

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before: Mr. Justice Mahmood A. Khan.
Mr. Justice Mohammed Karim Khan Agha.

C.P No. D-1872/2016,

Javed Ali

Vs.

Chairman NAB and others.

along with CP No.D-2087/2016, D-2088/2016,

D-2317/2016, D-2318/2016,

D-2319/2016, D-2334/2016,

D-2357/2016, D-2374/2016,

D-2386/2016, D-2464/2016,

D-2521/2016 and D-4094/2016

Date of hearing:	07-03-2017, 21-03-2017, 22-03-2017 and 28-03-2017
Date of Order	31-03-2017

Mr. Zulifqar Ali Sangi advocate for the petitioners in C.P No. D-1872/2016.

Mr. Kamal Azfar advocate for the petitioners in C.P. No. D-2088/2016 and in C.P No. D-2334/2016

Mr. Ghulam Shabbir Shah, advocate for the petitioner in C.P No. D-2087/2016.

Mr. Tariq Ali Jakhrani, advocate for the petitioners in C.P No. D-2318, D-2521/2016, D-4094/2016 and D-2374/2016.

Mr. Ali Raza Baloch, advocate for the petitioner in C.P No D-2318/2016

Mr. Bakhshan Khan Mahar, advocate for the petitioners in C.P No.D-2319/2016 and C.P No.D-2464/2016.

Mr. Dareshani Ali Haider 'Ada' advocate for the petitioner in C.P. No D-2357/2016.

M/s Qurban Ali Malano and Gulzar Ahmed Malano, advocates for the petitioner in C.P No.D-2317/2016, D-2386/2016.

Mr. Muhammad Zubair Malik, A.D.P.G.A NAB (Sukkur) a/w Abdul Majeed Memon, Special Prosecutor NAB (Sukkur) for the Respondents.

ORDER

Mohammed Karim Khan Agha, J. By this composite order we propose to dispose of the above mentioned petitions filed by petitioners for confirmation of their pre arrest bail

2. All the petitioners have been accused of corruption and corrupt practices under the National Accountability Ordinance 1999 (NAO) which lead to the National Accountability Bureau (NAB) filing NAB reference 07/2016 **The State V Jameel Ahmed Qureshi and 17 others** against them and others on 18-03-2016 which is currently proceeding before the Accountability Court at Sukkur

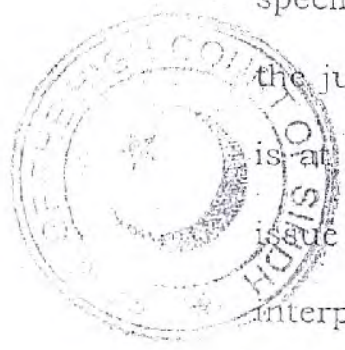
3. The brief facts of the case are that the official accused were mostly XEN's, Assistant XEN's and Sub Engineers all working for the Provincial High Ways Division Sukkur (PHDS) who all misused or failed to exercise their authority during the grant of, monitoring of, and payment of contractors who are the other co-accused in the reference all of whom are Government or private contractors who

intentionally, deliberately and illegally failed to perform their contracts to the agreed standard/quantity and measurement and yet received full payment at the completion of the same in connivance and collusion with the official accused which caused loss to the national exchequer and gave undue benefit in terms of award of contracts and financial gain for the payment of the contract work which had either not been completely constructed or had been constructed in a sub standard way in breach of the agreed terms and conditions through either not using the required materials, or failing to construct the project in the required manner using the required materials which lead to the projects being completed in a defective and sub standard manner. Most of the projects involved the construction of roads in the Sukkur and Ghotki areas of Sind. By such misuse of authority/failure to exercise authority by the official accused the other accused (who were mainly Government and private contractors and beneficiaries) gave illegal and undue favours/benefits to the non official accused and thus all the accused were liable for the offenses of corrupt practices and corruption under S.9 of the NAO and hence reference No.7/2016 was filed against them on 28-10-2016 by the NAB before the Accountability Court Sukkur.

4. The case essentially therefore divides into two classes of accused. Firstly the official accused who deliberately and intentionally misused or failed to exercise their authority in connivance with the other co-accused (beneficiaries-most of whom

are Government or private contractors) who gained an undue benefit and caused loss to the public exchequer and made personal gain on account of this collusion and connivance with the official accused through the award and non performance of contracts to construct roads who form the second class of accused i.e. beneficiaries.

5. The first point to consider is that by and large the amount involved in this reference is below the pecuniary jurisdiction of NAB as set out in the case of **Amjad Hussain V Chairman NAB** (YLR 2017 1 in which one of us Mohammed Karim Khan Agha J was a member) and therefore prima facie **may** not qualify as a NAB case. However it was observed at para 44 of **Amjad Hussain's case** (Supra) that the SOP, now judicial order, in terms of NAB's prima facie minimum pecuniary jurisdiction **may** not apply if there is a prospect of a plea bargain and the reference is in the advanced stages. In the instant case it is made clear in the reference that 5 of the original accused have already entered into plea bargains and as such there **may** be a prospect of other accused entering into plea bargains. Thus in our view the pecuniary jurisdiction in this specific case **may** not be a bar in NAB filing this reference under the judicial order on pecuniary jurisdiction, especially as the case is at a relatively advanced stage, although we will deal with this issue in more detail later in this order when we consider the interpretation of **Amjad Hussain's case** (Supra) and other relevant cases on this point.



6. Since this is a case of pre arrest bail before considering the cases of the petitioners on interim pre arrest bail in this case it is in our view necessary to observe that as is well known the conditions for the grant of pre arrest and post arrest bail are quite distinct in law and were well set out in the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 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 disgrace and dishonor 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)

7. At P.434 Para 15 of the aforesaid Judgment it was also held as under:

"It had also been repeatedly held by the Superior Courts (reference be made to Zia-ul-Hassan's case supra) that no Court would have any power to grant pre-arrest bail ***unless all the conditions specified for allowing bail before arrest especially the condition regarding Malafides were proved.***" (bold and italics added)

8. The question before us is therefore, as a matter of law, based on the facts and circumstances of the case and the role which each petitioner played in the case whether he is entitled to the confirmation of his pre arrest bail.

9. We have heard the learned counsel for the petitioners and considered both their oral submissions and written submissions, ADPGA NAB, perused the record very carefully and the case law cited at the bar by them.

10. As per settled law 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 on merit based on the evidence before it.

11. We shall deal with the case of each petitioner in turn all of whom have applied for pre arrest bail. In all cases NAB vehemently opposed the grant of pre arrest bail and stressed that there had been no malafides on the part of NAB and that in each case there was sufficient material to prove beyond a reasonable doubt that all the concerned petitioners were guilty of the offense for which he had been charged in the reference.

12. **Learned counsel for petitioner No.1 in CP D 2087/16 Mr. Gul Hasan Shaikh** (accused No.2 in the reference) who at the time of the offense was XEN Provincial Highway Division Sukkur (PHDS) submitted that petitioner No.1 was excluded from the scope of the reference as the works which he had sanctioned had occurred before the inquiry was started and as such he could not be part of the reference; that he had only been involved in one work order which was two years earlier; that the technical report was defective and inconclusive as it only examined 2 pit holes in the long road; that the technical report only found that the road was damaged and was not sub standard and as such exonerated him; as per Rule 94 of the Central Public Works Rules he was not the responsible officer concerned with ensuring that the work was carried out to the required standard and there had been no misuse of authority on his part and as such for all the above reasons petitioner No 1 was entitled to have his pre arrest bail confirmed.

13. He did not submit that there had been any malafide on the part of NAB
14. In support of his contentions in respect of misuse of authority learned counsel placed reliance on *The State Vs. M. Idrees Ghauri* (2008 SCMR 118), *Mansur-Ul-Haque Vs. Government of Pakistan* (PLD 2008 SC 166). In support of his contentions that the offering of an earlier voluntary return at bail stage was irrelevant he placed reliance on *Munir Ahmed Seelro Vs. Federation of Pakistan through Chairman NAB* (2016 YLR 2624) and *Muhammad Islam Khan Vs. Zarai Taraqiati Bank Ltd.* (2013 PLC (CS) 795).
15. Petitioner No.1 has been given a specific role at para 5 of the reference which reads as under:

"Para 5. The Investigation Report reveals that the accused No. 02 / **Gul Hassan Sheikh, Ex-XEN Provincial Highways Division Sukkur**, was posted as Executive Engineer Provincial Highways Division Sukkur. During his incumbency from 2010 to January 2013 in connivance with accused No.4, 6 and accused Siraj Ahmed (Contractor) by misuse of his authority issued work order of O1x scheme to contractor, (Siraj Ahmad). Verified the measurement books (MBs), paid bills on the basis of MBs by which substandard work was executed and works were found below the specification as per report of Pakistan Public Works Department (PPWD) Sukkur. Accused Gul Hassan Shaikh willfully failed to exercise his authority to prevent the grant and rendered undue benefit / favor which he could have prevented by exercise of his authority, due to his omission and misuse of his lawful authority he caused loss and gains occurred of Rs.11,10,131/- (Eleven Lac Ten Thousand One Hundred and Thirty One Rupees) to national exchequer. His individual liability & gains is of Rs.2,77,532/-"

16. We do not except petitioner No.1's contention that his one sanction action fell outside the scope of the inquiry, investigation or

reference. An inquiry under the NAO, like an F.I.R, simply gets the ball rolling in a criminal case and if any incriminating evidence of an offense is discovered during that inquiry and or investigation it may form a part of a reference provided that the evidence is sufficient for the purposes of S.18 (g) NAO.

