JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.805 of 2016

Wajid Ali Khan
Versus.
The State and another

Date of Hearing:	**21.12.2016**
Petitioner by:	**M/s Laiq Khan Swati and Ehthesham Turk, Advocates.**
Respondent by:	**Mr. Muhammad Adnan Tahir, Special Prosecutor N.A.B. along with Umair Naeem Bajwa, Assistant Director N.A.B.**

MIANGUL HASSAN AURANGZEB, J:- Through the instant petition under Article 199 of the Constitution, the petitioner, Wajid Ali Khan, seeks post-arrest bail.

2. The petitioner was arrested on 19.11.2015 by the National Accountability Bureau ("N.A.B."). The petitioner is a co-accused in Reference No.02/2014, which is pending before the Accountability Court. The bail petition of the principal accused, Mufti Ehsan-ul-Haq, has already been dismissed. The petitioner is specifically nominated in the 3rd Supplementary Reference. The petitioner is accused of making investments for the principal accused in various companies and properties from the amounts which had been deceitfully collected from the general public. The principal accused has voluntarily returned a substantial amount of the ill gotten wealth, but is still behind bars, because he defaulted in returning the entire amount he had undertaken to return. Some of the properties purchased by the petitioner from the funds provided by the principal accused, were purchased by the petitioner in his own name as *benamidar*.

3. Learned counsel for the petitioner submitted that the petitioner is engaged in the business of distributing medicine and consumer products; that the petitioner is sole proprietor of "I.W. Traders" having a place of business at Korang Road, I-10/2, Islamabad; that the petitioner is a tax payer and has earned a good name and reputation in the business community; that the petitioner is a member of the Chamber of Commerce, Islamabad; that in the year 2012, one Muhammad Ibrar-ul-Haq expressed his

intention to the petitioner to purchase a pharmaceutical business; that the petitioner managed and arranged the purchase of Spadix Pharmaceuticals for Muhammad Ibrar-ul-Haq; that vide sale purchase agreement dated 15.03.2012, the petitioner purchased 70% share of Spadix Pharmaceuticals for Rs.60 Million from its previous owners; that subsequently the remaining 30% shares of Spadix Pharmaceuticals were purchased by the petitioner on behalf of Muhammad Ibrar-ul-Haq, who was shown as holding 5% share in the said business; that after the purchase of the said shares, the petitioner started manufacturing, marketing and selling pharmaceuticals products in the market; that due to the efforts of the petitioner, the value of the shares increased from Rs.60 Million to Rs.250 Million; that due to the petitioner's personal commitments, the business of Spadix Pharmaceuticals was handed over to its actual owners, namely, Mufti Ehsan-ul-Haq and Muhammad Ibrar-ul-Haq; that vide agreement dated 13.12.2012, the business relations between the petitioner and the above-named persons came to an end with mutual consent; and that on 15.03.2013, the petitioner resigned as Director of Spadix Pharmaceuticals.

4. The petitioner has admitted that the properties listed in paragraph 11 of the petition, were purchased by him for Mufti Ehsan-ul-Haq and Muhammad Ibrar-ul-Haq.

5. For purchasing these properties, the petitioner received commission/charges for services performed as an agent of Mufti Ehsan-ul-Haq and Muhammad Ibrar-ul-Haq; that House No.658, Street No.18, Sector I-8/2, Islamabad, was purchased on 14.09.2012 by the petitioner with his own savings and income from Sheikh Muhammad Asghar for a sale consideration of Rs.5 Million; that 50% share in the said house has been gifted by the petitioner to his wife: that N.A.B. Rawalpindi has marked a caution/lien on the petitioner's bank account maintained at Habib Bank Limited, I-9 Branch, Islamabad; and that the petitioner was taken in N.A.B. custody on 05.03.2014 for thirty five hours.

