

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Salahuddin Panhwar

Civil Petition No.256-K of 2024

(Against the order dated 13.03.2024
passed by the High Court of Sindh,
Circuit Court, Hyderabad in C.P.No. D-
1077 of 2023)

Ahsan Ali Dawach ... Petitioner

Versus

The State through Chairman NAB & others ... Respondents

For the Petitioner: Mr. Shaukat Hayat, ASC

For the NAB: Mr. Sattar Mehmood Awan, DPG
Syed Meeral Shah, Spl. Prosecutor
Mr. Irfan Ali, I.O/Deputy Director

Date of Hearing: 18.03.2025

Judgment

Muhammad Ali Mazhar, J- This Civil Petition for leave to appeal is directed against the order dated 13.03.2024 passed by the High Court of Sindh at Hyderabad circuit in C.P.No.D-1077 of 2023.

2. According to the chronicles instituted in the case, the petitioner was taken into custody by respondent No.3 on 23.09.2021 for the investigation of a pension funds scam involving District Accounts Officials, District Hyderabad, and some others persons. At the time of arrest, a vehicle, namely Honda Vezel (typed as Toyota Vezel in the Freezing Order), Model 2016, bearing Registration No. BJ-4546, was also seized by the respondent No.3 from the petitioner's custody during the ongoing investigation. The Chairman NAB (respondent No.1) after scrutinizing and evaluating the material collected during the investigation by the Investigation Officer (I.O.) filed Reference No.04/2022 under Section 18(g) and 24(b) of the National Accountability Ordinance, 1999 ("**NAO 1999**") and incriminated 84 accused persons, including the petitioner, for the

misappropriation of Rs. 3.2 billion from pension fund accounts of DAO Hyderabad through fake pension vouchers. Accordingly, as per the allegations outlined in the NAB Reference, all accused are said to have committed the offence under Sections 9 and 10 of the NAO 1999, read with Sections 3 and 4 of the Anti-Money Laundering Act, 2010 ("AML"). As said by petitioner, he was enlarged on bail on the ground of statutory delay *vide* order dated 08.12.2022 and as per conditions incorporated in the bail order, the name of the petitioner/accused persons also placed on the Exist Control List ("ECL"). In the course of the investigation, the respondent No. 2 (DG NAB Sindh) passed an Order on 01.02.2022 under Section 12 of the NAO 1999 for freezing of movable and immovable properties of accused persons which was confirmed by the Trial Court on 14.02.2023. According to the constituents of the Freezing Order, as far as it relates to the Vehicle in question (Registration No.BJ-4546), itemized in Category (C) at Serial No. 4, only a prohibition was inflicted against the transfer of the said vehicle by the Excise & Taxation Authority, Karachi. The petitioner, on 31.01.2023, filed an application under Section 516-A of the Code of Criminal Procedure Code, 1898 ("Cr.P.C.") in the Trial Court for release of the aforesaid vehicle on *superdari* subject to furnishing of solvent surety. The petitioner also asserted that only his vehicle was seized by the I.O. on the date of the arrest, while all other vehicles mentioned in the Freezing Order are still in custody of their respective owners. The application filed by the petitioner under Section 516-A Cr.P.C. was dismissed by the Trial Court *vide* Order dated 20.05.2023 with the observation that the car in question was seized under Section 12 (b) (i) & (iii) of the NAO, 1999, hence the application under section 516-A Cr.P.C. for return of vehicle on *superdari* is misconceived. The petitioner assailed the order of the Trial Court before the Sindh High Court, Circuit Court Hyderabad, by dint of C.P. No.D-1077/2023 which was dismissed *vide* the impugned Order.

3. The learned Counsel for the petitioner argued that the application moved under Section 516-A Cr.P.C. was dismissed without any cogent reasons and the Trial Court and High Court both discarded the grounds in a mechanical manner. Both the Courts below also committed serious errors and failed to consider

that in the Freezing Order of all vehicles cited in Category (C), page 5 of the Freezing Order, the Mode of Freezing is restricted to the transfer during pendency of Reference in NAB Court which does not amount to seizure. The Freezing Order dated 01.02.2022 is only attracted against the vehicle of the petitioner to the extent of prohibition of transfer during pendency of the NAB Reference. It was further averred that the High Court misinterpreted the Freezing Order and drew wrong conclusions, therefore, the impugned order is liable to be set aside. It was further contended that the petitioner has no objection to the Freezing Order or its confirmation with regard to the prohibition imposed against the transfer of vehicle by the Excise & Taxation Office, Karachi. Nevertheless, on the principle of equity and fair play, the vehicle of the petitioner may be released on *superdari* on furnishing of solvent surety bond till the final decision of the Reference.

