

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD

(Original Jurisdiction)

To

Most Urgent

1. The Attorney General for Pakistan, Islamabad.
2. The Federal Cabinet through Attorney General for Pakistan, Islamabad,
3. The Secretary, M/o Interior, Islamabad.
4. Mr. Ahsan Sadiq, Additional Director General, (Economic Crime Wing), FIA, Headquarters, through DG, FIA, Islamabad.
5. Mr. Imran Latif Minhas, Commissioner-IR (Corporate Zone), Regional Tax Office through Chairman, FBR, Islamabad.
6. Mr. Majid Hussain, Joint Director BID-I, State Bank of Pakistan through Governor State Bank of Pakistan C/o AR(Karachi).
7. Mr. Noman Aslam, Director, National Accountability Bureau through Chairman, NAB, Islamabad.
8. Mr. Muhammad Afzal, Director, Specialized Companies Division, Securities & Exchange Commission of Pakistan through Chairman, SECP, Islamabad.
9. Brigadier Shahid Parvez, of Inter-Services Intelligence through DG, ISI, C/o Secretary, M/o Defence, Rawalpindi.
10. The Advocate General, Sindh, at Islamabad.
11. The Director General, FIA, Islamabad.
12. The Chairman, NAB, Islamabad.
13. The Chairman, PEMRA, Islamabad.
14. The Chief Secretary, Sindh, Karachi C/o AR(Karachi).
15. The President, National Bank of Pakistan through Governor State Bank of Pakistan, Karachi C/o AR(Karachi)
16. The President/CEO Summit Bank Ltd. through Governor State Bank of Pakistan, Karachi C/o AR(Karachi)
17. The President/CEO Sindh Bank Ltd. through Governor State Bank of Pakistan, Karachi C/o AR(Karachi)
18. The President/CEO Silk Bank Ltd. thr: Governor State Bank of Pakistan C/o AR(Karachi)
19. The President/CEO, United Bank Ltd. through Governor State Bank of Pakistan, Karachi C/o AR(Karachi)
20. The Inspector General of Police Sindh, Karachi C/o AR(Karachi).
21. The Inspector General Prisons, Sindh, Karachi C/o AR(Karachi)
22. Mr. Naeem Bukhari, Sr. ASC through Ch. Akhtar Ali, AOR
23. Ch. Aitzaz Ahsan, Sr. ASC through M.S. Khattak, AOR
24. Mr. Farooq H. Naek, Sr. ASC C/o Syed Riffaqt Hussain Shah, AOR
25. Kh. Ahmed Tariq Rahim, Sr. ASC thr: Ahmed Nawaz Ch., AOR
26. Dr. Khalid Ranjha, Sr. ASC C/o Arshad Ali Chudhary, AOR
27. Mr. Salman Aslam Butt, Sr. ASC thr: Syed Rifaqt Hussain Shah, AOR
28. Mr. Gohar Ali Khan, ASC through M.S. Khattak, AOR
29. Mr. Shahid Hamid, ASC through Syed Rifaqt Hussain Shah, AOR
30. Ms. Ayesha Hamid, ASC through Syed Rifaqt Hussain Shah, AOR
31. Mr. Azhar Siddiq, ASC through Ahmed Nawaz Chaudhary, AOR
32. Mr. Raza Kazim, ASC C/o AR(Karachi)
33. Khawaja Naveed Ahmed, ASC through Ahmad Nawaz Ch., AOR
34. Mr. Umar Aslam Khan, ASC thr: Ahmed Nawaz Chaudhary, AOR
35. Mr. Shahab Sarki, ASC thr: Ahmed Nawaz Chaudhary, AOR
36. Syed Hamid Ali Shah, ASC thr: Arshad Ali Chaudhary, AOR
37. Mr. Abid S. Zuberi, ASC through Mr. Tariq Aziz, AOR
38. Mr. Najeeb Jamali, ASC through Muhammad Kasim Mir Jat, AOR
39. Mr. Shaukat Hayat, ASC through Muhammad Kasim Mir Jat, AOR
40. Mr. Haider Waheed, ASC thr: Mr. Ahmed Nawaz Ch., AOR
41. Mr. Munir Ahmed Bhatti, ASC thr: Mahmudul Islam, AOR C/o DR(Lahore)
42. Mr. Namar Majeed, through Mahmudul Islam, AOR C/o DR(Lahore)
43. Raja Abdul Ghafoor, AOR, Islamabad.

SUBJECT: HUMAN RIGHTS CASE No. 39216- G of 2018 ETC.