6. Learned counsel for the petitioner further submitted that the petitioner has been nominated as an accused in N.A.B. Reference No.2/2014 with *malafide* intention, and in an

unauthorized manner; that the petitioner is not a *benamidar*, but the actual owner of House No.658, Street No.18, Sector I-8/2, Islamabad, which has been purchased with the petitioner's own funds; that the main accused, Mufti Ehsan-ul-Haq, does not claim to be the owner of the said house; that the petitioner has absolutely no role in the offence alleged to have been committed by the Mufti Ehsan-ul-Haq; that there are several thousand complainants against the above-named principal accused, but not a single complainant against the petitioner; that the petitioner has not induced or motivated any person to make an investment with Mufti Ehsan-ul-Haq; that the guilt or innocence of the petitioner will be determined during the trial, which will take a very long time; that the case against the petitioner is that of further inquiry; that the petitioner has served with the above-named principal accused in companies and firms, but has not committed any offence; and that the petitioner has remained in physical remand with N.A.B. for fifty five days, but no incriminating material was recovered from the petitioner.

7. On the other hand, Mr. Muhammad Adnan Tahir, learned Special Prosecutor, N.A.B. submitted that more than 9,100 complaints against Mufti Ehsan-ul-Haq were received by N.A.B.; that perusal of these complaints and initial inquiry showed that more than Rs.8.5 billion had been collected from members of the public in the name of *Modaraba* by Mufti Ehsan-ul-Haq, Mufti Subhan, etc.; that the accused in Reference No.2/2014 have neither returned the principal amount nor the return on investment to the members of the general public from whom the amounts were collected; that the competent authority authorized an inquiry on 16.04.2013 on allegations of corruption and corrupt practices by way of cheating the public at large; that on the same very day, warrants of arrest was issued against Mufti Ehsan-ul-Haq, who was arrested; that during the course of inquiry, it became clear that the accused nominated in the said reference dishonestly induced members of the public in the name of *Modaraba* by receiving huge investment.

8. Learned Special Prosecutor, N.A.B. further submitted that Mufti Ehsan-ul-Haq admitted his guilt and applied for voluntary

return under Section 25 of the NAO, 1999; that on 18.06.2013, the competent authority approved the application for voluntary return on the basis of the claims received up to 13.06.2013 for an amount of Rs.552,439,700/- out of which Rs.446,610,979.61 was paid through twenty pay orders, and the balance amount was to be paid by the accused within a period of one month; that the original title deeds of six immovable properties were kept by N.A.B. as guarantee for the payment of balance amount; that after the approval of the voluntary return in the Executive Board Meeting of N.A.B., Mufti Ehsan-ul-Haq was released on 20.06.2013 under Section 25(a) of the NAO, 1999; that as the said accused failed to honour his commitment as regards the payment of the balance amount, a fresh inquiry was authorized on 06.09.2013, and he was re-arrested; that Mufti Ehsan-ul-Haq remained in N.A.B. custody for 23 days, after which he was sent to the judicial lock-up on 30.09.2013; that interim reference has been filed on 10.02.2014 against seven accused persons, and a Supplementary Reference has been filed on 10.10.2014 against 36 accused persons, out of which 11 were arrested.

9. Learned Special Prosecutor, N.A.B. further submitted that as regards the petitioner / Wajid Ali Khan he was a close associate and a front man of Mufti Ehsan-ul-Haq and Ibrar-ul-Haq; that the petitioner managed and invested the funds for the above-mentioned persons; that the petitioner was a Director Spadix Pharmaceuticals as per the records of Securities & Exchange Commission of Pakistan; that the petitioner purchased different properties for Mufti Ehsan-ul Haq and Ibrar-ul-Haq in their own names and in the name of *benamidars;* that the petitioner purchased a house worth Rs.40 Million from the proceeds of the *Modaraba* Scam; that after the arrest of Mufti Ehsan-ul-Haq, the petitioner disappeared with a huge amount of the looted money.

