

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Dr. Syed Fiaz Ul Hassan Shah.

Criminal Bail Application No.D-65 of 2025

Applicant: **Mohammad Farhan Arain** through Mr. Farooq H. Naek, Advocate.

Respondents: Moazam Ali Shaikh, Special Prosecutor NAB
along with Waqar Anwar, Deputy Director NAB

And

Criminal Bail Application No.D-67 of 2025

Applicant: **Shakil Ahmed Shaikh** through Mr. Farooq H. Naek, Advocate.

Respondents: Moazam Ali Shaikh, Special Prosecutor NAB
along with Waqar Anwar, Deputy Director NAB

And

Criminal Bail Application No.D-66 of 2025

Applicant: **Salahuddin Rashidi** through Mr. Farooq H. Naek, Advocate.

Respondents: Moazam Ali Shaikh, Special Prosecutor NAB
along with Waqar Anwar, Deputy Director NAB

And

Criminal Bail Application No.D-101 of 2025

Applicant: **Anand Saroop** through Mr. Shahnawaz Ayoub Dahri, Advocate.

Respondents: Moazam Ali Sheikh, Special Prosecutor NAB
along with Waqar Anwar, IO/Deputy Director NAB.

And

Criminal Bail Application No.D-47 of 2025

Applicant: **Altaf Hussain Gorar** through Mr. Sajid Ali Gorar, Advocate.

Respondents: Moazam Ali Shaikh, Special Prosecutor NAB along with Waqar Anwar, Deputy Director NAB

And

Criminal Bail Application No.D-45 of 2025

Applicant: **Qadir Bux** through Mr. Sarfaraz Ali Metlo, Advocate.

Respondents: Moazam Ali Shaikh, Special Prosecutor NAB along with Waqar Anwar, Deputy Director NAB

Date of hearing: 15.05.2025

Date of decision: .06.2025

ORDER

DR. SYED FIAZ UL HASSAN SHAH, J.- Through the Bail Applications under section 497 Cr.P.C., the Applicants are seeking post arrest bails in in NAB Reference No.2 of 2023 (*The State v. Mushtaq Ahmed Shaikh and others*) for the offences allegedly committed under sections 9 of the National Accountability Ordinance 1999 (NAB Ordinance) and sections 3 & 4 of the Anti-Money Laundering Act 2010 (AMLA). Initially, the applicants have filed bail applications before the Accountability Court-II, Hyderabad (hereafter referred to as the “Trial Court”) which was dismissed vide Order dated 18.03.2025.

2. It may be noted that initially NAB has filed Reference No.4 of 2021 before the Accountability Court at Karachi which reference

was transferred to the Accountability Court No.II, at Hyderabad, where it has been registered with new number Reference No.2 of 2023.

3. The brief facts as per Reference are that an inquiry on the allegations of misappropriation of pension funds by the officers of DAO, Hyderabad and others bankers, other officials and private individuals was authorized which was subsequently, converted into investigation and after conducting investigation by the NAB the instant Reference was filed against the above named accused alongwith eighty-three other co-accused including five deceased accused persons and contractors of agriculture department in collusion with each other misused their authority and misappropriated funds amounting to Rs.3.2 Billion from pension accounts in the District Accounts Office, Hyderabad through the use of fake vouchers and fraudulent Agriculture refund vouchers thereby causing significant loss to the national exchequer. Furthermore, the accused persons in connivance with each other allegedly committed the offence of money laundering as defined U/S 3 of the Anti-Money Laundering Act (AMLA) 2010 consequently, the accused persons allegedly committed the offence of corruption and corrupt practices U/s 9(a) (i), (iii) (iv) (vi) (ix) (x) of NAO, 1999. After usual investigation on 16-05-2022, NAB authorities filed Reference in Accountability Court-VI, Karachi which was subsequently, transferred to Accountability Court-II, Hyderabad as Reference No.02/2023.
4. That an inquiry on the allegations of misappropriation of pension funds by the officers of DAO Hyderabad and others was authorized The Inquiry was converted into investigation on 18th

June, 2021 u/s 9(a) of NAO 1999. The Director General on 25th December 2021 reauthorized the investigation with the inclusion of section 3 and 10 of Anti-Money Laundering Act 2010. Later on due to involvement of officers of BPS 20 and above the Chairman delegated the power to authorize the investigation on 14th March 2022 and on 15th March 2022 DG NAB (K) authorized investigation to Investigation Officer.

5. That 5433x pension bills and 130x refund bills were recovered during the house search of accused No. 1 Mushtaq Ahmed Shaikh during the course investigation against him. For the purpose of investigation only 1756 x pension bills/vouchers out of 5433 x were sorted out which pertain to MCB Bank and accused persons accused No.1 Mushtaq Ahmed Shaikh, accused No. 2. Nazir Bhutto and accused No.3 Allah Bachayo Jatoi who signed and processed the same at relevant time of their incumbencies.
6. That the investigation revealed that the said pension bills were fake having fake Pension Pay Order (PPO) numbers and the same were deposited in the bank accounts of persons different than the names mentioned on the vouchers and 137x bank accounts of 88 individuals, mostly belonged to accused No.7 Aijaz Dawach and his family members and friends. These 137x accounts were operated at three (3) branches of MCB during period of 2010 to 2017. During investigation it was found that the total value of these 1756x is Rs. 1.165 billion. These bills were not processed as per Accounting Policies and Procedures Manual (APPM) issued by Govt. of Pakistan, which is applicable on the Federal as well as Provincial Governments. Table of signatories of 1756 x bills as follow:

S#	Name DAO	Total No. of Bills	Total Amount
1.	Accused No.1 Mushtaq Shaikh	891	544,244,961
2.	Accused No.2 Nazir Hutto	850	610,664,440
3.	Accused No.3 Allah Bachayo Jatoi	15	10,738,950
	Total	1,756	1,165,648,358.00

7. That the Investigation revealed that accused No.7 Aijaz Dawach got prepared fake pension bills with fake and bogus names and PPO numbers in connivance with accused No.1 Mushtaq Ahmed Shaikh, accused No.3 Allah Bachayo Jatoi and accused No. 2 Nazir Bhutto. These 3x accused persons after placing the embossed seal in the capacity of authorized officers as ADAO-III sanctioned/signed these pension bills as authorized signatories. Accused No.1 Mushtaq Ahmed Shaikh, Accused No.3 Allah Bachayo Jatoi and Accused No. 2 Nazir Bhutto also entered these bills in the and signed the advices along with the bills sent to SBP. During Investigation the signatures on the pension bills of the signatory accused persons were verified from the District Accounts Office and State Bank of Pakistan (SBP).
8. That the banking analysis by the banking expert of the 137x accounts revealed that in addition to Rs.1.16 billion, pertaining to 1756x Fake Pension Bills, which credited into these accounts, another amount to the tune of Rs.1.8 billion was also credited from government funds. The details have been given at para 20 of Investigation Report.
9. That during the course of investigation 44x immovable properties of accused No.7 Aijaz Dawach and other accused persons and benamis were unearthed and have been freeze during investigation. In addition to above 9x vehicles, 1x company, 411x

Bank accounts and live stocks have also been freeze u/s 12 of NAO 1999.

- 10.** That the investigation also revealed accused No. 13 Akhtar Ali and his wife Ghulam Sughran accused No.59 maintained 9x accounts in which 163x fake pension entries amounting to Rs.179.40 million was found and also acquire 3x properties and 1x vehicle. Accused No. 13 Akhter Ali joined investigation and later on after getting bail he absconded. Accused No.24 Imdad Ali Dawach maintained 1x account in which 31x pension related entries amounting to Rs.35.9 million found and also acquired 2x properties. Accused No. 25 Nizamuddin Dawach maintained 4x accounts in which 164x entries amounting to Rs.144 million was found credited in his account Accused No. 28 Asad Ali Dawach maintained 5x accounts including 1x company account in which 219x fake entries were identified amounting to Rs.88.8. Accused No.28 Shahzad Ali maintained 4x accounts including 1x company account in which 135x pension transactions amounting to Rs.91.349 million was unearthed. Accused No.30 Ramzan Dawach maintained 3x account in which 89x fake pension entries were identified amounting to Rs.63.1 million. Accused Kamaluddin Dawach maintained 5x accounts including 1x company account in which 154x entries amounting to Rs.118 million were found. Accused No.32 Sajjad Ali Dawach So Tharo Kinari maintained 4x account in which 151x fake entries amounting to Rs.88.4 were found. Accused No.33 Ahmed Ali maintained 5x account including 1x company account having 362x entries amounting to Rs.266.2 million.