IN THE MATTER OF SLACKNESS IN THE PROGRESS OF PENDING ENQUIRES RELATING TO FAKE BANK ACCOUNTS ETC.

Take notice that the above noted case came up for hearing before the Court on **07.01.2019** and while disposing of the case, an order was passed, certified copy of which is enclosed herewith.

You are, therefore, required to ensure compliance on your part of the enclosed Order in letter & spirit.

Islamabad: 16th January, 2019


(Sr. Court Associate)
(Human Rights Cell)
Phone: 051-9203557
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IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ

MR. JUSTICE FAISAL ARAB

MR. JUSTICE IJAZ UL AHSAN

Human Rights Case No.39216-G of 2018

**IN THE MATTER OF SLACKNESS IN THE PROGRESS OF
PENDING ENQUIRIES RELATING TO FAKE BANK
ACCOUNTS, ETC.**

In Attendance:

Mr. Anwar Mansoor Khan, Attorney General
for Pakistan

Syed Asghar Haider, PG, NAB

Mr. Khurram Saeed, Addl.AGP

Mr. Salman Talib ud Din, AG, Sindh

Ch. Aitzaz Ahsan, Sr. ASC

Mr. Gohar Ali Khan, ASC (For Bahria Town)

Kh. Ahmed Tariq Raheem, Sr. ASC

Mr. Azhar Siddique, ASC (For Zain Malik & Malik Riaz)

Mr. Naeem Bukhari, ASC

Ch. Akhtar Ali, AOR for NBP

Mr. Farooq H. Naek, Sr. ASC

Sardar M. Latif Khosa, Sr.ASC

(For Asif Ali Zardari and Faryal Talpur)

Mr. Zakir Hussain Khaskheli, ASC

Muhammad Irfan, Law Officer for MLD

Mr. Imran Aziz, ASC for Silk Bank

Mr. Shahid Hamid, Sr. ASC

Ms. Ayesha Hamid, ASC

Syed Razaqat Hussain Shah, AOR

(For Anwar Majeed and Abdul Ghani Majeed
and Omni Group)

Mr. Munir Ahmed Bhatti, ASC

(For Kh. Nimar Majeed, Kh. Mustafa

Zulqarnain Majeed and Ali Kamal Majeed)

Kh. Naveed Ahmed, ASC for President

Sindh Bank and Mr. Ahsan Tariq, President
Sindh Bank

Mr. Salman Aslam Butt, Sr. ASC for UBL

Mr. Ibrar Saeed, Legal Advisor

(For SECP)

Mr. Najeem Jamali, ASC

Mr. M. Qasim Mirjat, AOR

(For Nasir Abdullah Lootha)

Mr. Abid S. Zuberi, ASC

Mr. Tariq Aziz, AOR


(For Summit Bank)

Mr. Shaukat Hayat, ASC

Mr. M. Qasim Mirjat, AOR

(For Hussain Lawai)

Mr. Ahmed Nawaz Chaudhry, AOR

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Supreme Court of Pakistan
Islamabad

(For Sher Muhammad Mugheri)
Mr. Shahab Sarki, ASC for Shahzad Jatoi
(For A One Group)

For FIA Mr. Bashir Ahmed Memon, DG FIA
Mr. Ali Sher Jakhrani, Dir Law
Mr. I.D Mangi, AIGP (Legal) Sindh Karachi
Mr. M. Saleem Baig, Chairman, PEMRA
Mr. Ali Zeeshan Gondal, Head Legal, PEMRA

For State Bank Syed Ansar Hussain, AD
Raja Abdul Ghafoor, AOR

For JIT: Mr. Faisal Siddiqui, ASC
Mr. Ihsan Siddiqui, Addl.DG, FIA
Brig. Shahid Parvez, ISI
Mr. Muhammad Afzal, SECP
Mr. Nauman Aslam, NAB
Mr. Imran Latif, FBR
Mr. Majid Hussain, SBP
Malik Tariq, Addl.Dir Law, FIA


Date of Hearing: 07.01.2019

ORDER

IJAZ UL AHSAN, J- This Court had taken Suo Motu notice under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (*"the Constitution"*) regarding widespread reports of fake accounts in Summit Bank Limited, Sindh Bank Limited and United Bank Limited. These accounts were allegedly being used for money laundering and other unlawful activities involving tainted money, bribes and kickbacks. Directions were issued to Director General, Federal Investigation Agency (DG, FIA) to appear alongwith all relevant records and apprise this Court regarding the progress made in the matter and reasons for delay in finalization of the same.