10. It is further submitted that the petitioner deliberately avoided to join the investigation and intentionally avoided the process of the law by absconding for a considerable period of time; that the petitioner's bank accounts were used by Mufti Ehsan-ul-Haq to collect the *Modaraba* funds, and to carry out

other investment transactions; that the petitioner's bank accounts were used to conceal the proceeds of crime; that the petitioner purchased products from M/s Hilal Foods Private Limited for an amount of more than Rs.21 Million by utilizing the *Modaraba* funds on behalf of Mufti Ehsan-ul-Haq; that the petitioner also purchased products for AF Enterprises and SJ Enterprises; that the certificates relied upon by the petitioner do not show any contact number, NTN number or Sales Tax number.

11. It was further submitted that the accused, Ibrar-ul-Haq (Mufti Ehsan-ul-Haq's brother) revealed during interrogation that the petitioner worked as a front man, by managing their businesses including the business of oil lubricants and distribution of pharmaceutical products; that the petitioner purchased shares in Spadix Pharmaceuticals for Ibrar-ul-Haq, and the payment for the said shares was made from the *Modaraba* funds; that the petitioner has admitted that he had made investments for Ibrar-ul-Haq; that the petitioner played an active role in concealing the proceeds of crime by purchasing the shares in Spadix Pharmaceuticals in his own name; that after the arrest of Mufti Ehsan-ul-Haq, the petitioner withdrew huge amounts from the different bank accounts and disappeared from the scene; that the petitioner was neither a property dealer nor an estate agent, but was purchasing properties for Mufti Eshsan-ul-Haq and Ibrar-ul-Haq with the proceeds of the *Modaraba* Scam; that the petitioner purchased House No. 658, Street No.18, Sector I-8/2 Islamabad, for Rs.40 Million, which amount was paid to him by Ibrar-ul-Haq - this fact was revealed by Ibrar-ul-Haq during interrogation; that Ibrar-ul-Haq also revealed that the petitioner was paid Rs.11,00,00,000/- for the purchase of shares in Spadix Pharmaceuticals and Rs.22,00,00,000/- for the purchase of Goodman Laboratories, in addition to Rs.30,00,00,000/- for different business concerns. Learned Special Prosecutor prayed for the writ petition to be dismissed.

12. We have heard the contentions of the learned counsel for the petitioner and the learned Special Prosecutor N.A.B., and have perused the record with their able assistance.

13. It is not disputed that the petitioner was arrested on 19.11.2015. He was in physical custody of N.A.B. for a period of 55 days, after which he has remained in judicial custody. The learned counsel for the petitioner also admitted that the petitioner made investments in various companies and properties for Mufti Ehsan-ul-Haq and his brother Ibrar-ul-Haq. Some of the properties admittedly purchased by the petitioner for Mufti Ehsan-ul-Haq and Ibrar-ul-Haq, are as follows:-

> ***"a) Plot No.16, Road S-5, RCCI (Rawalpindi Chamber of Commerce & Industries), Adjacent to Spadix.***
> ***b) Plot No.36, Road S-5, RCCI (Rawalpindi Chamber of Commerce & Industries).***
> ***c) Plot No.13, Road S-5, RCCI (Rawalpindi Chamber of Commerce & Industries), Al-Hassan Autos.***
> ***d) Plot No.5, Road S-5, RCCI (Rawalpindi Chamber of Commerce & Industries) Goodman Laboratories.***
> ***e) Plot No.17, Spadix Pharmaceutical Road S-5, RCCI (Rawalpindi Chamber of Commerce & Industries).***
> ***f) House No.275, Street No.100, Sector I-8/4, Islamabad.***
> ***g) House No.265, Street No.62, Sector I-8/3, Islamabad.***
> ***h) V-8 Land Cruiser***
> ***i) Vitz Car etc."***

14. It is also an admitted position that some of the properties including shares in Spadix Pharmaceuticals were purchased in the name of the petitioner as ostensible owner/*benamidar* for Mufti Ehsan-ul-Haq and Ibrar-ul-Haq, who were the real owners. Mufti Ehsan-ul-Haq has already filed an application for voluntary return of the amount taken through deception from the public at large. His application for voluntary return of Rs.552,439,700/- was approved by the competent authority. Out of the said amount, Mufti Ehsan-ul-Haq has already paid Rs.446,710,979.61 through twenty pay orders. Since the balance amount was not paid within the agreed period of one month, Mufti Ehsan-ul-Haq has been re-arrested. Presently, he is in judicial custody.

