

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

W.P No.2662-P/2024 with IR

**Syed Masood Hussain Shah and others
Vs
National Accountability Bureau (NAB), through its
Chairman and others**

JUDGMENT

Date of hearing: 03.07.2024

Petitioners (by): M/S. Shumail Ahmad Butt and Barrister
Qasim Wadoud Advocates

Respondents (by): M/S Syed Azeem Dad, DPG and
Muhammad Ali, ADPG.

SYED ARSHAD ALI, J.- This consolidated judgment shall dispose of the instant as well as the connected W.P No.2710-P/2024 having involved a common question of law for adjudication beside having common facts.

2. In the instant petition, Syed Masood Hussain Shah, who is the Chief Executive of M/s Maqbool Associates (Pvt) Ltd. and others the Petitioners have challenged the orders of the worthy Director General, National Accountability Bureau (“NAB”) dated 13.03.2024, freezing the assets of the Petitioners followed by the order of the learned Judge Accountability Court-III, Peshawar (“Court”) dated 28.03.2024 confirming the said freezing order and the subsequent order of the Court dated 18.04.2024 and 26.04.2024.

3. The present issue stems from the inquiry/investigation being conducted by the NAB in

respect of alleged corrupt and corrupt practices in the execution of a project commonly known as Buss Rapid Transit ("**BRT**"). It is the case of prosecution / investigation that an agreement was executed between the Peshawar Development Authority ("**PDA**") and Messers SGEC-Maqbool-Calson JV on 14.11.2017, which is a Joint Venture of Pakistani as well as Chinese companies for procurement of a civil works of the BRT. During inquiry conducted by the respondents, it was revealed that a contract for execution of the BRT project was secured through corrupt practices and the cost of the project was illegally increased from Rs. 49.346 billion to Rs. 66.437 billion due to mismanagement and frequent changes of the designs, malpractices of the contract management by the government officials in league with Petitioners; illegal benefits were extended to the Petitioners in award of contracts which prevented the BRT project from completion within stipulated time and resultantly caused huge loss to the government exchequer. Regarding the role of Syed Masood Hussain Shah, the Chief Executive of M/s Maqbool Associates (Pvt) Ltd, it is the assertion of the prosecution that he signed Supplementary JV Agreement with M/s Calsons, M/s SGEC and M/s China Railway 21st Bureau Group, whereby it was agreed to pay 2% of the total project cost as management fee to the Chinese lead partners and it was agreed that 100% construction work shall be executed by M/s Maqsool and M/s Calson while the respective lead Chinese M/s CR21G & SGEC firm shall be silent partner. He had submitted fake documents in

respect of his company's financial position and got benefit in securing the contract for execution of BRT Project. Similar allegations were also attributed to other individual namely Imran Latif and Amir Latif, who are the Director/owners of M/S Calson. The inquiry in the case has been initiated since long which was later converted into investigation, However, how long it will take to conclude the investigation has not been provided to us.

4. Through the instant petition, the following orders have been challenged:

- (i) **Order dated 13.03.2024.** Through the said order, the worthy Director General NAB Khyber Pakhtunkhwa while exercising his power under section 12 of the National Accountability Ordinance, 1999 ("**Ordinance**") has ordered for freezing of 75 Bank Accounts maintained by the Petitioners at different banks and at different places i.e. Islamabad, Karachi, Toba Tek Singh etc. It is the opinion of the worthy Director General NAB in Para-2 of the said order that after perusing the record collected during inquiry/investigation, he finds that there are reasonable grounds to believe that the accused have committed the offence of corruption and corrupt practices and resultantly caused loss to the exchequer being an offence under section 9(a) of the Ordinance and schedule thereto.

- (ii) **Order dated 28.03.2024.** An application was filed by the NAB through special prosecutor for confirmation of the freezing order dated 13.03.2024 to the Court; notice was issued to the Petitioners and after hearing the parties, the Court has ordered for the confirmation of the freezing order, vide order dated 28.03.2024.
- (iii) **Order dated 18.04.2024.** On the objection petition filed by the Petitioners, an order was passed by the Court on 18.04.2024. The learned Court has slightly modified the order dated 28.03.2024 confirming the freezing order by allowing the Petitioners to operate the account in the manner that the Director General NAB should be applied through the Court and accordingly the Director General NAB shall submit the requisite amount to the court for further disbursement to the Petitioners who would be required to submit acquaintance roll to the Court. Similarly, the operation of the car leasing account was also allowed.

