The money was then deposited into the personal accounts of above named dummy contractors. The accused Peer Bux Samoon have used following main accounts to route the embezzled amount:

S.No.	Account No.	Titled as	Bank / Branch
01	03061004789521	Ms. Naila	Bank Alfalah/Qasimabad Branch
02	01011138466	Peer Bux	Soneri Bank Main Branch Hyderabad.
03	01011177165	Mst. Naila	

Petitioner/accused Peer Bux Samoon was living a luxurious lifestyle which doesn't commensurate with the income of a retired Office Superintendent of BPS-16. Following assets of accused Peer Bux Samoon were unearthed during the investigation:

- a. 2 x luxurious Bungalows in Village Muhammad Murad Samoon, Kotri Jamshoro.
- b. Flat No.307, 3rd Floor, Autobhan Tower, Hyderabad.
- c. One black Toyota Prado (Land Cruiser) having No.BF-4555 Sindh.
- d. One white Honda Civic (Prosmatic) having No.AYY-480
- e. One Whilte Toyota Passo having No.AFR-2016
- f. One Golden Cultus having No.BEM-084.

b. **Prince Ali Samoo**

Petitioner/accused Prince Ali Samoo is brother of accused Peer Bux Samoo and he was the one on whose name various PLA cheques were issued. He was neither vendor at Bureau of Curriculum & Extension Wing (BC&EW) Sindh at Jamshoro nor any contract / work was executed by him. He was the one who was signing the cheques and Peer Bux Samoo was receiving the amount in his accounts and was also drawing huge amount in cash. The following accounts of accused Prince Ali Samoo have been used in which PLA cheques have been deposited:

S.No	Account No.	Bank name	Branch Name	PLA Amount Received
01	005828-01 (Old) 01011161582 (New)	Soneri Bank Ltd.	Dr. Ziauddin Road Saddar Branch Hyd	141,405,139
02	1021-0078-006283-01-1	Bank Al-Habib Limited	Qasimabad Branch Hyderabad	51,600,000
		Total		193,005,139

Mustansar Ali Samoon.

Petitioner/accused Mustansar Ali Samoon who is son of accused Peer Bux Samoon and he was the one in whose name various PLA cheques were issued. He was neither vendor at Bureau of Curriculum & Extension Wing (BC&EW) Sindh Hyderabad at Jamshoro nor any contract / work was executed by him. He was the one who was signing the cheques and Peer Bux Samoon was receiving the amount in his account and was also drawing amount in cash. Properties were being sold and purchased in his name and he has enjoyed all the benefits of embezzled amount deposited in his following accounts by his father Peer Bux Samoon. Details given below provides an insight about receipt of amount in accused's bank account.

S.No.	Account No.	Bank Name	Branch Name	PLA Amount Received.
01	1603600000208(old) 100156249 (new)	Meezan Bank Ltd	Qassimabad Branch	158,188,600

			Hyderabad	
02	01021761009	Soneri Bank Ltd	Qassimabad Branch Hyderabad.	8,500,000
		Total		166,688,600

Muzaffar Ali Samoon.

Petitioner/accused Muzaffar Ali Samoon is son of accused Peer Bux Samoon and he was the one on whose name various PLA cheques were issued. He was neither vendor at Bureau of Curriculum & Extension Wing (BC&EW) Sindh Hyderabad at Jamshoro nor any contract / work was executed by him. He was the one who was signing the cheques and Peer Bux Samoon was receiving the amount in his account and was also drawing amount in cash. In addition, he also maintained a bank account No.31002102 in MCB Kotri, Jamshoro in which transaction amounting to Rs. 3 million has been credited. Properties were being sold and purchased in his name and he has enjoyed all the benefits of embezzled amount deposited in his account by his father Peer Bux Samoon. Details given below provides an insight about receipt of amount in accused's bank account.

