

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
 Mr. Justice Muhammad Iqbal Kalhoro.
 Mr. Justice Shamsuddin Abbasi

C.P.No.D-2757 of 2020
 Sultan Qamar Siddiqui & others

Versus
 National Accountability Bureau & others

Date of hearing &:
order : **27.04.2021**

Mr. Khawaja Shams-ul-Islam, advocate for petitioner
 Mr. Riaz Alam, Special Prosecutor, NAB

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioner No.1 standing a trial in Reference No.12/2017 against allegation of accumulating assets beyond source of income, in the enquiry of which, his and his family members' bank accounts were frozen and put under caution under Section 23 of National Accountability Ordinance, 1999, filed an application before the relevant Accountability Court at Karachi for releasing certain amounts for meeting household expenses, dismissed vide an order dated 28.02.2020, has filed this petition impugning the said order in addition to praying for unfreezing the said bank accounts.

2. Interestingly, during pendency of this petition, the entire trial against petitioner No.1 has culminated into his acquittal vide a judgment dated 13.11.2020. After the acquittal, he moved an application under Section 13 of NAO, 1999 for lifting caution and unfreezing the bank accounts but it has met the same fate vide an order dated 23.04.2021 by the trial court, postulating, among others, that since NAB has filed acquittal appeal, a continuation of the trial, it cannot decide the issue.

3. Learned Special Prosecutor, NAB despite acquittal of petitioner No.1 in the reference has unnaturally tried to defend the impugned orders and has attempted to convince us that pending acquittal appeal, petitioners are not entitled to the relief prayed here. We, however, find such contention totally absurd and besides the mark, an objection only for the sake of objection. Section 23 NAO, 1999 allows the Chairman, NAB to put caution

on the property of an accused involved in an offence from transferring the same, creating charge, alienate possession thereof, etc. However, after conclusion of the trial, resulting into acquittal of the accused, vires of power exercised as such come to an end and get merged into the judgment. Its challenge to this court would not change such situation, unless ordered otherwise and the appeal admitted for regular hearing. The element of double presumption of innocence running in favour of the accused would lean strongly against any presumed probability of it being upset in the acquittal appeal. For it is settled that the principles governing consideration in acquittal appeal are quite distinctive to what regulates the appeal against the conviction. Acquittal appeal is not right of the appellant, whereas it is vice versa in the appeal against the conviction, which point the learned trial court totally lost sight of while deciding application u/s 13 of NAO, 1999 and rendering the judgment with an omission to cover this aspect of the case.

4. We may clarify here that mere filing of acquittal appeal for the purpose as is being dealt with here would not be considered as a continuation of proceedings against petitioner No.1 in *stricto sensu* either creating an insurmountable barrier to exercise of constitutional jurisdiction of this court to pass orders for making ends of justice meet. Petitioner No.1 went through rigorous of the trial and emerged vindicated as, *prima facie*, no incriminating evidence to have accumulated property, frozen by the Chairman NAB, illegally and beyond sources of income was found against him.

5. Therefore on account of pendency of the acquittal appeal the accused would be deprived of means to deal with his property as per his wishes in accordance with law, which otherwise is his right guaranteed under the Constitution. We, therefore, find no merits in the arguments of learned Special Prosecutor, NAB and allow this petition along with pending applications as prayed.

6. The petition stands disposed of in above terms along with pending application(s)

JUDGE
JUDGE