11. Accused No.56 Shazia w/o All Nawaz has 1x bank accounts which were credited with Rs.37 million from government pension funds. Accused No.57 Sheeza has 3x bank accounts which were credited with Rs.34.68 million from government pension funds. Accused No.58 Sanam has 3x bank accounts which were credited with Rs.30.03 million from government pension funds. Accused No.59 Ghulam Sughra has 4x bank accounts which were credited with Rs.54.96 million from government pension funds. Accused No. 60 Haleema has 4x bank accounts which were credited with Rs.124.07 million from government pension funds. Accused No.61 Uzma has 3x bank accounts which were credited with Rs.124.07 million from government pension funds. Accused No.62 Marvi has 4x bank accounts which were credited with Rs.71.34 million from government pension funds. Accused No. 63 Nazeeran has 3x bank accounts which were credited with Rs.48.90 million from government pension funds. Accused No.64 Parveen has 1x bank account which was credited with Rs.2.1 million from government pension funds. Accused No.65 Hameedan has 2x bank accounts which were credited with Rs.14.59 million from government pension funds. Accused No.66 Haneefan w/o Din Muhammad has 1x bank account which was credited with Rs.13.16 million from government pension funds. Accused No.67 Shazia has 1x bank account which was credited with Rs.10.69 million from government pension funds. Accused No.68 Saima Burriro has 3x bank accounts which were credited with Rs.37.86 million from government pension funds. Accused No.69 Shahnaz Ayaz has 2x bank accounts which were credited with Rs.57.01 million from government pension funds. Accused

No.70 Hameeda Begum Memon has 1x bank account which was credited with Rs.13.20 million from government pension funds. Accused No.71 Hanifaan w/o Ali Murad Khero has 2x bank accounts which were credited with Rs.20.22 million from government pension funds. Accused No.72 Sanobar has 1x bank account which was credited with Rs.51.94 million from government pension funds. Accused Panah Khatoon (late) w/o Muhammad Ramzan Dawach has 3x bank accounts which were credited with Rs.28.79 million from government pension funds.

- 12.** That in a company account of accused No.34 Mehboob Ali Arain was credited with Rs.24 million and 3x vehicles were also found on his name. Accused No.35 Muhammad Moosa Khokhar has 1x bank account which was credited with Re:88.97 million government pension funds. Accused No.36 Muhammad Yaqoob has 2x bank accounts which were credited with Rs.30.32 million from government pension funds. Accused No.37 Azizullah khoso nas ix bank account which was credited with Rs.21.27 million from government pension funds. Accused No 38. Muhammad Saffar has 1x bank account which was credited with Rs.9.4 million from government pension funds. Accused No 39. Muhammad Ali s/o Sher Laghari has 1x bank account which was credited with Rs.8.12 million from government pension funds. Accused No.40 Riaz Hussain has 1x bank account which was credited with Rs. 10.78 million from government pension funds. Accused No.41 Abid All has 1x bank account which was credited with Rs.11 million from government pension funds. Accused No.42 Jinsar has 1x bank account which was credited with Rs. 13 million from government pension funds. Accused No 44. Ghulam-Qadeer has

1x bank account which was credited with Rs.12.44 million from government pension funds. Accused No.43 Altaf Hussain Khoso has 1x bank account which was credited with Rs.11.82 million from government pension funds. Accused No 45 Sanaullah Khoso has 1x company bank account which was credited with Rs.74.8 million from government pension funds. Accused No. 46 Din Muhammad has 3x bank accounts including 1x company account namely O.P.A.L Construction Company which were credited with Rs.63.9 million from government pension funds. Accused No.47 Mohsin Khan has 2x bank accounts including 1x company account namely G-A Builders Company which were credited with Rs.32.13 million from government pension funds. Accused No.48 Fahad Ali has 1x bank account which was credited with Rs.8.1 million from government pension funds. Accused No.49 Khadim Hussain has 1x bank account which was credited with Rs.14 million from government pension funds. Accused No.50 Manzoor Ali has 1x bank account which was credited with Rs.13 million from government pension funds. Accused No.51 Muhammad Ashraf has 1x bank account which was credited with Rs.67.36 million from government pension funds. Accused No.52 Zulfiqar Ali Laghari has 1x bank account which was credited with Rs.7.05 million from government pension funds. Accused No.53 Sheraz All Khero has 1x bank account which was credited with Rs.12.71 million from government pension funds. Accused No.54 Sakhi has 3x bank accounts which were credited with Rs.61.53 million from government pension funds. Accused No.55 Mumtaz Ali has 1x bank account which was credited with Rs.27.75 million from government pension funds. Accused No.26 Gul Muhammed s/o

Yaqoob Pawanr has 2x bank accounts which were credited with Rs.14 million from government pension funds. Accused No.27 Jan Mohammad Panhwar s/o Gul Muhammad has 1x bank account which was credited with Rs.9 million from government pension funds.

13. That Investigation further revealed that after approval from SBP the fake bills were deposited into accounts of persons other than the names mentioned on the bills. These credits were against the banking rules and regulations. The bank officials including accused No. 14. Junejo Banaour ex-Blvi, accused No.15 Abdul Hafeez Lund and Accused No. 17 Azhar Hussain Hingoro (Branch Managers) deposited fake pension bills in the accounts of unrelated persons. It is noteworthy that accused bank officials in active connivance with the illegal beneficiaries deposited the said bills ignoring the "guarantee clause" which was signed on each pension bill that the bills would be deposited into the "payees' account" only. After getting cleared these payments from SBP the amount of pension was posted and credited into the accounts of private persons.

14. The investigation further revealed that after thorough verification the SBP debited the Account No.1 of the Provincial Government and transferred the requisite pension funds of the day to corresponding bank branch. The accused persons namely accused No.14. Junejo Bahadur Ali (BM of Naushero Feroz Branch and Station Road Branch), accused No. 17 Azhar Hussain Hingoro (BoM of MCB Main Branch Dadu), accused No. 15 Abdul Hafeez Lund (BM of Station Road Branch and BoM Main Branch), accused No. 20 Ashraf Maznani and accused No.16 Siraj Ali

Mastoi (Branch Operation of Naushero Feroz Branch), accused No.19 Abdul Waheed Siyal (ex- BM Main Branch and Station Road) credited these pension funds into the accounts of private persons. They signed the deposit slips for each voucher through which the pension bills were credited into the accounts of unrelated/unauthorized persons. The bank officials later on facilitated the accused persons with cash withdrawn of the deposited money.

15. That during further investigation after the analysis the account of Accused No.55 Mumtaz Ali it was unearthed the a payment of Rs.400,000/- on 19th May, 2015 was found credited Into the accounts of M/s Student Link, a firm co-owned by accused No.4 Ashraf Ali Janwari. The account of Student Link was also credited with Rs.4.5 million on 15th January, 2015 from the account of Ms. Nisar Bano wife of accused No.1 Mushtaq Ahmed Shaikh (co-accused in Ref No. 12/217/H State Vs. Mushtaq Ahmed Shaikh and others). Accused No.4 Ashraf Ali Janwari denied any link with M/s Student link but the Meezan Bank record reveals that he is the co-owner of the firm. Accused No.4 Ashraf Ali Janwari is the beneficiary of the illegal gains knowingly that accused No. 1 Mushtaq Shaikh was involved in corruption and corrupt practices. Accused No.4 Ashraf Ali Janwari is also involved in signing of pension bills and refunds bills.

16. That the Investigation revealed the accused persons namely Accused No.14. Junejo Bahadur Ali, accused No.15 Abdul Hafeez Lund, accused No.16 Siraj Ali Mastoi and accused no. 17 Azhar Hussain Hingoro, accused No.18 Altaf Gorar opened fake accounts for the purpose of money laundering. They in active

connivance with the private individuals as well officers of District Accounts Office, Hyderabad laundered the money. They for layered and placed the crime proceed and managed to deposit pension and other amount in accounts of unauthorized persons.

17. That the investigation revealed that accused No. 16 Siraj Ali Mastoi, Ex-Branch Operation Manager MCB Bank Naushero Feroz Brach, signed Account Opening Forms in Naushero Feroz Branch which were used for credit of pension funds without proper KYC and in some cases proof of income was take. He verified number of deposit slips of the fake pension vouchers. The accused persons namely accused No. 21 Abdul Qadir and accused No. 22 Gul Muhammad (both ex-cashiers) entered the pension payments in the accounts of the unrelated persons.
18. The Investigation revealed that in MCB Main Branch Dadu 16 x accounts of accused No.7 Aijaz Dawach and his family by accused No. 18 Altaf Gorar branch manager Main Branch Dadu. Accused No. 17 Azhar Hussain branch manager also opened 18 x accounts of the relatives of accused No.7 Aijaz Dawach and his family without completing KYC/account opening formalities, for misappropriation and money laundering purposes.
19. The investigation revealed that accused Abdul Hafeez Lund, remained posted as Branch Operational Manager (BOM) at Main Brach Dadu from 11.03.2012 to 12.06.2014, and Branch Manager (BM) at Station Road Dadu from 10.08.2015 to 13.10.2017. During his tenure, he caused to deposit pension bills in the accounts other than the mentioned on the pension bills illegally and in that way benefitted the accused persons.

