

IN THE LAHORE HIGH COURT LAHORE

WRIT PETITION NO. 5668 / 2010

Kamran Hayat Mirza son of Hayat Baig Mirza resident of 53/G,
Hameed Park, Johar Town, Lahore.

Petitioner

Versus

1. DG, FIA, FIA Headquarter, Islamabad.
2. Director of FIA Region, Punjab.
3. Director FIA (SIU), Mr. Liaqat Ali Saleemi,
FIA Directorate, Islamabad.
4. Inspector, FIA (SIU), Mr. Niamat Ali, FIA SIU Directorate,
Islamabad.
5. Mr. Khalid Anees, Assistant Director, FIA, Crime Circle Punjab Region,
Lahore.

Respondents


6. Nadeem Ishtiaq son of Ishtiaq Ahmad resident of Mohallah Mughal
Market, Chowk Yateem Khana, Multan Road, Lahore.
7. Shahbaz Ahmad Khan S/o Mumtaz Ahmed Khan, resident of House 2-A, Street
No.35, Mughal Market, Chowk Yateem Khana, Multan Road, Lahore
8. Muhammad Ashraf son of Zulfiqar Ali resident of Village No.50/MB, Tehsil and
District Khushab
9. Muhammad Mubbashar Hayat s/o Hayat Baig Mirza resident of 53-G, Johar
Town, Lahore
10. Ahmad Shahzad Saleem son of Muhammad Saleem,
Resident of House No.218-C, Faisal Town, Lahore
11. Nazar Zaidi son of unknown, resident of Lahore
12. Imran Iqbal son of unknown, resident of Lahore
13. Shakeel Ahmad son of unknown, resident of Lahore

Performa Respondents

PARA-WISE REPLY TO THE ABOVE TITLED WRIT PETITION

Respectfully Sheweth:

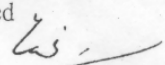
1. No comments.
2. No comments.
3. No comments regarding the contents of the said Para since the matter is before the
Special Court (Offences in Banks) Lahore in a trial.


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4. Incomplete facts. The Petitioner was nominated in the original FIR No. 9/2009 dated 21.02.2009 as an accused and surprisingly was never arrested nor was he at the very least mentioned in Column 2 of the Challan or other case diaries.

The learned counsel of the Petitioner also misrepresents the facts regarding the status of the Petitioner's brother, namely Mr. Muhammad Mubashir Hayat Mirza, with ZARCO Exchange Company (Pvt.) Limited. Record shows that Mr. Muhammad Mubashir Hayat Mirza was the Senior Executive Vice President of ZARCO Exchange Company (Pvt.) Limited since the company's inception and was directly looking after the day to day running of the company with all the heads of departments directly reporting to him. Record shows Mr. Muhammad Mubashir Hayat Mirza having direct administrative authority as well as over all control of the company which the above mentioned Challan also fails to mention. The learned counsel for the Petitioner is trying to mislead this Honourable Court by portraying that the Petitioner voluntarily "joined the investigation" and was not implicated in the case. The fact that the Petitioner was nominated in the original FIR doesn't give the Petitioner much chance to voluntarily join the investigation. However, it is alarming as to how the Petitioner's name completely managed to disappear from the Challan & other case record and raises serious questions regarding the procedure of the investigation.

5. Incomplete facts. As already stated in the reply of Para 4, the fact that the Petitioner's name is completely missing from all record without any reason or evidence to support his exoneration raises doubts regarding the procedure followed during the course of the investigation. Apart from the link already mentioned in Para 4, the Petitioner also runs a computer hardware and software business under the name of Prestige Computer, 1st Floor, Hafeez Center, Lahore, and due to his brother, Mr. Muhammad Mubashir Hayat Mirza, the SEVP of ZARCO Exchange Company (Pvt.) Limited, the Petitioner's company was unduly favoured and Mr. Muhammad Mubashir Hayat Mirza authorized majority of hardware and software purchases for ZARCO Exchange Company (Pvt.) Limited


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from the Petitioner's company to benefit his brother. The learned counsel of the Petitioner again misleads this Honourable Court by concealing the fact that it was the Petitioner's payment booth where the wrongdoing also reported in the instant case that was one of the reasons the FIR was registered against the Petitioner. The Challan or no other evidence on record justifies the Petitioner's complete exoneration or why his name should not exist in any columns of the Challan.