17. Petitioner No.1 has tried to underplay his role in this reference by submitting that he had no real role to play in monitoring the works since he was XEN and as per Rule 94 of the Central Public Works Rules he was not the officer in charge of the works. Instead he attempted to pass the buck to A XEN and Sub XEN. We do not find any substance in this argument. Petitioner No.1 held the senior position of X EN and in our view he had overall supervision of the works carried out by his subordinates and as such he was equally responsible if these works were either not carried out or not carried out to the required standard. In our view the greater the seniority the greater the responsibility is to ensure that subordinates carry out there work in a proper manner and to the required standard.

18. The fact that the petitioner No.1 was only involved in sanctioning one work order is irrelevant. In fact it is an admitted position by the petitioner's counsel that he did sanction the work order in question. In our view the Technical Report rather than exonerating the petitioner fully implicates him in his misuse of authority and signing off on substandard works as column 2 of the remarks of the road in question states as under at P.137, "that the



executed thickness is **not** justified with TS estimate. The premixed carpet of 1-1/2 thick is **not** executed in various portions of the road". The report at P.137 also indicates overpayments for work which was not done by examining the difference in quantity as per MB and per site. Other documents relating to the road in question including the work done and costing have also been placed on record which show the signature of petitioner No.1 which also belie his claim that he had no responsibility in the matter and on the contrary suggest that he was fully involved in supervising the matter as per his job function bearing in mind his seniority.

19. It is pertinent to note that the accused contractor who illegally benefited from the works has already entered into a plea bargain (PB) with the NAB and has thus admitted his guilt. The petitioner No.1 along with some other co-accused (1, 4, 5, 6, and 8) also offered a voluntary return to the NAB which was rejected by the NAB which facts alone may not justify the refusal to confirm the petitioners bail but such facts speak for themselves and may to a certain extent be corroborative of other material on record.

20. In our view it is quite apparent from the material on record in particular the technical report that the petitioner No.1 misused/failed to exercise his authority in sanctioning the works and failing to ensure that the works were carried out by the contractor to the required standard and also authorized over payments which benefited the contractor and caused loss to the national exchequer. Since there is no evidence on any malafides on

the part of NAB and in our view there is prima facie sufficient material to connect the petitioner No.1 to the offense with which he is charged his pre arrest bail is hereby recalled.

21. Learned counsel in CP D 2088/2016 for petitioner No.2 Mr. Ghulam Shabir Shaikh (accused No.3 in the reference) who at the time of the offense was Assistant XEN PHDS, in CP D 2088/16 for petitioner No.3 Mr. Khadim Hussain Khalwar (accused No.5) in the reference who at the time of the offense was Sub Engineer PHDS and in CP D 2088/16 for petitioner No.4 Mr. Syed Ali Nasseer Shah Jafferri (accused No.6 in the reference) who at the time of the offense was Sub Engineer PHDS, in CP D 1872/16 for petitioner No.5 Mr. Javed Ali Shaikh (accused No.4 in the reference) who at the time of the offense was Assistant XEN PHDS, submitted both written and oral submissions. On the legal plain he submitted that this was a case of further inquiry; that on a tentative assessment of the material on record there was nothing to connect the petitioners to the commission of the offense; and placed special emphasis on the question of proportionality in criminal cases in support of the proposition that the grant of bail was the proper course in this case as opposed to imprisonment especially when the petitioners had been regularly attending the trial and were no longer needed in the inquiry and submitted that under such circumstances the pre arrest bail of the petitioners should not be recalled. In this respect he placed reliance on both case law and an article on *Proportionality in the Philosophy of Punishment, a Study by Andrew von Hirsch - Crime and*

Justice Vol. 16, 1992, pp 55-98, The University of Chicago Press, explain Proportionality in Criminal Justice System very widely which is reproduced as under for ease of reference:

"For some accused/prisoners, incarceration is so stark and psychologically painful that it represents a form of traumatic stress serve enough to produce post-traumatic stress reactions once released. (US Constitutional Amendment VIII). In addition to the pain inflicted upon the offender being imprisoned, incarceration also harms the family and children of the sanctioned offender, resulting in a punishing element which far exceeds the prima facie sentencing goal and range. Incarceration, as the infliction of profound psychological (and in many cases physical) pain through severe deprivations of action and association, has a destructive effect on an offender's private and family life. It also impacts future career prospects, and leads to other significant post-incarceration consequences on communities and the offender's health (either through long-term incarceration or through infectious diseases).

Posner, a jurist, thus subjects punishment to a cost/benefit analysis - a matter of estimating the costs of punishment and weighing them against penalties' crime preventive yield.

Equity is scarified when the proportionality principle is disregarded, even when this is done for the sake of crime prevention."

22. So far as the allegations against the petitioners were concerned he submitted that there had been no wrong doing on the part of the petitioners; that they had carried out their functions lawfully; that their S.161 Statements supported their contentions that the work had been carried out to the required standard and that they were innocent of any wrong doing; that to recall their bail would cause humiliation to them; that the refusal of bail could not be done in order to punish the petitioners; that NAB's acts were motivated by malafides and that the technical report was defective

and for all the above reasons the petitioners 2,3,4 and 5's pre arrest bail should be confirmed.

23. In support of his various contentions learned counsel placed reliance on the following law and authorities; Article 9 and 10A Constitution of Islamic Republic of Pakistan, **Crown vs. Khushi Muhammad** (PLD 1953 FC 170 at p.186), **Muhammad Ayoub vs. Muhammad Yaqub** (PLD 1966 SC 1003 at p.1012-A,1013-C & 1014-D), **Sadiq Ali vs. State** (PLD 1966 SC 589 at p. 597 & 598-F), **Manzoor and 4 others v. State** (PLD 1972 SC 81 at p.84), **Zabur Iahi vs. The State** (1981 SCMR 935 at p.938), **Murad Khan vs. Fazl-e-Subhan** (PLD 1983 SC 82 at p.84), **Jamaluddin vs. The State** (1985 SCMR 1949 at p.1952-E & F, para 9), **Meeran Bux vs. The State** (PLD 1989 SC 347 at p.350-C), **Naqi Hussain Shah vs. The State** (1992 SCMR 600 at p.601-A), **Tariq Bashir vs. The State** (PLD 1995 SC 34 at p.41-D & E), **Multiline Associates vs. Ardeshir Cowasjee** (PLD 1995 SC 423), **Imtiaz Ahmed v. State** (PLD 1997 SC 545 at p.588-M), **Dildar Ali vs. The State** (1999 SCMR 1316 at p.1316-A), **Asfandiyar Wali & others v. Federation of Pakistan** (PLD 2001 SC 607), **Abdul Aziz Khan Niazi vs. The State through NAB** (PLD 2003 SC 668 at p.674-B & C; 675-D & E), **Muhammad Firdaus vs. The State** (2005 SCMR 784 at p.844-A; 845-B), **Lal Muhammad Kallero vs. The State** (2007 SCMR 843 at p.844-A;845-B) **Khalilullah Sarhandi vs. NAB** (2008 P.Cr.L.J 967 at p.970; 971-B), **Zulfiqar Ali Abbasi vs. The State, through Chairman NAB** (2008 YLR 2229 at p.2232-A, Para 12 & 13), **Muhammad Kamil vs. The State** (2010 YLR 1057 at p.1058-A),

Fayaz Ahmed vs. The State (2014 SCMR 1628 at p.1630-A),
 Muhammad Sadiq vs. The State (2015 SCMR 1394 at p.1397 B &
 C)

24. Petitioner No.2 (Ghulam Shabir Kalwar) has been given a specific role at para 6 of the reference which reads as under:

"6.The Investigation Report reveals that the accused No. 03 **Ghulam Shabir Kalwar, Assistant Engineer, Provincial Highway Sub Division Ghotki.** Accused No.03 remained posted as Assistant Engineer from 26.09.2013 to 09.09.2014. During his incumbency in connivance with accused No.1, 5, 10, 12, 17 and Siraj Ahmed (contractor) accused No.3 verified the MBs of 4x schemes after measurement at the site. On his verification and approval, XEN allowed the payment to contractors. During his posting, as per PPWD report, the executed works were found substandard and below the specification as recorded in MBs. Accused No.3 willfully failed to exercise his authority to prevent the grant and rendered undue benefit / favor which he could have prevented by exercise of his authority, due to his omission and misuse of his lawful authority he caused loss and gains occurred of Rs. 1,08,46,564/- (One Crore Eight Lacs Forty Six Thousands Five Hundred and Sixty Four Rupees) to the national exchequer. His individual liability & gains is of Rs.16, 26,984/ "".

25. Petitioner No.2 was concerned with the construction of 4 roads as set out below.

P.129 of the Report which is the Ubaro Langho Shah Road shows in the remarks column under earth works that, "the embankment of the berms of road in some portions was not properly executed which is sanctioned in TS estimate" and for providing 1" thick consolidated premix carpet, "The executed thickness is **not** justified with TS estimate. The premix carpet of 1" thick is **not** executed in various portions of the road". The difference in qty columns also clearly show over charging by the contractor.

P.171 of the Report which concerned construction of road from village Sher Mohammed Mahar where the contractor was Wazir Ali Mahar (petitioner No. 8 in this order) whose case is dealt with below basically showed the same substandard work, over charging etc as was the case for petitioner No.8 and in our view shows that petitioner No.2 was hand in glove with petitioner No.8 whereby petitioner No.2 deliberately failed to exercise his authority/misused his authority in order to give undue favour, benefit and gain to petitioner No.8.