2. The DG, FIA submitted a report containing details

of persons/companies in whose names fake bank accounts had been opened for the purposes of money laundering and

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Supreme Court of Pakistan
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other unlawful activities. The names of persons who allegedly deposited the amounts running into Billions of Rupees and alleged beneficiaries of the said accounts were also mentioned.

3. Having heard DG, FIA and on perusal of the report submitted by DG, FIA, we as a first step directed that all those persons whose names appeared in the report be summoned to appear before this Court. Presidents/Chief Executive Officers of United Bank Limited, Summit Bank Limited and Sindh Bank Limited were also directed to appear before this Court.

4. We were informed that a number of petitions had been filed before the High Court of Sindh seeking various kinds of relief. The record of the said cases was also requisitioned for our perusal. We were also informed that shares worth Rs.7 billion representing equity of the shareholders had been deposited by Summit Bank Limited with the State Bank of Pakistan. An apprehension was expressed that the said shares/funds may be misappropriated. We accordingly directed that the pledged shares shall not be allowed to be withdrawn by the pledgor. Further, the accounts were also directed to be frozen. Both the said orders shall continue to hold the field.


5. Vide our order dated 12.07.2018, we had also directed that persons who were accused in criminal cases involving opening of fake accounts and either operating or being beneficiaries of the same may be placed on the Exit

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Control List (ECL). The Ministry of Interior, Government of Pakistan, was accordingly directed to do the needful.

6. We also directed the Inspector General of Police, Sindh to ensure presence of all persons before this Court so as to give them an opportunity to clear their respective positions. A number of counsel appeared before this Court claiming to be authorized by M/s Anwar Majeed and Abdul Ghani Majeed. However, most of them could not produce any validly executed power of attorney. Finally, Mr. Shahid Hamid, learned ASC, submitted his power of attorney to represent Omni Group as well as M/s Anwar Majeed, Abdul Ghani Majeed, Ali Kamal Majeed, Mustafa Zulqarnain Majeed and Namar Majeed. The said persons were also directed to appear before this Court in person.

7. There were also serious complaints by various employees of the Banks including UBL, SBL and Sindh Bank Limited about harassment caused to them by private individuals as well as functionaries of Sindh Police. The IGP Sindh was summoned before this Court and directed to provide necessary protection to the victims of harassment. The Group which *prima facie* appears to have direct connection with most of the transactions was the Omni Group. It consists of various companies and is being run and operated by the Majeed Family directly or indirectly. The names of male members of Majeed Family were directed to be placed on ECL. Further, they were directed to appear before FIA for the purposes of interrogation and investigation. Mr.

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Asif Ali Zardari and Mrs. Faryal Talpur were also accused of having involvement in the transactions undertaken through fake accounts and were therefore directed to appear before FIA for investigation which they did after some initial hesitation. Mr. Anwar Majeed is in custody in a Hospital. Mr. Abdul Ghani Majeed is lodged in Adyala Jail, Rawalpindi.

8. It may be recalled that the matter initially arose out of inquiries initiated by FIA regarding fake/*Benami* accounts opened by various individuals and entities including M/s A-One International, Iqbal Metals, Lucky International and Omair Associates. Another inquiry was also initiated on receipt of Suspicious Transaction Reports (STRs) from Financial Monitoring Units (FMU) of the State Bank of Pakistan. An investigation team headed by Dr. Najaf Quli Mirza, Additional Director General, FIA was constituted to investigate the matter. Having received information that there was slackness and slow progress in the matter and the probe and investigation was being influenced, obstructed, hindered and hampered by certain individuals, this Court took Suo Motu Notice of the matter.

9. The record indicates that in one of the matters an FIR was also registered against some persons including members of the Majeed family regarding which an interim challan had already been submitted in the Special Court (Banking), Karachi. In this regard, some of the accused persons holding senior positions in some Banks, including Mr. Hussain Lawai were also arrested and are presently

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confined in Jail in Karachi/Islamabad. Initial investigation found 29 suspicious/fake Bank accounts showing transactions in excess of Rs.35 billion undertaken through various Banks. Ostensible owners of such bank accounts denied opening or operating the accounts. There were valid reasons to believe that the accounts were opened by misusing National Identity Cards of different unsuspecting persons without their knowledge or consent. This appears to have been done in order to undertake illegal rotation, layering and movement of huge sums of money through the said accounts presumably for money laundering of tainted money obtained through kickbacks, bribes and other unlawful means and methods.