5. In W.P No.2710-P/2024, the allegations against the Petitioner are that the Petitioner while in Joint Venture with the Chinese firms namely M/s Beijing Santel Technology & Trading Corp and M/s Beijing E-Hualu Information Technology Company Limited, illegally obtained the contract for Intelligent Transport System (ITS) of BRT Project. The accused did not submit their bid till the closing dated i.e. 16.07.2018 which was extended up to 31.07.2018 in favour of the

accused and thereafter opportunities given to the accused to form Joint Venture on 27.07.2018. The bid was conducted on single source. In the preset case, the following orders have been challenged before this Court.

- (i) **Order dated 04.04.2024.** Through the said order, the worthy Director General NAB KP has ordered for freezing of two bank accounts of the Petitioner at Habib Bank Limited, Corporate Branch Islamabad and Post Mall Branch, F-7 Islamabad. It is the opinion of the worthy Director General NAB that after perusing the record collected during inquiry/investigation, he finds that there are reasonable grounds to believe that the accused has committed the offence of corruption and corrupt practices.
- (ii) **Order dated 18.04.2024.** Through this order, the freezing order dated 04.04.2024 was confirmed by the learned Court vide order dated 18.04.2024 on the application of the Bureau.
- (iii) **Order dated 15.05.2024.** On the objection petition filed by the Petitioner, it was ordered by the Court that the matter requires recording of pro and contra evidence.

6. The learned counsel representing the respondents-NAB have raised a preliminary objection to the maintainability of this petition on two grounds; firstly, that an alternative remedy is available to both the

Petitioners under section 13 of the Ordinance and the said remedy in form of filing of objection petition has already been availed by the Petitioners and under section 13(3) of the Ordinance, an appeal can be preferred once the objection petition is dismissed. Therefore, keeping in view the said alternative remedy, this petition is not maintainable, and secondly, this petition is premature as the objection petition filed by both the Petitioners shall be decided on merit by the Court.

7. While rebutting the said arguments of the learned counsel for the respondents-NAB, the learned counsel (s) for the Petitioners have argued that since fundamental rights of the Petitioners to do business guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") has been seriously eroded by freezing their accounts, beside the impugned orders are patently illegal therefore, the said remedy under section 13 (3) of the Ordinance being illusory cannot be termed as an effective and efficacious remedy, hence the jurisdiction of this Court is not barred.

On merit, the learned counsel for the Petitioners, while referring to the definition of assets as provided under section 5(c) of the Ordinance and the classes of offences as provided under sections 9, 10 and 12 of the Ordinance, have argued that the learned Court was first required to have decided its jurisdictional fact as the essential attributes provided for a freezing of a property in terms of section 12 of the Ordinance are not available in the present case, therefore, the said order is patently illegal. In support of their contentions, the learned

counsel for the Petitioners have placed reliance on cases of “Dr. Muhammad Azam Kasi vs. The State through Deputy Prosecutor-General Accountability Court No.1, NAB, Quetta” (2012 PCr.LJ 1950), “Shah Rukh Jamal vs. National Accountability Bureau, Islamabad and others” (PLD 2022 Islamabad 1), “Dr. Arsalan Iftikhar vs. Malik Riaz Hussain and others” (PLD 2012 SC 903), “Mst. Rukhsana Bangash vs. Chairman, National Accountability Bureau (NAB) and 4 others” (2021 PCr.LJ 1813), “Messrs Memom Motors Private Limited through Genral Manager vs. National Accountability Bureau through Chairman and 2 others” (2014 PCr.LJ 1378), “Ehsan Ullah Sirazai and another vs. Director General (Karachi) National Accountability Bureau and another” (PLD2018 Sindh 696), “Haji Muhammad Arif Khattak and 2 others vs. Chairman/Director General, National Accountability Bureau and another” (PLD 2018 Peshawar 207), “Adam Amin Chaudhry and another vs. National Accountability Bureau (NAB) Islamabad through Chairman and 29 others” (2023 PCr.LJ 1536)

8. Mr. Azeem Dad, DPG and Muhammad Ali, ADPG for NAB, while rebutting the said arguments of the learned counsel for the Petitioners, have argued that the impugned orders have been passed strictly in accordance with law and the Petitioners have an ample opportunity to defend their case before learned Accountability Court as the objection petitions filed by the Petitioners are yet to be decided by the learned Accountability Court, therefore, the petitions merit dismissal.