20. That investigation revealed the accused No.20 Ashraf Maznani in active connivance with accused No. 15 Abdul Hafeez Lund and accused No.17 Azhar Hussain Hingoro, the branch managers at relevant time, caused loss to government by processing the fake bills. During his tenure in Station Road and Main branch fake voucher of value of Rs.169.3 million were deposited.
21. That the investigation further revealed that No.23 Abdul Khaliq Solangi Junior Clerk Finance Department was involved in bribing accused No. 5 Noor Ahmed Khuro, Section Officer and others for release of pension funds for DAO Hyderabad. He was posted as Junior Clerk in Budget Section and he used to take bribe of 0.5 million from accused No.1 Mushtaq Ahmed Shaikh on monthly basis and later distributing this ill-gotten money among the high-ups of Finance Department including accused No.5 Noor Ahmed Khuro, Section officer and Accused No. 6 Amir Zia Isran,
22. That it is pertinent to mention here that during the analysis of forensic report of Accused No.1 Mushtaq Ahmed Shaikh mobiles electronic devices messages were found in which Abdul Khaliq, through which accused No.23 informed accused Mushtaq Shaikh that he had arranged the release in pension funds. During the Investigation number of properties were discovered in the name of accused No.20 Abdul Khaliq, which include 1x house at Kaneez Fatima and 3x plots at Sachal Goth Karachi.
23. That during further investigation it also revealed that accused No.5 Noor Ahmed used his ID for releases of funds of millions of rupees from Finance Department in favor of District Accounts Office, Hyderabad for more than 8 years. These additional releases were made without approval of the Competent Authority,

which subsequently landed in the hands of accused No.1 Mushtaq Ahmed Shaikh and other accused persons, who misappropriated the same. During his incumbency as SO Budget in the FY 2015-16 and FY 2016-17 Rs.4.6 billion were paid for pension without any authority. He malafidely and dishonestly failed to prevent the loss to Government Exchequer.

24. That investigation revealed the Accused Amir Zia Isran remained SO in Finance Department from 23.11.2009 to 10.10.2016. He remained SO Chief Minister Secretariat from 13.10.2016 to 24.04.2017 having additional charge of the post of SO Finance Department. Later on he was promoted as Deputy Secretary on 24.04.2017. During his incumbency he deliberately failed to use his authority to commit offense of fake pension bills and did not take any measures with regard to audit reports and over and above approvals of pension amounts. He is also involved in the taking bribe from Accused No. 5 Noor Ahmed. Accused No. 6 Amir Zia Isran has also amassed assets from these corruption proceeds.

25. That during further investigation it was unearthed 130x fake refund claims vouchers of the Agricultural Engineering Department of Rs.170,739,734/- sanctioned by accused No.73 Saifullah Magsi Ex-ADAO, accused No. 1 Mushtaq Ahmed Shaikh and accused No.3 Allah Bachayo Jatui. These fake refund bills were in favor of private contractors. These 130x bills were never sent to SBP for clearing from their office. The advices sent to SBP does not bear any dairy number or serial number of the DAO Hyderabad and no such record is available with DAO.

26. That the investigation revealed that these 130x bills other bills were also entered into the advices forwarded to SBP duly signed by the accused persons. The payments were paid on Form No.72 designated for refunds claims. As per rules the payments to the contractors for procurement should have been on Form No. 30/DC. Furthermore 53x such entries in SAP for 187x payments amounting to Rs.246,083,433/- were found paid for refund vouchers in which the payments were illegally adjusted from pension payments.
27. That the investigation revealed during the posting of accused No.3 Allah Bachayo Jatoi as District Account Officer (DAQ) he signed fake refund bills of section of ADAO-I to the tune of Rs. 21,484,700/-. It is also pertinent to mention here that accused No.77. Naveed Majeed Bajari was also posted as Sub-Accountant in DAO Hyderabad from 02.03.2011 to 20.11.2020. He was involved in the data punching of the SAP System. He in connivance with accused No.73 Saifullah Magsi and Mushtaq Shaikh deliberately with malafide intention entered the payments of refund bills as pension payments in the SAP system. He also entered refund payments in the pension expenditures. Accused No.76. Abdul Sattar Soomro was posted as sub-accountant and he pre-audited the bills and prepared the invoices for SBP.
28. That the investigation further revealed the accused No.73 Saifullah Magsi signed fake vouchers as ADAO-1 and accused No.1 Mushtaq Shaikh signed the voucher as an accountant. Accused No. 1 Mushtaq Shaikh also signed refund vouchers as ADAO-I. Accused No.1 Mushtaq Shaikh was never posted as ADAO-I and not authorized to sign refund vouchers. He was

posted as ADAO-III in pension section. Details of fake payments are given at para 84 of Investigation report.

29. That the Investigation also revealed that accused No.74 Imdad Memon sanctioned and approved the fake refunds bills in favour of private contractors. Most of the bills were deposited into the official accounts of Director AE&WM from where the amounts were withdrawn in cash through open cheques signed by him. From this account Rs.1.2 billion have been withdrawn in cash. His personal bank accounts have also been credited with millions of rupees from the accounts of the private contractors.
30. That investigation revealed accused No.75 Salahuddin Rashidi and Muhammad Ramzan Baprani (late) signed and sanctioned the fake bills of refund without any authority and in violation of the laws rules and regulations.
31. We have heard the learned counsel for the Applicants in the listed Cr. Bail Applications and the learned Special Prosecutors appearing on behalf of NAB who has assisted by the Investigation Officer of the case. The record in the case is voluminous.
32. Having heard the arguments and examined the relevant statutory provisions, judicial precedents, legal submissions, and investigation report, we deem it necessary to first address the three questions of law central to the present case. Only after resolving these legal questions, we shall proceed with the bail application of each individual applicant.

Question-I Statutory jurisdiction (Cr.P.C or Writ)

33. Afterwards, the rule handed down in “*Asfand Wali Khan v. the State*”, (PLD 2001 SC 607), the Supreme Court and High Courts handled bail cases under constitutional jurisdiction,

applying **Section 497 Cr.P.C** principles. In “**Abdul Aziz Khan Niazi vs. The State**” (PLD 2003 SC 668), the Court affirmed judicial principles and due process in bail decisions on the analogy of procedural law and its provision of Section 497 Cr. P.C despite the bar placed by **Section 9(b) NAO**. It was held that:

“7. the refusal of bail by the High Court in its constitutional jurisdiction merely for the reason that the concept of discretion for grant of bail under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is different to that of under section 497/498 Cr.P.C is not proper. The discretion of High Court under the Constitution and under ordinary law in bail matter is based almost on same principle.”

Line supplied

- 34. Pre-Amendment interpretation of Section 9(b):** Pre-amendment, Section 9(b) expressly barred any court, including the High Court, from exercising Cr. PC powers unless the NAB Ordinance allowed.

“All offences under this Order shall be non-bailable and notwithstanding anything contained in sections *(426, 491), 497, 498 and 561-A or any other provision of the Code or any other law for the time being in force no Court, including High Court shall have jurisdiction to grant bail to any person accused of any offence under this Order.”

(*Inserted by Ordinance IV/2000 dated 3.2.2000).

