

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : W.P. NO.77-2020

Muhammad Bilal Sheikh

Vs.

Accountability Court No.I, Islamabad etc.

CASE NO. : CRIMINAL APPEAL NO.360-2019

The Chairman, NAB through Prosecutor General Accountability, National
Accountability Bureau, Islamabad

Vs.

M. Bilal Sheikh

CASE NO. : W.P. NO.87-2020

Tariq Ahsan

Vs.

Accountability Court No.I, Islamabad etc.

Petitioners by : Mirza Mahmood Ahmad Advocate, Mr. Ahmad Bashir, Advocate, Mr. Saad Ullah Tahir, Advocate, Mr. Aziz-ur-Rehman Farooqi, Advocate and Mr. Masood Anwar, Advocate for petitioners and for respondent in CrI. App. No.360-2019

Respondents by : Barrister Rizwan Ahmad, Special Prosecutor, NAB for appellant in CrI. App. No.360-2019 and for respondents in W.P. No.77-2020 & W.P. No.87-2020.
Mr. Irshad Ahmad, Advocate for respondent No.7 in W.P. No.77-2020

Date of hearing : 22.10.2020

AAMER FAROOQ J. This judgement shall decide instant writ petition as well as Criminal Appeal No.360-2019 and W.P. No.87-2020, as common questions of law have been raised.

2. In W.P. No.77-2020, the petitioner is ex-President of Sindh Bank Limited and inquiry was initiated against him by National Accountability Bureau (NAB) with respect to Fake Accounts Scam pertaining to imprudent lending to Omni Group of Companies. At the relevant time, the petitioner was Member of Board of Directors of Sindh Bank Limited; he joined inquiry and appeared before Investigation Officer. The inquiry was converted into investigation in June, 2019. Subsequently, the petitioner was arrested on 10.07.2019, however, was released on bail pursuant to judgment of this Court passed in W.P. No.4166-2019. Meanwhile NAB sent letter dated 12.07.2019 to all the banks, where the

petitioner was maintaining his accounts, to the effect that inquiry/investigation is pending against him, hence under section 23 of National Accountability Bureau Ordinance, 1999 (the Ordinance), the transfer of funds is void. The letter intimated the effect of section 23 of the Ordinance. The petitioner moved an application before Accountability Court seeking clarification that letter was, in fact, a notice of caution, which had the effect of freezing of accounts in terms of section 12 of the Ordinance. Learned Accountability Court-I, Islamabad held that letter was in fact a notice of caution under section 23 *ibid* and was not a freezing order. Petitioner filed another application seeking permission to withdraw sum of Rs.950,000/- per month as monthly expenses, the same was disposed of vide order dated 23.10.2019 with permission that petitioner can withdraw sum of Rs.95,000/-.

3. National Accountability Bureau, in Criminal Appeal No.360-2019, has challenged order dated 23.10.2019 passed by the Accountability Court No.I, Islamabad, whereby permission has been granted to respondent namely Muhammad Bilal Sheikh to withdraw a sum of Rs.95,000/- per month as monthly expenses.

4. The petitioner, in W.P. No.87-2020, is aggrieved of order dated 11.09.2019 passed by the Judge, Accountability Court-I, Islamabad, whereby application for permission to withdraw monthly expenses has been turned down in similar circumstances as of the petitioner in aforementioned writ petition. In this behalf, the petitioner also is facing investigation in the same case being ex-employee of Sindh Bank Limited.