S.No.	Account No.	Bank Name	Branch Name	PLA Amount Received.
01	01021516970	Soneri Bank Ltd	FJR Branch Hyderabad	67,278,400
02	1021-0078-006281-01-9	Bank Al-Habib Ltd	Qassimabad Branch Hyderabad.	30,500,000
		Total		97,778,400

e. **Syed Khadim Hussain Shah.**

Petitioner/accused Syed Khadim Hussain Shah, who is currently Assistant Accounts Officer, Bureau of Curriculum & Extension Wing (BC&EW) Sindh Hyderabad at Jamshoro was the Office Assistant at the time when accused Mehboob Ali Halepoto was the Accounts Officer at Bureau of Curriculum & Extension Wing Jamshoro. The accused in

connivance with accused Mehboob Ali Halepoto and accused Peer Bux Samoon misused his authority and opened various DDO Accounts in the name of Assistant Accounts Officer (BC&EW) in different banks and fraudulently withdrawn huge amount through cheques issued by the accused Mehboob Ali Halepoto in the name of accused Syed Khadim Hussain Shah and whole amount was embezzled. The accounts which have been opened and cheques issued from those accounts in the name of accused Syed Khadim Hussain Shah are account No.1698-7 at National Bank Sindh University Colony Branch Jamshoro and account No.1737-5 at Allied Bank Journalist Colony Branch Hyderabad. It is pertinent to mention that all the payments made in the name of Syed Khadim Hussain Shah have been found fake / bogus as per the record of Bureau of Curriculum and Extension Wing Jamshoro. The main account used by Syed Khadim Hussian Shah to route the embezzled amount which currently is having a balance of Rs.18.8 Million approx. is as follows:

S.No.	Account No.	Titled as	Bank / Branch
01	01-101-6159-6	Syed Khadim Hussain Shah & Naseem Syed	Allied Bank Ltd. Tando Adam Branch

According to the record provided and statement of Muhammad Zubair Shaikh, Sales Manager Toyota Hyderabad Motors that following vehicles were purchased by Khadim Hussain Shah from Toyota Hyderabad Motors; although one vehicle is in the name of Ayaz Ali & Brothers but its purchase order and delivery was ordered and received by Syed Khadim Hussain Shah.

S.No.	Registration No.	Registration year	Type
01	BG-2675	2017	Toyota Fortuner
02	BOZ-193	2015	Corolla Altis

According to the record provided and statement of Syed Raza Abbas, Assistant Excise and Taxation Department that vehicles with following registration details were found in the name of Syed Khadim Hussain Shah.

S.No.	Registration No.	Registration year	Make
01	CT-0533	2010	Suzuki
02	ATW-040	2010	Suzuki
03	CU-0216	2012	Suzuki
04	BH-5544	2013	Toyota Land Cruiser
05	BCW-098	2015	Suzuki

h. **Sikandar Ali Abro.**

Petitioner/accused Sikandar Ali Abro, being District Accounts Officer, misused his authority and signed and endorsed PLA cheques of more than Rs.150.436 Million illegally during his posting period at Treasury Office Hyderabad from 05.11.2010 to 02.11.2011 as District Accounts Officer and the amount was continuously landing in the accounts of accused Peer Bux Samoon through Dummy contractors. Being District Accounts Officer Hyderabad, it was in his authority and responsibility to look after the overall affairs of the Treasury Office. Being the signing and endorsing authority, it was his responsibility to clear all the claims / cheques of various departments after proper verification. Sikandar Ali Abro while in league with accused Peer Bux Samoon and others misused his authority and fraudulently endorsed fake and bogus PLA cheques in the name of dummy contractors i.e. Sons and brother of accused Peer Bux Samoon. The accused has taken active part in embezzlement instead of curbing the embezzlement being incharge of the District Office, instead, the accused facilitated other

accused persons and as per plea of accused Mushtaq Ahmed Shaikh, the accused Sikandar Ali Abro was endorsing these PLA cheques prior to promotion of accused Mushtaq Ahmed as Additional District Accounts Officer. Moreover, the accused has been dismissed from service on the pretext that he had done huge frauds and embezzlement at District Office Hyderabad while he was District Accounts Officer.