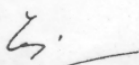
6. That the contents of the said Para are denied. The SIU FIA was conducting an internal enquiry in to the conduct of FIA Lahore officials and found out documentary and oral evidence pertaining to not only to the misconduct/ malafide of the FIA Investigation Team of Crime Circle Lahore but also relating to fictitious bank accounts, assets beyond means, forgery and fraud, and Foreign Exchange accounts with heavy transactions of million of US Dollars of certain ZARCO employees who were deliberately and with dishonest intention let off during the course of investigation, chief among them was the 'honest and patriotic' brother of the Petitioner, Mr. Muhammad Mubashir Hayat Mirza who was apparently assisting the investigating officers of FIA Lahore to ensure his own safety and to wrongfully implicate others. One is further astonished as to why the main administrator, Mr. Muhammad Mubashir Hayat Mirza who was behind the day to day running of the company and had swindled millions was not implicated by the investigating officers at all and was protected under the garb of a witness while individuals who had no say in any monetary matters of the company such as the IT head, Mr. Abdul Mussawar Waqar was implicated and imprisoned while Syed Lakheth-i-Hasnain was held responsible for the crimes committed by the Petitioner's brother and his group of employees even when there is significant evidence showing that Mr. Muhammad Mubashir Hayat was running the show in Zarco with all hire and fire powers, while Mr. Hasnain apparently was not aware of what as going on inside the Zarco company.

7. See above Para 4, 5 and 6.

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8. No comments regarding the contents of the said Para since the Honourable Trial Court has taken cognizance of the above mentioned Challan. However, after the completion of the internal enquiry in to the conduct of the investigating team of FIA Lahore and the FIA officials related to this case, by the Special Investigating Unit (SIU) of the FIA will take the Honourable Trial Court in to confidence and will submit any new material evidence that surfaces and place it on record. The SIU will not take any action against any accused without first seeking permission of the Learned Trial Court and will provide evidence to further their case to take action against actual culprits to better assist the Honourable Trial Court in the interest of justice.

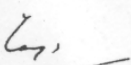
9. That the contents of the said Para are denied. The Ministry of Interior received an application from Mrs. Kausar Bano, 5 Baqar Lane, Canal View Housing Society, Lahore (wife of Syed Lakheth-i-Hasnain accused) leveling serious allegations against the conduct of the investigating team of FIA Lahore who were entrusted to carry out the investigation on the matter referred in the Writ Petition, supported by documentary evidence. Mrs. Kausar Bano claimed that the team had overlooked significant material evidence in this case and misrepresented the facts to protect the real culprits in this matter and that the injustice seems to had been done to Syed Lakheth-i- Hasnain and ZARCO Exchange Company (Pvt) Ltd. Keeping in mind the magnitude of the impact of the closure of ZARCO Exchange Company on the overall economy of Pakistan (the said company in bringing inward remittances to Pakistan and Pakistan significantly losing foreign exchange due to its closure and at least 1000 plus employees losing their jobs), the Ministry of Interior directed FIA to verify the contents of the application and assess if the application had merit. To ascertain facts and determine the efficacy of the above mentioned allegations, an officer of the rank of Director FIA SIU, Islamabad was first deputed to conduct a preliminary enquiry in to the facts of the application. The officer visited Lahore from 14-18 March 2010 and examined in detail documentary and oral evidence. Upon the basis of the evidence produced before


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the Director SIU, FIA, Islamabad and the examination of witnesses/members of the FIA investigation team of FIA Crime Circle Lahore, the above mention SIU FIA Islamabad at Lahore. The investigation so far conducted revealed as under :

“As a result of enquiry conducted by the team of SIU FIA Islamabad under the close supervision of its Director in this case has omitted to contradict or support the contention of the applicant and her husband Syed Lakheth-i-Hasnain. The allegations leveled against the members of the FIA investigation team Lahore, Mr. Najam-ul-Saqib of the State Bank of Pakistan and persons allegedly involved in day to day operation of the company are serious and prima facie have the case. The basis of the entire case against ZARCO Exchange relates to alleged violation of the rules and regulations of the State Bank of Pakistan and financial loss caused to various stake holders. For all these matters it was essential to thoroughly investigate persons assigned with the tasks of compliance, audit, finance, accounts and day to day operations. Prima facie this was not done and some persons who were based in the USA and was not prima facie involved in the day to day working of the company and Abdul Mussawar Waqar who was the head of IT Department of Zarco Co. and had nothing to do with financial matters and according to the observations of the Honourable Lahore High Court in his bail orders had not taken any pecuniary benefit were arrested by the investigating team. The Director SIU observes that there is prima facie doubt as to the conduct, procedure and the outcome of the investigation.”

