

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C. P. No. D-1528 of 2020**

a/w **C. Ps. No. D-1556, 1557, 1559, 1560 of 2020**  
and 48 **of 2021**

Date of hearing	Order with signature of Judge
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**Before:**

Mr. Justice Nazar Akbar

Mr. Muhammad Faisal Kamal Alam

**Petitioners:**

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| 1. Aijaz Hussain Jakhrani<br>in C.P.No.D-1528/2020 | Through Mr. Barrister Mohsin<br>Shahwani, Advocate |
| 2. Nazir Ahmed Malik<br>in C.P.No.D-1556/2020      | Through Mr. Abdul Majeed<br>Memon, Advocate        |
| 3. Aijaz Ahmed & others<br>in C.P.No.D-1557/2020   | Through Mr. Waseem Ahmed<br>Sundrani, Advocate     |
| 4. Manzoor Ahmed Panhyar<br>in C.P.No.D-1559/2020  | Through Mr. Waseem Ahmed<br>Sundrani, Advocate     |
| 5. Ghulam Fareed Mugheri<br>in C.P.No.D-1560/2020  | Through Mr. Waseem Ahmed<br>Sundrani, Advocate     |
| 6. Allah Ditto Panhyar<br>in C.P.No.D-48/2021      | Through Mr. Nisar Ahmed<br>Bhanbhro, Advocate      |

**Respondents:**

National Accountability Bureau through its Chairman	Through Mr. Muhammad Zubair Malik, Special Prosecutor NAB
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**Date of Hearing:** 16<sup>th</sup> March, 2021

**ORDER**

**Nazar Akbar, J:** By this common order, we intend to dispose of the above captioned 06 Constitutional Petitions filed by the Petitioners Aijaz Hussain Jakhrani, Nazir Ahmed Malik, Aijaz Ahmed Khoso, Moula Bakhsh Noonari, Manzoor Ahmed Panhyar, and Ghulam Fareed Mughari, who are seeking pre-arrest bail in Reference No.23 of 2020, whereas, Petitioner Allah Ditto Panhyar is the only accused who is seeking post-arrest bail in the same

Reference, pending adjudication before the Accountability Court at Sukkur.

2. Briefly stated, it is alleged in Reference No.23/2020 that Petitioner Aijaz Hussain Jakhrani being highly influential person Ex-MNA/Advisor to Chief Minister Sindh for Prisons Inter Provincial Coordination (IPC) is allegedly directly involved in the offence of corruption and corrupt practices being beneficiary of millions of rupees from two contractors of the development Scheme in this reference. It is further alleged that the officers / officials of Machinery & Maintenance Division Khairpur @ Shikarpur in District Jacobabad and Kashmor @ Kandhkot in connivance and collusion with contractors were involved in misusing of authority and misappropriated the Government funds by violating codal formalities for payments as per relevant rules and thereby caused loss to the government exchequer to the tune of Rs.31,15,66,848/- (Rupees thirty one crore fifteen lacs sixty six thousand eight hundred and forty eight ).Therefore, the Petitioners /accused committed the offence of corruption and corrupt practices, and after completing the investigation, Reference No.23/2020 was filed against them.

3. Learned counsel for the Petitioners mainly contended that the Petitioners have been implicated in this case by NAB authorities with *mala fide* intention and ulterior motives at the instance of political rivals of petitioner Aijaz Hussain Jakhrani; that no such loss has been caused to the Government exchequer by the Petitioners. Learned counsel for the Petitioners, after arguing the matter at some length, submitted that though the allegations leveled against the Petitioners in the Reference are false

but inspite of that they are ready to deposit an amount equivalent to the extent of loss allegedly caused to Government exchequer by each of the Petitioner individually as allegedly attributed to each of them in the Reference within a reasonable time.

4. Learned Special Prosecutor NAB has objected to the acceptance of such proposal even if the entire amount is secured. He has contended that in one of the cases the Hon'ble Supreme Court has disapproved this kind of concession at the bail stage.

