

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.d-4249 of 2019

<u>Date</u>	<u>Order with Signature</u>
-------------	-----------------------------

FRESH CASE .

1. For order on Misc. No.18601/2019
2. For order on office objection No.12 & 18
3. For order on Misc. No.18602/2019
4. For hearing of main case.

24.06.2019.

Mr. Khalid Javed Khan, Advocate for the Petitioner.

Mr. Amjad Ali Shah, Special Prosecutor, NAB alongwith Investigating
Officer Mohammad Umair.

-
- 1) Urgency is granted.
 - 2) Deferred for the time being.
 - 3) Granted subject to all just exceptions.
 - 4) ***Mohammad Karim Khan Agha, J.*** The petitioner Sharjeel Inam Memon is facing a NAB Reference No.50/2016 before the Accountability Court No.I, Sindh Karachi concerning misuse of authority in relation to the Information Department, Government of Sindh, Karachi in which he is in custody. The petitioner moved a post arrest bail application in that matter which was initially heard on around 11-06-2016 and was reserved for order on 20.06.2016. It appears that NAB has opened another inquiry against the petitioner for having assets beyond his known sources of income. On 21.06.2019 one day after the post arrest bail petition of the petitioner in Reference No.50/2016 was reserved for orders the NAB attempted to arrest the petitioner in the separate case of assets beyond his known sources of income whilst he was still in jail in central prison Karachi. This attempt was unsuccessful and the NAB, made an application to the Accountability Court No.I, Karachi for an order to execute the arrest warrant against the petitioner in Central Prison Karachi which was allowed on 22.06.2019 whereby the Accountability Court No.I, Sindh Karachi gave its NOC to the arrest of the petitioner in the case of assets beyond his known sources of income whilst being confined in Central Prison Karachi.

2. This is the background which lead to filing of the instant petition whereby the petitioner has approached this court with amongst others the following prayers; that the impugned order dated 22.06.2019 passed by the Accountability Court No.I, Sindh Karachi be suspended / set aside, that the warrant of arrest dated 13.06.2019 and letter dated 21.06.2019 in the case of assets of beyond known sources of income be suspended/set aside and that the respondents be restrained from arresting the petitioner by acting upon the impugned order and the impugned warrant of arrest until the final adjudication of this petition.

3. Learned counsel for the petitioner has contended that this is a case of extreme malafide on the part of the NAB. According to learned counsel the NAB did not want to take a chance that the petitioner may be granted bail and therefore moved for his arrest in another reference after the bail petition in Reference No.50/2016 was reserved for orders so that even if the petitioner was granted bail in that petition he would remain in jail in the case of assets beyond his known sources of income. He also submitted that Accountability Court No.I, Sindh Karachi in passing the impugned order had done so without application of mind and without considering the grounds of arrest in the arrest warrant.

4. Learned Additional Prosecutor, NAB on the other hand, present in court in other cases waived notice and contended that there was absolutely no malafide on the part of NAB and that the arrest warrant had already been executed and as such this petition was infructuous and that the impugned order was a fully speaking order and should remain in the field.

5. We have heard the parties and perused the record.

6. It appears to us that the first point to be considered is whether or not warrants of arrest have in fact been executed on the petitioner. In our view it appears that at the best the Superintendent, Central Prison Karachi has received warrants of arrest but has **not** executed the same. As the NAB IO has admitted he has not arrested the petitioner, has not prepared a memo of arrest and that when he went to arrest the petitioner, he was not given permission to do so without the permission of the trial court; hence the application made by the NAB to the trial court seeking its NOC in order to



arrest the petitioner in jail, which the accountability court granted through the impugned order. Under these circumstances, in our view the warrant of arrest is yet to be executed upon the petitioner.

7. We have also noted that the timings as set out in the reference filed by the NAB before the Judge, Accountability Court No.I, Sindh Karachi concerning request for NOC against Sharjeel Inam Memon in judicial custody in Reference No.50/2016 (State v. Sharjeel Inam Memon) which indicates that inquiry in the case of assets beyond his known sources of income was authorised on 22.12.2018 and converted into investigation on 17.01.2019 and a warrant of arrest was issued on 13.06.2019, yet no steps were taken to execute that warrant of arrest **until after** the bail petition of the petitioner was reserved for orders and as such in our view, prima facie, there may have been some attempts by the NAB to circumvent the order which may have come from this Court in determining the petitioner's bail petition in order to keep him in custody no matter what the order of this court was on his bail application. If this was, in fact the case such action is to be highly deprecated as the purpose of any Investigation Agency is not to aim to keep an accused in custody for years on end and in several cases when his attendance for the purpose of inquiry / investigation could be called for whilst he was not in custody. It is also note worthy in this case (assets beyond known sources of income) that the other co-accused were arrested well before any attempts were made to arrest the petitioner in that case and as such in our view it raises eye brows that the NAB only attempted to execute the arrest warrant on the petitioner when his bail application was reserved in Reference 50/16. With regard to the assets beyond known sources of income case no reference has yet been filed.

8. We have also observed from the impugned order that the learned Judge, Accountability Court No.I, Sindh Karachi does not seem to have applied her judicial mind in giving a fully speaking order after examining the grounds of arrest before giving her NOC to the execution of the arrest warrant.

9. Under these circumstances, we deem it appropriate that until the next date of hearing the impugned order dated 22.06.2019 is suspended,

impugned warrant of arrest dated 13.06.2019 and letter dated 21.06.2019 are also suspended and that the petitioner shall not be arrested by the NAB in the case of assets beyond his known sources of income.

10. A copy of this order shall be sent by fax to the learned Judge, Accountability Court No.I, Sindh Karachi, Senior Superintendent, Central Prison, Karachi and D.G. NAB, Karachi Sindh for information and compliance. Let this matter come for final determination on 27.06.2019 at 11:30 a.m when special prosecutor NAB and the concerned IO shall both be in attendance.

MAK/PS