10. Interrogation of arrested suspects and connected persons led to recovery of further information about the accounts, companies and individuals who had links with the deposit of the funds in question. These included M/s Omni Group, its owners, associates and sugar mills; Bahria Town Private Limited; Zardari Group Private Limited, Arif Habib Limited, Nasar Abdullah Lootha, H & H Exchange Company, Parthenon Private Limited, Dream Trading & Company and Ocean Enterprises amongst others. Some of the accused persons were also arrested. Some are facing investigation, few are on protective bail and some are absconding.

11. We were informed by the DG, FIA that as investigation progressed, more accounts and information was discovered by the investigators. This pointed towards a series

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of suspicious transactions involving Billions of Rupees spanning various jurisdictions. This was done by a skillfully structured accounting methodology involving layering and other ways to camouflage and avoid detection of transfer of huge sums of money by the Regulators and Law Enforcement Agencies. Despite *bonafide* efforts on the part of the FIA, progress was slow on account of huge quantity of electronic data that required unraveling and interpretation. For this exercise, FIA faced a lack of specialized investigators.

12. In order to conduct effective, in-depth and incisive investigations to discover the truth, cut through multiple layers of transactions, fake accounts, movement of funds, and trace the money trail and real identity of persons who were actual but hidden beneficiaries, a broad based, multidimensional and technically skilled team of experts was required which was not available with FIA. Further, on account of alleged involvement of high profile and powerful politicians, their cronies and other business figures connected with the tainted transactions, who had powerful connections within the government, investigation was being seriously hampered, handicapped and at times willfully obstructed at every stage. Further, we were informed that investigators were being threatened on account of involvement of high profile and powerful persons. We were of the view that the fears expressed before us were not without foundation, considering the general environment and the law and order situation in Karachi.

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Sd/- Court Associate
Sd/- Court of Pakistan
Islamabad


13. On account of the aforementioned reasons, a prayer was made before this Court for appointment of a broad based and skilled Joint Investigation Team (JIT) consisting of an Additional Director General, FIA; Experts from Federal Board of Revenue (FBR), State Bank of Pakistan (SBP), National Accountability Bureau (NAB) and Securities & Exchange Commission of Pakistan (SECP). Request was also made that representatives of Inter-Services Intelligence (ISI) and Military Intelligence (MI) may also be associated with the JIT.

14. The learned counsel appearing on behalf of the Omni Group, Majeed Family, Asif Ali Zardari, Mrs. Faryal Talpur and Zain Malik/Bahria Town vehemently opposed the formation of the JIT. It was argued that it was not a case of an Investigating Agency, being unwilling to proceed with the matter. It was pointed out that FIA had already submitted an incomplete *challan* before the competent Court. Therefore, the right of the accused persons that the final *challan* be submitted and trial should commence without further delay could not be denied. It was further argued that since incriminating material and evidence against the accused persons was lacking or deficient, the matter of submission of final *challan* was being delayed which was violative of the fundamental rights of due process and fair trial guaranteed to the accused persons by the Constitution. The learned counsel submitted that FIA had sufficient powers under the Federal Investigation Agency Act, 1974 as well as the Anti Money Laundering Act, 2010, therefore, there was no need for this Court to appoint a JIT.

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In Court Associate
Supreme Court of Pakistan
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15. After having heard lengthy arguments addressed by learned counsel for the parties, we found that *prima facie* enough material was available on record to support the fact that fake accounts had been opened in various Banks in the names of persons whose National Identity Cards had been misused without their consent or knowledge. Many such persons appeared before this Court and categorically stated that they had no knowledge of the accounts in question. Some of them also complained of systematic harassment at the hands of police as well as private parties and sought protection. We also found from the material placed before us that huge sums of money running into Billions of Rupees had been deposited in the said accounts by or on behalf of persons who were under investigation or entities controlled by them. We noticed that after being deposited in the said accounts, such funds were either routed to other accounts which were/could be traced with some due diligence or withdrawn without any ostensible trail available. Further, evidence of huge sums of money being remitted out of Pakistan, possibly through *hawala/hundi* transfers added an additional dimension to the investigation.