P.131 of the Report concerns the reconditioning of the road from Ubaro Langho Noor Shah Road which clearly shows that the lead rate was **not** in accordance with the quantity which caused a loss to the national exchequer. In this scheme the contractor has already entered into a PB with NAB.

P.173 of the Report concerns the construction of road from Bago Daho to village Rasool Bux Korai where the contractor was Mr. Soomar who is petitioner No.15 in this order whose corruption in respect of building this road is discussed later in this order. Once again the nexus between the petitioner No.2 and the accused contractor petitioner No.15 tends to show that they were hand in glove with each other and that through petitioner No.2's misuse of authority/failure to exercise authority the said contractor was given undue benefit and gain at the cost of the national exchequer.

26. In our view as mentioned later in this order we find the Report to be well prepared by experts as assisted by other experts in the relevant field and that it is concise, sufficiently detailed and reliable and the learned counsel for the petitioner has been unable to put any significant dent in the Report which in our view can safely be relied upon as being accurate.

27. Petitioner No.2 was an Assistant engineer who held a position of responsibility whose duty was to ensure that the works were carried out to the required standard and the correct payment was made for the work to the contractor which position is bolstered by

rule 94 of Central Public Works Rules as mentioned earlier. In our view the material on record prima facie shows that the petitioner No 2 has failed to exercise his authority and misused his authority in order to give benefit, undue favour and gain to the aforementioned contractors in collusion and connivance with them and as such there is prima facie sufficient material on record to connect petitioner No.2 with the offense for which he has been charged.

28. We have carefully considered the case law relied upon by learned counsel for the petitioner especially in terms of malafide which, in our view, based on the case law on pre arrest bail, is the main pre condition for the grant of pre arrest bail and are of the view that all the authorities so cited by learned counsel for the petitioner are distinguishable from the above cited case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) (which we consider still remains the defining judgment on pre arrest bail as it considered all earlier relevant judgments/orders before condensing and setting out all the requirements which needed to be satisfied in order to grant/confirm pre arrest bail) in terms of the grant of pre arrest bail which requires the legal issue of malafides to be present. In this case we find no malafides on the part of NAB. NAB has no animus or prior relationship with the petitioner No.2 and its findings are based on the Report which we have already found to be reliable and accurate. In this connection in particular we observe that a number of the cases relied upon by learned counsel for the petitioner have either been cited and

considered in the case of **Rana Mohammed Arshad (Supra)**, have been passed before that Judgment, or are by High Courts or concern post arrest bail or show clear malafides so as to qualify for the grant of pre arrest bail or humiliation and as such are distinguishable from the present case. With respect to the two most recent Supreme Court cases relied upon with regard to the case of **Fayyaz Ahmed V The State** (2014 SCMR 1628) this concerned insufficient material to link the accused to the offense which is distinguishable from this case as we find prima facie that there is sufficient material to connect the petitioners to the offense as charged. Furthermore, the final and most recent case of 2015 relied upon by the petitioner being the Supreme Court case of **Muhammed Saddiq V The State** (2015 SCMR 139) fully follows and supports the case of **Rana Mohammed Arshad (Supra)**, in terms of the grant of pre arrest bail and the role of malafides in the grant of the same where at P.1397 Para 7 it is held as under:

"Considerations for pre-arrest bail are totally different from that of post-arrest bail. Pre-arrest bail is an extraordinary relief, whereas the post-arrest bail is ordinary relief. While seeking pre-arrest bail it is duty of accused to establish and prove *mala fide* on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offences with *mala fide* and ulterior motive".

29. Thus, since in our view, prima facie there is sufficient material to connect petitioner No.2 to the offense for which he has been charged and no malafides has been shown on the part of NAB

the interim pre arrest bail granted to petitioner No.2 is hereby recalled.

30. Petitioner No.3 (Khadim Hussain Kalwar) has been given a specific role at para 8 of the reference which reads as under:

"8. The Investigation Report reveals that the accused No. 05 / **Khadim Hussain Kalwar Sub Engineer, District Highway Sub Division** Daherki District Ghotki, remained posted as Sub-Engineer, District Highway Sub Division Daherki District Ghotki from 26.09.2013 to 30.06.2015. During his posting he in connivance with accused No.1,3,10,12, 17 & Siraj Ahmed (contractor) intimated/ recorded MBs on the site after measurement, thereafter it was verified and checked by AEN then by XEN. According to PPWD report accused No.5 became instrumental for recording excessive measurement, as works executed at site are found less than the measurement recorded in MBs and substandard. Accused No.5 willfully failed to exercise his authority to prevent the grant and rendered undue benefit/ favor which he could have prevented by exercise of his authority, due to his omission and misuse of his authority he caused loss and gains occurred of Rs.1, 08, 46,564/- (One Crore Eight Lacs Forty Six Thousand Five Hundred and Sixty Four Rupees) to the national exchequer. His individual liability & gains is of Rs.10, 84,656/-".

31. Petitioner No.3 was involved in the same 4 schemes as petitioner No.2 whose deficiencies have been mentioned above in respect of petitioner No.2.

32. We see no need to re-iterate those deficiencies/misuse of authority/failure to exercise authority again as they have been already set out above. Petitioner No.3 was a Sub Engineer and was more senior to petitioner No.2 so to that extent he bears greater responsibility than petitioner No.2. Even otherwise we find that these cases are on the same footing and since there is sufficient material on record to prima facie connect him to the commission of

the offense for which he has been charged and we have found no malafide on the part of NAB his pre arrest bail is hereby recalled.

33. Petitioner No.4 (Syed Ali Naseer Shah Jaffery) has been given a specific role at para 9 of the reference which reads as under:

"9. The Investigation Report reveals that the accused No.06/Syed Ali Naseer Shah Jaffery, Sub Engineer Provincial Highways Division Sukkur remained posted as Sub-Engineer, provincial Highway Sub Division Sukkur from 27.09.2013 to date. During his posting he in connivance with accused No.2,4 & Siraj Ahmed (contractor) initiated / recorded MB on the site after measurement, and thereafter it was verified and checked by AEN and then by XEN. According to PPWD report accused No.6 became instrumental for recording excessive measurement, as works executed at site and found less than the measurement recorded in MBs and substandard. Accused No.6 willfully failed to exercise his authority to prevent the grant and rendered undue benefit/ favour which he could have prevented by exercise of his authority, due to his omission and misuse of his authority he caused loss and gains occurred of Rs.11,10,131/- (Eleven Lacs Ten Thousand One Hundred Thirty One Rupees) to the national exchequer. His individual liability & gains is of Rs.1, 11,013/-".

34. Petitioner No. 4 was responsible for one scheme which was the W/R of Road from Haleji MP check post up to 3/3 FFR MTTS & watch tower the report on which work can be found at P.137 of the Report. This work was also the responsibility of petitioner No.1 and since we have set out the deficiencies in the work/failure to exercise authority/misuse of authority in respect of petitioner No.1 as mentioned earlier in this order we find no need to reiterate the same. He also applied for a voluntary Return which was rejected by the NAB although we have not considered this aspect in a negative manner.

35. The petitioner No.4 being sub engineer was also a senior and responsible officer and although junior to petitioner No.1 we find that the same considerations apply to him. Thus, since in our view there is sufficient material on record to connect him to the commission of the offense for which he has been charged and there has been no malafide on the part of NAB his interim pre arrest bail is hereby recalled.

36. Petitioner No.5 in CPD 1872/2016 is Javed Ali Shaikh who has been given a specific role at Para 7 of the reference which reads as under:

"7. The Investigation Report reveals that the accused No. 04/**Jaweed Ali Sheikh** Assistant Engineer, Provincial Highway Sub Division Sukkur, remained posted as Assistant Engineer at Sub Division Sukkur from 26.12.2011 to 22.09.2015. During his incumbency in the period of Jameel Ahmed Qureshi & Gul Hassan Ex-Executive Engineer, in connivance with accused No. 1,2, 6 to 9, 11 to 16, 18 (**& 5 others who opted PB**), accused No.4 verified the MBs of 14x schemes after measurement at the site. On his verification and approval, XEN allowed the payment to contractors. During his posting, as per PPWD report, the executed works were found substandard and below the specification as recorded in MBs. Accused No.4 willfully failed to exercise his authority to prevent the grant and rendered undue benefit/ favor which he could have prevented by exercise of his lawful authority, due to his omission and misuse of authority he caused loss and gains occurred of Rs.1,61,85,922/- (One Crore Sixty One Lacs Eighty Five Thousand Nine Hundred Twenty Two) to the national exchequer. His individual liability & gains is of Rs.24, 27, 888/-".

37. Petitioner No.5 was an AEN who was involved in **14 different schemes** and we have been informed that he applied for VR which

was rejected by the NAB although such an application has not been taken by us as a factor in determining the petition.

38 The road construction/repair works which he was involved in can be found at P.137,145,147,149,151,153,155,157,159, 161,163,165,167,and 167 of the Report.

39. We have studied the reports at the aforesaid pages which on the whole show a **massive and continuous failure** to exercise authority/misuse of authority by petitioner No.5 which favored and unduly benefited contractors and caused loss to the national exchequer. A number of these contractors have already entered into plea bargains with the NAB which however is not the sole determining factor in connection with his petition.

40. Thus, in our view there is prima facie sufficient material to connect petitioner No.5 to the offense for which he is charged and since there has been no malafides on the part of the NAB his interim pre arrest bail hereby stands recalled

41 **Learned counsel in CPD No.2317/16 for petitioner No 6 Mr. Ghulam Shabir Solangi** (accused No.9 in the reference) who at the time of the offense was Sub Engineer PHDS submitted that petitioner No. 6 was innocent of any wrong doing, that the scheme was carried out as per work order and that if any damage had been caused to the roads then this was on account of rain or wear and tear since NAB's report had been carried out 2 to 3 years after the road was completed. In support of his contention that the road had been completed to the required standard learned counsel placed

reliance on the "Government of West Pakistan, Highways Departments, Instructions on Highway materials and construction" dated 1969. He did not plead any malafide on the part of NAB however he submitted that for the above reasons his pre arrest bail should be confirmed.