5. Learned counsel for the petitioner in W.P. No.77-2020 *inter alia* contended that order passed by National Accountability Bureau (NAB) is, in essence, an order under section 12 of the Ordinance, which is not tenable in inasmuch as it requires sanction of the Chairman, NAB and further validation is to be obtained from the Accountability Court. It was further contended that letter has been captioned as 'CAUTION' yet it is purportedly under section 23 of the Ordinance, but the same could not be one under section 23 *ibid* inasmuch as NAB is in knowledge of all the assets/bank accounts of the petitioner, hence in terms of judgment of this Court reported as 'Shuja Khan Baluch Vs. Capital Development Authority, Islamabad through Chairman etc. (PLD 2011 Islamabad 25),

the same, in essence, is order under section 12 of the Ordinance. It was further submitted that there is a marked difference between sections 12 & section 23 of the Ordinance and there is plethora of case law on the subject that letters sent to the banks of the petitioner cannot and does not amount to one under section 12 of the Ordinance. It was submitted that NAB has no authority to send letters, as issued in the instant case, in light of case law reported as 'Chaudhry Muhammad Akram Warriach and another Vs. Chairman, National Accountability Bureau, Islamabad and others' (2010 YLR 2766). Reliance was further placed on case reported as 'Zaki Ullah Vs. National Accountability Bureau' (2017 PCr.LJ 1292). It was also submitted that purpose of freezing of account is to prevent sale of assets which have been obtained through embezzled/ill-gotten money, so that if guilty, the amounts may be recovered from the accused, which is not the case in the case in hand, as the matter is still under investigation. Reliance was placed on case reported as 'Haji Ghousuddin Vs. The State through NAB Authorities, Quetta' (PLD 2012 Balochistan 104).

6. Learned counsel for petitioner in W.P. No.87-2020 adopted the arguments by learned counsel for the petitioner in W.P No.77-2020.

7. Learned Special Prosecutor NAB *inter alia* contended that sections 12 & 23 of the Ordinance can be reconciled, as they are entirely distinct from each other. It was contended that section 23 *ibid* is a self-executing provision which comes into force by operation of law as soon as an inquiry or investigation is initiated by NAB and Chairman, NAB has only to issue letter for 'caution' that section 23 *ibid* is applicable; that section 23 cannot be done away and even the courts cannot dilute the same, whereas section 12 of the Ordinance operates with permission of the court as well as Chairman, NAB. It was submitted that case law reported as 'Shuja Khan Baluch Vs. Capital Development Authority, Islamabad through Chairman etc. (PLD 2011 Islamabad 25) is distinguishable, as it pertains to the transfer in favour of bonafide purchasers. It was contended that section 23 *ibid* makes any transaction, including transfer of the property, as void. It was contended that petitioner in W.P. No.77-2020 has exaggerated his monthly expenses. It was contended that Muhammad Bilal Sheikh, on dismissal of his first application, filed subsequent one, which was disposed of on 23.10.2019 though the referred grant was

W.P. Nos.77-2020 etc.

available to him and application was not maintainable in light of case law reported as PLD 2014 SC 241.

8. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

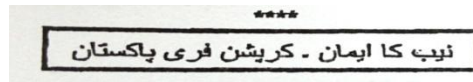
9. The facts, leading to filing of instant petitions and appeal, have been mentioned hereinabove, hence need not be reproduced.

10. As noted above, the petitioners, in both writ petitions, are facing investigation in the Fake Accounts Scam with respect to imprudent lending to M/s Omni Group. In this behalf, on 12.07.2019, a letter was written by Additional Director (Staff), NAB Rawalpindi intimating Sindh Bank. For ease of convenience, same is reproduced below: -

MOST IMMEDIATE



GOVERNMENT OF PAKISTAN
NATIONAL ACCOUNTABILITY BUREAU (RAWALPINDI)
INVESTIGATION WING
OLD NAG HQ BUILDING, SECTOR G-5/2
ISLAMABAD



No. NABR-20190123158186/2019/IW/INQ/
12 July, 2019

To

The Head of Compliance
Sindh Bank Limited
Compliance Division, Floor B-2
Federation House, Abdullah Shah Ghazi Road,
Clifton, Karachi.

