

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**W.P. NO.2858/2014**

**Malik Mazhar Abbas**  
**Vs.**  
**Chairman N.A.B.**

**Petitioner by : Ms. Rakhshanda Younas, Advocate.**

**Respondents by : Barrister Rizwan Ahmed, Special  
Prosecutor N.A.B.**

**Date of hearing : 08.10.2020**

**LUBNA SALEEM PERVEZ, J.** Through instant petition, the petitioner, Malik Mazhar Abbas, has invoked the constitutional jurisdiction of the Court against imposition of 15% additional payment on the amount of plea bargain by respondent No.2. The following prayer has been made:-

- A. Declaring that the act of respondents in demanding 15% interest on the amount of plea of bargain under the provisions of section 25 of the NAB Ordinance, 1999 is totally illegal, improper, and unjust, without lawful authority and jurisdiction and is in violation to the provision of NAB Ordinance, as such, is of no legal consequences and has been done in excess and mis-exercise of the authority vested in them.*
- B. Declaring that the petitioner is only liable to make payment of the amount of plea of bargain i.e. Rs. 30,00,000/- and no extra amount can be charged by the respondents over and above of the same.*
- C. After granting relief of Clause A & B the respondents be directed not to demand any amount from the petitioner except the amount of plea of bargain i.e. Rs. 30,00,000/- out of which Rs. 25,11,500/- has been deposited on the basis of cheques and the petitioner is ready to deposit the remaining amount of Rs. 4,88,500/-*
- D. Permanently restraining the respondents from demanding 15% interest from the petitioner.*
- E. Any other relief which this Hon'ble Court deem fit and appropriate may also be awarded with cost of the petition in favour of the petitioner, in the interest of justice. “.*

2. Brief facts of the case are that the petitioner was a land supplier and agreed to supply land to the society namely M/s Banker City (Pvt.) Ltd and received Rs. 50,00,000/- from its sponsor Syed Rahat Mehmood. The petitioner paid an advance of Rs. 20,00,000/- to one Malik Naeem for acquiring land for the society. However, the petitioner and Malik Naeem failed to supply the land to Rahat Mehmood, who consequently failed to deliver plots to the members of the society. Thus, the case was referred to National Accountability Bureau ("N.A.B"). Petitioner was arrested and showed his willingness to return the amount of Rs. 30,00,000/- and requested that the remaining amount of Rs. 20,00,000/- may be recovered by Malik Naeem, who was subsequently involved in the investigation on the directions of this Court vide W.P No. 1517/2008. During the proceedings, the petitioner as well as Malik Naeem admitted the liability and entered into plea bargain u/s 25-B of NAB Ordinance, 1999, whereby total liability against the petitioner has been worked out at Rs. 34,50,000/- which includes 15% of additional amount as penalty. Being aggrieved of imposition of additional charges @ 15% of Rs. 30,00,000/- which amounted to Rs. 4,50,000/-, the petitioner has filed the present petition.

3. Learned counsel for the petitioner submitted that the 15% additional charges worked out by the Respondent No.2 are illegal and unlawful and placed reliance on the judgments reported as "*Haji Khan Muhammad vs. Government of Pakistan, NAB*" (2013 P Cr. L J 1571), "*Asghar Ali vs NAB*" (2016 P Cr. L J 477) and "*Syed Atiq Anwar Sherazi vs. Director General, National Accountability Bureau*" (PLD 2016 Balochistan" (PLD 2016 Balochistan 69), wherein the claim of 15% of plea bargain amount on account of additional/incidental charges/interest is held to be unjustified, illegal and in violation of section 25 of National Accountability Ordinance, 1999.

4. On the other hand, learned Special Prosecutor, N.A.B placed reliance on an unreported judgment of this Court dated 13.10.2016 passed in case titled as "*Zahid Shafiq vs. National Accountability Bureau, etc (W.P No. 3068 of 2016)*", wherein the petition was dismissed for being not maintainable in terms of Article 199 of the Constitution.

5. Heard learned counsel for the parties and perused the record.

6. On the above narrated admitted facts, the controversy relates to the charge of 15% additional by Respondent No.2 on the admitted amount of Rs. 30,00,000/- for plea bargain u/s 25-B of the NAB Ordinance, 1999. We have gone through the judgment cited by the learned counsel for the petitioner, wherein it has been held as under:-

- **Haji Khan Muhammad vs. Government of Pakistan, NAB” (2013 P Cr. L J 1571),**

“6. Plain reading of proviso to section 15 of the Ordinance reveals that any person, who availed the benefit of section 25 of the Ordinance, will be deemed to have been convicted under the Ordinance, and shall stand disqualified for a period of 10 years for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority. Such person is also disqualified to avail a finance facility. Besides, the accused has to deposit the actual amount as per the charge. These are the consequences of the admission of the guilt. So far as the question of an interest upon the actual amount is concerned, section 25 of NAB Ordinance, 1999 is silent. The imposition of 15% as an additional amount from the petitioner is unjustified. The learned Prosecutor did not cite any provision of law, entitling the NAB authorities to collect the amount, in excess of what the actual amount is. Under such circumstances, the claim of 15% interest or the additional amount by the NAB authorities, is totally illegal and without lawful authority, being in violation of section 25 of the NAB Ordinance, 1999.

7. In view of above, the petition is allowed. The respondents are restrained permanently from claiming excess amount as 15% interest from the petitioner. In case, any extra amount has been recovered by the NAB, the authority is directed to return the same to the petitioner, within a period of 30 days.”.

- **Asghar Ali vs NAB” ( 2016 P Cr. L J 477**

We are unable to understand as to why till date no Rules have been framed under the NAB Ordinance, 1999. If the NAB authority intends to impose 15% as incidental charges to be paid in addition to the total amount to be recovered from an accused person, who prefers a Plea Bargain. Then appropriate Rules should be framed under the Statute/National Accountability Ordinance, 1999 so as to legalize the imposition of the 15 % incidental charges. Rules when framed under the NAB Ordinance, 1999, will then be called the Statutory Rules and will then be held as the integral part of the Parent Act/the NAB Ordinance, 1999.

13. The learned Prosecutor did not cite any provision of law, entitling the NAB authorities to collect 15%, in excess of the actual amount.

14. In view of as discussed as above, this Petition is allowed, the claim of 15% as incidental charges by the NAB authorities, is declared illegal, having no force of law and in violation to section 25 of the NAB Ordinance, 1999. The respondents are permanently restrained from claiming excess amount as 15% incidental charges from the petitioner.”.

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Since, the controversy of imposition of 15% additional charge over and above the amount of plea bargain has been resolved, therefore, in the light of the above judgments the amount of Rs. 4,50,000/- charged at the rate of 15% of Rs. 30,00,000/- under the head of additional amount/penalty is held to be illegal and in violation of provisions of NAO, 1999.

7. In view of above, instant petition is allowed.

**(MIANGUL HASSAN AURANGZEB) (LUBNA SALEEM PERVEZ)**  
**JUDGE JUDGE**