42 Petitioner No.6 has been given a specific role at para 12 of the reference which reads as under:

"12. The Investigation Report reveals that the accused No. 09 / **Ghulam Shabbir Solangi remained posted as Sub-Engineer** at Provincial Sub-Division Sukkur from 31.12.2013 to 30.06.2014. Accused No. 09 in connivance with accused No.1,4 and Hafcezullah (Contractor) initiated / recorded MB on the site after measurement, and then thereafter it was verified and checked by AEN and then by XEN. According to PPWD report accused No.9 became instrumental for recording excessive measurement, as works executed at site are found less than the measurement recorded in MBs and substandard. Accused No. 09 willfully failed to exercise his authority to prevent the grant and rendered undue benefit / favor which he could have prevented by exercise of his authority, due to his omission and misuse of his authority he caused loss & gains occurred of Rs.15,53,596/- (Fifteen Lacs Fifty Three Thousand Five Hundred and Ninety Six Rupees) to the national exchequer. His individual liability & gains is of Rs. 15,53,596/-".

43. NAB has primarily relied on a Technical Report dated 15th July 2015 by the XEN Central Civil Division Pakistan Public Works Department, Government of Pakistan (The Report as referred to earlier in this order) which remained almost completely undamaged during the arguments by all the petitioners (if they challenged it at all).

44. The Report was prepared on the following basis as set out in the Report which states as under:

REPORT

This report is submitted in regard of National Accountability Bureau, Airport Road Sukkur, vide letter No. 720014/IW/CO/NAB (SK)/2015/742 Dated 10.07.2015 and vide Administrative Officer, Chief Engineer (S) Office, Pak PWD, Karachi, letter No.726/252-WI/NAB/1830, Karachi, the 10th July 2015.

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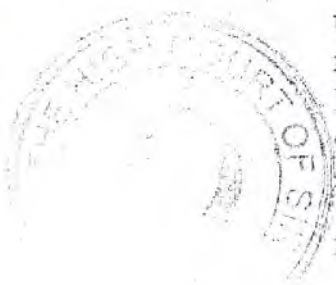
This report contains observations arising from the physical inspection and scrutiny of records as pointed out / provided by Inquiry Officer NAB Sukkur respectively. The purpose of this report is to provide technical assistance to Inquiry Officer NAB Sukkur. In this regard inspections / site visit and scrutiny of record were carried out.

Following members were present during the course of visit and scrutiny of record:

1. Mr. Shahzada Imtiaz Ahmed, Additional Director, NAB Sukkur.
2. Mr. Samar Hussain Qadri, Deputy Director, NAB Sukkur.
3. Mr. Khalid Hussain Shaikh, Executive Engineer, CCD, Pak PWD, Sukkur.
4. Mr. Imran Rasool Qureshi, Sub Engineer, CC, Pak PWD, Sukkur.
5. Mr. Jawed Ahmed Kalhoro, Assistant Executive Engineer, Provincial Highways Division Sukkur.
6. Mr. Khadim Hussain Kalwar, Sub Engineer, Provincial Highways Division, Sukkur.
7. Syed Ali Naseer Shah, Sub Engineer, Provincial Highway Division, Sukkur with other non technical staff.

Random checking was carried out and method of checks was simple / handfeel test which provided useful guidance during the inspection. The purpose of this report is to provide technical assistance to Inquiry Officer, NAB Sukkur in pursuance to above referred inquiry (details enclosed).

The detailed report of site visited is submitted herewith for further necessary action. (bold added)



Imran Rasool Qureshi
Sub Engineer
Central Civil Division
Pakistan PWD, Sukkur.

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Khalid Hussain Shaikh
Executive Engineer
Central Civil Division
Pakistan PWD, Sukkur

45 This report and its various site visits and MB books seized and considered is corroborated by the S 161 Cr.PC statements of Mr. Imran Shams, Mr Imran Rasool Qureshi, Mr. Khalid Hussain Shaikh, Mr Riaz Ahimed and Mr.Rafique Shaikh and we have already earlier in this order found the said Report to be prepared by the relevant professionals and to be both reliable and accurate in our view it is also significant that no malafide has been alleged against the compilers/signatories of the Report by any of the petitioners.

46. P.145 of the Report concerns the project which petitioner No.6 was concerned with and by and large suggests that the work was carried out to a reasonable standard however in our view to the required standard since within a year of its construction it appears that it needs considerable maintenance work. What is more apparent from the Report however in the remarks column was that the work was overcharged for. While the rate should have been 3650.23 it was charged at almost double the rate i.e. 7723 which was completely unjustified. When confronted with this overcharged amount petitioner No.6 had no explanation. It is clear that whilst allowing the contractor to overcharge for the work petitioner No 6 misused his authority and failed to exercise his

authority and as such in our view prima facie there appears to be sufficient material on record to connect petitioner No.6 to the offense for which he is charged. It is also pertinent to observe that the concerned contractor who received this over payment has entered into a Plea Bargain (PB) with the NAB and has therefore admitted his guilt in this overcharging.

47. Thus, since there has been no malafide on behalf of the NAB and there is prima facie in our view sufficient material to connect petitioner No.6 to the offense with which he is charged in the reference his pre arrest bail is hereby recalled.

48. Learned counsel in CPD No.2317/16 for petitioner No.7 Mr. Abdul Rab Shaikh (accused No 7 in the reference) who at the time of the offense was Sub Engineer PHDS submitted that petitioner No.7 was innocent of any wrong doing, that the scheme was carried out as per work order and that his role was only to verify the measurements and not to make them and for all the above reasons his pre arrest bail should be confirmed. He did not plead malafides on the part of NAB.

49. Petitioner No-7 has been given a specific role at para 10 of the reference which reads as under.

"10.The Investigation Report reveals that the accused No. 07 / **Abdul Rab Shaikh Sub-Engineer** Highways Division Sukkur remained posted as Sub-Engineer Highway Sub Division Sukkur from 27.02 2012 to 31.07 2015. During his posting he in connivance with accused No 1,4,12,14 to 15 & Masroor Ahmed (contractor) initiated / recorded MB on the site and measurement, and thereafter it was verified and checked by AEN and then by XEN. According to PWD

report accused No.7 became instrumental for recording excessive measurement, as works executed at site are found less than the measurement recorded in MBs and substandard. Accused No. 7 willfully failed to exercise his authority to prevent the grant and rendered undue benefit / favor which he could have prevented by exercise of his authority, due to his omission and misuse of his authority he caused loss and gains occurred of Rs.45, 29,541/- (Forty Five Lacs Twenty Nine Thousands Five Hundred and Forty One Rupees) to the national exchequer. His individual liability & gains is of Rs.4, 52,954/-".

50 It was petitioner No 7's obligation as sub engineer to monitor and verify the works being carried out by the contractor on site. P.165 of the Report indicates that as with petitioner No 6 he allowed massive overcharging for the work that was carried out. Most crucially the column quantity as per site has been left blank which has allowed the overcharging by the contractor which was caused by his misuse of authority and failure to exercise authority. P.61 of the reference shows that he was involved in 2 schemes where such over charging was allowed. Petitioner No 7 like petitioner No.6, has not plead malafides on the part of NAB and in our view there is sufficient material to prima facie connect him with the commission of the offense. As with petitioner No.6 the concerned contractor has already entered into PB with the NAB and returned the illegally acquired gains which he made.

51. Thus, since there has been no malafide on behalf of the NAB and there is prima facie in our view sufficient material to connect petitioner No.7 to the offense with which he is charged in the reference his pre arrest bail is hereby recalled.

52. Learned counsel in CPD No.2319/16 for petitioner No.8 Mr. Wazir Ali (accused No.10 in the reference) who at the time of the offense was a contractor submitted that he had fully completed the construction of the road and as such he had received full payment in respect of the work. He also submitted that the work had been carried out to the required standard. He relied on the statement of Riaz Ahmed in support of his contentions. He did not plead malafides but contended that he was totally innocent of any wrong doing and as such his pre arrest bail should be confirmed.

53. Petitioner No.8 has been given a specific role at para 13 of the reference which reads as under:

"13.The Investigation Report reveals that the accused No. 10 / **Wazir Ali Mahar Proprietor of M/s Wazir Ali Mahar**, is a **Government Contractor** and accused No.10 in connivance with accused No.1,3 & 5 received payment against full length of road whereas, according to PPWD report at site only 69% of the road length was available. Therefore accused No.1,3 & 5 by misuse of authority, misappropriated the Government Fund & gains occurred of Rs.30,77,290/ and accused No. 10 is involved in misappropriation of government fund which resulted in loss to the exchequer and his liability & gains is of Rs.15,38,645/-."

54. The main allegation against petitioner No.8 is that he only built 69% of the road for which he was given full payment as if he had fully completed the road.