Subject: **TRANSFER OF PROPERTY VOID UNDER SECTION 23 OF NAO – INQUIRY AGAINST THE HOLDERS OF PUBLIC OFFICE, LEGAL PERSONS AND OTHERS INVOLVED IN FAKE BANK ACCOUNTS SCAM REGARDING CORRUPTION AND CORRUPT PRACTICES IN EXTENDING LOANS BY SINDH BANK LIMITED TO OMNI GROUP AND THEIR MISAPPROPRIATION.**

This Bureau is conducting the subject inquiry under the provisions of National Accountability Ordinance, 1999 and section 3 of Anti-Money Laundering Act, 2010.

2. During the proceedings of inquiry, it revealed that following accused persons and their family members are maintaining bank accounts/ lockers/ Term Deposits etc in Sindh Bank Limited:-

No.	Name of Individuals	CNICs No.
a)	Muhamamd Bilal Sheikh S/o Hakeem Fazal Din	42301-0741033-7

b)	Ishrat Bilal W/o Muhammad Bilal	42301-9112976-6
c)	Tariq Ahsan S/o Mirza F. Akhtar Ahsan	42201-2257522-7
d)	Shehnaz Tariq W/o Tariq Ahsan	42000-1072249-2
e)	Syed Nadeem Altaf S/o Syed Altaf Azad	42201-0781275-3
f)	Shama Nadeem W/o Syed Nadeem Altaf	42501-0448511-6

3. In this regard, your attention is drawn towards section 23 (a) of NAO, 1999 which states that:

Notwithstanding anything contained in any other law for the time being in force after the Chairman NAB has initiated investigation into the offences under this Ordinance, alleged to have been committed by an accused person, such person or any relative or associate of such person or any other person on his behalf, shall not transfer by any means whatsoever, create a charge on any movable or immovable property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the Accountability Court; and any transfer of any right, title or interest or creation of a charge on such property shall be void.

4. It may also be noted that under section 23 (b) of NAO, 1999:-

Any person who transfers, or creates a charge on property in contravention of subsection (a) shall be punishable with rigorous imprisonment for a term, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved.

5. Please acknowledge receipt.

Muhammad Saleem Ahmad Khan

A/Additional Director (Staff)

For Director General

Ph: 051-9224271

Fax: 0519207966”

The letter does nothing except intimate the effect of section 23 of the Ordinance to the banks.

11. Mr. Muhammad Bilal Sheikh, the petitioner in W.P. No.77-2020, it seems, has filed two different applications, one for seeking clarification that letter dated 12.07.2019 is mere a ‘CAUTION’ and not a freezing order and subsequently, seeking permission to withdraw the amounts for daily sustenance. Likewise, Mr. Tariq Ahsan, the petitioner in W.P. No.87-2020 sought permission for withdrawal of amount in the sum of Rs.4,00,000/- for monthly expenses.

12. The thrust of arguments by learned counsel for the petitioners, as noted above, is that in essence, letter is one under section 12 of the Ordinance, as it has the effect of freezing accounts of the petitioners. For the sake of brevity, relevant provisions of law i.e. sections 12 & 23 ibid are reproduced below: -

12. (a) The Chairman NAB or the Court trying an accused for any offence as specified under this Ordinance, may, at any time, if

there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf.

(b) If the property ordered to be frozen under sub-section (a) is a debt or other movable property, the freezing may be made:

(i) by seizure; or

(ii) by appointment of receiver; or

(iii) by prohibiting the delivery of such property to the accused or to anyone on his behalf; or

(iv) by all or any of such or other methods as the Court or the Chairman NAB as the case may be, deem fit.

(c) If the property ordered to be frozen is immovable, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases-

(i) by taking possession; or

(ii) by appointment of receiver; or

(iii) by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or

(iv) by all or any of such methods as the Chairman NAB or the Court may deem fit:

Provided that any order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding [fifteen] days unless confirmed by the Court, where the Reference under this Ordinance shall be sent by [the Chairman] NAB:

Provided further that notwithstanding [anything to the contrary contained herein,] that the order of [Chairman] NAB or the Court shall be effective from the time of passing thereof or proclamation thereof in a newspaper, widely circulated and dispatch at the last known address of the accused [either by registered post A.D. or courier service or electronic media as the [Court] may deem proper having regard to the facts and circumstances of the case.]