5. We have heard arguments advanced by the learned counsel for the parties and perused the material available on record.

6. The perusal of material available on record reveals that the documentary evidence has already been collected by the Investigating Officer and there is no apprehension of tampering with the evidence as all the P.Ws are official witnesses. The Reference has already been filed against the Petitioners before the Accountability Court at Sukkur, wherein the charge has been framed and some of the P.Ws have already been examined. The Petitioners are regularly attending this Court as well as learned Trial Court and did not misuse the concession of interim pre-arrest bail extended to them. The Petitioners are voluntarily ready to deposit the liability amount as leveled against each of them in the impugned Reference No.23 of 2020. The Hon'ble Supreme Court has also granted bail to accused on similar terms as discussed below.

7. The contention of learned Special Prosecutor NAB that the Hon'ble Supreme Court in the case of Rai Muhammad Khan v. NAB through Chairman and others (2017 SCMR 1152) has disapproved

this offer has been rebutted by learned counsel for the Petitioners by placing reliance on two unreported Judgments / Orders of Hon'ble Supreme Court in (i) C.P.No. 2300 of 2018 and (ii) C.P.No.1175-K of 2020 wherein the accused on depositing entire amount of alleged loss attributed to the accused were admitted to bail before arrest. The relevant portion of the Order dated **26-11-2020** passed in Civil Petition No.1175-K of 2020, is reproduced herein below:

*“We have observed that bulk of accused nominated in the reference are enlarged on bail either due to acceptance of plea bargain or had deposited their incurred liability with the trial court. Otherwise we have been informed that as per order of Accountability Court, Sukkur dated 27.07.2020 a letter bearing No.ABL/JCD/2(20) dated 27.07.2020 from Allied Bank Limited Jacobabad Branch was received to the trial court wherein it is submitted that DD bearing No.BBB1351295 dated 20.07.2020 amounting to Rs.34,72,100/- is genuine and the entry of the same has been made in the register in the name of trial court. **It is noticed that the pre-arrest bail of co-accused Mujeeb-ur-Rehman has been confirmed on deposit of pay-order in civil petition No.277-K/2020 by this Court vide order dated 15.07.2020. The petitioner has already deposited his individual liability of Rs.34,72,100/- before the learned trial court and leave this case has already been granted on 07.08.2020 at Karachi Branch Registry of this Court, hence, in the interest of safe administration of criminal justice, the petitioner be released on bail subject to his furnishing bail bond in the sum of Rs.5,00,000/= with two sureties each in the like amount to the satisfaction of the learned trial court.”***

8. Similar view was taken by Hon'ble Supreme Court on **26.12.2018** in the case of Mumtaz Ali v. The State through Chairman NAB (C.P.No.1149-K of 2018). The Order is reproduced below:

*“Mr.Muhammad Ashraf Kazi Senior Advocate Supreme Court, submits that the petitioner is ready and willing to deposit with the trial Court the entire amount of his liability so far determined by the prosecution.*

*Syed Amjad Ali Shah learned DPG NAB present in Court waives the notice and submits that in view of the case of Shamraiz Khan v The State (2000 SCMR 157) he would have no objection for the grant of a bail to the petitioner subject to his depositing the entire amount of his liability in this case being Rs.61,79,238/- (Rupees Sixty One Lac, Seventy Nine Thousand, Two Hundred and Thirty Eight) with the Additional Registrar of this Court at Brach Registry Karachi.*

*In these circumstances, this petition is converted into an appeal and allowed, the petitioner is admitted to bail subject to his depositing with the Additional Registrar of this Court the above amount.”*

9. These Orders are subsequent in time and passed by three Member Bench of Hon'ble Supreme Court, whereas, the reliance placed by learned Special Prosecutor NAB on the case of Rai Muhammad Khan (*supra*) was earlier in time and the Judgment is delivered by two Member Bench.

10. The case of the Petitioner Allah Ditto Panhyar in C.P. No.D-48/2021 is bail after arrest and rest of the Petitioners are already on interim bail before arrest. Like other petitioners, who have agreed with the proposition based on the authoritative judgments of the Hon'ble Supreme Court, that the entire amount of loss

allegedly caused by them shall be deposited by them in Court, the Petitioner Allah Ditto Panhyar is also ready to deposit an amount equal to the extent of his liability in Reference No.23 of 2020.