15. Now investments to the tune of millions of rupees were made by Mufti Ehsan-ul-Haq (the principal accused in Reference No.02/2014) through the petitioner. *Prima-facie* we are of the view that the petitioner made it convenient for the principal accused to invest the amount taken by deception from the public at large. The petitioner's role is not just that of a broker or a property dealer making transactions for his client for a commission/charge, because some of the properties purchased

by the petitioner with the funds provided by the principal accused were purchased in the petitioner's own name. The learned counsel for the petitioner during his submissions was not able to satisfy us that the petitioner had the financial capacity to purchase House No.658, Street No.18, Sector I-8/2, Islamabad.

16. The petitioner has been arraigned as accused No.3 in the third supplementary reference in Reference No.02/2014. Specific role has been assigned to the petitioner in the third supplementary reference. The position taken in the third supplementary reference is that the petitioner, during interrogation, revealed that he purchased Spadix Pharmaceutical and Goodman Pharmaceutical for Rs.220 Million. At first the shares of Spadix Pharmaceuticals were purchased in the petitioner's name, and were subsequently transferred to Mufti Ehsan-ul-Haq and Ibrar-ul-Haq. House No.658, Street No.18, Sector I-8/2, Islamabad, was also purchased by the petitioner partly in his wife's name. The petitioner also purchased another business by the name of M/s Arbab Associates, which was holding a license as Custom Bounded Career / Custom Clearing Agents. A dealership of Pakistan Steel Mills was also purchased by the petitioner. In the said supplementary reference, it is stated that Mufti Ehsan-ul-Haq transferred an amount of Rs.80 Million to the petitioner, who purchased a Toyota Corolla GLI. All these purchases are said to have been paid out of the *Modaraba* funds.

17. The investigation report gives further details of the role played by the petitioner in making investments for and on behalf of the principal accused, Mufti Ehsan-ul-Haq. The petitioner wife's statement under Section 161 Cr.P.C. has also been recorded, wherein she stated that different bank accounts were opened in her name but operated by her husband. She also stated that all the cheque books regarding these bank accounts were managed and handled by the petitioner. The search carried out by N.A.B. showed that a property in Gul Bahar, Peshawar, had been purchased in the name of Sajjad Hussain, who is the petitioner's brother-in-law. The title deeds of this property were ceased by N.A.B. Investigation Team during the search. The

petitioner's brother-in-law is said to be an employee in a hardware shop in Peshawar, and not in a position to purchase an expensive immovable property.

18. Perusal of the documents filed along with the third supplementary reference, *prima-facie*, leads to a tentative view that the petitioner invested huge funds, which were taken by the principal accused Mufti Ehsan-ul-Haq and his accomplices from the public at large through deceit in the name of *Modaraba*. In making these investments, the petitioner did not act just as a broker or a commission agent, but as a *benamidar* for and on behalf of the above named principal accused and his brother Ibrar-ul-Haq. We feel that the investments made by the petitioner for the principal accused and his brother from the ill gotten wealth and the funds swindled from the general public was an impetuous and motivation for the principal accused to carry out the corrupt practices. The role of the petitioner is akin to 'fencing' i.e. purchase of stolen goods. The presence and availability to such fences makes the offences of theft or corruption more attractive.

19. We appreciate the magnitude of the *Modaraba* Scam including more than Rs.8.5 billion, in which the petitioner is one of the accused. Although, there are a large number of witnesses to be examined, but we expect that the learned Accountability Court would conclude the trial within a period of six months provided the delay in the conclusion of the trial is not attributable to the accused persons.

20. In view of the above, this petition is dismissed with no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017.

(JUDGE) **(JUDGE)**

Qamar Khan*

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