- 35. Post-amendment interpretation of Section 9(b):** Pursuant to the judgment in **Khan Asfandiyar Wali’s** case (Supra), **Ordinance No. XXXV of 2001**, dated **10.08.2001** (**Federal**

Statute), introduced a significant amendment to **Section 9(b) of NAO, 1999**. The amendment **omitted** the words “**including High Court**” after “**no Court**”, the reference to High Court was deliberately removed from Section 9(b) thereby modifying the provision to read as follows:

“All offences under the Order shall be non-bailable and notwithstanding anything contained in sections 426, 491, 497, 498 and 561A or any other provision of the Code or any other law for the time being in force no Court shall have jurisdiction to grant bail to any person accused of any offence under this Order.”**

(**Including High Court” omitted)

- 36.** The removal or omission of the term ‘**High Court**’ from the text of Section 9(b) of the National Accountability Ordinance, 1999, and the use of the generic term ‘**Court**’ thereafter, reinforces the presumption that the High Court has been intentionally excluded from the operation of the ouster. Accordingly, the **supervisory and inherent jurisdiction** of the High Court remains intact and unimpaired, and continues to be exercisable in appropriate cases where no alternate remedy exists or where intervention is necessary to prevent miscarriage of justice.
- 37.** To reconcile Section 9(b) with constitutional safeguards, the **doctrine of severability** is a rule from Constitutional law to strike down only the unconstitutional or inconsistent part of a statute while preserving the valid portions, provided the valid portion can function independently. Although, it’s secondary in this case as the Courts are reluctant to strike down legislation if a reading

down can achieve constitutionality but reference would provide certainty by applying its test too. In the present context, even if the broader ouster language in Section 9(b) is upheld, the omission of the High Court implies that any bar cannot be severed to apply to it without offending legislative intent. Courts possess the authority to judicial review to **sever** the illegal provision of a statute or unconstitutional provisions that excessively restrict procedural rights while preserving the remainder of the statute. If a post-amendment version of **Section 9(b)** selectively or arbitrarily bars procedural rights—such as bail or sentence suspension—courts may invalidate the relevant provision while ensuring the broader objectives of the NAO remain intact. Doctrine of Severability allows the isolation of unconstitutional parts of legislation without invalidating the whole. Reliance can be placed on the cases reported as “**Benazir Bhutto v. Federation of Pakistan**”, (PLD 1988 SC 416), “**Mian Muhammad Nawaz Sharif v. State**”, (PLD 2009 SC 814) & “**M.D. Khandelwal v. Union of India**”, (PLD 1998 Lahore 181).

- 38.** The **doctrine of reading down** is a cardinal principle of constitutional interpretation. Courts often read down provisions that would otherwise render a statute unconstitutional and is best suited when the goal is to preserve the statute but limit its scope. If a literal reading of a provision would violate fundamental rights or lead to an absurdly patchwork regime, the court narrows its scope (“reads it down”) rather than striking the whole thing. Here, even if Section 9(b) were to be interpreted broadly, it must be read down to exclude the High Court from its ambit so as to preserve the constitutionality of the statute and ensure

continued access to justice. Pakistan's superior courts have frequently used this doctrine when dealing with ouster clauses or overbroad legislation, especially in criminal law and preventive detention statutes. For instance, Courts read down ouster clauses in preventive detention laws to allow habeas corpus jurisdiction under Article 199 of the Constitution of Pakistan, 1973. Therefore, this Court can interpret 9(b) narrowly, so it does not exclude Cr.P.C provisions Sections 426, 439, or 561-A. It allows judicial harmony between the NAO and the Constitution without declaring 9(b) ultra vires. Doctrine of Reading Down permits courts to interpret statutes narrowly to preserve their constitutionality. Reliance can be placed on the case ***"Federation of Pakistan v. Durrani Ceramics"*, (2014 SCMR 1630)**.

- 39.** Precariously, the subjective requirement of ouster clause section 9(b) viz ***"non-bailable offence"*** has eventually been amended through Amendment Act 2022, the objective purpose of ouster provision has become objectiveless and redundant.

2 [Subject to the provisions contained in sections 439, 496, 497, 498 and 498A of the Code, no court other than the Court established under this Ordinance shall have powers to grant bail or order release of the accused.]

*substituted vide National Accountability (Amendment) Act, 2022 dated 22.06.2022.

- 40.** We are mindful that the High Court vest its judicial authority not from **procedural statute** but from the **Constitution** itself, under Article 175. It retains jurisdiction under Articles 199 and 203, and inherent powers under Sections 426, 439, and 561-A Cr. P.C. Article 175(2) of the Constitution of Pakistan, 1973 demands that:

“No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.”

- 41.** Article 175(2) provides that no court shall have any jurisdiction except as conferred by the Constitution or by law. However, this limitation must be read in harmony with the entrenched status of superior courts, whose supervisory and constitutional powers under Articles 184(3), 199, and 203 are not derived from statutes but from the Constitution itself. The provisions of Sections 561-A and 439 recognize the High Court’s inherent powers in criminal matters—not granted by statute but it has acknowledged. Therefore, on both perspective, the filing of criminal application under section 497 Cr.P.C. is now maintainable rather a constitution petition.
- 42.** Hence, Section 561-A serves merely as statutory acknowledgment of a power already embedded in the constitutional structure. Therefore, in the presence of statutory remedy by way of Appeal, Revision or Proceeding under inherent jurisdiction conferred by Section 561-A Cr.P.C, the Supreme Court of Pakistan does not incline to entertain Constitution jurisdiction. Reliance can be placed in **“Dr Sher Afgan Khan Niazi v. Ali S. Habib and others”, (2011 SCMR 1813)** while approving earlier principle settled in **“Nawazul Haq Chowhan v. State”, (2003 SCMR 1597)**. Section 561-A Cr.P.C recognizes the High Court’s inherent powers in criminal matters—not granted by statute but it has acknowledged.

43. Therefore, we hold that criminal bail applications under **Section 497 and 498 of the Code of Criminal Procedure (Cr.P.C.)** are maintainable before this Court. Furthermore, we affirm that the **High Court**, under its inherent jurisdiction, has the authority to adjudicate bail applications and issue appropriate orders, including reviewing decisions made by the **National Accountability Court** in a pending reference. Additionally, applying the same jurisprudential legal principle, this Court holds jurisdiction to entertain applications under **Section 426 Cr.P.C.** in pending appeals or revisions under the NAO, ensuring due process and judicial oversight in such matters.

QUESTION-II:APPLICABILITY OF TWO PROVISION OF SAME STATUTE

44. This Court proceeds to determine the scope and interplay between Section 4(d) and Section 9 of the National Accountability Ordinance, 1999 (NAO).

“Determination of Scope and Applicability of Sections 4(d) and 9 of the National Accountability Ordinance, 1999 (NAO) — Procedural Lapses and Criminal Liability”

i. General principles of interpretation:

When two provisions of the same statute appear to be in conflict, one provision grants exemption or protection, and another fixes liability, the court will determine Scope and intent of each provision as to whether the provisions can coexist by limiting one to non-criminal matters and the other to fraudulent/criminal acts by applying rule of harmonious construction. This means; "the

statute must be read as a whole, and effect must be given to all provisions so that none is rendered redundant, contradictory, or meaningless. Both provisions are presumed to have meaning and purpose."

ii. Contextual Framework of NAO

- 45.** The **National Accountability Ordinance, 1999 (NAO)**, though a **special law**, defines a range of offences such as **corruption, criminal breach of trust, misappropriation, and dishonest conversion** — terms that either originate from or are judicially defined under the **Pakistan Penal Code, 1860 (PPC)**. The NAO does not always provide **comprehensive definitions**, and where its language parallels offences under PPC (e.g., “misappropriation”, “fraudulently”, “dishonestly”), courts are justified in importing established definitions and interpretative standards from the PPC and related jurisprudence.

iii. Legislative & Jurisprudential Basis

- 46.** **Section 9 NAO – "Corruption and Corrupt Practices"** includes acts such as dishonest or fraudulent misappropriation, conversion of property, and abuse of position. These terms align closely with:
- **Section 403 PPC** – Dishonest misappropriation of property
 - **Section 405 PPC** – Criminal breach of trust
 - **Section 24 & 25 PPC** – Definitions of “dishonestly” and “fraudulently”
 - **Section 415 PPC** – Cheating to deceit or retain property or harm.

iv. Aim and Framework for Understanding

- 47.** The **NAO** borrows heavily from the PPC in substance and structure. Where the NAO uses terms borrowed directly or

substantially from the PPC in substance and structure. Therefore, the interpretation of offences under **NAO** must draw from the definitions, principles, and case law developed under the PPC. Courts must interpret them consistently with the meanings settled under PPC jurisprudence. This approach ensures uniformity, legal certainty, and compliance with constitutional guarantees of a fair trial. Reliance is placed on Supreme Court of Pakistan cases. In “**State v. Zafar Abbas**”, (2015 SCMR 736) the Supreme Court affirmed that “dishonesty” must be interpreted per Section 24 PPC when applied under NAO. In “**Muhammad Riaz v. The State**”, (2019 SCMR 728) held that “Criminal intent” under NAO construed using PPC's interpretative framework. In “**State v. Misbah-ud-Din**”, (PLD 2021 SC 409) held that mens rea under NAO cannot be presumed; must be proven in accordance with principles derived from the PPC.

v. Legal Principles Applied

- 48. Doctrine of Harmonious Construction**—Under the rule of harmonious construction, Section 4(d) and Section 9(iii) of NAO: do not conflict, but rather address different categories of conduct. The Procedural lapses (without corrupt intent) are exempt under Section 4(d) while the Dishonest or fraudulent acts fall under criminal liability in Section 9(iii). Courts will interpret these together to protect honest officials while still punishing corruption. Sections 4(d) and 9 must be interpreted together to maintain the integrity and purpose of the NAO. Section 4(d) does not negate Section 9.