4. The learned DPG, NAB, argued that an inquiry on the allegations of misappropriation of pension funds against the officers of DAO Hyderabad and others was authorized which was converted into an investigation. The petitioner and other co-accused persons, in connivance with each other, misused their authority and misappropriated huge amounts through fake pension vouchers and fake agriculture refund vouchers and thus caused loss to the national exchequer and committed the offences as mentioned in the NAB Reference. It was further contended that before confirmation of the Freezing Order under Section 12 of the NAO 1999, notices were issued for filing of objections, but the petitioner failed to avail the remedy under Section 13 of the NAO 1999, and also failed to raise any objection. It was further contended that the application under Section 516-A Cr.P.C. for return of vehicle on *superdari* was without substance; hence, it was rightly dismissed by both the Courts below.

5. At the outset, we aspire to analyze the scope and *raison d'être* of Sections 12 and 13 of the NAO 1999, which are significant and pivotal to get to the bottom of the bone of contention and, as a whole, on the threshold of these very Sections, the *vires* of the impugned Order passed by the Accountability Court and affirmed by the High Court in its constitutional jurisdiction *vis-à-vis* the effect of Section 516-A Cr.P.C., for the release of vehicle as interim custody (*superdari*) is

required to be mulled over. For the ease of convenience, Section 12 and 13 of the NAO 1999 are reproduced as under: -

"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 subsection (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 Chairman NAB:

Provided further that notwithstanding anything to the contrary contained herein, 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). 1

(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, whereafter it shall be subject to an order by the court in which an appeal, if any, is filed.

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 objection 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.

6. If we delve into Section 12 of the NAO 1999, the Chairman NAB or the Court, on reasonable grounds, may order the freezing of property or part thereof, whether in possession of accused or in the possession of any of his relative, associate, or person on his behalf. Indeed Section 12 (*ibidem*), *inter alia* provides in clear

terms that if the property ordered to be frozen 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* and 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*. Whereas, Section 13 (*ibidem*), *inter alia* accentuates a remedy in well-defined words that 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 and such claims or objection shall be made before the Court within 14 days from the date of the order of freezing such property, and in case the accused or any other aggrieved party, whose claim or objection against freezing of property, has been dismissed by the Court, he may, within ten days file an appeal against such order before the High Court [Emphasis supplied].

7. According to the Section 5(m) (Definitions Clause) of the NAO 1999, the "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 to 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. No doubt, the expression "Freezing" is provided in the definition with a long range of its fragments and components, but the fact remains that this definition cannot be read in isolation; for better understanding, it is to be read with the modes of freezing of movable property provided in the parent Section 12 of the NAO 1999, which is relevant in the present context of the case where the freezing can be ordered by seizure; by appointment of receiver; by prohibiting the delivery of such property to the accused or to anyone on his behalf; or by all or

any of such or other methods as the court or the Chairman NAB may deem fit. What is momentous to take note of is that a plain reading of Section 12 NAO 1999 shows that it is actually the tenor of a Freezing Order which articulates distinct modes of freezing of any particular property; and in this case, the genre of Freezing Order for the vehicle in question is "By prohibiting the transfer of property-Excise and taxation office Karachi" [Emphasis applied]. However, the Accountability Court, while dismissing the application for interim custody, held as under: -

5. It seems that car in question was seized under section 12 (b) (i) & (iii) of NAO, 1999, hence the application under section 516-A Cr.P.C for return of vehicle on superdari without substance. The application merits no consideration, hence dismissed.

8. It appears from the aforesaid passage of the Order that the NAB Court merely got rid of the matter, and simply observed that the vehicle was seized under Section 12 (b) (i) & (iii) of the NAO, 1999, without adverting to the actual framework or skeleton of the Freezing Order, which, as a matter of fact and in its true sense, was restricted to the transfer of the vehicle to someone else during the pendency and culmination of the NAB Reference. It neither deduces that the interim custody of the vehicle in question cannot be allowed to its owner under all circumstances, even on furnishing solvent surety bond, nor conveys any adverse impression that the vehicle must remain motionless, deteriorate, corrode, or lose its potential value due to disuse.

9. The advent of Section 516-A Cr.P.C., *inter alia* draws our attention to an unambiguous provision wherein the Court may pass an order for interim custody of property pending the conclusion of the inquiry or trial and disposal of property when any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, and if the property is subject to speedy or natural decay, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. The provision of allowing the release of a seized vehicle before the completion of legal proceedings enables and facilitates the vehicle owner to apply for restoring the interim custody on showing

lawful grounds and requisite documents to the Court without awaiting the conclusion of a prolonged legal process before retrieving the possession of the seized vehicle. Furthermore, this provision is intended to minimize inconvenience, as in this case, where it was emphasized that the vehicle is lying dormant under the open sky, deprecating in both condition and value. Moreover, apart from the petitioner's vehicle, no other vehicle was seized or retrieved from other accused persons before or after the filing of the NAB Reference; a vigorous contention raised by the learned counsel for the petitioner, which was not denied by the I.O. present in the Court at the time of hearing.