16. On the basis of material placed before us, we found that specialized knowledge of financial transactions and expertise in identifying and tracing movement of funds through banking channels and otherwise was required in order to conduct a proper probe and investigation in the matter. Expertise in working of companies, banking transactions, electronic transactions and cyber activities

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Supreme Court of Pakistan
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relating to money transfers was needed. Further, knowledge of reporting requirements and monitoring regime put in place by the State Bank of Pakistan, modes of discovering and tracing suspicious transactions and methods utilized for unlawful circulation and movement of money within the country and abroad was required. Such expertise was not available with the FIA. We were therefore convinced that it was in the interest of justice and to ensure that national resources and national wealth which belong to the people of Pakistan was not looted, plundered, misappropriated or taken out of Pakistan.

17. It is significant to note that despite having reservations about the methodology or the merits of the case presented by FIA, the learned counsel for the accused frankly conceded that this Court had ample powers and jurisdiction in terms of Article 184(3) of the Constitution to appoint or nominate the JIT. We were also of the view that in appropriate cases technical inability to undertake a complicated modern day investigation furnished reasonable basis and justification to constitute a JIT which in our opinion was imperative and necessary under the facts and circumstances of this case. Accordingly, vide order dated 05.09.2018, we constituted a JIT consisting of six members with the following directions:-

- i) *The JIT shall set up its Secretariat at a place convenient to it;*
- ii) *The JIT shall have all powers relating to inquiries and investigations including those available in the Code of Criminal Procedure, 1908; National Accountability*


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Ordinance, 1999; Federal Investigation Agency Act, 1974 and the Anti Corruption Laws, etc;

- iii) All executive authorities or agencies in the country shall render assistance and provide support to the JIT in its working, if required;*
- iv) The JIT shall submit periodic reports before this Court qua the progress made in the investigation on fortnightly basis under sealed cover for our examination;*
- v) The Additional Director General, FIA, who shall head the JIT may co-opt any other expert who may in his opinion be necessary to complete the investigation in an effective and timely manner; and*
- vi) First Report of the JIT shall be filed within a period of 15 days from today."*

18. We also issued directions to Pakistan Rangers to provide adequate and effective security to investigators to ensure that they were able to perform their functions without any fear to their life or limb or that of their families. At that stage, we for the time being also declined the request of DG, FIA to transfer investigation of the case to Islamabad. However, we observed that in case any material ground or information came before this Court showing interference in investigation or an attempt at hampering, delaying or obstructing investigation or creating an environment of fear and pressure for the investigators, the said request could be reexamined for passing appropriate orders.

19. In the context of the aforementioned investigations, M/s Anwar Majeed, Abdul Ghani Majeed, Hussain Lawai and others had been arrested and continue to be behind bars. Various medical reports issued by various Medical Boards

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The Court Secretary
Supreme Court of Pakistan
Islamabad

were presented before this Court. They included periodical reports about the medical condition of M/s Anwar Majeed, Abdul Ghani Majeed and Hussain Lawai. On the basis of such reports, Anwar Majeed was admitted to a Hospital and continues to stay there. However, Abdul Ghani Majeed was ultimately directed by this Court to be shifted to Adyala Jail, Rawalpindi where he continues to be detained.

20. At one stage, it was reported to this Court by the JIT that the Government of Sindh was not cooperating in the matter and the requested documents were not being provided by its respective departments rather such documents were deliberately being withheld or produced in an incomplete and piecemeal manner. This Court passed various orders directing the Sindh Government to cooperate in the matter and provide the requisite documentation to the JIT without unnecessary delay.

21. During the course of hearing these matters, it was pointed out to us that Omni Group had availed loans from various Banks including National Bank of Pakistan, Sindh Bank Limited, Summit Bank Limited and Silk Bank Limited. These loans had been secured by hypothecation/ pledge of stocks of sugar. Upon verification, it was found that pledged stocks fell substantially short of what was pledged and considerable stocks were missing from the total pledged stocks valued at Rs.13.5 billion. Stocks worth approximately Rs.2 billion were available in the Godown while there was a deficit of Rs.11.5 Billion. We, therefore, directed that a probe

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be conducted and in the event it was found that pledged stocks had been removed without authorization, appropriate criminal action should be initiated.

22. It appears that NBP having found the stocks short by substantial quantities filed a criminal complaint before a Banking Court of competent jurisdiction. We were also informed by the learned counsel for Omni Group that his clients had initiated negotiations with the Banks in order to resolve the disputes. Time was granted to explore the possibility of an out of Court settlement and in this regard a tentative agreement was also reached between the parties. However, the agreement fell through on account of the timeframe and methodology of payments and the security offered by Omni Group to secure repayment of the amounts owed to the NBP.