49. Doctrine of No Redundancy—Each provision must be given full effect. Section 4(d) cannot be interpreted to undermine the substantive offence provisions under Section 9.

50. Specific Over General (Generalia Specialibus Non Derogant)—Section 9, being specific in nature regarding corrupt practices, prevails over the general procedural protection of Section 4(d) when corruption is established.

51. Purposive Interpretation—the interpretation must align with the legislative object of the NAO, which is to root out corruption. Thus, Section 4(d) cannot be used to shield criminal intent or benefit.

vi. Judicial Precedents support for Harmonious Construction:

52. In “**Federation of Pakistan v. S.A. Mazhar**”, (PLD 1970 SC 1) held "Where two parts of a statute appear to be in conflict, an interpretation should be adopted that gives effect to both."

53. In “**Fauji Foundation v. Shamimur Rehman**”, (1993 SCMR 1287) held "Statutes must be construed as a whole and provisions harmonized if possible."

54. In “**Haji Muhammad Nawaz v. State**”, (2009 SCMR 407) held "Where immunity or protection is granted, courts must carefully ensure it is not misused to shield fraud or corruption."

Indian Jurisdiction:

55. In “**State of Jharkhand v. Govind Singh**, (2004) 10 SCC 505] held when the words of a statute are clear, plain, and unambiguous, then the courts must give effect to them without speculating into legislative intent.”

56. In “**Workmen of American Express v. Management**”, [(1985) 4 SCC 71] held that the courts must adopt a **beneficial**

interpretation that furthers the purpose of social welfare legislation.

- 57.** Further reliance can be placed on judicial precedents held by Supreme Court of Pakistan in “*Asfandyar Wali Khan (supra)*”; “*Chairman NAB v. Shabbir Ahmed*”, (2022 SCMR 1360); “*State v. Misbah-ud-Din*”, (PLD 2021 SC 409); and Supreme Court of India in “*State of Maharashtra v. Som Nath Thapa*”, [AIR 1996 SC 1744 (India)].

QUESTION-III:INTERPRETATION AND IMPLEMENTATION NAO SECTIONS 4 & 9

- 58.** The core purpose of the National Accountability Ordinance (NAO), 1999 — which is to eradicate corruption and corrupt practices in the public and private sectors. While procedural lapses may offer a shield under the amended **Section 4(d)** while critically gauging and observing persecution by the NAB investigators in various cases, however, this defence becomes legally untenable in the face of criminal intent (mens rea) or dishonest conduct under **Section 9** of the NAO. The preamble and object of NAO clearly state that:

“The Ordinance is intended to provide for the recovery of misappropriated assets, prosecution of persons involved in corruption, and to bring transparency and accountability in governance.”

- 59.** Hence, prevention, investigation, and punishment of corruption are its central objectives. Section 4(d) is not meant to nullify Section 9. Rather, it protects only procedural

irregularities that occur without dishonest intent. Guidance can also be taken from the Supreme Court of India cases. “**R.S. Nayak v. A.R. Antulay**, AIR 1984 SC 684); “**Shah Faesal v. Union of India**”, [(2020) 4 SCC 1]. Therefore, its provisions must be interpreted to promote **transparency, accountability, and deterrence** against misuse of public office. Reliance be placed on the following dictums of Honorable Supreme Court of Pakistan and Indian:

- i. “**Asfandiyar Wali Khan (Supra)**; the Supreme Court clarified that genuine procedural errors are not punishable under NAO, but dishonest misuse of authority or willful loss to the public exchequer is actionable. Without element of criminality NAB has no jurisdiction.
- ii. In “**Chairman NAB v. Shabbir Ahmed**”, (2022 SCMR 1360); the Supreme Court ruled that intentional misuse of authority for personal benefit cannot be termed a “procedural lapse” and falls within the ambit of **Section 9 NAO**.
- iii. In “**Khalid Aziz v. NAB**”, (2019 SCMR 1254), the Supreme Court held **Mens rea** is a vital component. Without proving **dishonest intent**, a prosecution under NAO cannot sustain. However, once such intent is established, procedural defences collapse.

Indian Parallel –

- iv. In “**State of Maharashtra v. Som Nath Thapa**”, (AIR 1996 SC 1744), the Supreme Court of India held that "Mens rea is an essential ingredient of criminal offences involving dishonesty or fraud. Where such intent is proven, no procedural defect can wash away criminality."

- v. In “*State of Maharashtra v. Som Nath Thapa*”, [AIR 1996 SC 1744 / (1996) 4 SCC 659] the Supreme Court of India held that **Mens rea** is essential in corruption cases; mere suspicion or technical lapses are insufficient. However, when dishonest intent is clear, prosecution is justified.
- vi. In “*C.K. Damodaran Nair v. Government of India*”, (AIR 1997 SC 1612), it was held by Supreme Court of India that the misuse of position for obtaining pecuniary advantage, even indirectly, constitutes an offence under the Prevention of Corruption Act — **irrespective of procedural regularity**.

60. In view of the above rules of interpretation and judicial precedents, we observe that **Section 4(d)** offers immunity in cases where there is no evidence of personal benefit or dishonest intent. The protection under **Section 4(d)** is not absolute but conditional, and ceases to apply where evidence is produced demonstrating that the accused has derived a personal or monetary benefit from the procedural lapse directly or indirectly for his or her own use for others. **Section 9**, on the other hand, defines the acts that constitute corruption and corrupt practices, including fraudulent conduct, dishonest misappropriation, and abuse of authority for unlawful gain. Where the prosecution establishes mens rea and the receipt of undue benefit, the offence is prosecutable under Section 9 of the NAO. The definitions and interpretative guidance drawn from the Pakistan Penal Code shall apply in construing criminal intent and culpability. Where the Court finds that mens rea, i.e., criminal intent or knowledge, once established by the prosecution, it definitely supersedes any protection under Section 4(d), if it is shown that the public office holder or on their behalf received a benefit they were not entitled

to— whether monetary or material — such conduct falls squarely under Section 9 of the NAO. Accordingly, any defense predicated solely on procedural lapses shall not prevail where the prosecution successfully proves the existence of criminal intent and illicit gain and in the failure of such criminal intent NAB has no jurisdiction being ousted by the provision of Section 4 of the NAO.

61. In response to the legal argument presented, and in light of established principles and justified interpretations, we classify the applicability of safeguard or immunity under **Section 4 (d) of the NAO** as follows:

- a. Applicants **eligible** for safeguard or immunity – Those who are found guilty of procedural lapses **without criminal intent** may avail the benefit of bail.
- b. Applicants **ineligible** for safeguard or immunity – Those who are found guilty **with criminal intent** cannot seek protection under **Section 4(d)** at this bail stage.

62. Accordingly, the refusal or grant of such safeguard or immunity shall be determined based on these classifications. Order accordingly.

63. Now moving on towards the bail applications, we have based our observations on what was argued before us and the pieces of evidence shown to us from the voluminous record.

Cr Bail Application No.D-65 of 2025 (Mohammad Farhan Arain)

64. The applicant seeks his post arrest bail in NAB reference number 02 of 2023. Mr. Farooq H. Naek, learned Counsel for the Applicant has argued that the applicant is a registered contractor and the said applicant is a partnership concern with one Shakeel

Ahmed Abbasi (co-accused) by virtue Partnership Deed dated 05.08.2009 (Page 351 of file). He states that Agriculture department and Accountant General Office (District Account Officer) has also verified the status of the Applicant. The learned Counsel further state that the Applicant is a genuine Contractor and cannot be amendable to any of the provisions of Section 9 NAO. According to the learned Counsel, the charge framed has framed under section 9(a) (i), (iii), (iv), (xi) or (xii) of NAO and the requisite ingredients are not attracted in the case of applicant as per prosecution's own case. Therefore, his case is of further inquiry. He contends that the Applicant has done his duty honestly and diligently and it is not his job to follow the requirement of Government or any authority to personally check any head of account or requirement of audit as it is the requirement binding upon public officials and do not restrict the Applicant. He further states that the award of contract is a **contractual obligations** govern under the Contract Act, 1872 and the applicant is /was bound to fulfill the contractual terms and conditions and has nothing to do with the in-house issues of the Project Director or any of Engineer or even any requirement of the documents except that the applicant had entered into the contract for certain development works. He finally stated that the applicant has performed his contractual obligations against which the amount has been released in favor of the applicant.