(d) If the property ordered to be frozen consists of livestock or is of a perishable nature, the Chairman NAB, or the Court may, if it deems proper and expedient, order the immediate sale thereof and the proceeds of the sale may be deposited with the Chairman NAB or the Court, or as either may direct as appropriate.

(e) The powers, duties, and liabilities of a receiver, if any, appointed under this section shall be the same as those of a receiver appointed under Order-XL of the Code of Civil Procedure, 1908 (Act V of 1908).

(f) The order of freezing mentioned in sub-sections 'a' to 'e' shall remain operative until the final disposal of the case by the Court, and in the event of the acquittal of the accused, shall continue to remain operative for a period of ten days after receipt of certified copy of the order of acquittal [or release] by NAB, where-after it shall be subject to an order by the court in which an appeal, if any, is filed.

23. (a) Notwithstanding anything contained in any other law for the time being in force after the Chairman NAB has initiated [an inquiry or] investigation into [any offence] under this Ordinance, alleged to have been committed by an accused person, [accused] person or any relative or associate of [accused] person or any other person on his behalf, shall not transfer by any means whatsoever, [or] create a charge on any property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the Court; and any transfer of any right; title or interest or creation of a charge on such property shall be void.

(b) Any person who transfers, or creates a charge on property in contravention of sub-section (a) shall be punishable with rigorous imprisonment for a term, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved".

[Provided that such transfer of any right, title or interest or creation of a charge on such property shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit.]

The above two provisions came under judicial consideration before the Hon'ble Sindh High Court in case reported as 'Chaudhry Muhammad Akram Warriach and another Vs. Chairman, National Accountability Bureau, Islamabad and others' (2010 YLR 2766), where the bank accounts of certain companies were put under caution. The Hon'ble Sindh High Court observed that there is a marked difference between sections 12 & 23 of the Ordinance. It was further observed as follows: -

"8. Relevant provisions of the Ordinance of 1999 are reproduced as below:-

Section 12. Power of the Court to freeze property.---

(a) The Chairman NAB or the Court trying an accused for any offence as specified under this Ordinance may at any time, if there appear reasonable ground for believing that the accused has committed such an offence, order the freezing of his property, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf.

(b)

(c)

Provided that any order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding fifteen days unless confirmed by the Court, where the reference under this Ordinance shall be sent by NAB Chairman."

Section 23. Transfer of property void.---(a) Notwithstanding any-thing contained in any other law for the time being in force after the Chairman NAB has initiated an inquiry or investigation into any offence under this Ordinance, alleged to have been committed by an accused person, such accused person or any relative or associate of such person or any other person on his behalf, shall not transfer by any means whatsoever, or create a charge on any property owned by him or in his possession, while the inquiry, investigation or pro ceedings are pending before the NAB or the Court and any transfer are pending before the NAB or the Court and any transfers are pending before the NAB or the Court and any transfer of

any right, title or interest or creation of a charge on such property shall be void.

- (b) Any person who transfers or creates a charge on property in contravention of sub-section (a) shall be punishable with rigorous imprisonment for a term, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved:

Provided that such transfer of any right, title or interest or creation of a charge on such property shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit."

