

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
JUDICIAL DEPARTMENT

**Writ Petition No.3832-P/2019**

**“Manzar Khan Vs. NAB through Chairman NAB,  
Islamabad & two others”**

**JUDGMENT**

Date of hearing                    **19.08.2019**

Petitioner(s) by:                    Mr. Jalal-ud-Din, Advocate.

Respondent(s) by:                    Mr. Riaz Khan Mohmand,  
Special Prosecutor.

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**WIQAR AHMAD, J.-** The petitioner namely Manzar Khan son of Sikandar Khan has sought grant of bail by filing the instant Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

**02.**            The allegations against the petitioner may be gathered from Reference No.18/2007, which was filed against him on 01.06.2007 before the learned Administrative Judge, Accountability Court, Peshawar (*hereinafter referred to as “the Accountability Court”*). Khalid Khan and others had lodged a complaint against the accused-petitioner before the concerned officers of National Accountability Bureau (*hereinafter referred as “NAB”*) alleging therein that he alongwith his brother-in-law namely Shehryar Khan had lured the people of the locality to pay

for the booking of Tractors under the pretended Prime Minister Scheme at the rate of Rs.2,51,000/- per Tractor instead of market price of Rs.3,10,000/- in the time **span ranging** from the year 2002 to 2006, which could never be delivered to the complainants and their monies were embezzled. According to the Prosecution, it was a case of cheating the public at large, therefore, Reference was filed before the Accountability Court after conclusion of investigation in the case. Allegedly embezzled amount was stated to be Rs.44.414 Million. It was also found during course of investigation that the accused-petitioner had been working as Junior Clerk/Crop Reporter (BPS-05) in the Government of Khyber Pakhtunkhwa Agriculture Department at the relevant time. The accused-petitioner was also found to have entered into agreements with the affectees for the return of their money but instead of fulfilling his commitment, he disappeared. The case was referred to the Accountability Court under Section 16 (c) of National Accountability Ordinance 1999 (*hereinafter referred as "NAO"*).

**03.** The accused-petitioner had neither turned up during investigation nor could he be

arrested. He did not appear before the Court also, and was proceeded against under Section 512 Cr.P.C, where-after he was declared proclaimed offender and perpetual warrant of arrest was issued vide Order dated 27.10.2007 of the Accountability Court Peshawar.

**04.** Accused-petitioner was then arrested on 14.05.2019 by the NAB authorities and after completion of investigation and period of remand, the accused-petitioner was sent to Central Prison, Peshawar on 28.05.2019 and since then, he is behind bars.

**05.** Learned counsel for the petitioner draw the attention of the Court towards 2<sup>nd</sup> page of the reference filed under Section 18(g) of the NAO and contended that the total number of the affectees given in the reference have been shown to be 27 while the amount allegedly received by the accused-petitioner comes out to be Rs.44414000/-. He contended that the offence of cheating of public at large do not stands out of the record against the accused petitioner and that NAB should not have initiated any proceedings in the matter. He placed reliance on the judgments of "*Rafiq Haji Usman Vs. Chairman, NAB and*

*another*" reported as **2015 SCMR 1575**, "*Abdul Waheed Khan Vs. Chairman, National Accountability Bureau through Deputy Prosecutor General and 4 others*" reported as **PLD 2018 Peshawar 59**, "*Zahid Ali Noor Vs. NAB and others*" reported as **2017 P Cr.LJ 147**, "*Muhammad Fakhar Javed Khokhar and another Vs. National Accountability Bureau and others*" reported as **2018 P Cr.LJ 477** and "*Naseem Abdul Sattar and 6 others Vs. Federation of Pakistan and 4 others*" reported as **PLD 2013 Sindh 357**.

Learned counsel for the petitioner also placed reliance on Clause 4 of the Standing Operating Procedures (SOPs) of NAB for selection of cases and contended that in sub-Clause-D therein, NAB authorities have been bound down to take cognizance of only those cases where the minimum number of affected persons are more than 50 and the amount involved is not less than 100 million. He further added that the case is of civil nature and conversion of the matter in criminal domain is illegal.

**06.** Learned Special Prosecutor, NAB contended that the case of the present petitioner was initiated and investigated way back in the

year 2006/2007 while the SOPs referred by the learned counsel for the petitioner has been put in place in the year 2010, therefore, same could not be applied to the case of the petitioner. He next contended that the petitioner has defrauded poor people of the locality, alluring them towards making the payment by offering them a price which was 60 thousand less than the market price of the Tractors at the relevant time. He further added that the accused had also gone into absconsion and therefore he is not entitled to be released on bail.