9. Arguments heard and record of the case was perused.

10. The perusal of the record would show that the NAB has initiated inquiry in the alleged corrupt and corrupt practices in obtaining execution of contract of BRT Project which was later converted into investigation. However, what is the stage of the said investigation is not before us. The essential question before this Court is the jurisdictional factor while invoking section 12 of the Ordinance in the matter i.e. whether the worthy Director General NAB while passing the impugned orders has acted in accordance with law and both the orders freezing the assets/property/Bank accounts of the Petitioner qualify the essential attributes; as provided under section 12 of the Ordinance, and secondly, the learned Court while confirming the said order has acted judicially or has passed the said order mechanically without apply his judicial mind. Since the matter relates to interpretation of sections 12 and 13 of the Ordinance, therefore, for ease of reference the relevant provisions along with the other provisions of the Ordinance germane to the controversy are reproduced as under:

Section 5(c) of the Ordinance

"Assets" means any property owned, controlled by or belonging to ay accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan which he cannot reasonably account for or for which he cannot prove payment of full and lawful consideration.

Section 5(1) of the Ordinance

"Freezing includes attachment, sealing, prohibiting, holding, controlling or managing any property

either through a Receiver or otherwise as may be directed by the Court or Chairman NAB, and in case it is deemed necessary the disposal thereof, by sale through auction or negotiation subject to confirmation by the Court or by Chairman NAB as the case may be after public notice.

Section 12 of the Ordinance

12. Power 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 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 [or release] 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.

Section 13 of the Ordinance

13. Claim or objection against freezing:

(a) Notwithstanding the provisions of any law for the time being in force, the Court shall have exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under section 12 above. Such claims or objections shall be made before the Court within 14 days from the date of the order freezing such property.

(b) The Court may for sufficient cause extend the time for filing such claims or objections for a period not exceeding additional 14 days.

(c) The accused or any other aggrieved party, whose claim or objection against freezing of property has been dismissed by the Court, may,

within ten days file an appeal against such order before the High Court.

11. The Ordinance contains comprehensive provisions; defining the offences of corruption and corrupt practices; its investigation by setting up a Bureau known as National Accountability Bureau and the procedure for a trial of the offences. However, where no express provision is provided for the trial of an offence or inquiry/investigation, then the provisions of the Criminal Procedure Code shall mutatis mutandis apply to any proceedings under the Ordinance.¹

12. Section 12 of the Ordinance authorizes the freezing of the assets/property of the accused facing trial or investigation, by the Chairman NAB before the final verdict of guilt by the Court. The jurisprudence on interpretation of criminal law; so far developed in our jurisdiction in unequivocal words lays down that the accused must always be presumed to be innocent and the onus of proving everything essential to the establishment of the offence is on prosecution. All that may be necessary for the accused is to offer some explanations of the prosecution evidence and if the same appears to be reasonable even though not beyond doubt and to be consistent with the innocence of the accused, he should be given the benefit of it.² It is axiomatic that accused is considered to be innocent unless proven guilty on conclusion of the trial and it is well settled rule that a penal statute must be construed with such strictness as to

¹ Section 17 of the National Accountability Ordinance, 1999

² Pir Mazharul Haq vs. The State through Chief Ehtesab Commissioner, Islamabad" (PLD 2005 SC 63)

carefully guard the rights of accused and at the same time preserve the obvious intention of legislature.³

13. Similarly, it is also well settled that a statute which transgresses on the rights of a subject whether as regards his person or property, should be so construed, if possible, which may preserve such rights.⁴

14. Regarding the presumption against accused as provided under section 14(a) of the Ordinance, the Apex Court, while confronted with the same in the case of *Mansur ul Haque*⁵ has held that notwithstanding special provisions of shifting of burden of proof, fundamental principle of law of criminal administration of justice that basic onus is always on prosecution to establish commission of offence is not changed. Similarly, an accused facing any inquiry or criminal investigation has the right to know the nature of the inquiry, the purpose of the investigation, and the nature of the offence for which he or she is charged.

15. Keeping in view the aforesaid canon of criminal administration of justice, we would now revert to the present controversy. Section 12 of the Ordinance no doubt empowers the Chairman or the officer of the NAB or Court trying an accused for an offence under the Ordinance to order the freezing of his property or part thereof. However, this power is statutory in nature and not discretionary and can be exercised only if there appear reasonable grounds for believing that the accused

³ Crawford, "Statutory Construction" Page 474, Understanding Statute, Page 258).