10. As far as, letter dated 11th May, 2010 is concerned, the Chairman NAB has no authority to direct the bank or any person not to do a particular act or to freeze an account except in exercise of powers conferred upon Chairman NAB under section 12. As we have stated above such power is available to the Chairman NAB only for a period of 15 days and order passed by the NAB comes to an end latest upon expiry of 15 days except when it has been confirmed by the Court having jurisdiction. However section 23, independent of any order or direction by Chairman NAB, imposes an obligation on "any person", which obviously includes a bank where the money in question is parked, not to transfer etc. Therefore, by using the word 'direction' in letter dated May 11, 2010, though NAB official might have resorted to a 'terminological inexactitude' (to borrow a phrase from Churchill) but had not made any difference in any material sense"

The bare perusal of the observations made by the Hon'ble Sindh High Court shows that under section 12 *ibid*, account or the asset freezes completely; in case of bank account, (which is the case in the instant matter) no deposits can be made or withdrawals are allowed, however, in case of section 23 of the Ordinance, deposits can be made and even withdrawals are allowed for legitimate purposes provided there is no transfer of funds or creation of charge.

13. The distinction between two provisions of law, mentioned above, were further elaborated in judgment of this Court reported as 'Shuja Khan Baluch Vs. Capital Development Authority, Islamabad through Chairman etc. (PLD 2011 Islamabad 25), wherein Mr. Justice Riaz Ahmad Khan Khan, as he then was, while handing down opinion for the Court, observed as follows: -

"9. It is also to be noted that section 23 of the National Accountability Ordinance, 1999 by itself creates an offence, which provided that if transfer of property is effected during the pendency of enquiry or investigation, the same would amount to an offence and the punishment for the same would be 3 years. It has further been provided that transfer also would be void. It obviously means that if the accused person owns property, which is not in the knowledge of Chairman, NAB or Accountability Court and the same is transferred during the pendency of enquiry or investigation, then the transfer of such property would be void and the transfer of property would also amount to an offence under section 23 of Ordinance *ibid*. On the other had, if the property belonging to accused is in the knowledge of Chairman, NAB and enquiry is initiated, then Chairman, NAB would be obliged to act under section 12 of National Accountability Ordinance, 1999 and order freezing of the property. In the instant case, no freezing order was passed by the Chairman, NAB or Accountability Court. The Chairman, NAB had only informed C.D.A. authorities that the property of the accused may not be transferred into the name of any other person. It obviously means that Chairman, NAB was in the knowledge of property, but no order under

section 12 was passed for freezing of property. Since no order was passed, so presumption would be that NAB Authorities knew that the property did not belong to the accused or for the reasons best known to them, they did not want to take any action regarding the suit property. Since no freezing order was in field regarding the suit house, so it cannot be said that the property in dispute was under investigation by NAB authorities. It may also be added that the Chairman, NAB has the authority to pass any order in respect of the property of the accused as long as the Court has not taken cognizance of the case, but the moment the Court takes cognizance of any matter under the National Accountability Ordinance, 1999, then Chairman NAB becomes functus officio and only the Accountability Court can pass any order regarding the property of the accused. In the present case, it is admitted that no order was passed by the learned Accountability Court in respect of the suit house. As such, the Chairman NAB has no authority to place any embargo on the transfer of the suit house”.

14. In case reported as ‘Haji Ghousuddin Vs. The State through NAB Authorities, Quetta’ (PLD 2012 Balochistan 104), the Hon’ble Division Bench of Balochistan High Court, set aside the order for freezing and putting caution on the property, merely for the fact that inquiry/investigation was going on for the last three years without any progress.

15. In case reported as ‘Mst. Bilqis Bano and another Vs. Pakistan Defence Officers Housing Authority through Administrator and 4-others’ (2019 PCr.LJ 962), the Hon’ble Sindh High Court, while highlighting the distinction between sections 12 & 23 of the Ordinance, observed as follows: -

“21. In passing this judgment, I am mindful that sections 12 and 23 of the NAO 1999 are provisions catering to different scenarios as also discussed in the cases of Shuja Khan Baluch v. Capital Development Authority, Islamabad (PLD 2011 Islamabad 25) and Chaudhry Muhammad Akram Warraich v. Chairman NAB (2010 YLR 2766). Section 12, N.A.O., 1999 is an enabling provision which enables the NAB or the Accountability Court (as the case may be) to pass an express order to freeze transfer of suspected property when such property comes to its knowledge. On the other hand, section 23 of the N.A.O., 1999 is a prohibitory and penal provision intending to act as a deterrence to transfer of such ill-gotten property, the existence of which property may be discovered after the transfer. But as discussed above, any grievance against restraints placed both under section 12 and section 23, N.A.O., 1999 can only be redressed by the Accountability Court under the N.A.O., 1999. In this view of the matter I have refrained from discussing or expressing any view on the ingredients of section 23, N.A.O., 1999”.

