

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Omar Sial

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Accountability Appeal No.03 of 2025

Appellant : Zakaria Moti Wala S/o Moosa Moti Wala
through Mr. Muhammad Numan Jamali,
Advocate

State : through Mr. Manzoor Shah,
Special Prosecutor NAB

Date of Hearing : 25.08.2025

Date of Order : __.09.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J – The Appellant has filed the instant Criminal Accountability Appeal under Section 13(c) of the National Accountability Ordinance, 1999 (**NAO**) being aggrieved with and dissatisfied by the Order dated 16.01.2025 (**impugned Order**) passed by the learned Judge, Accountability Court No.V, Karachi (**Trial Court**); whereby an Application under Section 13 NAO filed by the Appellant for de-freezing of properties was dismissed.

- 2. Brief fact of the case—**the Chairman, National Accountability Bureau (NAB) authorized an inquiry against Gul Hassan Channa and Abdul Razzaq Qureshi, former Secretaries of Revenue Stamps and Evacuee Properties (RS&EP), Government of Sindh, along with others, regarding the alleged illegal allotment of 272-14 acres of government land located in Karachi East. The NAB issued a letter dated 15.05.2020 to the Commissioner Karachi Division requesting issuance of judicial orders to cancel all entries arising out of the alleged illegal orders passed by the Secretaries (RS&EP). The letter stated that the accused Secretaries had

illegitimately allotted state land measuring 272-14 acres. On 22.10.2020, legal heirs of Mr. Moosa Haji Umer received a call-up notice under Sections 19 read with 27 NAO in connection with the aforesaid inquiry.

3. The appellant appeared on behalf of all legal heirs and submitted a written statement disclosing facts relating to 18-32 acres of land inherited from their late father, along with relevant documents including a Khatooni issued in 1971 by the Settlement Department substantiating their claim. During his visit to the NAB office on 22.12.2020, the appellant was provided with a questionnaire by the Case Officer, which he duly replied to on 04.01.2021 on behalf of all legal heirs. Despite furnishing all details, the appellant and his siblings were repeatedly summoned by NAB officers, leading them to obtain interim pre-arrest bail from the trial Court which was confirmed on 20.03.2023. The appellant was satisfied that the 18-32 acres of land in question was not part of the 272-14 acres nor allotted by the accused Secretaries under investigation. However, NAB authorities submitted an application to the Accountability Court seeking confirmation of a freezing order dated 10.11.2022 issued by the Chairman NAB, which erroneously included the 18-32 acres of land, not related to the inquiry.
4. The Inquiry Officer (IO) admitted in the inquiry report that the 18-32 acres was allotted vide order No PS/MBR/L.U/2400/91 dated 15.10.1991 but misleadingly represented the allotment as fresh under Section 2 of the Evacuee Property and Displaced Persons Law (Repealed) Act, 1975, while concealing that the allotment was actually an alternate land grant after prior approval of the Chief Minister Sindh, granted on a 99-year lease against verified claim, and payment of differential malkano at Rs.15,000/- per acre.
5. The learned counsel for the Appellant has further contented that the said land was allotted under the Colonization & Disposal of Government Lands (Sindh) Act, 1912, and not under the repealed Evacuee Law as falsely

claimed. Subsequently, the 18-32 acres were included in the Sindh Government Lands Cancellation Ordinance, 2000, which mandated cancellation of allotments made below market rates after January 1, 1985, subject to regularization upon payment of differential amount. While the appellant and legal heirs applied for regularization by paying the differential amount, no response was received. Meanwhile, one Iqbal Ahmed, an accused in the subject inquiry, on the basis of a forged Will and power of attorney allegedly of the appellant's late father, obtained illegal regularization of the 18-32 acres in his name from the Land Utilization department. The appellant challenged this regularization before the Board of Revenue (Sindh), which, after verification, cancelled the order dated 14.06.2018 through Land Utilization Department order dated 25.10.2024, confirming the said order had been obtained through forgery. The land measuring 25 acres allotted by Gul Hasan Channa via petition No. 23/1994 was a distinct property unrelated to the disputed 18-32 acres and entries related thereto have been cancelled. The prosecution's letter dated 11.8.1994 relates solely to the 25-acre land and does not pertain to the 18-32 acres at issue. The alleged notice for freezing purportedly issued to Pervaiz Rais Siddiqui, as alleged attorney of Moosa Haji Omer, is also challenged on the grounds that he was not the legitimate attorney for this land and had died prior to issuance of such notice, thus rendering the notice legally ineffective concerning the appellant and other legal heirs.

