

**THE HIGH COURT OF SINDH, KARACHI**

C. P. NO. D-7446 / 2021

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Date Order with signature of Judge

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**Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Agha Faisal***

**Petitioner:** Nayer Bari,  
Through Mr. Shoukat Hayat,  
Advocate.

**Respondents:** The Chairman NAB & Others,  
Through Mr. Shahbaz Sahotra, Special  
Prosecutor NAB.

**Date of hearing:** 21.09.2022

**Date of Order:** 21.09.2022.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Petition, the Petitioner has impugned order dated 07.10.2021 passed by the Accountability Court No. IV at Karachi, whereby, the application of NAB in respect of return of seized articles received back by the Petitioner pursuant to order dated 30.6.2008 has been allowed.

2. Learned Counsel for the Petitioner submits that the said application was time barred and was hit by laches as it was filed after expiry of more than 12 years; that no such application can be allowed or entertained if it is not filed within a reasonable time; that the Petitioner is 82 years of age and after return of the seized articles he has consumed the same; that the trial is at the final stage and therefore, the impugned order is liable to be set aside or in the alternative matter be remanded after setting aside the same with directions to the trial Court to decide the fate of the seized articles at the time of announcement of the Judgment.

3. On the other hand, learned Special Prosecutor NAB has opposed this Petition on the ground that the seized articles are case property and were returned pursuant to promulgation of National Reconciliation Ordinance 2007 (“NRO”) which finally stands declared ultra vires by the Hon’ble Supreme Court; hence, the articles being case property are required for the completion of the trial, whereas, the delay if any, is not fatal.

4. We have heard learned Counsel for the Petitioner as well as learned Special Prosecutor NAB and perused the record. It is a matter of record that after promulgation of NRO, the petitioner made an application to the trial Court for release of properties in question and learned trial court vide its order dated 30.6.2008 ordered return of the same to the petitioner on the ground that Reference(s) in question stand terminated / withdrawn pursuant to NRO; hence, are no more required.

5. Insofar as the objection regarding delay or involvement of laches is concerned, primarily the same does not hold field or has any weightage inasmuch as there is no limitation prescribed for filing of such an application. While confronted, learned Counsel could not refer to any such provision, except that the same ought to have been filed within a reasonable time. It is an admitted position that the articles in question were case property and were properly seized by FIA / NAB authorities, whereas, they were returned to the Petitioner vide order dated 30.06.2008 on the application of the Petitioner pursuant to promulgation of NRO and abetment of the proceedings against the Petitioner. Thereafter, NRO was declared as ultra vires by the Hon’ble Supreme Court vide its Judgment dated 16.12.2009 passed in C.Ps. No. 76 to 80 of 2007 and 59 of 2009 and Civil Appeal No. 01 of 2009. Once it is not in dispute that NRO pursuant to which the seized articles were returned to the petitioner has been declared to be ultra vires and *non-est*, whereas, the case stands

reopened from where it was terminated, there was no justification for the Petitioner to retain the seized articles. In our view, instead he ought to have returned them voluntarily and even without a formal application.

6. Moreover, it is a case property and notwithstanding that most of the evidence is completed, the prosecution can always seek amendment in the charge and lead further evidence pursuant to return of the seized articles which as observed is a case property and without which the prosecution's case would be seriously prejudiced at the trial.

7. In view of hereinabove facts and circumstances of this case, in our considered view, the learned trial Court has passed a fair and reasoned order which does not require any interference by this Court in its Constitutional jurisdiction; therefore, by means of a short order on 21.09.2022, this Petition was dismissed and these are the reasons thereof.

**J U D G E**

**J U D G E**

Arshad/