⁴ The State vs. Syed Qaim Ali Shah" 1992 SCMR 2192)

⁵ Mansur ul Haque vs. Government of Pakistan (PLD 2008 SC 166)

has committed any offence under the Ordinance subject to an inquiry or investigation. Therefore, this statutory power cannot be exercised mechanically and without the essential satisfaction of the Chairman NAB as well as the Court to reach at the conclusion that there are reasonable grounds for believing that the accused has committed the offence before passing a stringent order freezing the assets of the accused. The Islamabad High Court in the case of *Shah Rukh Jamal*⁶, has very aptly and elaborately explained the expression "reasonable ground for believing" after referring to the opinion of the Superior Court in the case of "Fazlul Qader Choudhury v. Crown" (PLD 1952 FC 19), "Ch. Abdul Malik v. The State" (PLD 1968 SC 349, "Chaudhry Shujat Hussain v. The State" (1995 SCMR 1249, Paras 12, 13 and 14 of the said judgment are relevant which are reproduced as under.

12. The expressions 'reasonable grounds for believing' and 'reasonable suspicion' are distinct. The august Supreme Court in the case titled "(Moulvi) Fazlul-Qader Choudhury v. Crown" (PLD 1952 Federal Court 19) has considered and interpreted the expression and has observed and held that it may be that a certain amount of suspicion is caused by the conduct of a person but the word "believe" is a much stronger word and, moreover, it would require that the belief must be a reasonable one. In the case titled "Ch. Abdul Malik v. The State" [PLD 1968 SC 349] the august Supreme Court has explained the expression as follows:

"Reasonable grounds" is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, "grounds" being a word of higher import than "suspicion". However, strong a suspicion may be it would not take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or

⁶ Shah Rukh Jamal vs. National Accountability Bureau, Islamabad and others (PLD 2022 Islamabad 01)

rejection. The reasonableness of the grounds has to be shown by the prosecution by displaying its cards to the Court, as it may possess or is expecting to possess as demonstrating evidence available in the case both direct and circumstantial."

13. The august Supreme Court in the case titled "Chaudhry Shujat Husain v. The State" [1995 SCMR 1249] has observed and held as follows: "The term 'reason to believe' can be classified at a higher pedestal than mere suspicion and allegation but not equivalent to proved evidence. Even the strongest suspicion cannot transform in 'reason to believe.'" In Nisar Ahmad's case the criteria laid down seems to be that where some tangible evidence is available against the accused which, if left un rebutted, may lead to the inference of guilt."

14. It is obvious from the above discussed precedent law that having 'reasonable grounds to believe' has reference to the required evidentiary threshold. It is a legal standard and it has to be met as a precondition before exercising the intrusive power under section 12 of the Ordinance of 1999. There must be 'reasonable grounds' which manifests existence of certain essential facts. It essentially refers to the existence of such facts and circumstances which would lead a reasonable prudent person to form a belief. In the context of section 12 such belief would be relatable to the property being, directly or indirectly, owned and controlled by an accused and the latter having committed one of the offences described under section 9 of the Ordinance of 1999. The requisite standard is higher than a reasonable suspicion but less than 'on balance of probabilities'. It is distinct from conjecture, speculation or suspicion. The required standard is far less than proving something beyond a reasonable doubt. It is a threshold required for a reasonable person to conclude and be satisfied on the basis of sufficient material to conclude deprivation of or interference with the right to own, hold or control a property. The conclusion may be subjective but it must be based on some reliable material or evidence. The formation cannot be based on mere suspicion even if it may be reasonable. In a nutshell, forming an opinion On the basis of reasonable grounds to believe is distinct and a higher legal standard than 'reasonable suspicion'.

16. It is also axiomatic that any statutory authority dealing with the rights of people whether exercising judicial or quasi-judicial functions, while passing any order under any statute, it is required to give reasons for

passing the said order. The said reasons must confirm that the statutory authority while passing an order has considered the matter as required by the statute conferring power to it to pass such order and it is satisfied that the said circumstances exist which are prerequisite for passing the said order nevertheless the said reasons must be reflected from the contents of the order. Any vague order of a statutory authority, though authorized under the law to pass the said order would be nullity in the eye of law.