10. For all intents and purposes, at the time of deciding the application moved for an interim custody by a person, the underpinning benchmark that must be followed is not only the "best right to possess" but also indisputable corroboration of ownership. This includes the motor registration certificate, purchase invoice, or other relevant documents, authenticating the ownership or substantiating a rightful claim streaming from some lawful authority. The application moved under Section 516-A Cr.P.C. must be decided expeditiously after providing a fair chance to contest the legality of the seizure and the order must be based on cogent reasons as to why the vehicle should be released or why it should not be released, rather than deferring the application for an indefinite period or disposing it of in a slipshod or cursory manner. The discretion should be exercised judicially while determining the question of right and entitlement to take possession of property subject to furnishing bond with or without surety, equivalent to the worth of the property allowing to be retained on *superdari*, and the terms and conditions wreaked by the Court must be recounted in the bond unambiguously. According to the command and mandate of Article 23 of the Constitution of the Islamic Republic of Pakistan, 1973, ("Constitution"), every citizen has a 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. All at once, it is engrained and embedded under Article 24 of the Constitution that no person shall be deprived of his property save in accordance with the law with certain exceptions already jotted down in the Article itself.

11. While exercising discretionary powers for allowing or disallowing an application for interim custody, the Court must also consider the constitutional provisions to ensure that withholding custody without any rhyme or reason does not flout or violate or infringe upon fundamental rights as enshrined under the Constitution. On one hand, the Court must aptly uphold a good sense of implementation of law, but on the other hand, it is obligated to shield and safeguard the rights of individuals in order to ensure justice without protracted detentions or delays of such interlocutory applications, as long as it does not compromise the legal proceedings. However, it is clarified that the scheme of law permitting the interim custody of vehicle on *superdari* neither amounts to prejudice the trial, nor gives a clean chit to the accused, nor does it relieve or exempt the owner/recipient of custody from pending legal proceedings. However, the duration of the interim custody may continue subject to the bond and surety till the final fate of the case, till then, the person allowed interim custody is duty-bound under the law to attend, participate, and produce the vehicle as and when directed by the Court.

12. At this point, we shall quote Section 24-A of the General Clauses Act, 1897, which provides that (1) 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 the purposes of the enactment; (2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall so far as necessary or appropriate, give reasons for making the order or as the case may be for issuing the direction and shall provide a copy of the order or as the case may be the direction to the person affected prejudicially. In the case of Muhammad Iqbal Chaudhry Vs. Secretary, Ministry of Industries and Production, Government of Pakistan and others (PLD 2004 SC 413), it was held by this Court that the forums seized with judicial matters are required to pass such a speaking judgment that it should give an impression to readers that the legal and factual aspects of the case which were raised before it for the purpose of decision have been considered and decided in the light of recognized principles of law on the subject instead of disposing of in slipshod manner.

Whereas this Court, in the case of Muhammad Amin Muhammad Bashir Limited Vs. Government of Pakistan (2015 SCMR 630), reiterated the dictum laid down in the case of Amanullah Khan Vs. Federal Government of Pakistan (PLD 1990 SC 1092) with regard to the principles of structuring the discretion that "Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times." Moreover, the judgment also quotes excerpts from the case of Abid Hasan Vs. PIAC (2005 SCMR 25) in the following words: "In his Treatise 'Discretionary Powers' which is Legal Study of Official Discretion D.J. Galligan has acknowledged that the general principles that discretionary decisions should be made according to rational reasons means; (a) that there be findings of primary facts based on good evidence, and (b) that decisions about the facts be made for reasons which serve purposes of the statute in an intelligible and reasonable manner". According to the celebrated author, the actions which do not meet these threshold requirements are arbitrary, and may be considered a misuse of power." Even in the case of Khalid Humayun Vs. The NAB through DG Quetta and others (PLD 2017 SC 194), yet again this Court 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.

13. The main reason for nonsuiting the petitioner by the learned High Court is that the Trial Court passed a Freezing Order on 14.02.2023, and since then the petitioner failed to raise any objection which has attained finality and is still in the field, therefore, an application under Section 516-A Cr.P.C. for return of vehicle on *superdari* is not maintainable for the reason that the NAB law is a special law wherein special provisions are applicable such as filing an application under Section 13 of the NAO 1999 but the petitioner has failed to do so.

14. What we understand in the case in hand is that the petitioner never endeavored to challenge the Freezing Order, rather he accepted it without demur, but he applied for the custody of vehicle within the sphere of the Freezing Order (which is confined to an embargo against the transfer of the vehicle only). There is no demonstrable restriction or prohibition in the law that if an accused or aggrieved person fails to lodge a claim or objection against the Freezing Order in terms of Section 13 of the NAO 1999, they shall be deprived and shall, perpetually or unremittingly, not be able to apply for interim custody of the vehicle/property. Each case is to be decided on its own peculiar facts and circumstances, therefore, what is material in the instant case is the pith and substance and fundamental nature of the Freezing Order and nothing else, which both the courts below failed to take into consideration, and simply dismissed the application.