65. During arguments, it appears from the record that the NAB authorities was conducting investigation regarding accumulation of assets beyond known resources against Mushtaq Ahmed Shaikh, during such investigation, the NAB authorities raided the

House of Mushtaq Ahmed Shaikh Ex-ADAO Hyderabad, and recovered 5433 Bills pertaining to the pension amount while 130 original refund bills related to the Agriculture Engineering & Water Management department. The reference deals with two different subjects of misappropriation through fraudulent and fake bills related to the pension amount Rupees 1.165 billion. These fake bills were processed and signed by Mushtaq Shaikh, Nazir Bhutto and Allah Bachayo Jatui with bogus pension pay order number on Bills' voucher as referred at paragraph 12 & 14 of the investigation report.

- 66.** Out of these 5433 fake bills against the pension funds, 1756 fake bills, including 137 Bills related to the Agriculture Engineering & Water Management Office, Agriculture Department were tracked which were deposited into 137 Banks accounts of different person (the names are given at paragraph 20 of Investigation) operated with 03 branches Dadu main Branch, Station Road Branch, Dadu and Nusheroferoz branch, MCB. These accounts were opened by Aijaz Dawach and his family members with Mushtaq Shaikh, Nazir Bhutto and Allah Bachayoo Jatui. On the other hands, bank officials are also involved in this crime of siphoning of public money and names of such bank officials are given at paragraph 18 of the Investigation report. We have been informed that main bank official Bahadur Ali Junejo has run away to United States and NAB is pursuing for his Red Warrant after taking perpetual warrant from the Trial Court.
- 67.** The FMU (financial Intelligence Watchdog) has also raised more than 97 STRs in respect of accounts, operating by Ejaz Dawach and his family members.

68. Duration of the offense period is 2014 to 2017 related to the fake bills against siphoning of pension amount as per paragraph 57 of the investigation report while offence related to the Agriculture Refund bills adjusted against the pension payments pertains to the period of offence 2015 - 2017.
69. The allegation against the applicants. Are mentioned at paragraph 97 and their roles have been assigned at paragraph 257-260 of the investigation report.
70. The respondent NAB strongly opposed the bail application on the ground that the applicant was not entitled to receive such huge amount of public exchequers as no services or supplied of various engineering parts were provided and the public money had looted against preparation of fake and bogus official bills and the Applicants are the beneficiary.
71. In light of the principles set down by the Supreme Court that in NAB Bail's matters—though prior to amended NAO, 2022—that it is for the NAB prosecution to show the court that **reasonable grounds** exist to refuse bail or to not grant the concession of bail in favor of the applicant accused.
72. The expressions '**reasonable grounds for believing**' and '**reasonable suspicion**' are distinct in their legal interpretation. The august Supreme Court has thoroughly examined these terms and observed:
- a. In "***Moulvi Fazlul-Qader Choudhury v. Crown (PLD 1952 Federal Court 19)***" that while a person's conduct may give rise to a degree of suspicion, the term "**believe**" carries a much stronger connotation. Moreover, for a belief to hold legal weight, it must meet the threshold of reasonableness.

- b. In "*Ch. Abdul Malik v. The State*" [PLD 1968 SC 3491]; the Supreme Court of Pakistan held that "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 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."
- c. In "*Chaudhry Shujat Husain v. The State*" (1995 SCMR 1249); the Supreme Court of Pakistan held "The term "reason to believe" can be classified at a higher pedestal than mere suspicion and allegation but not equivalent to prove evidence. Even the strongest suspicion cannot transform in "reason to believe."

73. Therefore, we would prefer to record the structural framework of investigation and legal analogy of the prosecution (NAB) case while handing off our hands from deeper appreciation. In "*Mohammad Iqbal Khan Nori vs. NAB*", (Civil Petitions No.3637 & 3638 of 2019), the three Member bench of Hon'ble Supreme Court has ruled that it is the obligation of the Prosecution (NAB) to demonstrate from the **record or investigation** that **reasonable grounds** are existing against the Applicant and it is **not the duty of the Applicant** to present the

case that reasonable grounds exist to enlarge him or her on the concession of bail. The relevant paragraph is re-produced hereunder:

“7. In order to ascertain whether “reasonable grounds” exist or not, the Court should not probe into the merit of the case, but restrict itself to the material placed before it by the prosecution (NAB) to see whether some tangible material/evidence is available against the accused which may lead to the inference of his guilt. Mere accusation of an offence would not be sufficient to disentitle an accused from being bailed out. There should be “reasonable grounds” as distinguished from mere allegations or suspicion. It is for the prosecution (NAB) to show reasonable grounds to believe that the accused has committed the crime. If the Court is not satisfied that there exist reasonable grounds to believe that the accused is guilty, the Court is to grant bail in enforcement of the aforesaid fundamental rights.”

Line supplied

74. The controversy revolves around three important points as has mainly emphasized by the Prosecution (NAB). The following are the main controversial point and on these reasons, the Prosecution (NAB) claims that **reasonable grounds** exist that the present bail applications must be dismissed.

- a. **Status of companies of private contractors (Applicants)**
- b. **No sanctioned Head of Account (for Emergency Work) to release fund on account of emergency work alternatively violation SPRA Rules, 2010 and**
- c. **Goods/mechanical spare parts were not supplied to the Agriculture Engineering & Water Management Office, Department of Agriculture, Govt. of Sindh.**

75. According to the prosecution (NAB), a significant amount of public funds had released under a fictitious and self-claimed **Emergency head of account** for flood damage-related works. This is deemed an established fraud and modus operandi to siphoned of public money. The prosecution (NAB) argues that, prima facie, the accused, including the applicant and official Accused, are involved in offenses warranting legal action. Therefore, they contend that the accused are not entitled to post-arrest bail.
76. In response, Mr. Naek has directed attention to the **Investigation Report** and page-351 to 379 of the Court file. The letter Number DAO/HYD-Admin/T-Cert/542 dated 06.02.2025 issued by the Addl; District Account Officer, Hyderabad and Certificate dated 18.02.2025 issued by the Deputy Director (Admin & Accounts), Directorate General, Agriculture Engineering Sindh, Hyderabad confirmed that the Al Musawir Engineering & Gold Star Constructions Co., are locally registered with the said Agriculture Department and Vendor Account have also been established by the Agriculture Department. Notably, without registration of Vendor Account, the Accountant General Sindh or Pakistan cannot process and issue a Cross cheque in favor of 3rd party. Therefore, the Respondent NAB failed to draw our adverse inference on the above-mentioned point (a).
77. Based on the facts presented, it has been established, for our tentative assessment only for deciding these bails applications, that it appears that a departmental inquiry was conducted under Chairmanship of Mr. Shahabuddin Abro, Director General Agriculture Engineering alongwith two members namely Gulam

Akbar Panhwar, Add; DG Agriculture Engineering (Lower) and Ali Asghar, Section Officer (B&A) and at paragraph 13 (i) it has categorically mentioned that vide Office Order dated 29.07.2010 (Annexure-I) Flood Emergency was declared.

- 78.** Given the existence of this head of account for emergency services, the allegation of violating SPRA rules does not hold, as the Statute itself allows relaxation of rules for emergency work. This is supported by a conjoined reading of Sections 2(g) and 2(r), in conjunction with Section 16, Subsection (b) of the relevant Act. The same is re-produced for the convenience:

“2-(g): “Bidding Documents” means all documents provided to the interested bidders to facilitate them in preparation of their bids in uniform manner;

2-(r): “Emergency” means natural calamities, disasters, accidents, war and breakdown of operational equipment, plant, machinery or engineering infrastructures, which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person(s), property or the environment;

S.16- “Alternate Methods of Procurements (1) A procuring agency may utilize following alternative methods of procurement of goods, services and works, namely:

(a).....

(b) Direct Contracting – This method means procurement from a single source without competition and shall only be applicable under any of the following conditions:

- i. standardization of equipment or spare parts, to be compatible with the existing equipment, provided**

that the competent authority certifies in writing the compatibility of the equipment or spare part(s) to be procured;

- ii. the required item(s) is of proprietary nature and obtainable only from one source, provided that the Head of the Department certifies in writing the proprietary nature of the item(s) to be procured;
- iii. the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee;”

79. Furthermore, from the records presented, a document which is a letter dated 29.07.2010 confirms that the concerned official formally declared a state of emergency. The NAB has not refuted the record and has not brought on record that such letter issued in 2010 continued or discontinued at the relevant time of the commission of offence. The NAB has also not examined the Members of Inquiry Committee. In our tentative views, the aforementioned two key points of controversy or allegations relied upon by Respondent NAB, basing their case of “**reasonable grounds**” have not been sufficiently established by the NAB Prosecution before us for the purpose to refuse post-arrest bail application of the Applicant.

