

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI.**

C.P.No.D-2659 of 2020.

Date	Order with signature of Judge
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1. For order on office objections
2. For hearing of MA 11802/2020.
3. For hearing of main case.

**05.11.2020.**

Barrister Waleed Khanzada, advocate for petitioner.  
 Mr. Ubedullah Abro, Special Prosecutor NAB.

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**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Petitioner, in custody, claiming to be sole proprietor of a company known as M/s Shahbaz World Builders is aggrieved by a letter dated 22.11.2019, a communiqué by Deputy Director NAB Sukkur to branch Manager Habib Bank Ltd. Jacobabad Branch requesting blocking of all debit transactions in account No.00717900723503 having a balance amounting to Rs.54,162,500/-, pertaining to said company which NAB alleges was deposited in the account through a cheque issued by officials of Machinery Maintenance Division Khairpur @ Shikarpur accused in an investigation for money laundering and other offences including u/s 18(c) National Accountability Ordinance, 1999 (NAO, 1999).

2. Foremost ground to challenge the impugned letter, which learned counsel has vociferously argued, is that the petitioner was awarded various works through contracts after due formalities by the said department, which he completed to the entire satisfaction and resultantly the subject cheque was issued to the petitioner. It is the only bank account, his firm, where more than 100 people are employed, is maintaining, and who due to such blockage have been suffering as salaries and other expenses have not been paid to them. On legal pedestal, it has been argued that blocking/freezing of the account is unlawful and a sheer violation of section 12 and 23 of NAO, 1999. To urge this point, learned counsel has relied upon the case of China International Water and Electric Corporation & others (2019 YLR 989).

3. Contrarily learned Special Prosecutor NAB has pleaded that against the petitioner several references have been filed and besides he is facing multiple enquiries. The subject enquiry putting caution only on debit transactions has been concluded with overwhelming evidence found against the petitioner and a reference is likely to be filed within a short while before relevant Accountability Court where the petitioner will have a remedy against impugned letter.

4. Heard and perused the record. On factual aspect we do not find any evidence supporting the case of the petitioner, file is bereft of any document reflecting that the cheque was deposited in the bank towards satisfaction of some work awarded to the petitioner through any contract. No tender document, or documents pertaining to bidding process, a copy of any agreement between the petitioner and the department, completion certificate, nature of work etc., have been filed to prima facie lend credence to what has been agitated before us. As to the legality of impugned letter, we may refer to para 16 of the judgment in case of China International Water and Electric Corporation (supra) relied upon by learned counsel, laying down as under:-

**“In our view section 23 of the NAO is itself a self executing section which will automatically come into effect once NAB opens an inquiry or investigation into any offence under NAO which cautions that any property which is the subject matter of the inquiry cannot be transferred or a charge allowed to be created thereon and that in the event that any transfer of any right, title or interest or creation of a charge on such property takes place, it shall be void and that any person who transfers the property or creates a charge on such property shall be subject to prosecution.**

In para 18 of the said judgment, under sub-para (8) this court further explaining the said point has observed:

**“There is clear and marked distinction between the provisions contained section 12 and those of section 23. Section 12 authorizes the Chairman, acting on his own to freeze the property of an accused person. Obviously such freezing of property is for a maximum period of 15 days unless confirmed by the Court. So there is power of freeze; not a drop can enter and not a trickle can escape. On the other hand, section 23 declares “transfer by any means whatsoever or create a charge on any property owned” by the accused person or in his possession. Thus, what falls within the mischief of section 23 is ‘transfer’ and ‘creation’ of a charge. Thus, if an amount is held in a bank account section 23 does not freeze that bank account. That bank account can be operated, both in terms of deposits made in it and withdrawals from it but for legitimate and bona fide needs. (emphasis supplied).**

5. It is apparent from above that only for legitimate and bonafide needs, withdrawal of the amount could be allowed. In the present case nothing has been brought on record to show that petitioner intends to withdraw the amount for any bonafide and legitimate purpose like releasing salaries to his employees etc. as no document reflecting a list of employees, their tenure, salaries strength etc. duly registered has been filed to appreciate such argument. And more so, there is prima facie nothing to show that this amount has been earned by the petitioner through legitimate means and bonafidely for providing a platform to consider allowing its withdrawal by the petitioner during enquiry.

6. In another case of re Chaudhry Muhammad Akram Waraich Vs. Chairman, National Accountability Bureau Islamabad and others (2010 YLR 2766) this court has held in a similar context that:

**“As far as caution is concerned, since an enquiry is pending in the NAB no wrong can be ascribed if the NAB informs the bank that inquiry in respect of amount in a particular account is pending in the NAB. Thereafter section 23 shall suo moto kick in and if any transfer is allowed or charge is allowed to be created on it, the bank, who could but for conveying of this information, otherwise have claimed that it had no knowledge of the pending inquiry, stands informed of a particular inquiry.**

And further in para 10 it is stated that:

**“.....However section 23, independent of any order or direction by Chairman NAB, imposes an obligation on “any person”, which obviously includes a bank where the money in question is parked, not to transfer etc. Therefore, by using the word ‘direction’ in letter dated May 11, 2010 though NAB official might have resorted to a ‘terminological inexactitude’ (to borrow a phrase from Churchill) but had not made any difference in any material sense.**

7. We, in the light of above discussion are of the view that the petitioner has no case on legal pedestal either. The impugned amount is the subject of ongoing inquiry which has already been concluded and as affirmed by the learned Special Prosecutor NAB, the reference is likely to be filed within a short while before learned Accountability Court where the petitioner could make an attempt to get relief sought for here. Besides, since disputed facts are involved, we refrain ourselves from exercising discretionary relief under Article 199 of the Constitution in favour of the petitioner. This being the position, we do not see any merits in this petition and dismiss it accordingly alongwith pending application.

JUDGE

JUDGE

A.K