15. A close reading of the exactitudes of Section 17 of the NAO 1999 articulates that notwithstanding anything contained in any other law for the time being in force, unless there is anything inconsistent with the provisions of this Ordinance, the provisions of Cr.P.C. shall, *mutatis mutandis*, apply to the proceedings under this Ordinance and Chapter XXIIA of the Cr.P.C. (Trials before High Courts & Courts of Session) shall apply to trials under this Ordinance. At the same time, it distinctly avers under Section 18 that the Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or

an officer of the NAB duly authorised by him. Sure enough, the aphorism “special laws” is meant to refer to laws regulating specific subjects and stipulating their own limitations and conditions to be applied. At the same time, it is also a well-known interpretation of law that special law prevails and dominates over a general law. However, while resolving the issue by the Courts on whether a statute is a special or general law, the crucial consideration must be the legislative intent, and of course in case of divergence, the rule of harmonious construction may be adopted. It is almost transparent that by virtue of Section 17 of the NAO 1999, the legislature has expounded that by reference, the provisions of the Cr.P.C. shall *mutatis mutandis* apply to the proceedings under this Ordinance and Chapter XXIIA, Cr.P.C., shall apply to trials. We do not catch sight of any inconsistency or incongruity between Section 516-A Cr.P.C. and the provisions of the NAO 1999, and obviously, there is no specific provision for releasing the custody of vehicle embedded in the NAO 1999, but at the same time, there are also no absolute restrictions against doing so. Therefore, in all fairness, the aid and assistance may be taken by the Courts from the general provisions of Cr.P.C., particularly when the letter of law indubitably makes it clear that the provisions of Cr.P.C. shall *mutatis mutandis* apply to the proceedings unless there is anything inconsistent with the provisions of the NAO 1999. Along these lines, allowing interim custody of vehicle on *superdari*, in our considered view, in terms of Section 516-A Cr.P.C., in the present circumstances of the case, neither offends any provision of the NAO 1999 nor is it inconsistent with any of the provisions of the NAO 1999.

16. This Civil Petition was converted into an appeal and allowed *vide* our short Order dated 18.03.2025 which is reproduced as under: -

“For reasons to be recorded later, this Civil Petition is converted into an appeal and allowed. As a consequence, thereof, the Order dated 20.05.2023, passed by the Accountability Court-II, Hyderabad, in Reference No. 02/2023 on an application moved by the petitioner under Section 516-A the Code of Criminal Procedure, 1898 (“Cr.P.C.”), for the custody of Vehicle No. BJ-4546, Model 2016, Chassis No. RU3-1237318, Engine No. LEB-5937340, on *superdari*, as well as the Order dated 13.03.2024, passed by the learned Division Bench of the High Court of Sindh, Circuit Court,

Hyderabad, in C.P. No. D-1077/2023, are both set aside. The application moved under Section 516-A, Cr.P.C., for the custody of vehicle on *superdari* in the Accountability Court-II, Hyderabad, in Reference No.02/2023 is allowed subject to the furnishing of personal bond along with solvent surety before the Accountability Court-II, Hyderabad, equivalent to the present market value of the vehicle in question, with the further condition that on attaining custody of the vehicle on *superdari*, the petitioner shall produce the said vehicle as and when required by the learned Accountability Court and shall not alter/change the condition of the vehicle in such a way that may materially affect its value. The learned Accountability Court-II, Hyderabad, shall also mark caution against the said vehicle in the concerned Excise and Taxation department/office so that no transfer application of the vehicle is entertained till further orders of the trial Court.

N.B: At this juncture, the learned counsel for the petitioner submits that there is some typing error in the Freezing Order. In fact, the "Make" of the vehicle in question is "Honda Vezel" and not "Toyota Vezel", which fact is truly reflecting from the Certificate of Registration (Form G) of the vehicle, issued by the Excise, Taxation & Narcotics Control Department, Government of Sindh, in the name of the petitioner, as attached with the paper book at page 88. We cannot correct or rectify such mistake here, but direct the learned Accountability Court-II, Hyderabad, that this Order has been passed for allowing custody on *superdari* of the Vehicle No. BJ-4546, Model 2016, Chassis No. RU3-1237318 and Engine No.LEB-5937340, irrespective of any typing error, if committed by the NAB/Accountability Court in the Freezing Order while describing the exact "Make" of the vehicle in question".

Above are the reasons assigned in support of our short order.

Judge

Judge

Judge

Karachi:

18.03.2025

Approved for reporting
Khalid