6. The learned counsel for the appellant and the learned Special Prosecutor NAB were heard at length. The material on record was also carefully examined.
7. At the very outset, the learned Counsel for the Appellant states that the Appellant is the legal heir of Moosa Haji Omar, allottee of Land serialized "B" at para-4 of the impugned Order having land measuring 18-32, Deh Songal, vide Entry No.10 dated 06.11.1991 and urged before us that he, under instruction, only presses the instant appeal to the extent of this

property and he does not press the freezing order regarding other two properties serialized at "A" & "C".

8. We have noticed that the Inquiry report of Respondent NAB (Page 143 to 163) under signature of Mr. Mirza Aleem Baig, Deputy Director, NAB confirmed that Director General NAB (K) had approved the authority inquiry under letter bearing No. NABK20180220114212/IW-I/CO-C/NAB(K)2018/ 5293 dated 30th July 2018, the Chairman, NAB has issued freezing Order in respect of only three properties vide letter No.3-2(1)(304)/K/MW-OO/NAB-HQ/2017 dated 10th November 2022. The said freezing Order is re-produced hereunder:

"An Investigation against the accused (1) Abdul Razzaq Qureshi S/o Abdul Wahab Qureshi, (2) Aftab Ahmed Memon S/o Muhammad Hashim Memon, (3) Deceased Pervaiz Raees Siddiqui S/o Rais Ahmed Siddiqui, (4) Iqbal Ahmed S/o Shakeel Ahmed, (5) Naveen Parvaiz Siddiqui W/o Parvaiz Raees Siddiqui, (6) Lubna N. Basit W/o Nadeem Basit, (7) Sahar Parvaiz Siddiqui W/o Kashif Pasha, (8) Ali Parvaiz Siddiqui S/o Parvaiz Raees Siddiqui for commission of acts of Corruption and Corrupt Practices as defined under section 9 and punishable u/s 10 of the NAO, 1999 read with the schedule thereto; was authorized vide letter No.NABK2018022114212/W-1/COC/NAB(K)/2017/3947 dated 28.04.2017. During the course of investigation, it has come to my knowledge that the accused persons acquired following Govt. lands on the basis of fake Evacuee Claims:

Sr	Deh	Village Form (VF) Entry No. alongwith date	Area of New Survey No's. (Acres-Ghuntaz)
a.	Songal	VF-II, Entry No.93 dated 21.02.1998	17-18
b.	Songal	VF-II, Entry No.10 dated 06.11.1991	18-32
c.	Okewari	VF-II, Entry No.170 dated 14.09.1995	00-18
Total Land			36 Acres

2. After appraising the record of Investigation, I find that there are reasonable grounds to believe that the accused persons have

committed the said offences and resultantly have acquired these properties through the commission of offences under NAO, 1999. Therefore, I hereby by exercising powers u/s 12 of the NAO, 1999 order the freezing of properties as mentioned above.

3. This order shall remain in force for a period not exceeding fifteen days and it shall be filed in the Court of the learned Judge, Accountability Court, Karachi, for its confirmation as required under first proviso of section 12(c) of NAO, 1999.