23. The JIT constituted by us filed periodical reports about the progress of investigation which indicated that Omni Group, Bahria Town, Zardari Group, Mrs. Faryal Talpur and a number of others were *prima facie* involved in opening and operation of the bank accounts which were subject matter of these proceedings. On the basis of material placed before us vide our dated 24.12.2018 we issued a restraining order against sale, purchase and transfer of buildings and properties mentioned in the report of the JIT, particularly, those held by or belonging to Parklane and Parthenon including Icon Tower and Opal 225, Karachi and any other properties or assets in which the said companies had any

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direct, indirect or beneficial interest. It was also directed that caution be marked on all accounts mentioned in the report of JIT and all transactions mentioned therein shall be monitored by the concerned Banks who shall retain all relevant records for production before this Court as and when required. Copies of the reports filed by the JIT were provided to the learned counsel for M/s Anwar Majeed, Abdul Ghani Majeed, Omni Group, Asif Ali Zardari, Mrs. Faryal Talpur and others with a direction to file their response. It was pointed out to us, at that stage that names of Mr. Farooq H. Naik, ASC, his son as well as those of Mr. Anwar Mansoor Khan, learned Attorney General for Pakistan and his brother have also featured in the report of the JIT. The members of the JIT were directed to justify the same and provide us the basis on which the said names had been included. We were also informed that on the basis of the report of JIT and recommendations made therein, the Federal Government had placed the names of 172 persons on the ECL. These names included some well known politicians including Mr. Bilawal Bhutto Zardari, Co-Chairman, Pakistan Peoples Party and Mr. Murad Ali Shah, Chief Minister, Sindh. It was argued on behalf of Mr. Bilawal Bhutto Zardari and Mr. Murad Ali Shah that their names had been included *mala fide* and in order to embarrass them rather than for any genuine and valid reason.

24. After hearing the parties, we directed the Federal Government to reconsider its decision for placement of names recommended by the JIT on the ECL and any decision taken by it should show due application of mind and consideration

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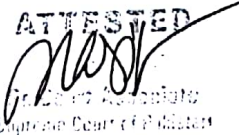
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Islamabad

of material placed before the Government. We were subsequently informed that the Cabinet had referred the matter to a Committee which would make its recommendations on the basis whereof a decision would be taken.

25. The parties have also filed their replies to the JIT report and have addressed arguments. Mr. Munir Ahmed Bhatti, learned ASC, representing Omni Group has submitted that the report of the JIT is against the facts as well as the record. He points out that the JIT has exceeded its jurisdiction and the conclusions drawn are patently *mala fide*, erroneous and incorrect. He further submits that the JIT has made allegations that the Omni Group grabbed some sugar mills and misappropriated subsidies. He has vehemently argued that the Mills in question were lawfully purchased and there was no illegality or irregularity in relation to subsidies availed by the Group which were lawfully availed in accordance with the policy of the Government of Sindh. He also submitted that there were miscalculations in the aggregate amounts which were allegedly deposited and withdrawn in various allegedly fake accounts.

26. Mr. Shahid Hamid, learned Sr.ASC, submitted that FIR No.4 of 2018 had been lodged against M/s Anwar Majeed, Abdul Ghani Majeed and others. An interim challan had been submitted. This Court had ordered that no further orders be passed in those matters without the approval of this Court. He maintains that it is the right of an accused person

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Judge of Sessions
Supreme Court of Pakistan
Islamabad

to expect an expeditious trial which is not happening on account of slackness on the part of FIA. On a question about the report of JIT, he submits that the report has been submitted and can of course be considered by this Court. However, as far as the NAB is concerned, it can examine the report and evidence collected and arrive at its own conclusions or undertake additional or further investigations if required. However, this Court should desist from commenting or giving the report its stamp of approval. In case, this Court passes an order approving the report of the JIT it may prejudice the right of the accused persons to a fair trial in terms of Article 10A of the Constitution. He further submits that FIA had identified only eight cases which during the course of hearing had increased to 32. This indicates an effort to entangle the accused in endless cases. Finally submits that in terms of paragraph 2 of the order of this Court dated 24.12.2018, the working of Omni Group has been seriously hampered as the order passed by this Court is for all intents and purposes an attachment order.

27. Mr. Farooq H. Naik, learned ASC, appearing on behalf of Mr. Asif Ali Zardari and Mrs. Faryal Talpur has submitted that there were no direct allegations against the said persons. The conclusions of the JIT are presumptive and indirect. They had been provided questionnaires which were duly responded to. However, the report does not incorporate the response given by the said persons. He maintains that the JIT has raised issues which were beyond its mandate. This has been done to malign and defame the two families.