17. In the case of **R v HEFC, ex parte Institute of Dental Surgery [1994] 1 WLR 242**, it is held that "*The giving of reasons may in any one case be requisite. The giving of reasons may among other things concentrate the decision-maker's mind on the right questions; demonstrate to the recipient that this is so; show that the issues have been conscientiously addressed and how the result has been reached; or alternatively alert the recipient to a justifiable flaw in the process. On the other side of the argument, it may place an undue burden on decision-makers; demand an appearance of unanimity where there is diversity; call for the articulation of sometimes inexpressible value judgments; and offer an invitation to the captious to comb the reasons for previously unsuspected grounds of challenge*".

18. In our jurisdiction, the said obligation on the statutory authority is embedded in section 24-A of the General Clauses Act, 1897, which envisages that where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of purposes of the

enactment. It further envisages that the authority, office or person making any order or issuing any direction under the power conferred by or under any enactment shall, so far as necessary or appropriate give reasons for making the order.

19. The Apex Court in the case of *Muhammad Amin Muhammad Bashir*⁷ has held that "*Section 24-A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised 'reasonably, fairly, justly and for the advancement of the purposes of the enactment' and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down. No other view is permissible*".

20. Similarly, Article 23 of the Constitution envisages that every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. The right of every citizen to enter upon any lawful profession or occupation, and to conduct any lawful trade or business subject to reasonable restrictions has also be recognized by the Constitution through Article 18 of the Constitution.

21. The question whether a restriction so imposed by legislation is reasonable or justiciable, that is to say amenable or judicial determination. Mr. Justice A. R. CORNELIUS, the CJ, in the case of *Saiyyid Abul A'LA Maudoodi*,⁸ has observed that the Constitution expressly gave the Courts power of judicial review of legislation,

⁷ Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630)

⁸ PLD 1964 SC 673

and reason in such affairs being peculiarly the province of the Judiciary, it is surely within judicial review to examine both as to the reasonableness of the law itself, as well as the reasonableness of the mode of application, of the restriction, whether such mode be prescribed by the statute or not. Therefore, the very word "reasonable" itself attracts the judicial process of ascertainment of the quality of consistency with reasons. This excludes subjective satisfaction and in judging whether a restriction is reasonable, an objective standard, that is, the standard of the average prudent man shall have to be applied.

22. Having discussed the above canon of law let us examine section 12 of the Ordinance and its application to the present case. We are mindful of the observation of the Apex Court in the case of *Khan Asfandiyar Wali*⁹ that the provision of section 12 of the Ordinance have been made consistent with Article 23 of the Constitution. Indeed, section 12 of the Ordinance is exhaustive and self-explanatory which provides that the Chairman may, at any time, if there appear reasonable grounds for believing that a person has committed an offence, punishable under the ordinance, order the freezing of **his property** or part thereof.

The word occurring "his property" in section 12 of the Ordinance cannot be given wider meaning as to include any of the property owned by the accused. These words shall be restricted only to those assets or properties of he accused which are subject matter of the investigation; otherwise if wider meaning is given to it as to include any of the property of the accused then it

⁹ Khan Asfandiyar Wali vs. Federation of Pakistan (PLD 2001 SC 607)

will have the effect of enlarging the scope of the Ordinance to those properties of the accused, the acquisition whereof is no offence under the Ordinance. Indeed, it is axiomatic that a penal statute has to be construed strictly and as held in *Qayem Ali Shah case* the construction of such kind of statutes would be to preserve the citizens' rights.

23. Keeping in view the jurisprudence developed for interpretation of criminal law as stated above, and the fundamental rights guaranteed by the constitutional of the accused through Article 18 and 23 of the Constitution, the following are the essential conditions for invoking section 12 of the Ordinance in a case.

- (i) the power u/s 12 can be exercised by the Chairman NAB (delegatee) or the court trying an accused for any offence as specified under this Ordinance;
- (ii) there must be reasonable grounds for believing that the accused has committed an offence under the Ordinance;
- (iii) The reasons of his such belief must be provided in order;
- (iv) The property/assets so frozen by the order under section 12 *ibid* must have some nexus with the alleged crime of the accused being investigated.