Sd/-
(Aftab Sultan)
Chairman NAB

Non-Inclusion of Appellant's Name in freezing Order:

9. The record reflects that the freezing order issued by the Chairman NAB lists eight individuals from the family of deceased Parvaiz Raees Siddiqui as purported accused. However, the name of the present Appellant, Moosa Haji Omar, is conspicuously absent from the said order, despite the fact that his properties were subjected to freezing. The application moved by the NAB Prosecutor under **Section 12(b)(iv) of the National Accountability Ordinance, 1999** for confirmation of the freezing order (pages 125–127 of the court file) also fails to mention the Appellant. The notice issued by the Trial Court prior to passing the confirmatory order similarly omits any reference to the Appellant. In light of these omissions, the objection raised by the Respondent NAB—that the Appellant was required to file objections against the freezing within the stipulated time—is devoid of merit. The Investigation Officer, despite being fully aware of the factual position as narrated in the inquiry report, which clearly states that the property in question was allotted to Moosa Haji Omer, failed to include the Appellant's name in the freezing order. More critically, he concealed this material fact from the Trial Court at the time the matter was placed for confirmation of the freezing order.

Failure to Cite Reasons or Allegations in the Freezing Order:

10. We are not persuaded with the contention of Special Prosecutor—that copies of the freezing order were provided to the Appellant during the hearing of his bail application along with NAB’s objections—is equally untenable. The freezing order itself is silent regarding the Appellant, and no action was proposed against him at the time of confirmation proceedings before the Trial Court. The subsequent supply of documents does not cure the procedural defect nor absolve the Investigation Officer of his statutory responsibility. This conduct amounts to a violation of the principles of natural justice and due process. The Supreme Court in ***Muhammad Hanif Abbasi v. NAB (PLD 2018 SC 189)*** emphasized that any coercive action affecting property rights must be preceded by proper notice and opportunity to be heard.

Lack of Nexus Between Property and Alleged Offence:

11. We are also not persuaded by the arguments presented by the learned Special Prosecutor assisted by Investigation Officer Mr. Baig, who referred to various records and orders from this Court and the Apex Court concerning the matter involves the allottee, Moosa Haji Omar, and his purported attorney, Pervez Raees Siddiqui and dispute of execution of a Will Deed by said Parvaiz Raees Siddiqui in favor of Iqbal Ahmed. The order dated 24.02.2025 passed in C.P. No.D-1315 of 1997 and related petitions, the Division Bench dismissed claims based on the alleged Will Deed, declaring it unauthorized and legally invalid for transferring rights in immovable property. Similarly, C.P. No.D-796 of 2023, filed by Iqbal Ahmed as an alleged attorney, was also dismissed. We have noted that Respondent NAB has sought to freeze only three properties belonging to the present Appellant, who was neither named nor implicated in the original inquiry. The NAB inquiry primarily authorized against the original accused, namely Parvaiz Raees Siddiqui, allegedly involved in fraudulent allotments. Under Article 17 of the Qanun-e-Shahadat Order, 1984, the burden of proof rests upon the party asserting the existence of a fact. In

the instant matter, NAB has failed to discharge this burden in support of the freezing order. The Special Prosecutor, assisted by the Investigation Officer present in Court, did not place any material on record nor refer to any police file or investigation dossier establishing a nexus between the Appellant's property and the commission of any offence, either by the original accused or the deceased allottee, Moosa Haji Omer. The sole document relied upon by NAB is an alleged power of attorney, which stands legally extinguished due to the death of both the principal (Moosa Haji Omer) and the attorney (Parvaiz Raees Siddiqui). Its legal sanctity is further undermined by the fact that the Appellant and other legal heirs have denied its execution and are actively pursuing inheritance rights in respect of the property. Notably, such Irrevocable Power of Attorney produced before the Court was executed by Moosa Haji Omer and his wife in respect of land situated in Deh Sunhro, and not for the land in question which is located in Deh Songal.

12. A power of attorney, being a creation of agency under Section 2 of the Powers-of-Attorney Act, 1882, authorizes the donee to execute instruments in their own name with the same legal effect as if executed by the donor. However, such authority is strictly confined to the scope defined in the instrument and stands automatically terminated upon the death of the principal, as held in ***Muhammad Nawaz v. Muhammad Khan* (2016 CLC (N) 62)**. It is also well settled that a power of attorney does not transfer title in immovable property, as affirmed by the Supreme Court of India in ***Suraj Lamp Industries v. State of Haryana* (AIR 2012 SC 206)**:

"A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in

a manner known to law. **Even an irrevocable attorney does not have the effect of transferring title to the grantee.”**

Emphasized added.