11. In view of above, the interim pre-arrest bail already granted to Petitioners is hereby **confirmed** subject to depositing entire amount equivalent to their respective individual liabilities mentioned in the Reference **through pay orders** as follows:

<b>Petitioner's Name</b>	<b>Liability</b>	<b>Petitioner's Name</b>	<b>Liability</b>
<b>Aijaz Hussain Jakhrani</b>	<b>Rs.5,17,53,500/-</b>	<b>Nazir Ahmed Malik</b>	<b>Rs.35,75,088/-</b>
<b>Aijaz Ahmed Khoso</b>	<b>Rs.8,64,863/-</b>	<b>Moula Bakhsh Noonari</b>	<b>Rs.10,11,942/-</b>
<b>Manzoor Ahmed Panhyar</b>	<b>Rs.29,41,135/-</b>	<b>Ghulam Fareed Mugheri</b>	<b>Rs.3,30,600/-</b>

and P.R bonds in the like amount to the satisfaction of learned Trial Court within a period of fifteen (15) days. Failure whereof, the interim pre-arrest bail granted to the aforementioned Petitioners shall stand recalled on expiry of fifteen (15) days from today and the defaulting Petitioner(s) will be taken into custody and remanded to jail till depositing the amount against their respective individual liability. Similarly, Petitioner **Allah Ditto Panhyar** is admitted to post-arrest bail subject to depositing amount of **Rs.26,26,941/-** through **pay orders** and PR bond in the like amount to the satisfaction of learned Trial Court.

12. Though the above order of confirmation of bail fully covers the case of all the accused facing trial before the Accountability Court in Interim Reference No.23 of 2020, however, learned Special Prosecutor NAB has raised novel objection of a kind of resjudicata on the petition No.D-1528/2020 filed by Aijaz Hussain Jakhrani for grant of pre-arrest bail in the said Reference. His main objection is that the petitioner in an earlier petition

No.D-6040/2019 against the NAB authorities has also sought bail in Reference No.23/2020 and therefore he cannot repeat the same prayer in subsequent petition. He has contended that CP No.D-6040/2019 has been dismissed by order dated **19.12.2020** by the Hon'ble High Court at Principal Seat Karachi and the instant petition is second petition for bail before arrest in the same Reference. We are surprised that the petition No.D-6040/2019 was filed/presented before the High Court of Sindh at Karachi in the year **2019** when Interim Reference No.23/2020 was not available even with the NAB authorities. Therefore we have examined the prayer of CP No.D-6040/2019 which negates the contention of the learned counsel for the NAB. The prayers in CP No.D-6040/2019 were as under:-

“It is prayed that this Hon'ble Court may graciously be pleased to issue writ/directions/order against the Respondents in the following manner:

- i. Restrain the Respondents from arresting the petitioner, without prior permission of this Court on the basis of any hidden inquiry or investigation, including the investigations pertaining to Provincial Highways Jacobbad, Education Works Department **in which no call-up notice has been issued to the Petitioner and in Reference No.10 of 2019, in which the Petitioner is not arrayed as an accused** or in the alternate grant Pre-arrest Bail.
- ii. Direct the Respondents to bring on record and produce in court the number and nature of the inquiry and investigations initiated against the Petitioner if any, along with complete record so that the petitioner can legally defend himself;
- iii. Direct the Respondents to provide protection to the life and liberty of the petitioner as guaranteed under the constitution of Islamic Republic of Pakistan.
- iv. Any other better and further relief, which this Hon'ble Court may deem fit under the circumstances.
- v. Cost.”