3. In Para No.34 of the Reference it is mentioned that accused persons in active connivance with each other were involved in corruption and corrupt practices. They have misused their authority thus in view of the above, it has been established that accused persons in active connivance with each other were involved in corruption and corrupt practices. They have misused their authority to embezzle the Govt. funds amounting to **Rs.678.946 Million**. Thus they have committed the offence of corruption and corrupt practices as defined under Section 9(a) and subsections thereto of the National Accountability Ordinance, 1999 punishable under Section 10 of the Ordinance and Schedule thereto.

4. Mr. Muhammad Yousuf Leghari, learned advocate for the petitioners in C.P.No.D-229/2018 argued that the petitioner Pir Bux was an officer of Grade-14. He had no authority to sanction the contracts. It is further contended that petitioner Pir Bux was illegally detained by the NAB during investigation without approval of the Chairman NAB. It is also argued that assets which were unearthed by NAB during investigation did not belong to the petitioner Pir Bux Samoon. Lastly, it is argued that petitioner and his sons have been arrested since 23rd October, 2017, yet there is no progress in the trial. In support of his contentions, learned counsel has placed reliance on the cases reported

as 1. Raja MUHAMMAD ZARAT KHAN and another Vs. FEDERATION OF PAKISTAN through Secretary, Ministry of Cabinet Division and 2 others (PLD 2007 Karachi 597), 2. NISAR AHMED ANSARI through his real son Vs. FEDERATION OF PAKISTAN through Secretary and 2 others (2016 P.Cr.L.J 761), 3. MAQBOOL AHMED SHEIKH VS. THE STATE (2014 YLR 2644), 4. MUHAMMAD WAQAS Vs. FEDERATION OF PAKISTAN through Secretary Ministry of Interior, Islamabad and 3 others (2017 P.Cr.L.J Note 171), 5. Dr. ALLAH NAWAZ A. QAZI Vs. THE STATE through Chairman NAB (2008 SCMR 196), 6. ABDUL JABBAR Vs. The STATE through Director General (NAB) (2015 YLR 108), 7. ATHAR ALI ABBASI Vs. The STATE and another (2017 P.Cr.L.J Note 167), 8. SARFRAZ AHMED and another Vs. The CHAIRMAN NATIONAL ACCOUNTABILITY BUREAU (NAB) through Chairman and others (2016 P.Cr.L.J 79), 9. Syed QASIM SHAH Vs. THE STATE (2009 SCMR 790) and 10. HIMESH KHAN Vs. The NATIONAL ACCOUNTABILITY BUREAU (NAB), LAHORE and others (2015 SCMR 1092).

5. Mr. Muhammad Jameel Ahmed, learned advocate for petitioner Syed Khadim Hussain Shah in C.P.No.D-295/2018 mainly argued that Syed Khadim Hussain Shah is big landlord. Nothing was embezzled by him. NAB has prepared the forged record against him. It is argued that properties have been purchased by the petitioner from his own sources. He further argued that the petitioner Syed Khadim Hussain Shah was arrested on 20.11.2017 without tangible material against him. Reference has already been filed before the trial court and there is no progress in the trial. He has further argued that PWs are officials, there is no question of tampering with evidence. Lastly, argued that in case bail is granted to petitioner, he will not abscond away. In support of his

contentions, learned counsel has placed reliance on the cases reported as 1. Nisar Ahmed Ansari through his real son v. Federation of Pakistan through Secretary and 2 others (2016 P.Cr.L.J 761), 2. Muhammad Farooq Shah and another v. The State through National Accountability Bureau Balochistan, Quetta (2018 P.Cr.L.J 403), 3. Sarfraz Ahmed and another v. The Chairman National Accountability Bureau (NAB) through Chairman and others (2016 P.Cr.L.J 79), 4. Abdul Aziz Khan Niazi v. The State through Chairman, NAB, Islamabad (PLD 2003 Supreme Court 668) and 5. Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 Supreme Court 1144).