**07.** We have heard arguments of the learned counsel for the parties and gone through the available record.

**08.** Regarding the jurisdiction of NAB in the instant case, it may be noted that not only a public servant but an ordinary citizen may be made the subject of investigation by NAB provided the other conditions laid down in NAO for the relevant offence are met as held by the Hon'ble Supreme Court of Pakistan in case of "*Abdul Aziz Memon and others Vs. The State and others*" reported as **PLD 2013 Supreme Court 594**. It needs mention here that though the

petitioner was public servant at the relevant time, but he is not alleged to have committed the offence in the discharge of his official duties. He is booked for cheating the public at large u/s 9 (a)(ix) of NAO. In the case of an offence u/s 9 (a)(ix) it is the requirement of law, however, that the cheating or criminal breach of trust is committed in respect of "public at large". It is correct that the case in hand preceded the devising of the SOPs by NAB, but it is not only a question of compliance of SOPs but the requirement of Section 9 (a)(ix) of the NAO 2001, that in cases where public at large are defrauded only then NAB can take cognizance. The said clause is reproduced as under for ready reference:

**"9. Corruption and Corrupt practices:**

**(a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices: -**

**(i) ----**

**(ii) ----**

**(iii) ----**

**(iv) ----**

**(v) ----**

**(vi) ----**

**(vii) ----**

**(viii) ----**

**(ix) If he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and thereby dishonestly induces members of the public at large to deliver any**

**property including money or valuable security to any person: or”.**

**09.** The connotation "*public at large*" has not been defined in the National Accountability Ordinance 2001. The word "public" however has been defined in PPC 1860 in Section 12 as follows.

**"The word 'public' includes any class of the public or any community".**

The said definition is not exhaustive but suggests that it should be a class or a community as a whole.

Black's Law Dictionary defines the two phrases as follow: -

**Public:**

**Relating or belonging to an entire community, state, or nation.**

**at large:**

**Not limited to any particular place, district, person, matter, or question".**

**10.** The August Supreme Court of Pakistan in the case of "*Rafiq Haji Usman Vs. Chairman, NAB and another*" reported as **2015**

**SCMR 1575** inter alia held as follows: -

**"We are of the view that 13 persons would hardly constitute public in its literal and ordinary sense; furthermore meaning of the word large i.e. "considerable or relatively great size, extent or capacity having wide range and scope" does not bring 22 or 13**

**persons as the case may be within its concept and fold. Thus from this angle as well the said section seemingly perhaps can be held not attracted to the instant case".**

**11.** As held by the Hon'ble Supreme Court of Pakistan in the above cited Judgment, the word "public at large" should be a number of people "considerable or relatively great size, extent or capacity having wide range and scope". Of late NAB has quantified the term in the shape of Item No.4 (4)(d) of its SOPs in the following words: -

**"Cases involving interest of members of public at large where the numbers of defrauded persons are more than 50 persons and amount involved is not less than Rs.100 million".**

**12.** We therefore have a criteria for discerning the cases on the touch stone of the phrase public at large in the shape of the relevant part of the SOPs, which appears to be reasonable as well.

**13.** Coming to the facts of the instant case, it is clear from the Reference that the total number of people allegedly deceived comes out to be 27 with the allegations of embezzlement of an amount of Rs.44.414 Million. In the case of "*Rafiq Haji Usman Vs. Chairman, NAB and another*" cited above, the Hon'ble Supreme Court



of Pakistan has held that a number of 22 or 13 persons do not qualify the required number for constituting it as "public at large". On the said touch stone, we are confident that the number of 27 persons also do not qualify the test of connotation "public at large" and therefore, there is a serious question regarding taking of cognizance of the instant case by NAB, which is yet to be determined by the learned Trial Court.

**14.** Whenever there is a serious question regarding the jurisdiction of an investigating agency, same has always been taken as a good ground for grant of bail. Arrest of an accused person is made because of authorization of investigation by NAB. If the investigation is authorized in a way that a mandatory condition precedent is ignored then the arrest and ensuing judicial custody also becomes questionable.

Though it's final effect and impact is yet to be adjudged by the Accountability Court, but the fact that these serious questions are floating on record, entitle the accused-petitioner to the grant of bail. Such grounds have been treated inter alia by this Court in the case of "*Abdul Waheed Khan Vs. Chairman, NAB and 4 others*" reported as **PLD**

**2018 Peshawar 59**, as a good ground for grant of bail as well as by the Hon'ble Lahore High Court in the cases of "*Muhammad Fakhar Javed Khokhar and another Vs. NAB and others*" reported as **2018 P Cr.LJ 477** and "*Zahid Ali Noor Vs. NAB and others*" reported as **2017 P Cr.LJ 147**. The Hon'ble Supreme Court of Pakistan has also treated this ground as one of the grounds for releasing the accused on bail in the case of *Rafiq Haji Usman Vs. NAB* cited above.

**15.** So far as absconsion of the accused is concerned, it is by now well settled that bail cannot be declined merely for the reason that the accused had gone in absconsion if his case is otherwise fit for grant of bail.

**16.** In such view of the matter, we allow the instant petition and admit the accused to the grant of bail.

**17.** Above are the detailed reasons of our short order of even date which is reproduced as under: -

"For reasons to be recorded later in the detailed judgment, this writ petition is allowed and petitioner Manzar Khan being charged under section 18(g)/9/10 read with section 24 of the National Accountability Ordinance 1999 along with offences mentioned in its Schedule further read with section 512 Cr.P.C registered at Police Station NAB Peshawar in Reference No.18/2007 shall be released on bail subject to furnishing bail bonds in

the sum of Rs.10 million with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means”.

**ANNOUNCED.**

**19.08.2019**

**J U D G E**

**J U D G E**

**DB**

**Hon'ble Mr. Justice Syed Arshad Ali  
Hon'ble Mr. Justice Wiqar Ahmad**

Himayat