24. Having concluded the aforesaid legal discourse, let us examine the impugned orders passed by the worthy Director General, NAB, dated 13.03.2024, followed by the order of the Court, dated 28.03.2024, and the order of the worthy Director General, NAB dated 04.04.2024, followed by the order of the Court, dated 18.04.2024, on the touchstone of the jurisprudence developed in our country by the Superior Courts. In both the cases, the

worthy Director General, NAB, while ordering for the freezing of the bank accounts of the Petitioners, has neither provided reasons nor the reasons of his believe that the accused-Petitioners in any manner are connected with the crime being investigated by the NAB. It would be pertinent to note that the comments filed by the respondents do refer to some alleged irregularities in the award of the contract to the present Petitioners relating to the civil work as well as other work. However, no document is available with such record to meet the test of expression "reasonable grounds for believing" as explained by the Hon'ble Islamabad High Court in the case of *Shah Rukh Jamal supra*.

25. Similarly, the learned counsel representing the Petitioners in both the cases have strenuously argued that various business accounts of the Petitioners have been ordered to be frozen by the worthy Director General, NAB without realizing that the said accounts are the business accounts of the Petitioners, who are carrying the occupation/business of execution of civil work and are presently carrying out the works under important contracts executed with various government agencies throughout Pakistan. The said accounts of the Petitioners have no connection with the alleged inquiry/investigation being conducted by the NAB and if the said accounts remain frozen then it will have an adverse effect on the execution of the said contracts as it would hamper the mode of receiving payment from the employer as well as payment to the employees and payment towards the other contractual obligations of the Petitioners. Be that as it may, the said defense offered by the Petitioner requires evidence, however, the impugned orders passed the

Chairman NAB neither contain any reasons nor has mentioned in the impugned orders any relevance of the amount allegedly earned by the Petitioners through corrupt and corrupt practices with the accounts so frozen. We are also mindful of the fact that so far the guilt of the Petitioner has not been established, therefore, the harsh order of the DG NAB has the effect of depriving both the Petitioners of carrying on the lawful trade as well as the right to hold the property in terms of Articles 18 and 23 of the Constitution. Thus we are of the considered opinion that the orders of the worthy Director General, NAB are unreasonable, harsh, deficient in its contents and incorrect in its result. Indeed, it is an offhand decision by the worthy Director General, NAB, completely lacks the essential attributes of section 12 of the Ordinance, therefore, all the impugned orders, as stated above, passed by the worthy Director General, NAB, are not sustainable in the eye of law.

26. Moving on to the orders of the Court dated 28.03.2024 and 18.04.2024 in the case of Syed Maqbool Hussain Shah etc. (W.P No.2662-P/2024) and orders dated 18.04.2024 and 15.05.2024 in the case of LMK Resources Pakistan (Private) Limited (W.P No.2710-P/2024). The object of first proviso to section 12 of the Ordinance envisaging that the order of freezing passed by the Chairman/Director General, NAB would be subject to the confirmation of the Court as it is the duty of the Court to ensure that the order passed by the Chairman/Director General, NAB confirms the essential attributes of section 12 of the Ordinance *ibid* and if it lacks any of such attributes, the Court is not bound to confirm the said order. Indeed, the function of the Court, either at the

investigation stage of any case or during the trial, is not to approve the *ipse dixit* of the investigation officer or, for that matter, of the prosecution but to each case, the court is bound to apply its independent judicial mind and ensure that any request of the prosecution / investigation that requires indulgence of the Court under any legal dispensation, whether confirms the statutory requirement or otherwise and not to rubber stamp any request of the investigation. We have perused the said orders and are of the firmed opinion that the learned Court has failed to apply his independent judicial mind while confirming the order of freezing in both the cases and has rubber stamped the same despite the fact that the respondents have raised very serious objection to the confirmation of the said orders.

27. Moving on further to the objection raised by the learned counsel for the respondents to the maintainability of this petition. Main objection of the respondents was that section 13 of the Ordinance provides a mechanism for receiving and adjudication of an objection by any person aggrieved by the freezing order passed under section 12 of the Ordinance and such objection petition is already pending before the Court, therefore, not only this petition is premature but if the objection petition is decided against the Petitioners, they have a remedy to file an appeal before this Court. We have perused section 13 of the Ordinance, which in our opinion is not exhaustive. Furthermore, the grievances raised in this petition which, inter alia, include that almost 75 bank accounts of the Petitioners in case of Syed Maqbool Hussain Shah etc. (W.P No.2662-P/2024), and two (02) bank accounts of Petitioners in the case of LMK Resources Pakistan

(Private) Limited (W.P No.2710-P/2024) have been frozen by the NAB / Director General NAB without realizing that the said accounts relate to the present business activities of the Petitioners in which not only the pecuniary interest of the Petitioners are involved but according to the Petitioner, the said accounts relate to their business activities regarding execution of public contracts and huge interest of the government/semi government organization are also involved.