55. P.179 of the Report under the heading technical observations in connection with the concerned road reads as under:

"The road is constructed in desert area. During site visit, detail measurements were taken wherein the quantum of work in terms of the road found **lesser** than

the measured in MB. The execution of road over length of 6850 Rft is recorded in MB while at site about 4722 Rft found executed. **The over payment of the road for 2128Rft which is about 31% made on account of road constructions.**" (bold added)

56. The statement of Riaz Ahmed is of little, if any, assistance to petitioner No.8 and in our view the findings in the Report clearly show that the road was not fully completed and yet petitioner No.8 has been paid the full cost of constructing the road. As such in our view petitioner No.8 has been the beneficiary of a misuse of authority/failure to exercise authority and has been unduly benefited and favored by such over payment through the misuse of authority/failure to exercise authority by other official co-accused which would have been obvious on a simple site inspection. As such in our view since there has been no malafides on the part of NAB and there is sufficient material to connect the petitioner No.8 to the commission of the offense his pre arrest bail is hereby recalled.

57. **Learned counsel in CPD No.2334/16 for petitioner No.9 Mr. Abdul Rehman Katyper** (accused No.8 in the reference) who at the time of the offense was sub engineer submitted that the road had been constructed as per requirements. All cats eyes had been put in place and if they were now missing they had been stolen by villagers. With regard to the marking of lines on the roads he submitted that this was a busy road and that the line markings had now been rubbed off by the passing traffic. He submitted that he had not committed any wrong doing, that NAB had no material

against him and that even otherwise he was entitled to the benefit of the doubt.

58. Petitioner No.9 has been given a specific role at para 11 of the reference which reads as under:-

"11. The Investigation Report reveals that the accused No.09 / **Abdul Rehman Katper, Sub Engineer**, Provincial Highway Sub Division Sukkur remained posted as Sub Engineer at Provincial Highway Sub Division, Sukkur from 02.04.2011 to 10.02.2016. Accused No.09 in connivance with accused No.1,4,11,12,16, 18 and Saeed Ahmed & Ghulam Murtaza (Contractor) initiated / recorded MB on the site after measurement, and thereafter it was verified and checked by AEN and then by XEN. According to PPWD report accused No. 8 became instrumental for recording excessive measurement, as works executed at site are found less than the measurement recorded in MBs and substandard. Accused No. 8 willfully failed to exercise his authority to prevent the grant and rendered undue benefit / favor which he could have prevented by exercise of his authority due to his negligence and misuse of his authority he caused loss & gains (excess) of Rs.89,92,654/- (Eighty Nine Lacs Ninety Two Thousand One Hundred Fifty Four Rupees) to the national exchequer. The individual liability & gains is of Rs 8, 99,265/-

59. Petitioner No.9 is a sub engineer who was the person on site whose obligation was to monitor the work being done and ensure that it was up to the required standard and conformed with the work order. He needed to record all the MB's and ensure that the work done was correctly mentioned in the relevant book. In total he was **involved in 7 schemes** being schemes 2 to 8 in P.59 in the reference all of which caused loss to the exchequer due to the substandard work, lack of work or over pricing by the contractor on account of his misuse of authority/failure to exercise authority.

60. P.147 to 159 show the schemes that he was involved in and amply illustrate his misuse of authority and/or his failure to exercise authority which lead to loss to the national exchequer and undue favour being given to contractors Saeed Ahmed & Ghulam Murtaza.

61. For example, at P.149 of the Report concerning the W/R of road from Rohri Arrore Salehpat the technical observations were as under:

"The major payment is involved in the items of Cat-eyes and Reflective Paint lines. During site inspection reflective paint line found vague as the scheme being years old **but in terms of quantum of work recorded in MB differs from the quantity and pattern at site.** As per MB such items has been executed over 16 miles of road. During random walk through survey of about 1 KM of road found about 85. No cat-eyes cumulatively over three lines (one centre and 02 side lines of reflecting lines) **affixed on road using nails only while no traces of sticky/glue material in order to bond the contact area of cat-eyes and road.** This is based on the items found at site at that time in respective of quantity. Reflective paint lines found 10 ft strip 20' apart for center line while two lines on either side of the road found continuous. **The quantity of strip found at site differs as recorded in MB.**"(bold added)

62. Under the column remarks on the same page it is shown that the number of cats eyes which were used was less than the required amount which had been paid for and were not even spaced as per requirements. Likewise the road lines were not as per requirements and most of them were not visible which suggests that either they were not done at all or were of sub standard quality to have disappeared after only one year. The required No. of strips were also missing. It is also pertinent that most of the contractors

have entered into plea bargains and have paid back their illegally acquired gain.

63. Petitioner No.9 did not plead malafides on the part of NAB

64. In our view prima facie there is sufficient material on record to connect petitioner No.9 to the offense for which he has been charged. We have found no malafide on the part of NAB and accordingly his pre arrest bail is recalled.

65. **The case of Petitioner No.16 Mr. Faiz Mohammed (Accused No.18 in the reference) in CPD 2318/2016** is now being taken up, as his case is interlinked with petitioner No.9, whose case we have just discussed above, in that petitioner No 9 was the concerned sub engineer for the works which petitioner No.16 carried out as a contractor. As noted above we have already recalled petitioner No.9's interim pre arrest bail. Learned counsel for petitioner No16 made similar submissions to that of petitioner No.9. In particular he stressed that the sample of one KM of a 26 KM road was too small; that the inspection had been carried out after two years; that the technical report was defective as it did not state whether the road surveyed was straight or curved; that the cats eyes and road markings had either fallen off or been rubbed off as the road was heavily used by traffic; that he was innocent of any wrong doing; that his Form 28 statement had been signed off by an X EN who had not been included in the reference which showed malafide on the part of NAB which was clearly proceeding on a pick

and choose basis and thus for all the above reasons petitioner No.16's pre arrest bail should be confirmed.

66. As with petitioner Rs.9, petitioner Rs.16 has been given a specific role at Para 21 of the reference which reads as under:

"The Investigation Report reveals that the accused No.18 / **Faiz Muhammad is a Government Contractor** / Proprietor of M/s Faiz & Co. in connivance with accused Rs.1, 4 & 8 is involved in misuse of authority and misappropriation. Accused No.18 intentionally unlawfully, illegally fraudulently saved the number of cat eyes by not affixing the required number of cat eyes and also managed to apply less quality of thermo plastic paint (reflector paint lines). Accused No.18 / Faiz Muhammad in connivance with accused Rs.1,4 & 8 caused loss to the National Exchequer & gains occurred to the tune of Rs.58,47,485/-. His liability & gains is Rs.29,23,742/-".

67 As found earlier in this order we find no defects or deficiencies in the Report which was completed by experienced officers and has been found by us to be both reliable and accurate. The petitioner No.16 had the full opportunity to explain his position.

68. NAB has explained that the concerned X EN who signed off on petitioners F22 is facing a separate and wide reaching inquiry which also includes the role he played in this case and as such we find that NAB has not proceeded on a pick and choose basis and that there has been no malafide on the part of the NAB. For the reasons discussed above for petitioner No.9 in particular with regard to P.149 of the Report as reproduced in the above case of petitioner No.9 we find that there is prima facie sufficient material

to connect the petitioner No.16 with the offense for which he has been charged as he has benefited from an undue favour which through his sub standard work caused loss to the national exchequer in collusion and connivance with petitioner No.9 and other co-accused and since there has been no malafide on the part of NAB we hereby recall the interim pre arrest bail granted to petitioner No.16 earlier by this Court.

69. **Learned counsel in CPD No.2357/16 for petitioner No.10 Syed Naseem Abbas Shah** (accused No.11 in the reference) who at the time of the offense was a contractor submitted that the malafides of NAB was evident from the fact that the members of the Technical Team who made the Report did not even visit the site, did not associate him in the site visit or the inquiry; that there had been a delay in filing the Report which according to him was vague and inadequate; and that the work had been carried out as per work order and that the Mehran University had carried out a test on his behalf which showed that the work had been completed to the required standard as per work order and there was no evidence against petitioner No.10 who was absolutely innocent of any wrong doing.

70. Petitioner No.10 has been given a specific role at para 14 of the reference which reads as under:

"14. The Investigation Report reveals that the accused No.11/**Syed Naseem Abbas Shah is a Government Contractor** / Proprietor of M/s Najaf Enterprises and accused No.11 in connivance with accused No.1, 4 & 8 failed to apply to required thickness 2" of Asphalt whereas, according to PPWD report at site 5mm

thickness was fixed and found and the accused No.11 drawn payment for 2" (two inches) Asphalt. Therefore accused No.1,4 & 8 by misuse of authority in connivance of each other misappropriated government fund & gains occurred of Rs.14,13,679/- and accused No. 11 is involved in misappropriation of government fund which resulted loss to the exchequer and his liability & gains is of Rs.7,06,840/-."

71. Petitioner No.10 is a government contractor and is a beneficiary in that he received payment for a contract which he failed to perform adequately in connivance/collusion with other co-accused. There is no evidence whatsoever that the members of the technical team which compiled the Report did not visit the site and the report at P.151 specifically states that they did make a site visit and as such we find no substance in this contention. Likewise the statement of petitioner No.10 was taken prior to filing of the reference so he was given the full opportunity of being heard and stating his position thus his argument that he was not associated with the case prior to the filing of the reference is also not sustainable. In our view the report at P.151 fully shows that the petitioner has not carried out the work as per work order in the following terms at P.151 Technical observations, "The Scheme is comprised of laying of 2" Asphalt layer as major item of work. 09 random pits were taken where in the **average thickness of carpet found varying upto 5mm** in about 75% pits."(bold added) and remarks "In 75% area, thickness found bit lesser avg 5mm i.e. **10% of required thickness**" (bold added). The qty as per site is also found to be blank.

72. We do not find the Report to be vague or inadequate. On the contrary we find it as earlier mentioned to be detailed but concise and carried out by professionals who have been named in the said report along with other professionals who were present at the time of inspection and as such we have already found it to be reliable and accurate. The Mehran University Report which has been prepared for the petitioner in our view does not trump the Report and was made **after** the reference was filed so may be used for defense purposes at trial.