13. The Investigation Officer primary function is to determine the criminal intent, criminal offence. The IO has intentionally drawn a connection between the appellant’s father’s land and the NAB inquiry, thereby creating a dispute suggesting that Pervez Raees Siddiqui was the rightful owner and had obtained an illegal allotment order through collusion with the Secretary, RS&EVP. Notably, the Comments filed by Respondent NAB present a second, inconsistent stance—claiming that the land was usurped through forged and fictitious documents and therefore it is a “state land.” Yet, in the same breath, both the Investigation Officer and Respondent NAB, in their Comments and inquiry report, have admitted that the allotment and occupancy value issued by the Land Utilization Department and are genuine documents. These contradictory positions—asserting inconsistent pleadings—and are impermissible under the law. Such “hot and cold” blows undermine the credibility of the inquiry and violate the principles of legal consistency and fairness. It is not the function of the NAB to legally evaluate an instrument and to declare an attorney an owner or vice versa. It is naked legal truth that the validity, scope, and purpose of such an instrument are matters of civil adjudication, falling squarely within the jurisdiction of the civil courts. In the absence of any judicial declaration to the contrary, proprietary rights in the property vest in the legal heirs in accordance with Islamic jurisprudence.

Distinction of statutes

14. The Inquiry report of Respondent NAB has itself admitted that the land of Appellant relates to allotment by Land Utilization department under different laws while Chairman, NAB has authorized inquiry for the illegal allotments of lands by Secretary, RSEV under different law. The relevant portion is re-produced:

Land measuring 18 Acres 32 Ghuntas, situated in Deh Songal, Tappo Gujro, Sector 17-B Scheme-33 Karachi

During inquiry another piece of precious Govt land was identified **which was also usurped by accused Iqbal Ahmed**. Assistant Commissioner Gulzar-e-Hijri (Scheme-33) Karachi East has submitted report alongwith the relevant record which revealed that the piece of land measuring 18 Acres 32 Ghuntas, situated in Deh Songal, Tappo Gujro Sector 17-B Scheme-33 Karachi is found **in record of rights at Entry No. 10 dated 06-11-1991 VF-II Deh Songal stand mutated in the name of Mr. Moosa Haji Omar**, from state land vide order No. PS/MBR/L.U/2400/91 dated 15-10-1991 wherein it is mentioned that land is leased for 99 years on non-agriculture purpose. **The allotment order issued by Secretary Government of Sindh Land Utilization Department revealed that land was allotted in pursuance of Section (2) of the Evacuee Property and Displayed Person Law (Repeal) Act 1975 and read with section 10 (1) Colonization of Govt Lands Sindh Act, 1912.** Report submitted by Assistant Commissioner Gulzar-e-Hijri (Scheme-33) Karachi East has confirmed that there is no further transaction on the above mentioned entry due to ban imposed by the Honorable Supreme Court of Pakistan.

During inquiry proceedings at NAB, in order to protect precious Govt land NAB vide letter No. letter No.NAB2018022011421/MAB-C/GHC-ARQ-E272/NAB(K)/3685 dated 20-5-2019 requested to Deputy Commissioner to impose caution U/s 23 of NAO 1999 on the lands which are under inquiry at NAB including the Land measuring 18 Acres 32 Ghuntas situated in Deh Songal, Tappo Gujro, Sector 17-B Scheme-33 Karachi, and caution was imposed accordingly on the said entries in record of rights Freezing under section 12 NAO 1999 is also imposed on the subject land on directions of order passed by Honorable Accountability Court No. IV dated-21-December 2022.