28. In this view of the matter, in our opinion that said remedy under section 13 of Ordinance is mere illusory. Indeed, it is not a settled rule that in all circumstances the availability of an alternate remedy to an aggrieved person would be a bar for maintaining a Constitutional Petition. Thus issue of alternate remedy has been well explained by the Lahore High Court in the case of *Arshad Mehmood*¹⁰. The relevant paras of the judgment are reproduced as under:

13. It is axiomatic and by now a judicial cliché, that sub-constitutional legislation cannot curtail or abridge the constitutional jurisdiction of this Court. Legislature, being the creature of the Constitution cannot take away the jurisdiction of a constitutional Court conferred by the Constitution. "Shortly stated, an ordinary statute or a sub-constitutional legislation is incapable of ousting, curtailing or limiting the constitutional jurisdiction of the Supreme Court or the High Courts and the words 'no court' in an ouster clause in a statute do not, therefore, include the High Courts or the Supreme Court so far as their constitutional jurisdiction (e.g. under Article 199 and Article 184 of the Constitution) is concerned."¹¹ This well settled constitutional principle loudly resonates through our jurisprudence: *Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others* (PLD 2001 SC 607), *Mrs. Shahida Zahir Abbasi and 4 others v. President of Pakistan and others* (PLD 1996 SC 632), *Malik*

¹⁰ *Arshad Mehmood vs. Commissioner/Delimitation Authority, Gujranawala and others* (PLD 2014 Lahore 221)

Muhammed Mukhtar, through Legal Heirs v. Province of Punjab through Deputy Commissioner (Collector) Bhawalpur and others (PLD 2005 Lah. 251), Miss Asma Jilani v. The Government of the Punjab and another (PLD 1972 SC 139), Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri (PLD 1969 SC 14) and Federation of Pakistan and another v. Malik Ghulam Mustafa Khar (PLD 1989 SC 26).

14. In a more common law context, it is a judicial norm, that courts jealously guard their jurisdiction. They start with a strong presumption against ouster of jurisdiction and construe the same strictly, which means "that if such a provision is reasonably capable of having two meanings, that meaning ... which preserves the ordinary jurisdiction of the court"¹² is preferred. "An ouster clause, however widely worded and whether it occurs in a Constitution or in an ordinary statute, does not save an act or order without jurisdiction (which expression compendiously describes and includes acts and orders coram non iudice and mala fide) from scrutiny of the courts because the purported act or order is no act or order at all."

29. The said judgment was reaffirmed by the Apex Court in the case of *Adamjee Insurance Company Ltd*¹¹. Even otherwise, where in any matter where resolution of some question of law was required to be made then direct approach to the High Court is otherwise permissible and the party cannot be compelled to avail of other remedies, for under the Constitution, as interpretation of law was the responsibility of the superior court¹².

Therefore, the objection of the respondents to the maintainability of this petition is overruled.

30. In view of what has been stated above, we hold and declare:

¹¹ Adamjee Insurance Company Ltd vs. Muhammad Ramzan and others (PLD 2020 SC 414)

¹² United Business Lines, S.I.E. Gujranwala and another vs. Government of Punjab through Secretary, Local Government, Lahore and 5 others (PLD 1997 Lahore 456) and Messrs Chenab Cement Product (PVT.) Ltd. and others vs. Banking Tribunal, Lahore and others PLD 1996 Lahore 672)

- i. The order passed by the worthy Director General, NAB, dated 13.03.2024, followed by the orders of the learned Court dated 28.03.2024 and 18.04.2024 and subsequent order dated 26.04.2024, in the case of Syed Maqbool Hussain Shah etc. (W.P No.2662-P/2024), are declared illegal and without lawful authority.
- ii. The order passed by the worthy Director General, NAB, dated 04.04.2024, followed by the orders of the learned Court dated 18.04.2024 and 15.05.2024 in the case of LMK Resources Pakistan (Private) Limited (W.P No.2710-P/2024), are declared illegal and without lawful authority.


SENIOR PUISNE JUDGE


JUDGE

Date of hearing and announcement
of judgment 03.07.2024

Date of preparation and signing of
Judgment 22.07.2024

D.B Hon'ble Mr. Justice Ijaz Anwar
 Hon'ble Mr. Justice Syed Arshad Ali

Mahmood Shah, SSS