73. We find no malafides on the part of NAB and since in our view prima facie there is sufficient material on record to connect the petitioner No.10 to the offense as charged his pre arrest bail is hereby recalled.

74. Learned counsel in CPD No.2374/16 for petitioner No.11 Jawaid Ahmed Shaikh, (accused No.12 in the reference), in CPD 4049/16 for petitioner No.12 Ameer Bux alias Mehr Mahar (accused No.14 in the reference), in CPD 2521/16 for petitioner No.13 Rajesh Kumar (accused No.15 in the reference), in CPD 2386/2016 for petitioner 14 Ishfaq Ahmed (accused No.16 in the reference) and in CPD 3464/2016 for petitioner No.15 Soomar Khan (accused No.17 in the reference) all of whom at the time of the offense were contractors submitted that the malafides of NAB was evident from the fact that the members of the Technical Team who made the Report did not associate them in the site visit. They further submitted that the work had been completed as per

work order; that they were innocent of any wrong doing and that the Report was defective in that it did not contain maps and charts and photo's etc and that there was no evidence against them.

75. All of the aforesaid accused have been given specific roles in the reference which are set out at Paragraphs 15, 17, 18, 19 and 20 of the reference respectively which are reproduced as under for ease of reference:

"15.. The Investigation Report reveals that the **accused No.12/ Jawaid Ahmed Shaikh Government Contractor** / Proprietor of M/s Sahih Haji Atta Mohamamd & Co and M/s J.S Construction & Co. in connivance with accused No.1, 3 to 5 & 7 is involved in misuse of authority and mis-appropriation. Accused No.12 intentionally did not apply the 1st coat of bitumen as required for the construction of road and drawn illegally, unlawfully amount of 1" carpet for which he was not entitled as he failed to lay the required thickness of road. Accused No.12 / Jawaid Ahmed Shaikh in connivance with accused No.1,3 to 5 & 7 is involved in misappropriation and caused loss to the national exchequer & gains occurred to the tune of Rs.29,26,094/-. His liability & gains is of Rs.14, 63,047/-".

Technical Report Observations/Remarks P.169 and 175 (two schemes):

"(First scheme) P.169. Random pits were taken where in the thickness of Sub-Base and Base course found accordingly as per MB while average thickness of carpet found nearly 1" while **1st coat traces remained unobserved.**" (bold added)

Quantity as per site left blank

Remarks: Amount to be recovered Rs. 413288/=.

"(Second scheme) P.175. Random pits were taken where in the thickness of Sub-Base and Base course found accordingly as per MB **while average thickness**

of carpet found nearly 1" while 1st coat traces remained unobserved." (bold added)

Quantity as per site left blank.

Remarks: Surface area of 1st coat items is lesser than carpet area. 50% is trained as the item exits at site, partially recovered due to poor and low specification. Amount to be recovered Rs. 2143628/= (bold added)

"17. The Investigation Report reveals that the accused No.14 / **Ameer Bux alias Meer Mahar is a Government Contractor** / Proprietor of M/s Al-Amir Enterprises in connivance with accused No.1, 4 & 7 is involved in misuse of authority and misappropriation. Accused No.14 intentionally did not apply the 1st coat of bitumen as required for the construction of road and drawn illegally, unlawfully amount of 1" carpet for which he was not entitled as he failed to lay the required thickness of road and also barrowed the earth for berm formation from the adjacent land and illegally saving the lead payments. Accused No.14 / **Ameer Bux alias Meer Mahar** in connivance with accused No.1, 4 & 7 involved in misappropriation and caused loss to the National Exchequer & gains occurred to the tune of Rs.11,09,660/-. His liability and gains is of Rs.5,54,830/-".

Technical Report Observations/Remarks P.161:

"Random pits were taken where in the thickness of Sub-Base and Base course found accordingly as per MB while average thickness of carpet found nearly 1" while 1st coat traces remained unobserved." (bold added)

Quantity as per site left blank.

Remarks: Diff of rate = lead rate - ord: rate = 7723.95 - 3650.23 = 4067.72 %0 cft. Due to unavailability of approved — charts in the record. Amount to be recovered Rs.997788/=. (bold added)

"18. The Investigation Report reveals that the accused No.15 / **Rajesh Kumar is a Government Contractor** / Proprietor of M/s Roomasa Engineering Works in connivance with accused No.1, 4 & 7 is involved in

of carpet found nearly 1" while 1st coat traces remained unobserved." (bold added)

Quantity as per site left blank.

Remarks: Surface area of 1st coat items is lesser than carpet area. 50% is trained as the item exits at site, partially recovered due to poor and low specification. Amount to be recovered Rs. 2143628/=. (bold added)

"17. The Investigation Report reveals that the accused No.14 / **Ameer Bux alias Meer Mahar is a Government Contractor** / Proprietor of M/s Al-Amir Enterprises in connivance with accused No.1, 4 & 7 is involved in misuse of authority and misappropriation. Accused No.14 intentionally did not apply the 1st coat of bitumen as required for the construction of road and drawn illegally, unlawfully amount of 1" carpet for which he was not entitled as he failed to lay the required thickness of road and also barrowed the earth for berm formation from the adjacent land and illegally saving the lead payments. Accused No.14 / Ameer Bux alias Meer Mahar in connivance with accused No.1, 4 & 7 involved in misappropriation and caused loss to the National Exchequer & gains occurred to the tune of Rs.11,09,660/-. His liability and gains is of Rs.5,54,830/-".

Technical Report Observations/Remarks P.161:

"Random pits were taken where in the thickness of Sub-Base and Base course found accordingly as per MB while average thickness of carpet found nearly 1" while 1st coat traces remained unobserved." (bold added)

Quantity as per site left blank.

Remarks: Diff of rate = lead rate - ord: rate = 7723.95 - 3650.23 = 4067.72 %0 cft. Due to unavailability of approved ___ charts in the record. Amount to be recovered Rs.997788/=. (bold added)

"18. The Investigation Report reveals that the accused No.15 / **Rajesh Kumar is a Government Contractor** / Proprietor of M/s Roomasa Engineering Works in connivance with accused No.1, 4 & 7 is involved in

misuse of authority and misappropriation. Accused No. 15 intentionally unlawfully, illegally drawn payments for earth work and it is compaction while according to PPWD report no such earth work and compaction were executed at site. Accused No. 15 / Rajesh Kumar in connivance with accused No.1,4 & 7 is involved in misappropriation and caused loss to the National Exchequer & gains occurred to the tune of Rs.5,63,913/-. His liability & gains is of Rs.2, 81,957/-.

Technical Report Observations/Remarks P.165:

"Random pits were taken where in the thickness of Sub-Base and Base course found accordingly as per MB **while average thickness of carpet more than 1."** (bold added)

Quantity as per site left blank.

Remarks: The berms of the road found with desert sand. Amount to be recovered Rs.491247/=.

"19. The Investigation Report reveals that the accused No.16 / **Ishfaq Ahmed Awan is a Government Contractor** / Proprietor of Ms/ Mohammad Ramzan 7 Co. in connivance with accused No.1, 4 & 8 is involved in misuse of authority and misappropriation. Accused No.16 intentionally didn't apply the 1st coat of bitumen as required for the construction of road and drawn illegally, unlawfully amount of 1" carpet for which he was not entitled as he failed to lay the required thickness of road and also barrowed the earth for berm formation from the adjacent land and illegally saving the lead payments. Accused No. 16 / Ishfaq Ahmed Awan in connivance with accused No.1,4 & 8 involved in misappropriation and caused loss to the National Exchequer & gains occurred to the tune of Rs.12,90,376/-. His liability & gains is of Rs.6, 45,188/-

Technical Report Observations/Remarks P.153:

"Random pits were taken where in the thickness of Sub-Base and Base course found according to measured in MB **while average thickness of carpet found 1" while 1st coat traces remained unobserved."** (bold added)

Quantity as per site 395186 cft.

Remarks: Damages portion. Qty = $4.75 + 9.75 / 2 \times 3.25 \times 1800$ length = 42412 Cft. Amount to be recovered Rs.1152137/=.

"20. The Investigation Report reveals that the accused No.17/**Soomar Khan is a Government Contractor** / Proprietor of M/s Soomar Khan Mahar in connivance with accused No.1, 3 & 5 is involved in misuse of authority and misappropriation. Accused No. 17 intentionally did not apply the 1st coat of bitumen as required for the construction of road and drawn illegally, unlawfully amount of 1st carpet for which he was not entitled as he failed to lay the required thickness of road. Accused No. 17 / Soomar Khan in connivance with accused No.1,3 & 5 is involved in misappropriation and caused loss to the National Exchequer & gains occurred to the tune of Rs.16,36,891/-. His liability & gains is of Rs.8, 18,425/-

Technical Report Observations/Remarks P.173:

"Random pits were taken where in the thickness of Sub-Base and Base course found accordingly as per MB while average thickness of carpet found nearly 1" while 1st coat traces remained unobserved." (bold added)

Quantity as per site left blank.

Remarks: 50% is trained as the item exists at site, partially recovered due to poor and low specification. Amount to be recovered Rs.1423235/=.

76. We do not agree that the non association of the petitioners 11 to 15 with the inspection of the site at the time when the Report was made represents any malafide on the part of NAB. There was no requirement on the part of the NAB to associate them with the inspections that were made. Their statements were recorded and all the petitioners had a full opportunity to present their case before the NAB before the reference was filed.