16. Similar views were expressed in case reported as ‘China International Water and Electric Corporation through Authorized Representative and others Vs. Federation of Pakistan through Secretary, Ministry of Interior and others’ (2019 YLR 989).

17. The Hon’ble Peshawar High Court, in case reported as ‘Zaki Ullah Vs. National Accountability Bureau’ (2017 PCr.LJ 1292), again highlighted the difference between above two provisions of law.

18. The upshot of above discussion of statutory provisions and the case law is that;-

- a) Sections 12 & 23 of the Ordinance have different scope and operations;
- b) An order under section 12 *ibid* can only be passed by Chairman, National Accountability Bureau, which remains valid for fifteen days only unless confirmed by the Accountability Court;
- c) Any person, having grievance against an order for freezing of the property, can make an application before Accountability Court (section 13 of the Ordinance);
- d) Section 23 of the Ordinance comes to life by operation of law and no specific order is required either by any court or NAB;
- e) It is appropriate for Chairman, NAB to issue letter for freezing of assets whether movable or immovable which are known, whereas with respect to unknown assets whether movable or immovable, section 23 *ibid* operates whenever an inquiry/investigation is initiated against any person;
- f) Section 23 *ibid* is a complete code and no specific order is required for its operation and if any person violates the said provision, he can be prosecuted and punished as prescribed under the law;
- g) Where order under section 12 *ibid* is passed, the movable or immovable property is frozen and nothing comes in or goes out;
- h) Effect of Section 23 *ibid* is that transfer and creation of charge on the property of any person facing investigation or inquiry is void. If the property is a bank account, it remains operational, as deposits can be made and money can be withdrawn for personal use;

19. It seems that when it comes to the known assets of any accused person, NAB conveniently avoids passing of orders under section 12 *ibid* and simply relies upon section 23 of the Ordinance and intimates relevant authorities to mark 'caution' on the same; this practice by NAB appears to be in violation of statutory provisions and should be avoided; whenever NAB desires that property should be frozen, it should specifically, through Chairman, NAB, pass such order and get it validated from the concerned Accountability Court.

20. Though the spirit of the Ordinance is that investigation or inquiry is to be conducted and concluded by NAB expeditiously and also trial is to be concluded within 30-days, yet it is hardly ever the case. The inquiry/investigation continues for years and even the trials are not concluded within stipulated statutory period. In such situation, blocking Bank Account (s) of an accused person, would tantamount to depriving him from his legitimate means to live. It can never be the spirit of law that a person, facing investigation or inquiry, is unable to withdraw from his bank account (s) for day-to-day affairs and the referred position to continue for years due to delay by the investigating agency.

21. Even, in the instant cases, investigation/inquiry is pending since April, 2019 and in July, 2019, assets of the petitioners were put under caution. The object of letters written by NAB to the banks, where petitioners are maintaining their accounts and consequently the denial, by the banks to operate the same by the petitioners, have the effect that the petitioners are finding it difficult to survive, as they are unable to withdraw a single rupee from their bank accounts.

22. It is pertinent to observe that where State has the responsibility to prosecute and procure punishment of a guilty person, it also has an equal responsibility that a citizen is not denied from exercising or enjoying rights over his/her property, as enshrined in the Constitution.