17. Furthermore Record was obtained from Land Utilization Department which revealed that Musa Haji Omar was immigrant of India came to Pakistan at the time of partition. In the year 1991 Musa Haji Omar approached to the then Chief Minister Sindh for allotment of land in an exchange of un-received evacuee land measuring 18-32 acres. It is important to mention here that the

claim of evacuee land were entertained Under Evacuee Laws which were repealed in the year 1975 through Evacuee Property and Displaced Persons Laws (Repeal) Act 1975 for the residual claim the Board of Revenue notified Rules vide notification No. SCK/79-735 dated 03-06-1979 According to rule B(1) the claim of residual land was to be verified by the Deputy Commissioner/Addl. Dy. Commissioner then under rule 8(2) Rs.10 for unit of agriculture land and Rs. 20 per unit of non-agriculture were to be paid to the claimant. **But Musa Haji Umar approached the then Chief Minister Sindh for allotment of Land in lieu of residual land of his managed claim. The then Secretary LU dept. without verification of claim of applicant from Evacuee Wing of Board of Revenue, processed summary to the then Chief Minister Sindh through Minister LU Dept. After approval of the Chief Minister Sindh allotment order bearing No. PS/MBR/(LU)/2400 dated 15-10-1991 for an area of 18-32 acres in sector 17-B of corridor area on 99 years lease at the rate of malkano of Rs. 15,000/- per acre in lieu of the equal area deducted from his claim. After payment of amount of malkano Rs. 282,000/- possession was delivered to Musa Haji Umar and entry No. 10 dated 06-11-1991 VF-II was made in Village Form II Deh Songal Scheme 33 District East. It is said that Musa Haji Umar had executed Irrevocable Power of Attorney bearing registration No. 330 dated 01-09-1994 of Sub-Registrar T-Div-IV Karachi whereby Musa Haji Umar and his sister Mehrun-Nisa had authorized Parvaiz Rais Siddiqui as attorney for some acts but not for sale. Musa Haji Umar died in the year 2001 after his death, the power of attorney which was even not for sale became infructuous.**

Then in the year 2000 Government of Sindh promulgated Sindh Government Lands (Cancellation of allotments, Conversions and Exchanges) Ordinance 2000, whereby all allotments of 99 years lease lower than market rate in violation of law or ban from 1st January 1985 including subsequent transactions were cancelled. Consequently, subject allotment was also cancelled. **Musa Haji Umar was inherited by Zakria Motiwala and others. In the month of August 2002 the heirs of Musa Haji Umar executed Irrevocable General Power of Attorney in favor of Zakria Motiwala which includes para for sale and others.**

Emphasized added

15. Upon careful examination of the record, it is observed that despite conducting an uninterrupted inquiry for over **four years**, the Respondent NAB ultimately moved to freeze only three properties measuring **36 Acres**—an insignificant fraction of the **769 Acres** of State land originally under scrutiny. Notably, these frozen properties stand in the name of an individual other than those against whom the inquiry was initially authorized. The frozen properties were allotted by the Secretary, Land Utilization Department, Government of Sindh, and not by the Secretary of the Registration, Stamps & Evacuee Properties (RSEP) Department. The Allotment in RS&EP made under distinct statute of Evacuee laws against the compensation claims while allotment in LU department made under the Colonization Act, 1912, against an Occupancy Value (Malkano) with exception of allotment in lieu of exchange or in lieu of alternate land that too subject to valuation by price committee. The allotment was made in favor of Appellant pursuant to the approval of the Chief Minister Sindh and, although superficially referenced under **Section 2(2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975**, the actual legal basis for the allotment was **Section 10(1) of the Colonization of Government Lands Act, 1912** against Occupancy Value (Price). This position is further corroborated by the Respondent NAB's own correspondence—specifically, letter No. NABK2018220114212/MAB-C/GHC-E/IW-I/NAB(K)/1893 dated 15.05.2020 — which does not seek cancellation of the said allotment of appellant's land.

16. The authority granted to the Chairman NAB and the Accountability Court under Section 12 of the National Accountability Ordinance, 1999 (NAO), to freeze property is not absolute or discretionary in nature. It reads:

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.