13. It is clear from the prayer clause that in CP No.D-6040/2019 the petitioner has not at all prayed for bail in Interim Reference No.23/2020 which was approved by Chairman NAB on **13.11.2020**. In fact the petitioner came to know about Interim Reference No.23/2020 during proceedings of CP No.D-6040/2019 at Karachi when he received a notice issued on **09.12.2020** by the Accountability Court for appearance of the petitioner in court on **17.12.2020**. The petitioner instantly filed the present petition on **15.12.2020** before this court within the jurisdiction of NAB, Sukkur and obtained pre-arrest bail on the same day even before the date of hearing of CP No.D-6040/2019 in the High Court of Sindh at Karachi. We do not know whether the date of hearing of Reference No.23/2020 before the Accountability court at Sukkur and hearing of petition at Karachi was same (17.12.2020) by co-incident or it was otherwise. Therefore the contention of counsel for the NAB that the earlier petition No.D-6040/2019 was also about Interim Reference No.23/2020 is contrary to the record. In these circumstances any observation by the Division Bench of High Court at Karachi in C.P.No.D-6040/2019 on Interim Reference No.23/2020 cannot have any bearing on the instant petition since the petitioner has not challenged Interim Reference No.23/2020 in the said petition nor the said petition was amended to include any relief against the Interim Reference No.23/2020. The interim order of bail before arrest passed by this court in the instant constitutional petition on **15.12.2020** cannot be considered as vacated by any order passed on **17.12.2020** or **19.12.2020** in any proceedings out of the jurisdiction of Sindh High Court Sukkur Bench.



14. Besides the above, the NAB authorities in their comments have not denied the factual position that the petitioner is already facing Reference No.02/2020 in which prior to filing said Reference the NAB authorities have issued him a call-up notice but in Reference No.23/2020 the NAB authorities have **not** issued any call-up notice to the petitioner contrary not only to the practice of NAB but also against the principle of natural justice. This conduct of NAB in preparation of Reference No.23/2020 against the petitioner was discriminatory since in all cases at the initial stage of inquiry NAB issues call-up notice to all suspects of offences under the NAB law. Learned counsel for NAB has not offered any explanation about failure of NAB to issue a call-up notice to the petitioner during the inquiry and investigation which culminated in Interim Reference No.23/2020 nor this glaring lapse on the part of NAB has been denied in their comments. The very fact that learned counsel for the NAB has placed Interim Reference No.23/2020 before the High Court of Sindh at Karachi in an already pending constitution petition without even putting the petitioner on notice by itself was malafide act on the part of NAB. Therefore, we do not find any force in the contention of NAB counsel that the earlier petition or any order passed in the said petition is in any way an impediment in the relief sought by the petitioner in the instant petition.

15. The allegation of malafide on the part of respondent is also born out from the facts that before filing any Reference the respondent on **03.07.2019** got the name of petitioner placed in the Exit Control List on the ground of some inquiry has been initiated by the NAB against the petitioner. Then the respondents on **14.01.2020** filed first Interim **Reference No.02/2020** against the

petitioner. As soon as the petitioner obtained pre-arrest bail in Reference No.2/2020, the respondent started another enquiry at the back of the petitioner and without any show cause notice or call-up notice to enquire from him anything about the said inquiry and investigation which ultimately culminated on **13.11.2020** in Interim Reference No.23/2020. The petitioner was not even interrogated by the Investigating Officer during the investigation prior to finalization of Reference No.23/2020. This is also factual position that the petitioner is a well-known political person who has political rivals and the possibility of their influence on the NAB authorities to keep the inquiry and investigation hidden from the petitioner cannot be ruled out. Even today an attempt has been made to interfere in the proceedings of this constitutional petition by Mr.Zain Soomro, Advocate as at the start of the proceeding he came forward with an application in his hand on behalf of complainant to become Intervenor in the instant petitions. However, to a question that under which provision of NAB laws or under any other law a complainant who set the prosecution in motion through State can be impleaded as an independent party. He had no answer and even otherwise this is against the High Court Rules to entertain an application during the court proceeding. In this back ground the conduct of NAB authorities that entire inquiry and investigation culminating in Interim Reference No.23/2020 were without call-up notice and/or without providing an opportunity of hearing to the petitioner can only be termed as an attempt to politically victimize the petitioner through the NAB. Unfortunately in the recent years the NAB has developed a reputation of an institution for political engineering in this

country and this belief of common man in gaining strength every day.