On the basis of the above mentioned preliminary enquiry the matter was brought before the DG FIA Mr. Zafarullah Khan concerning serious lapses in the investigation of case by FIA Lahore who sent the specific observations of Director/SIU, FIA Islamabad to FIA Lahore investigating team and directed Director SIU (Special Investigating Unit), FIA, Islamabad to conduct an internal fact finding enquiry pertaining to the conduct of concerned FIA officials and


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
assist the Honourable Court after the assessment of the conduct of the said team and bring on record any new/fresh evidence that may be uncovered during this process. The SIU may either take up a matter if it receives a complaint or may be directed to look in to investigation short comings by the DG FIA or other competent authority.

10. See above para-9.

11. That the reply to the said grounds are as follows:

GROUNDS

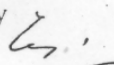
- a) That as explained in Para 9, the SIU is presently verifying the conduct of the investigating officers and the FIA Lahore team as part of **an internal enquiry** as to why grave and serious material evidence was not brought on record and what were the reasons for doing such. The SIU team understands that the Honourable Trial Court has taken cognizance of the matter and hence, once the internal departmental enquiry is complete and the team believes that fresh investigation is unavoidable, the team will bring this in the knowledge of the Honourable Trial Court and only take action after taking the Honourable Trial Court in to confidence and seek permission to carry out action against the actual culprits in the interest of justice and to assist the Honourable Trial Court and proceed accordingly. The learned counsel for the petitioner has jumped the gun in trying to halt an in house enquiry because the Petitioner fears that there is sufficient material evidence that has already been uncovered in just an internal departmental enquiry and more can be uncovered for which the actual culprits have fought tooth and nail to hide in connivance with certain investigators who have not only mislead their seniors who relied upon their investigation but also the Honourable Courts of Pakistan. And if the real culprits are caught, how is that "illegal, unlawful, unwarranted and


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against the ethics of natural justice"? This ground in itself defies all common sense, logic, and basic principles of justice. The investigation agencies are here to assist the Honourable Courts of Pakistan and the Honourable Courts of Pakistan rely on fair and transparent investigations to help expedite justice and the FIA understands its responsibility to assist the Honourable Courts of Pakistan and wants to set the record straight within the department that every investigating officer is to conduct their duty with honesty and there is no room for malice.


b) That as mentioned above, the team headed by Director SIU, FIA Islamabad has uncovered significant material evidence, it must not be forgotten that this was a result of an internal enquiry in to the conduct of FIA Lahore officials and the team has not yet implicated any party in this case. As already mentioned and also relying on the very case the learned counsel for the Petitioner has cited (PLD 2008, Lahore. 394), the SIU team will take prior permission of the Honourable Trial Court when it concludes its internal enquiry and believes there is significant material evidence which has been omitted in the earlier investigation and it has been surfaced before the agency after the completion of the first investigation and after submission of the Challan, to warrant fresh investigation unavoidable.

c) That as mentioned above there are multitudes of reasons to question the conduct of the first investigation and the SIU team is even prepared to present the evidence before this Honourable Court to satisfy the Honourable Courts conscience and assist the Honourable Court to pursue the interest of justice. To quote the learned counsel of the Petitioner "it is totally depending upon the facts and circumstance(s) of the case." The internal enquiry alone has uncovered new material evidence to prove the circumstances are exceptional in this case and they have been briefly


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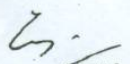
mentioned in Para. 6 of this reply. Furthermore, since both the Supreme Court of Pakistan and this Honourable Court have already heard matters related to this case (such as bail applications etc.), it becomes all the more important that actual culprits are brought to task and verification of an honest investigation is done to uphold the integrity of the Honourable Courts of Pakistan so that no investigating officer dares to mislead our Honourable Courts in the future.

- d) That in accordance to the order dated 20th March, 2010 of the Honourable Trial Court, the SIU team intimated the accused who moved the Honourable Trial Court and are facing trial that they are not required to come to Islamabad regarding any enquiry till the 27th of March, 2010 via SMS since they had switched off their phones and there was no other way to contact them. Since the order of this Honourable Court suspended all actions of the SIU pertaining to the matter, the SIU will not summon any party till it clears its position before the Honourable Court. The SIU team has and will continue to follow whatever orders and directions the Honourable Courts will give to them in this regard and will only take action after taking the necessary permissions from the Honourable Courts and the team will do its utmost to assist the Honourable Courts to expedite justice. Furthermore, as per the assumption of the learned counsel for the Petitioner regarding the thorough investigation of the first investigating officer, the internal enquiry is still pending yet, as already mentioned, there is serious evidence to challenge this assumption made by the learned counsel. As for the guilt/non-guilt of the main accused, the matter is before the Honourable Trial Court which is at present conducting the trial and, hence, no comments are required here.
- e) That so far no illegal steps have been taken by the SIU. As already stated, the DG FIA has only directed the SIU to verify the conduct of the