77. We do not agree with the contention that the Report is defective or is in any way flawed. We find it, as mentioned earlier, to be concise and accurate and fair setting out the description of the works carried out with associated remarks. Leeway has even been given for any required fair wear and tear for usage over time. In addition to the NAB officers the Report was compiled in the presence of the expert professionals mentioned earlier in this order (whose names and designations are set out below for ease of reference) whose credentials in our view fully enable them to make meaningful contributions at site to assist the compilers of the Report

“Mr. Khalid Hussain Shaikh, Executive Engineer, CCD, Pak PWD, Sukkur.

Mr. Imran Rasool Qureshi, Sub Engineer, CC, Pak PWD, Sukkur.

Mr. Jawed Ahmed Kalhor, Assistant Executive Engineer, Provincial Highways Division Sukkur

Mr. Khadim Hussain Kalwar, Sub Engineer, Provincial Highways Division, Sukkur.

Syed Ali Naseer Shah, Sub Engineer, Provincial Highway Division, Sukkur with other non technical staff”.

78. None of the petitioners have produced any material whatsoever to rebut any of the findings in the Report and have only made bald unsubstantiated allegations that the work was carried out as per work order. If there work has been signed off as completed and over payments made we are of the view that this is of little, if any, assistance to the petitioners as such signing off was done mainly by the official co-accused who the petitioners were in

collusion and connivance with or form a part of separate inter linked inquiries.

79. All the petitioners have admitted doing the works which have been found defective or lacking in the Report at P.169, 175, 161, 165, 153 and 173 respectively extracts of which have been set out below their role mentioned above for ease of reference.

80. As such since we have found no malafide on the part of the NAB and prima facie there is sufficient material to connect petitioners 11 to 15 to the offense for which they have been charged the interim pre arrest bail granted to petitioners 11, 12, 13, 14 and 15 and is hereby recalled.

81. Before parting with this order we would like to make the following observations:

82. Prior to partition cities in the interior of Sind such as Sukkur and Shikarpur were well maintained and even it was once allegedly said that Shikarpur was the Paris of Sind. Today these cities have been reduced to a pitiful state with poor sewage, sanitation, broken roads, inadequate public amenities and so on and so forth which has made the lives of the people living in such cities miserable. These cities have been provided funds for their uplift and maintenance but sadly this is a classic, and we suspect just one of many, cases where prima facie public funds have been siphoned off by contractors in collusion with Government officials with the result that the required work is either not done at all or deliberately done in a sub standard manner so that the government officials

and contractors in collusion and connivance with each other could make illegal gotten gains through the misuse of authority/failure to exercise authority without caring less about their own city and the inhabitants of their city, who probably also include their own family members, who are left to suffer on account of their misdeeds. Persons who commit such offences like these which in effect are also crimes against the public/society must be dealt with firmly in accordance with the law so that this prevailing practice can be eliminated and such cities, through proper utilization of development funds, can be a place where our children can grow up in a healthy environment with all the necessary and adequate facilities and amenities which make the right to life meaningful.

83. Notwithstanding the above observation we are deeply disturbed by the fact that once again the total amount of loss to the public exchequer and individual liability of each petitioner appears to be relatively minor in terms of the NAB's mandate to deal with mega corruption cases and we will deal with this aspect below. We are however not entirely convinced that the petitioners should have their pre arrest bail recalled and be jailed when such relatively minor amounts are involved in NAB cases bearing in mind that NAB's primary mandate is to pursue mega corruption cases. However the law on pre arrest bail as laid down in the above cited Supreme Court case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) which sets out the legal requirements which would entitle an accused for the grant of pre arrest bail make it clear that (a) grant of bail before arrest is an

extraordinary relief to be granted only in extraordinary situations (b) those situations would be to protect innocent persons against victimization through abuse of law for ulterior motives (c) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail (d) bail before arrest can not be granted unless the person seeking it satisfies the conditions specified in subsection (2) of section 497 of Code of Criminal Procedure (e) 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 dishonor him and that all of the above grounds need to have been made out. Thus, since we have found that none of these grounds have been made out by any of the petitioners in the above case, especially in terms of malafide, and we are constitutionally bound to follow the judgments/orders and principals of law as laid down by the Hon'ble Supreme Court thus in cases such as these the pre arrest bail as a matter of law should be rejected.

84. We further express are deep dissatisfaction and grave concern that cases of this nature involving relatively petty amounts continue to be filed as references by the NAB. By Amjad Hussain's case (Supra) NAB's SOP on pecuniary jurisdiction was made a judicial order. As per the learned Prosecutor General of NAB that SOP came into effect on 01-01-2016 (and according to him the SOP was being strictly complied with after this date) Amjad Hussain's case (Supra) was decided on 27-04-2016. The

SOP/judicial order in effect limited NAB to not filing references below RS 100 M (10 crore) except in exception circumstances as set out in the SOP/Judicial order. Yet we find that the instant reference 07/2016 has been filed before the Accountability Court Sukkur on 28-10-2016 (10 months after the date when the SOP became effective and 6 months after the **Amjad Hussain's case** (Supra) whereby the SOP was converted into a judicial order). In the instant reference in total the loss to the national exchequer was approx 2.7 crores i.e about 25% of the amount set out in the SOP and judicial order (divided between approximately 24 persons) with individual liability in some cases being as low as 2 lacs 77,000, 1 lac 11,000, 4 lacs 52,000, 8 lacs 99,000, 5 lacs 54,000, 2 lacs 81,000, 6 lacs 45,000 etc. It is difficult to see how **prima facie** such amounts fall within the pecuniary jurisdiction of the NAB when the primary mandate of NAB as set out in the Supreme court case of **Asfandiyar Wali Khan** (PLD 2001 SC 607), and later High Court cases of **Rauf Bux Kadri** (MLD 2003 777) and **Amjad Hussain** (Supra) was held to be to deal with large scale/mega corruption cases and was recently re enforced by NAB's own SOP which was made a judicial order in **Amjad Hussain's case** (Supra). The Hon'ble Supreme Court has even recently observed by order dated 24-10-2016 in Suo Moto Case No.17 of 2016 (unreported) that the NAO should only be used in cases of mega scams rather than petty cases. The aforementioned order in material part observed as under:

"This Court on 02.09.2016, during hearing of Civil Appeal No.82-K of 2015, noticed abuse of authority by the NAB while taking cognizance of petty matters in terms of Section 9 of the National Accountability Ordinance, 1999 (hereinafter referred to as the Ordinance). The Ordinance was primarily legislated to counter the cases of mega scandals and initiate proceedings against the accused persons who are involved in scandals of mega corruption and corrupt practices." (bold, italics and underlining added)

85. It is true that the consideration of PB may be taken into account but in our view this aspect appears to have been misunderstood/misinterpreted by the NAB. Yes, we agree that PB is a relevant factor in deciding whether or not to file a reference but in our view **it is only a secondary factor linked to the large scale corruption element or if the amount involved falls slightly under the RS100M pecuniary jurisdiction and in any event resort to PB must be in the national interest.** One of the intentions in our view of the NAO was to recover ill gotten gains through Voluntary Return or PB but this was in our view relatable to large scale amounts and not to proceed against persons who owed RS10 or 20 lacs with the hope that they would enter into voluntary return or PB before trial was fully alluded to in Para 28 and 30 in terms of PB in the national interest in **Rauf Bux Kadri's** case (Supra) where recoveries of PB of minor amounts of 10 to 20 lacs **is unlikely to be in the national interest.** In our view a case such as the current one should perhaps have been transferred to another investigating agency at the inquiry stage. **In this case however since the reference is at an advanced stage and**

nearing a decision by the Accountability Court. we are not inclined to interfere with the conduct of the reference before the accountability court as it would in our view at this belated stage achieve no useful purpose although under the circumstances we find it both troubling and painful to decline pre arrest bail in NAB cases where such minor amounts are involved which pursuit prima facie appears to be contrary to the primary object of the NAO which is for the NAB to pursue mega corruption cases.

86. However, it is made clear that if such relatively minor matters in terms of value falling well below NAB's SOP and Judicial order on pecuniary jurisdiction as set out in **Amjad Hussain's case** (Supra) **continue** to form part of NAB references this Court may well consider striking down the same (or refer the references to other courts as per Para 32 of the **Rauf Bux Kadri case** (Supra)) on the basis that as indicated above such cases are against the letter, spirit, purpose and intent of the NAO, the above cited judgments including that of the Supreme Court in **Asfandiyar Wali Khan case** (Supra), this Court in **Rauf Bux Kadri's case** (Supra) and the **Amjad Hussain case** (Supra) and as the Supreme Court has very recently indicated above **the filing of such references may amount to a misuse of authority** and as such may be struck down by the court acting in its constitutional jurisdiction to ensure that the law is neither misused or abused. Even the concept of seemingly attempting to tie up accused in relatively low value cases with prima facie the main intention appearing to be to squeeze a

voluntary return or PB out of them with the threat of trial hanging over their head otherwise may, depending on the particular facts and circumstances of the case, in future even render such cognizance as potentially malafide and thus bring the institution into disrepute. Even otherwise it is the duty of the court to do complete justice in its constitutional discretionary jurisdiction which may potentially allow it in such cases to consider pressing into service the principles laid down in **Shamraiz Khan V State** (2000 SCMR 157) (rather than keeping persons locked up in jail where relatively minor amounts are involved in NAB cases) as was recently done by a Divisional Bench of this Court in CPD 5122/2016 **Athar Ali Abbasi v State** (unreported) dated 24-01-2017 (although that case concerned post arrest bail) since after all the people expect justice and fair play from both the prosecuting authority in terms of complying with their primary mandate as set out under the law and the courts especially when a persons liberty is at stake. Indeed, as was held in the recent Supreme Court case of **Ziaghham Ashraf V State** (2016 SCMR 18) when considering the issue of granting or refusing an accused bail such matters must not be taken lightly but rather cautiously as a person's liberty is at stake.