80. Examining the third key point raised by the prosecution (NAB) to believe the **reasonable grounds** regarding the refusal of post-arrest bail to the applicant, we have carefully analyzed the letter No.DG/AE/Accts/443/20 dated 01.11.2021 issued under signature of Director General, Agriculture Engineering & Water Management, Sindh, Hyderabad. It has been confirmed that payments were made to contractors for the purchase of spare

parts for Machinery and Equipment/Bulldozers under sub-head C03137, following proper receipt of materials and fulfillment of all codal formalities. The bills were scrutinized and verified accordingly. A copy of the certificate confirming these transactions is available at page 361 of the court file, and records indicate that it was received in the Office of NAB. Notably, the Respondent NAB has not denied these documents, nor has the Investigation Officer (IO) considered this document in the Investigation Report. In light of these omissions, the matter warrants further inquiry. Notably, both documents Investigation report of the NAB and the aforesaid letter dated 01.11.2021 appear **inconsistent and contradictory**. The former asserts that no goods were supplied and payment siphoned off on fake bills. In contrast, Mr. Naek vigorously argued that the latter document (letter) presents the truth, confirming that goods supplied and payment released without any criminal intent or losses.

- 81.** We observe that an essential aspect of the investigation has been overlooked—or deliberately left unexamined—for reasons best known to NAB and its investigation team including its Supervisory Officer Director Investigation and DG, NAB Karachi. Specifically, the statement of Prosecution Witness Mr. Farruk Rasheed Ansari reveals that the matter was discussed with the **Agriculture Department** in a meeting held on 7th January 2009, chaired by the Secretary, Agriculture Department, where it was decided to release contractor payments from the same head of account C-03136 & C-03137 as referred above by us even if it is assumed that this Minutes of Meeting has been misinterpreted as period of commission of offence are far behind even then the NAB has to

specifically ask the Chairman of Meeting (ex-Secretary Agriculture) about its veracity, effect or continuity. Furthermore, the Statement under Section 161 Cr.P.C., recorded by the Investigation Officer, indicates that the Stock Register, containing relevant entries of supplied goods and mechanical parts, was supposed to be produced but has not been presented by NAB though it has mentioned in the said Statement of DG Agriculture and without such document, the filing of NAB Reference has been filed but consecutively charge has been framed and amended for sixth time.

82. The **Stock Register** is a mandatory record for any office or department, documenting all purchases and available inventory. Similarly, the **Death Register** for Destruction or loss of Stock serves as a crucial document to track items that have either expired due to their life cycle, been lost, or destroyed for any reason. These two registers form the foundation for **Annual Audits** and departmental inquiries in case of complaints. Additionally, they serve as **key evidence** in criminal cases, demonstrating whether an item was ever recorded or was lost due to criminal intent as the case may be.

83. The said Prosecution Witness has further confirmed that, during emergencies, goods may be purchased on an urgent basis. This crucial detail in the investigation reinforces that the supplies were made, and payments were subsequently released. The Applicant does not dispute receiving the payments. However, their defense plea asserts that the payments were received in consideration of the supply of articles/parts rather than any irregularity.

84. For our **tentative assessment**, if we accept the prosecution's claim that goods or mechanical spare parts were not supplied and payments were released based on fake bills, we find ourselves unable to draw an adverse inference due to the absence of material evidence presented before us. In light of this evidentiary gap, the matter qualifies as a case of "**further inquiry**."
85. The expression "**further inquiry**" derive from the provision of Section 497(2) Cr. P.C. and have been legally developed that lack of direct evidence linking accused to the allegation of alleged corruption, or documentary evidence requiring forensic verification or confirmed or confessional statements of co-accused not corroborated or the accused role appears minimal or supervisory or recovery of amount not establish or independently verified or if there are inconsistencies, contradictions, conflicting evidence, lack of direct culpability or if the Accused's role is peripheral and more importantly, when the material before the court creates doubt about the accused involvement. In any of the above-mentioned situations, case is generally called as further inquiry and the accused is entitled to bail. In contrast, further inquiry does not mean the accused is innocent it simply means that trial is necessary to determine guilt or otherwise.
86. The following judicial precedents are laid down by the Hon'ble Supreme Court confirming that "**further inquiry**" is a ground for bail.
- a. In "***Asfandar Wali Khan (supra)***"; upheld that bail can be granted where direct evidence is lacking or where NAB is using bail denial as a coercive tool.

- b. In “*Abdul Aziz Khan Niazi vs the State*”, (PLD, 2003 SC 668); held that the prosecution evidence did not conclusively connect the accused to the offense.
- c. In “*Shah Khawar vs the State*”, 2022 SCMR 387), held that the investigation was incomplete or flawed or the evidence against the accused were circumstantial.
- d. In “*Khawaja Saad Rafiq v. NAB*”, (PLD 2020 SC 456) rule that in cases of doubtful or indirect involvement, the accused must be granted bail.
- e. In “*Mohammed Iqbal Khan Nouri vs NAB*”, (PLD 2021 SC 362) reaffirmed that bail must be granted in cases of further inquiry, particularly where NAB’s allegation were speculative or the Accused’s role was not established.

87. Reasons enumerated for the first two-keys of “**reasonable grounds**” at paragraphs 74 to 79 and the third key of reasonable ground, a Certificate of Supply of Goods, Certificate about enlistment of companies including the Applicant, Letter of DG Agriculture that the Goods/mechanical parts were duly supplied due to flood emergency, Decision of Secretary Agriculture to release payment and Inquiry report cited by Mr. Naek has been included in the prosecution file by NAB itself and being official record—and does not originate from the applicant—coupled with the fact that NAB initiated its investigation after a **considerable delay of 06-08 years**, we are inclined to form a **tentative assessment** that the material evidence regarding supply of goods/mechanical parts with the Agriculture Engineering Water Management (Attached department/office) of the Agriculture

Department, Govt. of Sindh for development or other related work at the site remains **unclear and ambiguous** at this stage of the case. The presence of contradictory official reports and certificates suggests that this matter can only be properly resolved through the **recording of evidence** by the trial court. At this stage, a definitive conclusion cannot be drawn as no deeper appreciation is permissible under the rule of bails. Additionally, the role of Inquiry Committee members who appreciated that the Goods were supplied or flood emergency had earlier declared or no officials' bills are fake but on the contrary all are in order, and such dealing officers have not been critically examined by NAB.

88. Furthermore, the Applicant has admitted that the amount has received by him on account of certain works which he has performed and fulfilled as part of contractual obligation at site and this specific **defence plea** in the present criminal case, transfer the burden upon the NAB Investigators to adduce evidence that goods were not provided or available in the record through the above documents as discussed. Unfortunately, nothing has brought into our knowledge or urged before us to satisfy this Court that reasonable ground exist to refuse bail.

89. In light of the dictum established in the **Choudhry Shujaat Hussain Case**, the term '*reasonable grounds*' signifies the presence of essential facts and circumstances that would lead a prudent person to form a belief that it exists as claimed by the prosecution. In contrast, even the strongest suspicion—regardless of its intensity—cannot be equated with or transformed into '*reasons to believe*'. The distinction remains fundamental in legal interpretation, ensuring that mere conjecture does not substitute

for substantive justification and it is couple with the legal principles that a person is presumed innocent until proven guilty by a court of law as consistently held by the Hon'ble Supreme Court of Pakistan.

90. Therefore, for our tentative assessment, the prosecution has not established "reasonable grounds" to refuse bail and the applicant (Mohammad Farhan Arain) case fall within the definition of "**further inquiry**" and accordingly he has admitted to the post-arrest bail subject to surety in a sum of **Rupees Two Million** and PR Bond in likely amount to the satisfaction of the trial Court.

Cr Bail Application No.D-67/2025 (Shakil Ahmed Shaikh)

91. In the presence of contradictory record—one prepared by the departmental inquiries or correspondence or the certificate issued in favor of Accused Mohammad Farhan Arain, who is the partner of the present Applicant by virtue of Partnership Deed available on record and failure to seize or to produce Stock Register and Register of Destruction of record, the case of Applicant is at par with the case of Accused Mohammad Farhan Arain.
92. Given these conflicting reports and without analyzing the same or examination of such officers and justification to join them as accused or Prosecution witnesses, we have determined that the cases of "private contractors" (Accused) are of "further inquiry" with regard to supply of goods/mechanical spare parts. Therefore, the Applicant Shaikh Ahmed Shaikh is also admitted to the post-arrest bail against a surety in a sum of **Rupees One Million** and PR bond in equivalent amount to the satisfaction of the trial Court.