16. Be that as it may, the petitioner has categorically offered to deposit entire amount of alleged loss to the state money on account of any alleged corrupt practices by him. His offer is sufficient to confirm his interim pre-arrest bail by following the dictum laid down by the Hon'ble Supreme Court in the case of Shamraiz Khan v. The State (**2000 SCMR 157**) and followed in series of cases under the National Accountability Ordinance, 1999. The Hon'ble Supreme Court in the case of Shamraiz Khan had confirmed his pre-arrest only on accepting his offer to deposit an amount equalent to loss caused by him. It may be mentioned here that at the time of Shamraiz Khan case there was no concept of any plea bargain with the accused facing charges of corruption nor there was any law for the recovery of ill-gotten money. In this back ground, the scheme of National Accountability Ordinance, 1999 (NAO, 1999) is that once the petition/accused has offered to deposit the entire amount of alleged loss caused to the government exchequer by him at least half of the purpose of NAO, 1999 is instantly achieved. The primary purpose of the NAO, 1999 as set out in its preamble is to recover ill-gotten gain is accomplished without bargain and only penal aspect of NAO, 1999 is left to the Accountability Court. Such offer of the petitioner/accused also indicate his bonafide in challenging the allegation against him as false since this offer is without any condition and he knows that despite deposit of entire alleged amount if the evidence is brought against him before the Accountability Court he would be convicted. In view of this discussion, Petitioner/accused Aijaz Hussain Jakhrani has also made out a case of confirmation of bail before

arrest on merit in addition to his offer to deposit the alleged amount of loss attributed to him.

17. The observations made hereinabove are tentative in nature and will not influence the learned Trial Court while deciding the Reference on merits.

18. The aforementioned Petitions are **disposed of** in above terms. Office is directed to place a signed copy of this order in the captioned connected Petitions.

J U D G E

**Additional / Dissenting Note**

**Muhammad Faisal Kamal Alam, J.** – I agree with the Order, granting bail to the Petitioners No.2 to 6, on the terms that pre-arrest bail of Petitioners / accused, namely, Nazir Ahmed Malik, Aijaz Ahmed Khoso, Moula Bakhsh Noonari, Manzoor Ahmed Panhyar and Ghulam Fareed Mugheri is confirmed subject to depositing of their respective entire individual liability as mentioned in the Reference so also the Statement produced separately today by the learned Special Prosecutor NAB, through **Pay Orders** together with the P.R bonds in the equivalent amount to the satisfaction of learned Trial Court within a specified time and in case of default consequences will follow; **whereas**, Petitioner / accused Allah Ditto Panhyar has been admitted to post-arrest bail upon his depositing an amount of Rs.26,26,941/- through pay order and P.R bond in the like amount to the satisfaction of learned Trial Court, being his alleged individual liability as stated in the Reference No. 23 of 2020.

However, with due deference to my learned brother Mr. Justice Nazar Akbar, I do not agree with the conclusion drawn in the case of Petitioner Aijaz Hussain Jakhrani (in C. P. No. D-1528 of 2020). Record shows that vide Order dated 17-12-2020 passed in C. P. No. D-6040 of 2019, the

learned Division Bench of this Court at the Principal Seat, while refusing relief to the said Petitioner (Aijaz Hussain Jakhrani), did not extend him concession of bail in Reference No. 23 of 2020. Subsequently, a Review was preferred by the said Petitioner, which was also dismissed vide Order dated 15-01-2021. Although certain facts are undisputed with regard to pendency of this Constitution Petition filed by the said Petitioner, that is, present C. P. No. D-1528 of 2020 **sub judice** at the relevant time at Sukkur Bench and C. P. No. D-6040 of 2019 **sub judice** at the Principal Seat, but it is clearly mentioned in the Order of 15-01-2021 passed by the learned Division Bench at the Principal Seat on the Review application of said Petitioner, that factum of pendency of other Petition before the Sukkur Bench for same relief was not brought before the Bench hearing C. P. No. D-6040 of 2019. Once the concession of pre-arrest bail in the same Reference No. 23 of 2020 has been declined by another learned Division Bench of this Court, then, this Bench cannot grant the identical relief in the same Reference No. 23 of 2020, unless some new grounds have been agitated by the present Petitioner. In my considered view, the present C. P. No. D-1528 of 2020 is to be dismissed wherein the same relief of pre-arrest bail is sought, which has already been decided by another learned Division Bench of this Court as discussed in the preceding paragraphs. Consequently, this C. P. No. D-1528 of 2020 is dismissed and the interim bail granted earlier is recalled.

J U D G E

In view of the above dissenting Note, Office should place the above Order before the learned Senior Judge at Sukkur Bench.

J U D G E

J U D G E

Karachi, Dated: .03.2021