23. As noted above, the investigations/trials continue forever and along with it the effects of provisions like sections 12 & 23 of the Ordinance; if eventually accused persons are acquitted, it is nothing short of a hapless situation for them, especially so as section 36 of the Ordinance prohibits bringing any claim or proceedings against Federal Government, Chairman, NAB or any other Member of NAB.

24. In light of case law reported as ‘Chaudhry Muhammad Akram Warriach and another Vs. Chairman, National Accountability Bureau, Islamabad and others’ (2010 YLR 2766) wherein, a fine distinction was drawn by the Hon’ble Division Bench of Sindh High Court between sections 12 & 23 *ibid.* that the bank accounts can be operated, where there is no order under section 12 *ibid* and only caution letter under section 23 of the Ordinance has been sent inasmuch as section 23 of the Ordinance only bars transfer and/or creation of charge. We feel that this is the correct approach towards section 23 *ibid*, as investigating agency is not concluding investigation expeditiously and the trial is not decided within the statutory limitation provided under the Ordinance. The letter (s) in the instant case written to the Banks of the petitioners are hence under section 23 of the Ordinance and not section 12.

25. In view of foregoing, impugned orders passed by learned Accountability Court are not tenable, therefore, the above writ petitions are allowed; the impugned orders in the same are set aside, hence applications filed by the petitioners before learned Accountability Court are accepted and petitioners are permitted to withdraw the sums, mentioned in their applications, provided that with each withdrawal, they shall tender affidavit that withdrawal of funds is for personal use only and the banks shall keep affidavits in their record. In case, it is found that petitioners are in violation of mandate provided in section 23 *ibid*, the law shall take its course.

26. Criminal Appeal No.360-2019, filed by NAB, is without merit and is dismissed.

(GHULAM AZAM QAMBRANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 20.01.2021

(JUDGE)

JUDGE

Approved for reporting

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

CM No.1535-2022

In

W.P. No.77-2020

Muhammad Bilal Sheikh

Vs.

Accountability Court-I, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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25.07.2022

Mr. Saad Ullah Tahir, Advocate and Mr. Aziz Ur Rehman Farooqi, Advocate for applicant.
Mr. Irshad Ahmad, Advocate for respondent No.7.
Barrister Yasin Ahmad Rathore and Mr. Muhamamd Rafay Maqsood, Special Prosecutors NAB with Malik Uzair, AD/IO, NAB.

This is an application (filed in W.P. No.77-2020) seeking clarification of judgment dated 20.01.2021 passed in W.P. No.77-2020, W.P. No.87-2020 & Crl. App. No.360-2019.

2. At the very outset, learned counsel for the applicant submits that instant application has become infructuous inasmuch as through National Accountability (Amendment) Act, 2022, section 23 of National Accountability Ordinance, 1999 has been omitted and the effect of the amendment is retrospective as is borne out from section 1(2) of Act of 2022. Learned Special Prosecutor NAB, when was confronted with the situation, submits that through amendment, section 23 of 1999 Ordinance has been omitted but

contested that it has no effect on the already passed orders.

3. Arguments advanced by learned counsel for the parties have been heard.

4. Through W.P. No.77-2020, the petitioner challenged 'CAUTION' imposed by National Accountability Bureau during course of investigation, which was allowed vide judgment dated 20.01.2021.

5. The instant application seeks clarification that despite judgment, the petitioner is entitled to use his personal assets including bank accounts, lockers etc.

6. During subsistence of instant application, National Accountability Ordinance, 1999 was amended through National Accountability (Amendment) Act, 2022 and section 15 of the Act of 2022 omitted section 23 of National Accountability Ordinance, 1999. As per section 1(2) of the Act of 2022, amendment takes effect from the date of enforcement of National Accountability Ordinance, 1999, meaning thereby that retrospective effect has been given to the amendment. In this behalf, generally substantive law operates prospectively unless its application is made retrospective. There is catena of case law on the subject, however, for reference, the following three cases are being cited:-

- i) 'Abdul Mannan Vs. Haji Karam Ilahi (1981 SCMR 257); the issue related to an eviction application, during the pendency of which, law was amended and plea was taken that the benefit of amendment ought to have been granted to the tenant. The Hon'ble Supreme Court, while relying on an

earlier judgment of the Supreme Court reported as ‘Hassan and others Vs. Fancy Foundation’ (PLD 1975 SC 1), held that the amendment was prospective and would not govern pending proceedings.