6. Mr. Abdul Majeed Khoso, advocate for petitioner Sikandar Ali in C.P.No.D-919/2018 argued that the petitioner had not signed on P.L.A and all the documents have been managed by NAB. He was only over all supervising officer of District Hyderabad. It is also argued that NAB officials demanded money from him, on refusal illegally detained him and he lodged FIR against NAB officials, case is pending before ATC Karachi. It is submitted that NAB officials involved the petitioner for malafide reasons. Lastly, argued that investigation was conducted without lawful authority. In support of his contentions, he has relied upon the case of Maqbool Ahmed Lehri and another v. NAB and another (2016 SCMR 154), 2. Tarique Saeed and another v. Chairman, National Accountability Bureau and 2 others (2005 YLR 445), 3. Abdul Aziz Khan Niazi v. The State through Chairman, NAB, Islamabad (PLD 2003 Supreme Court 668), 4. Shoaib Warsi and another v. Federation of Pakistan and others (PLD 2017 Sindh 243), 5. Jamil A. Durrani v. The State (PLD 2003 Karachi 393), 6. Pir Mazharul Haq and others v. The State through Chief Ehtesab Commissioner, Islamabad (PLD 2005 Supreme Court 63), 7. Federation of Pakistan v. Muhammad Shafi

Muhammadi, Advocate and 3 others (1994 SCMR 932) and 8. Asif Ali Zardari v. The State through NAB, Islamabad (2005 YLR 717).

7. Mr. Jangu Khan, Special Prosecutor NAB argued that petitioner Pir Bux was living a luxurious life style which did not commensurate with the income of a retired Office Superintendent of BS-16. Assets of petitioner Pir Bux Samoon were unearthed during investigation. He has further argued that Pir Bux was Office Superintendent at Bureau of Curriculum. He prepared fake/bogus P.L.A cheques in the name of dummy contractors sons and brother Prince Ali Samoon, Mustansar Ali and Munzaffar Ali. It also argued that the petitioner Pir Bux used three accounts of his wife and his own to route the embezzled amount. Learned Special Prosecutor NAB further argued that petitioners Peer Bux and Khadim Hussain Shah misused authority and opened various DDO accounts with various titles in different banks and fraudulently withdrawn huge amount through cheques. Learned Special Prosecutor NAB argued that the petitioner Sikandar Ali was the District Account Officer at Treasury Office Hyderabad for the period from 05.11.2010 to 02.11.2011 being the signing and endorsing authority, it was his responsibility to clear all the claims/cheques to the various departments after proper verification. It is argued that accused Sikandar Ali while in connivance with accused Peer Bux Samoon and others misused his authority and fraudulently endorsed the fake and bogus P.L.A cheques in the name of dummy contractors amounting to Rs.150.436 million. Lastly, argued that accused Sikandar Ali Abro has been dismissed from service on the charges of committing huge embezzlement in District Accounts Office, Hyderabad. It is contended that the accused have committed the offence u/s 9 of NAB Ordinance, 1999 which carries the punishment of 14 years. He further contended

that there is sufficient material to connect the petitioners in the commission of offence. Lastly, it is argued that there is also documentary evidence against all the accused. Special Prosecutor NAB in the end of his arguments submitted a photocopy of application moved before the trial court by petitioner Prince Ali Samoon s/o Muhammad Essa Samoon for tender of pardon u/s 26 of NAB Ordinance, 1999. Special Prosecutor NAB, therefore, opposed the petitions for bail.

8. Mr. Lutufullah Arain, D.A.G. adopted the arguments advanced by learned Special Prosecutor NAB.

9. We have carefully heard the learned counsel for the parties, perused the relevant record and precedents cited before us.

10. Prima facie, petitioner Pir Bux used bogus PLA cheques issued in the name of dummy contractors, namely Prince Ali Samoon, Mustansar Ali and Muzaffar Ali. He has been implicated by PW Nouman Operation Manager, Soneri Bank Limited Main Branch Hyderabad in his 161 Cr.P.C statement recorded by the Investigation Officer NAB. Petitioner Pir Bux Samoon had account in his name in Soneri Bank Limited. PW Waheed Ali Wadho in his 161 Cr.P.C. statement has stated that white Honda Civic Model 2012 having No. AYY-480 and Black Toyota Prado model 2006 having No.BF-4555 are in the name of accused Pir Bux Samoon. I.O. also recorded the statement of PW Liaquat Ali who stated that one white Toyota Passo Model 2011 is owned by accused Pir Bux. Document of lease deed of a property is also in his name. Petitioner Prince Ali Samoon is the brother of Pir Bux Samoon and he was one in whose name various PLA cheques were issued. Details of PLA cheques have been placed on record. Documentary evidence has been placed on record against the petitioners Mustansar Ali and Muzaffar Ali and