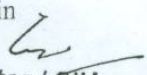

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investigating officers and if/any material evidence comes to light be brought to the notice of the Honourable Trial Court and assist the Honourable Trial Court accordingly. It is reiterated that so far no hurdle and difficulties have been created in the judicial proceedings by the SIU team nor can it ever contemplate doing so.

- f) That the Petitioner was nominated in the original FIR No. 9/2009 dated 21.02.2009 as an accused and surprisingly was never arrested nor was he at the very least mentioned in Column 2 of the Challan or other case record without any justification or evidence on record puts the entire investigation under a suspicious cloud and this omission in itself should defeat the learned counsel for the Petitioner's claim of the internal enquiry being "against the interest of justice and equity fair play".
- g) That the whole process has been explained in Para 9 of this reply while the status of the "honest and patriotic" brother of the Petitioner has been highlighted in Para 4 and 6 of this reply which the SIU can support with strong evidence. As per the allegation of favouring the owner of the company, the application which highlighted the shortcomings of the investigation was written by Mrs. Kausar Bano, wife of the owner, Syed Lakhet-i- Hasnain who is at present facing trial and the SIU has not interfered with his trial or shown any favoritism towards him since the mandate of the SIU team is only pertaining to the conduct of the FIA team investigating the matter. Mr. Hasnain is at present facing trial and if/when evidence comes before the SIU team either implicating or convicting him, the SIU team will bring it on record of the Honourable Trial Court.
- h) That this ground has already been addressed repeatedly throughout this reply


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- i) That, as already stated at length, there is only verification of the conduct of the investigating teams that was going on but was stopped in accordance to the Order of this Learned Court and hence, no action or fresh investigation or material evidence has been brought on record until the Honourable Trial Court is taken in to confidence. Hence, the trial already proceeding in the Honourable Trial Court shall continue its natural course.
- j) That respondent no. 3 and 4 only require direction from the DG FIA to initiate internal departmental enquiry and, hence, did not require any other directive to start internal enquiry in to the conduct of the investigating officers and FIA Lahore officials.
- k) That the contents of this ground are not only misinformed but also false and misrepresented. As already mentioned in Para 9, after the report of the officer entrusted with the preliminary enquiry to verify if the application by Mrs. Kausar Bano had merit, on the basis of the above mentioned preliminary enquiry the matter was brought before the DG FIA Mr. **Zafarullah Khan** who took notice and constituted the SIU team under Director SIU Mr. Liaqat Ali Saleemi. The team was constituted on 1st March, 2010 by the orders of Mr. Zafarullah Khan and the assumption that Ch. Sajjad Ahmad who was/is Director Technical FIA, Islamabad at that time, constituted the team is a gross misrepresentation of facts. Ch. Sajjad Ahmad being a senior Director FIA looked after the work of DG/FIA only for 13 days while the incumbent, Mr. Zafarullah Khan was in abroad from 07.03.2010 to 20.03.2010 to attend 6th Annual Heads of an Interpol Conference Lyon, France. Even during that time, Director SIU was only to report to Mr. Zafarullah Khan up on his return and, therefore, Ch. Sajjad Ahmad had no power to interfere with the team's operations. Furthermore, the allegation that Ch. Sajjad Ahmad favouring Syed Lakheth-i-Hasnain