Cr Bail Application No.D-101 of 2025 (Anand Saroop)

93. In view of the reasons enumerated hereinabove, the case of Applicant is at par with Applicants (Mohammad Farhan Arain and Shakil Ahmed Shaikh) being “further inquiry”. Therefore, the Applicant is also admitted to the post arrest bail against a surety in a sum of **Rupees Fifteen Million** and PR bond in the equivalent amount to the satisfaction of the trial Court.

Cr. Bail Application No.D- 66 of 2025 (Saluddin Rashdi)

94. The case of the Applicant is also at par with the above two cases of private contractor. Although the Applicant is an official charged with issuing fake bills under his signature when no goods/mechanical spare parts were provided. In view of reasons already recorded here-in-above and official record of the Agriculture Engineering & Water Management, Hyderabad, Department of Agriculture, Govt. of Sindh, and in the absence of official Stock Register and Register for Destruction of Goods, coupled with the absence of adverse findings during Annual Audit of each year at the hand of AGPR (Auditors of Federal Government), the case of the Applicant also made out as of “further inquiry. Furthermore, the Prosecution has not alleged any monetary benefits or illegal gains against the Applicant. Only accusation against him is process and signing of bills being fake, though this is not confirmed by the DG Agriculture, however, the preparation of bill or signing in the discharge of official duties may constitute an irregularity, which is now excluded from the purview of NAO under the newly amended provision of Section 4(2) (d) of NAO, 1999 if it is not burden with criminal intent.

95. The NAB has failed to present any reasonable grounds against the Applicant or establish any nexus between him and the co-accused in relation to the commission of the offence. The material on record indicates that no **direct evidence** exists to justify withholding the Applicant's bail. Besides, the safeguard as discussed in **paragraphs 58 to 62**, attracts. Given these circumstances, the case of the Applicant (Salahuddin Rashidhi) falls within the ambit of further inquiry. Therefore, the Applicant is admitted to post-arrest bail upon furnishing a surety of **Rs.Five Lac** and a PR Bond of an equivalent amount, to the satisfaction of the **trial court**.

Cr Bail Application No.D-47 of 2025 (Altaf Hussain Gorar)

96. The paragraph 18 of the nap investigation report is re-produced as under:

“18. The investigation revealed that after verification, the SBP debited the account number 1 of the provincial government and transferred the requisite pension funds of the day to corresponding bank branch. The accused persons namely Junejo Bahadur Ali (BM of Nushero Feroz branch and Station Road branch), Azar Hussain Hingoro (BoM of MCB main Dadu branch), Abdul Hafeez Lund (BM of station road branch and BoM main branch), Ashraf Mazani and Siraj Ali Mastoi (Branch operation of Nushero feroz) credited these pension funds into the accounts of private persons maintained by accused Aijaz Dawach and his friends, disregarding the guarantee clause. They signed thousands of deposits slips through which the pension bills were credited into the accounts of unrelated unauthorized persons. The Bank of Officials later on facilitated the Accused persons with cash withdrawn of the deposited

money. Hence, violation of the procedure mentioned as para 14 were made.”

97. The name of Applicant is not mentioned in the above paragraph-18 with regard to fraud and mis-appropriation or abetment of Bank Officials. Although at paragraph 129 of the Investigation Report, NAB has assigned a role to the Applicant Altaf Hussain Gorar, stating that, as a staff member of MCB Main Branch, Dadu City, he facilitated the opening of bank accounts. However, the prosecution has not mentioned the Applicant’s name in the relevant paragraph of the investigation, nor elsewhere, in connection with any charges that may attract the ingredients of Section 9 of the NAO or establish his involvement in the commission of an offence. Furthermore, the role assigned in paragraph 129 fails to disclose how many accounts were opened by the Applicant himself or processed for approval before the Branch Manager and other superior officers as it appears that the Applicant himself was not approval authority to open bank accounts. It also lacks the names of the account holders, which could establish a connection between the Applicant and the Accused account holders whole named mentioned in the NAB Reference before us. The internal Inquiry Report of the MCB Bank has declared the role of Applicant as “negligence” and not connected with criminal intent.
98. The safeguard provisions outlined under **Sections 4** and criminal intent requirement of **Section 9 of the National Accountability Ordinance (NAO)** have been thoroughly discussed and analyzed in **paragraphs 52 to 62**, ensuring a fair tentative assessment of the legal implications surrounding the alleged offence, the

Applicant is entitled to claim safeguard provision in the absence of criminal intent and element of monetary benefits. Therefore, in the absence of such material evidence, the allegations remain unsubstantiated and the case of Applicant term as “further inquiry”. Consequently, the applicant is admitted for the post arrest bail against a surety in a sum of **Rupees 5 lac** and PR bound in e quivalent amount to the satisfaction of the trial Court.

Cr Bail Application No.D-45 of 2025 (Qadir Buksh)

99. The Respondent NAB has levelled charges against the bank official and officers at paragraph-18 of the investigation report. The case of the Applicant is at par with the Accused Altaf Hussain Gorar to the extent that being bank official (Cashier) no charges have been given against him for mis-appropriation or fraud at paragraph-18 or elsewhere except the role assigned in the investigation report at paragraph-239 that pension payments were released by Junejo Bahadur Ali and Siraj Ali Mastoi through misuse of his ID and the Applicant has failed to justify such misuse. Although at paragraph 18 of the Reference No.2/2023. It appears from the record that Applicant filed an application that his ID has misused by Siraj Ali Masoti Operation Manager and Bahadur Ali Junejo Branch Manager and the MCB vide Letter dated 9th July 2018 conveyed that the Disciplinary Committee vide Meeting held on 28th June 2018 decided to issue Reprimand letter and stoppage of bonus FTY 2018 and increment.

100. The Investigation Officer has failed to produce any tangible evidence regarding the seizure of the computer used for fund clearance. Consequently, there is no corroboration to establish whether the ID was misused by an individual using a computer other than the one assigned to the Applicant. In the absence of such evidence, it remains unclear whether the payments were cleared using the Applicant's assigned computer, thereby rendering the Applicant's plea weightless and give strong presumption to the fact that the Applicant has timely informed the High ups about the mis-used of Personal ID. The safeguard provisions outlined under **Sections 4** and criminal intent requirement of **Section 9 of the National Accountability Ordinance (NAO)** have been thoroughly discussed and analyzed in **paragraphs 52 to 62**, ensuring a fair tentative assessment of the legal implications surrounding the alleged offence, the Applicant is entitled to claim safeguard provision in the absence of criminal intent and element of monetary benefits.

101. Given this evidentiary gap, the matter qualifies as a case of "**further inquiry.**" Therefore, the applicant is admitted to the post-arrest bail in a sum of **Rupees Ten Lac** and the PR Bond in an equivalent amount to the satisfaction of the trial Court.

- 102.** In sum up, the Criminal Bail Applications No.D-65, 66, 67, 101, 45 & 47 of 2025 are granted in terms of conditions mentioned at paragraphs 90, 92, 93, 95, 98 & 101 and stand disposed of accordingly.
- 103.** We have observed in paragraphs 33 to 43 that this Court possesses inherent jurisdiction as recognized under Section 561-A Cr.P.C., which cannot be removed by any Special Statute or its ouster or non obstante clause(s). During the hearing, serious concerns emerged regarding the misappropriation of over 05 billion rupees from the public exchequer in two references, causing harm to a national development project. In view of the gravity of the matter and damage to national cause of development, we find it necessary to direct the Governor, State Bank of Pakistan to initiate an inquiry through Director, Banking Policy & Regulation Department, SBP against MCB, a registered entity (RE/FI) including its Officers responsible in the region, Compliance, Fraud & Risk Management team for their breach of duty regarding: **Know Your Customer (KYC)** and **Continuous Due Diligence**, as mandated under the State Bank of Pakistan Regulations, 2022 and Failure to report as well as failure to act on **97** Suspicious Transaction Reports (STRs) raised by the Financial Monitoring Unit (**FMU**) as more than 2 billion rupees from the public exchequer were transferred or withdrawn through the banking channel without **MCB's** intervention or interruption, raising concerns of silent complicity.

JUDGE

JUDGE

Announced by us.

Dated: _____ June 2025

JUDGE

JUDGE