petitioner Syed Khadim Hussain Shah. Special Prosecutor NAB has also placed on record copy of an application submitted by Prince Ali Samoon before the learned Judge Accountability Court, Hyderabad for tender of pardon u/s 26 of National Accountability Ordinance, 1999. Mr. Muhammad Yousuf Leghari, counsel for the petitioners submitted that aforesaid application moved by petitioner Prince Ali Samoon has been dismissed as not pressed. We have also considered the aforesaid application alongwith other factors for deciding the aforesaid Constitution Petitions for bail.

11. With regard to petitioner/accused Sikandar Ali Abro, Investigation Officer states that signatures of petitioner Sikandar Ali were sent for expert opinion by the NAB authorities. Report dated 29.03.2018 was received which reveals that the signatures on the documents are similar. Relevant portion of finding of the expert is reproduced as under:-

“The examination of documents has revealed that questioned signatures marked as QS-57 to QS-61 are “Similar” in characteristics, with respect to routine signatures of Sikandar Ali Abro marked as RA-11 to RA-19 and his Specimen Signatures marked as SS-16 to SS-30.”

Petitioner Sikandar Ali Abro was the District Accounts Officer at District Treasury Officer Hyderabad for the period from 05.11.2010 to 02.11.2011 and being District Accounts Officer it was his authority and responsibility to look after over all affairs of the treasury office as he was signing and endorsing authority. It was his responsibility to clear all claims/cheques of various departments after proper verification. NAB collected material against the petitioner Sikandar Ali Abro that he in connivance with petitioner Pir Bux Samoon and others misused their authority and fraudulently endorsed fake and bogus cheques in the name of dummy contractors amounting to Rs.150.436 million.

12. As regards to the case of petitioner/accused Syed Khadim Hussain Shah and others, apparently, petitioner Syed Khadim Hussain Shah and other accused persons in active connivance with each other were involved in corruption and corrupt practices. They have misused their authority to embezzle government funds amounting to Rs.678.946 million and committed the offence of corruption and corrupt practices.

13. Record reflects that the petitioner Pir Bux Samoon, his brother Prince Ali Samoon and sons Mustansar Ali and Muzafar Ali have not tentatively accounted for the assets brought on record by NAB against them during investigation. All the petitioners/accused for the above stated reasons thus prima facie are connected with crime, attracting to prohibitory clause. As regards to the other contentions of counsel for the petitioners, the same require deeper appreciation of evidence which is not permissible at bail stage.

14. The Honourable Supreme Court in an unreported case of Muhammad Yousaf and another v. Chairman NAB & others, in Civil Petition No.259 of 2018, vide order dated 17.04.2018 observed as under:-

“4. Record reveals that mindboggling assets amassed by the petitioners have come to light which have not been even tentatively accounted for. The petitioners thus prima facie stand connected with a crime attracting prohibitive clause. We thus do not feel persuaded to grant bail.

5. For the reasons discussed above we dismiss this petition. However, prosecution is directed to conclude the trial within a period of three months positively, failing which petitioners may if so advised ask for grant of bail even on ground of delay in trial.”

15. Moreover, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a

threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well being of the poor people, is consistently embezzled/misappropriated at a large scale in the result majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. It has become the foremost obligation of each and every institution to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply Accountability Laws/ Anti-Corruption laws somewhat rigidly, at bail stage, against the accused person, while dealing with bail matter to an accused person, charged for corruption and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence.

16. We thus do not feel persuaded to grant bail to the petitioners and aforesaid Constitution Petitions are dismissed. However, trial court is directed to conclude the trial within 03 months positively.

17. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE

JUDGE

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