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Further, the JIT has also reached conclusions regarding matters about which Mr. Asif Ali Zardari and Mrs. Faryal Talpur were not even questioned. A media trial is being conducted which is meant to damage the name and reputation of the said persons and their political party.

28. Sardar Latif Khan Khosa, learned Sr.ASC has also reiterated and supported the arguments of Mr. Farooq H. Naik.

29. Mr. Salman Talib ud Din, learned Advocate General, Sindh has submitted that the main purpose of the investigation was to undertake a fact finding inquiry which has been undertaken subject to reservations of all concerned and their right to question the methodology as well as admissibility of material and documents on the basis of which conclusions have been drawn. He further submits that the Chief Minister, Sindh was never involved in any of the matters relating to FIA and there are defects and *lacuna* in the report of the JIT. He maintains that the Chief Minister should have been given an opportunity to explain his position and answer any questions that the JIT needed to ask in order to reach its conclusions. He has however candidly conceded that *prima facie*, a case had been made out and the matter could be referred to NAB for further probe and if found necessary to proceed with it further in accordance with law.

30. Mr. Faisal Siddiqui, learned ASC, appearing for the JIT has submitted that so far 32 fake accounts have been discovered which had been opened and operated by persons

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involving 11 entities. He has pointed out that the position of Omni Group which they had taken before the JIT to the effect that they had nothing to do with the fake accounts stood falsified by the fact that irrefutable evidence has been discovered showing that the Group had claimed amnesty against the same accounts. He further submits that the JIT is a fact finding and evidence gathering Team and as recommended by it, its report can be submitted to NAB alongwith all evidence collected by it. He further submits that NAB can conduct its own inquiry and investigation (if necessary) and on the basis of its findings submit 16 different References before the Accountability Courts. He further submits that investigation of the JIT is inconclusive regarding 9 other accounts in which more time is required to reach a conclusion. He seeks permission to do so.

31. We have heard the learned counsel for all concerned parties and carefully examined the record. The JIT had been constituted by us with the objective of conducting a fact finding inquiry, collect evidence and get to the bottom of things. It was for this reason that expertise available with various departments was pooled in order to undertake this investigation/inquiry knowing that it involved complicated transactions skillfully structured in order to hide and camouflage movement of funds, legitimacy of which was open to question. Further, we find that a network of carefully structured fake accounts has been put in place and transactions have been undertaken through a process of layering designed to hide the real beneficiaries of the

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transactions. Further, it appears that a money laundering mechanism has been devised to legitimize funds whose source and legitimacy is highly questionable.

32. A perusal of the report submitted by the JIT and the Final (Synthesis) Report dated 19.12.2018 indicates that the JIT has minutely probed 32 fake accounts and thousands of transactions directly, indirectly or incidentally associated or connected with these accounts. A large number of documents and other evidence has been unearthed in the short period of time granted by us to the JIT. We have been informed that instances where evidence was insufficient, inconclusive or required further probe have not been included in the findings of the JIT for the time being.

33. From the information available to the JIT, the oral documentary evidence collected and information obtained from all other sources, the JIT has opined that *prime facie* cognizable offences have been made out inter involving corruption, corrupt practices and money laundering. Further, public sector institutions have been remiss negligent and heedless in following laws, rules and regulations and in some instances working in complete disregard of the same for years on end.

34. After having gone through the various reports as well as evidence placed before us, we are of the view that


prima facie, a case for referring the report of the JIT, alongwith all relevant documents, evidence, statements and the recommendations of the JIT as well as various aspects of

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Supreme Court of Pakistan
Islamabad

violation of the laws, rules and regulations, receipt of bribes, kickbacks, misappropriation of public funds, misuse of authority, criminal breach of trust and related matters to the NAB for initiating proceedings under the National Accountability Ordinance, 1999 is made out. Even the learned counsel for the Respondents have not been able to advance any convincing argument why these matters may not be referred to NAB. In fact, some of the counsel frankly conceded that NAB and the Accountability Court are the correct *fora* to investigate, probe and try the offences that may ultimately be found to have been made out on the basis of material before us.