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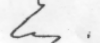
during his short tenure as acting DG FIA because he was ex-Assistant of former IGP Punjab/Addl. IGP Punjab Dr. Azhar Hassan Nadeem, brother of Syed Lakheth-i-Hasnain, is also baseless since Ch. Sajjad Ahmed never directly served under the above mentioned former IGP since no ACRs of Ch. Sajjad Ahmad have been found that have been signed by Dr. Azhar Hassan Nadeem in any capacity. Furthermore, the allegation that the real brother of the Acting DG/FIA was also the main agent of the ZARCO Exchange United Kingdom Limited is another lie because not only is there no record pointing to such, but the learned counsel for the Petitioner has leveled a serious accusation against the senior officer of the FIA without any proof or evidence and must be severely reprimanded for doing so. No brother of the present DG FIA Mr. Zafarullah Khan or the Acting DG FIA (Ch. Sajjad Ahmad) served as the main agent or agent for ZARCO Exchange United Kingdom Limited. As per the nephew of Director Technical/FIA, Islamabad Ch. Sajjad working as an agent of ZARCO in Lala Musa and running a Franchise on behalf of the main company in the name of Sunrise Enterprises the learned counsel for the Petitioner conveniently forgot to mention that the same nephew is also a claimant against ZARCO Exchange Company (Pvt.) Limited and Syed Lakheth-i-Hasnain. As per manipulation of the existing record is concerned, this assumption is baseless since all existing evidence has already been brought before the Honourable Trial Court and cannot be tampered with. The learned counsel for the Petitioner has leveled serious allegations against senior and well-respected government officials without any evidence in an attempt to create a negative impression before this Honourable Court. He must be reprimanded by this Honourable Court for willful misrepresentation.

- 1) That the FIR mentioned in this ground is currently being enquired into by the SIU team to find out why it was cancelled without fulfilling the

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necessary requirements of law and the SIU team can submit a report on its findings before this Honourable Court.

- m) That the content mentioned in this ground has already been discussed in great detail throughout this reply.
- n) That this ground has also been addressed and the SIU team assures this Honourable Court that it will only proceed once its internal enquiry is complete and it takes the concerned Honourable Trial Court in to confidence and proceed accordingly.
- o) That the contents of this ground are to be determined by the Honourable Trial Court. However, during its internal enquiry, the SIU team uncovered enough material evidence to bring before this Honourable Court and prove the guilt of the actual culprits. The SIU can produce evidence before this Honourable Court in support of Para 4 and 6 of this reply to further their case.
- p) That the conduct of the officials investigating the case is the subject matter of the internal enquiry because it is also the duty of the investigating agencies to ensure that their officers take due caution and carry out their duties honestly to ensure that innocents are protected and the guilty are apprehended. It is for this interest of justice that the SIU team will present its evidence to prove where the actual wrongdoing took place and how the investigating officers "overlooked" accounts with transactions of over millions of US dollars and how the Honourable Courts of Pakistan and senior officials of FIA were kept in the dark regarding the true facts of the matter.

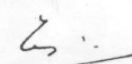

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- q) That the internal enquiry being conducted by the SIU team with the sole aim of bringing complete and all evidence before the Honourable Trial Court which, of course, may decide the matter in a manner deemed fit. There is no malafide whatsoever.
- r) That the SIU team once again assures this Honourable Court that no action will be taken against any party without first obtaining permission from the Honourable Trial Court.
- s) That the learned counsel of the Petitioner had already submitted an application before the Honourable Trial Court seeking the same remedy and the Honourable Trial Court had taken cognizance of it and summoned the SIU investigating team to explain themselves before the Honourable Trial Court, the learned counsel should have first made his case before the Honourable Trial Court. However, he sought this route even before the Honourable Trial Court could hear the arguments over this application because the Honourable Trial Court had only excused those already facing trial from not taking part in any other enquiry.

PRAYER

That in view of the submissions made above, it is humbly prayed:

- i. That the Petitioner has not come with clean hands and is apprehending that the evidence uncovered during the internal enquiry will expose the close nexus between the Petitioner, his brother and the main culprit Mr. Muhammad Mubashir Hayat Mirza and his associates, as well as the members of the FIA Lahore Crime Circle who went to great lengths to shelter and protect the actual culprits and in the process kept the essential evidence off the record. Hence, this Petition be dismissed in the interest of justice.


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- ii. That the Special Investigation Unit be allowed to complete its internal enquiry in to the conduct of the FIA officials and the investigating officers and take them to task so that it sends a strong message to all investigation agencies that there is no room for dishonest investigations or officers who willfully deceive the Honourable Courts of Pakistan who rely on their transparent investigations to execute justice.
- iii. That up on the completion of the internal enquiry, the SIU team be allowed to present its finding before the Honourable Trial Court to seek permission to take action against all those it finds guilty.
- iv. That in pursuit of justice, the SIU team be allowed to summon all persons it believes are relevant for their ongoing enquiry.

Dated 31.03.2010

Liaqat Ali Saleemi
Liaqat Ali Saleemi
Director
Special Investigation Unit
Federal Investigation Agency
Islamabad.

31/3/2010

Verification:

Verified on oath at Lahore on 31st of March 2010 that the contents of the above affidavit are true and correct to the best of my knowledge and belief.

Liaqat Ali Saleemi
Deponent
Director / SIU
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