Emphasized added

17. Such powers are conditional and may only be exercised where there exist *“reasonable grounds to believe”* that the accused has committed an offence under the NAO. Although the Ordinance itself does not define this standard, guidance may be drawn from Section 26 of the Pakistan Penal Code (PPC), which reflects a higher evidentiary threshold than mere *“reasonable suspicion.”* The legal distinction between *“reasonable suspicion”* and *“reasonable grounds to believe”* is critical. The former involves a plausible, though not speculative, inference of wrongdoing, while the latter imposes a dual requirement: the decision-maker must subjectively believe the threshold is met, and that belief must be objectively reasonable to a prudent person in similar circumstances. This ensures that significant coercive measures—such as freezing of assets—are not taken lightly or arbitrarily and must be invoked strictly within the bounds of law and only upon satisfaction of the legally required standard of *“reasonable grounds to believe,”* grounded in credible and objective evidence. The exercise of statutory discretion must conform to the principles of legality, reasonableness, and proportionality. In ***Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan (2015 SCMR 630)***, the Hon’ble Supreme Court authoritatively held:

“The exercise of discretionary power must be rational, in good faith, and aligned with the objectives of the legislation. Arbitrariness violates the rule of law. Section 24A of the General Clauses Act, 1897, mandates that statutory powers be exercised reasonably, fairly, and justly, with reasons provided for executive decisions. Any action contrary to these principles is liable to be struck down.”

18. This principle has been consistently reaffirmed in ***Aman Ullah Khan v. Federal Government (PLD 1990 SC 1092)***, ***Chairman RTA v. Pakistan Mutual Insurance Co. (PLD 1991 SC 14)***, ***Director Food NWFP v.***

Madina Flour Mills (PLD 2001 SC 1), Chief Secretary Punjab v. Abdul Raooof Dasti (2006 SCMR 1876), and Muhammad Ashraf Tiwana v. Pakistan (2013 SCMR 1159), underscoring that discretionary powers must be exercised transparently, with cogent reasoning and in furtherance of legislative intent.

19. The NAO is a legislative instrument aimed at combating corruption, recovering misappropriated public assets, and ensuring accountability. Sections 9 through 11 define specific offences, impose punishments including imprisonment and forfeiture, and require that any fine be at least equivalent to the benefit gained. Section 23 invalidates any transfer of property by an accused once proceedings have commenced. Section 12 allows the freezing of assets to prevent their dissipation and to secure the subject matter of investigation and prosecution. It is a preventive measure, not punitive in nature, and must be exercised strictly within the bounds of law and reasonableness.

20. In the present case, the Special Prosecutor cited various documents to assert that the Chairman NAB had formed such a belief regarding the Appellant's alleged acquisition of property through illegal allotment. Understandingly, a freezing order, being an interim measure, may be sustained if supported by higher threshold in case the statutory requirement of "*reasonable grounds to believe*" must always be strictly observed—both in terms of the legal standard and the evidentiary material relied upon. The freezing order was issued; no reference or charge sheet has been filed for over seven years. This inordinate and unexplained delay fundamentally undermines the statutory object of freezing, which is to maintain the status quo of the alleged crime property until the filing of a reference. The prolonged stagnation without prosecutorial action renders the freezing order arbitrary and disproportionate, in addition to the reasons recorded hereinabove. The Supreme Court in ***Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)*** emphasized that accountability proceedings must adhere to

principles of fairness, transparency, and promptness. Under **Article 129(e) of the Qanun-e-Shahadat Order, 1984**, the Court may presume that judicial and official acts have been regularly performed. However, where the record reflects prolonged inaction and absence of prosecutorial diligence such presumption stands rebutted. The criminal jurisprudence underscores that mere suspicion or unsubstantiated allegations cannot justify coercive measures such as freezing of property. In the absence of such material, the freezing order appears to be arbitrary, lacking legal foundation, and violate the Appellant's constitutional right to property under Article 23 and 24 of the Constitution of Pakistan, 1973.

- 21.** In view of the above, the freezing action taken by NAB lacks both factual foundation and legal justification, therefore, the **Criminal Accountability Appeal No. 03 of 2025** is allowed and impugned order dated 16.01.2025 passed by Trial Court is set aside by holding that the freezing order dated 10.11.2022 have no legal effect to the extent of the property land measuring 18 acres 32 ghuntas, Deh Songal, Sector 17-B, Scheme-33, Karachi.

JUDGE

JUDGE

asim/PA