35. As far as the recommendations relating to Mr. Bilawal Bhutto Zardari, Co-Chairman, PPP and Mr. Murad Ali Shah, Chief Minister, Sindh are concerned, the learned counsel for the JIT has frankly conceded that the material against the said persons may need re-examination to arrive at the correct conclusions. Further, their names may have been included in the list of persons who have been recommended to be placed on ECL, without careful examination of the material available on record and the ramifications and consequences of such orders for the said persons. In this regard, it has been pointed out that Mr. Murad Ali Shah is the Chief Minister, Sindh. It would cause serious problems in performance of his official functions in case his name is placed on the ECL and his movements are restricted. We accordingly direct that the names of the said persons for the time being be removed from the ECL. However, it is clarified

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that this would not prevent the NAB to probe their cases further and in case sufficient material is found connecting the said persons with cognizable offences, it shall not be precluded from making an appropriate request to the Federal Government to place their names on the ECL or take any appropriate action provided by law.

36. We have also been informed that names of Mr. Farooq H. Naik and his son and that of Mr. Anwar Mansoor Khan, ASC/AGP and his brother also feature in the report of the JIT. It has been pointed out by the learned counsel appearing for the JIT that their names have been mentioned in the context of certain monetary transactions involving professional fee for services rendered. If that is the case, we direct that their cases may also be re-examined by NAB in light of material collected by the JIT. In case, no cognizable offence is made out, their names may be removed from the report/ECL. Till such time that NAB concludes its inquiry / investigation no adverse action of any nature shall be taken against the said persons. It is however clarified that in case, on the basis of material and evidence already on record or subsequently discovered a cognizable offence is made out, NAB shall not be precluded from taking appropriate action against the said persons in accordance with law.


37. In addition and without prejudice to what has been stated above, the following directions are issued:-

- i. The complete report of the JIT alongwith all material and evidence collected by the JIT shall be transmitted to NAB immediately;

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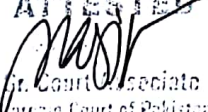
Sp. Court Associate
Sindh High Court of Pakistan
Islamabad

- ii. All members of the JIT shall be associated with NAB for the purposes of assisting in any further probe, inquiry or investigation that NAB may consider necessary or appropriate in order to satisfy itself about the fulfillment of legal and procedural requirements and to complete the investigation in its entirety.
- iii. All cases which have not been concluded or in the opinion of the JIT require further probe shall remain within the jurisdiction of the JIT which shall continue its probe and investigation under the mandate granted by this Court and complete such investigation/probe within a reasonable time whereafter its report together with all material and evidence collected shall be transmitted to NAB without the need for any further orders from this Court for action in accordance with law.
- iv. We are cognizant of the fact that during the course of its probe and investigation, the JIT has discovered that funds deposited in fake accounts and circulated through the same have been used for other unlawful activities which may not have strictly fallen within the parameters of the mandate granted by this Court. However, considering that all such transactions, activities, acts and omissions constitute a part of or arise out of the same set of events and transactions which have a direct, indirect or incidental nexus to questionable funds and their movement, we endorse the acts of the JIT in probing these matters and it will be deemed that the original mandate of the JIT as granted in the original order of this Court included within its scope and parameters a direction to probe such other activities, acts and or transactions which are hereby fully ratified

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- v. NAB is directed that if it considers expedient and appropriate to conduct any further or additional probe, inquiry or investigation involving the matters which are the subject of the report of the JIT from a point of view of determining the true facts, it shall be free to do so at Islamabad. However, such probe, inquiry or investigation shall be completed within a maximum period of two months. Thereafter, in case, cognizable offences are made out, the recommendations contained in paragraph 300 at page 124 of the Final (Synthesis) Report shall be acted upon and the requisite Reference shall be filed in the concerned Accountability Court.
- vi. We also direct that in view of the fact that the entire record of the JIT is to be submitted with NAB at Islamabad and further inquiry (if any) is also to be conducted there, the Reference shall be prepared and presented before the Accountability Courts at Islamabad/Rawalpindi.
- vii. We further direct that the Chairman, NAB shall designate a competent Director General, NAB who shall ensure preparation and filing of References in a timely manner and follow them up till their final conclusions. Further, a team of competent and experienced investigators and prosecutors shall be constituted to prepare and prosecute the References and take them to their final conclusions. The NAB shall file periodic reports before this Court which shall be placed before an Implementation Bench to be constituted by the Hon'ble Chief Justice of Pakistan for the said purpose.

38. This matter is accordingly disposed of, subject to the above directions and submission of reports by NAB. It is however, made clear that the matter may be resurrected at

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any time on the application of any of the parties or at the discretion of the Implementation Bench.

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

Certified to be True Copy

16-1-2019
Sr. Court Associate
Supreme Court of Pakistan
Islamabad