- ii) ‘Sardar Sher Bahadar Khan Vs. Election Commission of Pakistan’ (PLD 2018 SC 97); the matter related to local government elections in Khyber Pakhtunkhawa, the schedule of election was announced whereafter section 78A of Khyber Pakhtunkhawa Act, 2013 was introduced disqualifying candidates for election. The plea that such amendment shall affect present election as process has commenced was rebuffed and it was reiterated that statute or any amendment thereto operated prospectively unless by express enactment or necessary intendment, retrospective operation had been given to it.
- iii) ‘Commissioner Inland Revenue Vs. Messrs Olympia Chemicals Ltd.’ (2021 PTD 1512); the case was about adjustment of minimum tax in the return of tax year 2009 in terms of section 113(2)(c) of Income Tax Ordinance, 2001 which was paid during tax years 2004 to 2008 but the same was declined on the ground that the referred provision was not available in the statute in 2009. Section 113 was omitted from statute through Finance Act, 2008. The Division Bench, in the referred backdrop, dilated upon the scope of amendment in laws and after making reference to a series of judgment on the object, observed as follows:-

“10. Regarding retrospective application of a legislation, it is well-settled now that the Courts lean against giving retrospective operation where no vested rights or past transactions prejudicially affected or exist. A legislation does not operate retrospectively if it touches a right in existence at time

of passing of legislation. Statutes are presumed to be applicable to cases and facts coming into existence after their enactment unless there be clear intention to give them retrospective effect. Statute needs not to be read in such a way as to change accrued rights, the title to which consists in transaction past and closed. Rights of parties are to be decided according to law existing when action began unless provision made to contrary. Where statute itself does not make its operation retrospective, it would be extravagant to claim that by necessary implication it has retrospective operation. Change in substantive law, which divested and adversely affected the vested rights of the parties should always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication such law had been made applicable retrospectively. Substituted section cannot obliterate accrued rights.

7. In view of referred position, section 23 stands omitted since 1999; the consequences naturally follow and all actions taken thereupon would extinguish. Needless to observe that the omission albeit operates from 1999 shall not prejudice past and closed transactions.

8. For the above reasons, instant application has become infructuous, as no clarification of above referred judgment is required, hence is disposed of accordingly.

(SAMAN RAFAT IMTIAZ)
JUDGE

(AAMER FAROOQ)
JUDGE

Approved for reporting

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

CM No.2823-2022

In

CM No.1535-2022

In

W.P. No.77-2020

Muhammad Bilal Sheikh

Vs.

Accountability Court-I, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10.08.2022	Barrister Yasir Ahmed Rathore, Special Prosecutor, National Accountability Bureau/applicant in person.
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 This is an application seeking correction in order dated 25.07.2022 passed in CM No.1535-2022 in W.P. No.77-2020.

2. The applicant Barrister Yasir Ahmed Rathore contended that his name has been mentioned in the referred order as Barrister Yasin Ahmed Rathore instead of ‘Barrister Yasir Ahmad Rathore’, hence same be corrected.

3. In view of submission made by learned counsel and for the reasons mentioned, instant CM is allowed; consequently, order dated 25.07.2022 is corrected and in the said order, name of learned counsel representing National Accountability Bureau, shall be read as Barrister Yasir Ahmad Rathore instead of Barrister Yasin Ahmed Rahore.

4. This order shall form part of order dated 25.07.2022.

(SAMAN RAFAT IMTIAZ)
JUDGE

(AAMER FAROOQ)
JUDGE