87. In view of the above the **Chairman NAB is directed** to consider the observations recently made in the case of CPD No.2741/2016 **Rajid Ali Shah V Chairman NAB** (un reported) dated 08-03-2017 which was copied to the Chairman NAB and

which at Para 15 in part and 16 stated as under and for ease of reference are set out below:

"15 and perhaps the option open in this respect to the Chairman NAB, on the advice of the PGA, is to consider transferring one such test case to another court and see what the legal consequences of this may be.....

"16. Even otherwise Para 44 of **Amjad Hussain's case** (Supra) is only a direction to the Chairman NAB to **consider** transferring those references that have already been filed in Accountability Courts which fall below the threshold of the judicial order to other relevant courts. It is **not** a direction to transfer such cases. It is up to the Chairman NAB to apply his mind and to decide whether to transfer the reference to another Court or not subject to it being legally permissible and an appropriate case to justify a transfer.

88. We now **hereby direct** the Chairman NAB to file a report to show what steps he has taken to transfer such references of relatively minor value following the cases of **Amjad Hussain** (Supra) and **Rajid Ali Shah V Chairman NAB** (Supra) bearing in mind that sub-clause (ix) of the SOP/Judicial order was only to be pressed into service in **exceptional** circumstances and not as a matter of routine. Such report shall be taken up by us in chambers on 27-04-2017 along with the report to be filed in the **Rajid Ali Shah** case (Supra) and the direction given to DG NAB Sukkur which follows later in this order on which further orders may be passed thereon.

89. In stating the above we are in no way condoning any criminality on the part of anybody which must be prosecuted if sufficient evidence exists but in our view it is a question of

choosing the appropriate forum/jurisdiction for that prosecution bearing in mind the primary purpose of the NAO to tackle mega corruption cases. For the avoidance of any further doubt it is clarified that in proceeding with a NAB case under the NAO the primary consideration is whether the case is a mega corruption case which value is above the pecuniary jurisdiction of RS 100 M as set out in the SOP/Judicial order. This as noted in **Amjad Hussain's case** (Supra) will enable the NAB to best utilize its resources in investigating and prosecuting such cases rather than being bogged down in cases of relatively minor value which could be dealt with by a more appropriate forum under the law. In this regard we have even noted that NAB is being used as a debt collection agency by the Ministry of Water and Power through its various bodies e.g. SEPCO who are sending letters to electricity defaulters (individual consumers in most cases) under S.5 @ NAO in their own names for amounts sometimes a little over one lac rupees in the guise of willful default which we have already taken notice of in another NAB case before us in terms of jurisdiction. Did Parliament really intend for the NAB to be used as a debt collection agency by other bodies who have their own means of recovery in such petty cases? Was willful default intended to cover cases of consumers defaulting on minor amounts of their electricity bills? We doubt it very much. The **Asfandiyar Wali Khan case** (Supra) tends to indicate that willful default was criminalized as an offense under the NAO mainly to stop large scale bank loan default which was then often written off at the cost to the State, the economy and

depositors of that institution. Whilst performing such wide reaching and time consuming functions of in effect debt collection concerning relatively minor amounts on behalf of other bodies which appear to us to be prima facie unrelated to corruption we wonder how is it possible for NAB to fully harness its resources in order to pursue mega corruption cases worth RS billions which is its primary mandate under the NAO.

90. We have also observed whilst sitting on the NAB bench of this Court that in a significant number of pre arrest bail cases the accused is on pre arrest bail for over a year and very often the reference is nearly half way through when the case is ripe for deciding the question of whether the pre arrest bail should be confirmed or not. In such circumstances is it fair of the Court to recall the accused's pre arrest bail if he has been regularly attending the Court and has not caused any delay and is no more required for investigation? Would this amount to unfairly punishing the accused which is not the purpose behind denying someone bail? This is a difficult question bearing in mind the law on pre arrest bail as set out above. Such situation clearly shows that both the spirit and purpose of pre arrest bail is being both misused and abused. This is because as is well settled law **pre arrest bail is an extraordinary relief to be granted only under extra ordinary circumstances and not to be used as a substitute for post arrest bail** as mentioned earlier in this order. To allow the pre arrest bail to continue without confirmation for so long is in our view both a failure on the part of the counsel for the accused in

having the cases expeditiously heard rather than dragging them out in order to benefit their client bearing in mind that they are also officers of the Court and have a duty to fairly assist the court in ensuring the good and efficient and effective administration of justice, the prosecuting authorities in not vigorously pursuing the hearing of such cases and even to some extent the judiciary in allowing such pre arrest bail cases to unnecessarily linger on without deciding on their confirmation or otherwise.

91. In our view in NAB cases once the reference has been filed the pre arrest bail application should be immediately decided (but not before this time). This is because by this time any persons who are on pre arrest bail and who do not form part of the reference can withdraw their pre arrest bail applications. In our view it would be unfair on the accused on pre arrest bail to determine their confirmation prior to the filing of the reference since (a) if they were dropped at the inquiry or investigation stage and do not form part of the reference and their pre arrest bail had been recalled prior to this they would have unnecessarily spent unjustified time behind bars and (b) by deciding on confirmation prior to the filing of the reference may give the impression to the NAB that the Court considers that there is either insufficient or sufficient material against the accused depending on whether their pre arrest bail was confirmed or not which may influence NAB in determining whether or not to file a reference against them as the case may be. When, however, a reference is finally filed by NAB, the NAB ought **already** to have filed all comments and ancillary documents before the

Court in support of its case against the confirmation of the pre arrest bail, if it intends to oppose the same (as there is sufficient time from the opening of an inquiry to its potential conversion into an investigation and finally potentially filing a reference as per NAB's own SOP's for this purpose) to enable the pre arrest bail applications to be heard and decided immediately or within a month of filing the reference at the latest **unless** exceptional circumstances exist. In our view, if after this time lawyer's for the petitioners are perceived by the Court to be using delaying tactics in having the pre arrest bail application decided then as pre arrest bail is an extra-ordinary relief the Court in our view, if it deems it appropriate, may in its constitutional discretionary jurisdiction (where the accused/petitioner must come with clean hands) simply recall the interim pre arrest bail. Like wise if the concerned Court is unaware of the case or is not deciding the same expeditiously it would be the obligation of the NAB to bring this to the attention of the Court through moving urgent applications to have the matter heard and decided. **This is because, as held by the Hon'ble Supreme Court, pre arrest bail is NOT to be used as a substitute or alternative to post arrest bail in any case let alone a NAB case.**

In summary.

92. The interim pre arrest bail granted to all the petitioners is hereby **recalled** in respect of all the petitioners with immediate effect namely:

1. Petitioner No.1 in CP No.D-2087/16 **Gul Hasan Shaikh**
2. Petitioner No.2 in CP No.D-2088/2016, **Ghulam Shabir Kalwar**
3. Petitioner No.3 in CP No.D-2088/16, **Khadim Hussain Khalwar**
4. Petitioner No.4 CP No.D-2088/16, **Syed Ali Nasseer Shah Jafferri**
5. Petitioner No.5 in CP No.D-1872/16, **Javed Ali Shaikh**
6. Petitioner No.6 in CP No.D-2317/16, **Ghulam Shabir Solangi**
7. Petitioner No.7 in CP No.D-2317/16, **Abdul Rab Shaikh**
8. Petitioner No.8 in CP No.D-2319/16, **Wazir Ali**
9. Petitioner No.9 in CP No.D-2334/16, **Abdul Rehman Katyper**
10. Petitioner No.10 in CP No.D-2357/16, **Syed Naseem Abbas Shah**
11. Petitioner No.11 in CP No.D-2374/16 **Javed Ahmed Shaikh**
12. Petitioner No.12 in CP No.D-4049/16 **Ameer Bux alias Mehr Mahar**
13. Petitioner No.13 in CPNo.D-2521/16 **Rajesh Kumar**
14. Petitioner No.14 in CP No.D-2386/2016 **Ishfaqe Ahmed**
15. Petitioner No.15 in CP No.D-2464/2016 **Soomar Khan**
16. Petitioner No.16 in CP No.D-2318/2016 **Mr. Faiz Mohammed.**

93. The Accountability Court hearing this reference is directed to complete the trial within 3 months of the date of this order. A copy of this order shall immediately be sent to the concerned Accountability Court for compliance.

94. This order and especially the last 15 pages shall also immediately be sent to Chairman NAB, DG NAB (Sukkur) and DG

NAB (Karachi) for information and compliance. In particular DG NAB Sukkur is directed to review the references pending before the Accountability Court Sukkur in terms of pecuniary jurisdiction which have been filed after 01-01-2016 and the decision in **Amjad Hussain's case (Supra)** and on going inquiries and investigations in respect of pecuniary jurisdiction and submit before us in chambers by 27-04-2017 a report of all cases whether in inquiry stage, investigation stage or where a reference has been filed (along with details of how advanced the reference may be and the reasons for filing such references) where the amount involved is less than RS 10 Crore.

95. As per para 88 of this order the Chairman NAB shall provide a report by 27-04-2016 to be taken up by us in chambers (which ties in with the date when a separate report is also to be filed by the Chairman NAB pursuant to the orders given by this court in the case of **Rajid Ali Shah V Chairman NAB (Supra)** and thereafter further orders may be passed on such reports.

SUKKUR:

Dated: -31/3/2017.