

on 20.01.2022, the Director General NAB (Karachi) directed to Deputy Director/IO NAB Karachi to hold an inquiry and submit final report against the petitioner on the same allegation an inquiry of which stood already closed. Besides, the D.G NAB (Karachi) on the same date issued NBW against the petitioner without assigning grounds of arrest as required by law and in pursuance thereof, he was arrested on the same date. He also contends that reassigning of inquiry was *mala fide* whereby the entire family of the petitioner has been roped into, violating the fundamental rights of all siblings of the petitioner. He also contends that nothing was mentioned in the warrant of arrest which could show any substance having been available with the NAB against the petitioner and there is no difference in substance of earlier inquiry and present one. He also contends that nothing has been brought on record that once the inquiry was closed then how the same was again initiated without availability of fresh substance with the NAB; hence, the petitioner's arrest pursuant to the NBW was illegal and in violation of fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973 (**"the Constitution"**). The petitioner was admitted to bail, vide order dated 04.03.2022 passed in Bail Application No. 06/2022 by the Administrative Judge, Accountability Courts Karachi, who in his said order has observed that the Inquiry appears to be *mala fide* and without any substance. He while referring to the case of *Muhammad Iqbal Khan Noori vs. National Accountability Bureau (NAB) and others* (**PLD 2021 SC 916**) also contends that this Court under Article 199 of the Constitution has power to judicially review the order passed by the NAB, regarding arrest and detention of a person. Articles 4 and 9 of the Constitution mandates that no action detrimental to the life, liberty, body, reputation, or property of any person shall be taken except/save in accordance with law and Article 10 (*ibid*) commands that any person

who is arrested shall not be detained in custody without being informed of the grounds for such arrest. Hence, the petitioner has good case for the grant of relief sought by him.

On the other hand, learned Special Prosecutor NAB maintains that an Inquiry has been authorized by D.G NAB (Karachi) vide order dated 20.01.2022 against the petitioner/accused and others, who is/ are allegedly involved in the commission of offence(s) of corruption and corrupt practices by accumulation of assets beyond known sources of income. He further maintains that earlier Inquiry against the petitioner was approved by the competent authority for closure on the basis of the findings of Final Inquiry Report, while the present Inquiry against the petitioner is based on fresh charges on the basis of properties/ assets unearthed subsequently, details whereof have been furnished by the NAB with Para-wise Comments to the petition. He also maintains that the fresh Inquiry and petitioner's arrest was in accordance with law.

Heard the learned counsel for the petitioner and Special Prosecutor NAB and perused the material available on record.

It appears from the perusal of the record that earlier Inquiry/ case against the petitioner on the charges of "accumulation of assets beyond known sources of income" was approved for closure by the competent authority of NAB with observations *"the closure of this Inquiry only relates to the allegations mentioned above. However, it will not affect any other case, if already under Inquiry and shall not prevent initiating any new case under the Ordinance"*. The present Inquiry is being made against the petitioner and others for *prima facie* their involvement in commission of offence(s) of corruption and corrupt practices by accumulation of assets beyond known sources of income on the basis of 27 immovable properties allegedly owned by or

belonging to the petitioner and his family members. Out of them about 24 properties have allegedly been purchased or sold in the years 2017 to 2021. Hence, the contention that the fresh Inquiry is on the same allegation Inquiry of which stood already closed, is bereft of reasons.

With regard to contentions of issuance of NBW against the petitioner without disclosing the grounds and arrest of the petitioner on the same day of issuance of NBW are concerned, it appears that it is specifically mentioned in the NBW (*Annexure "D" page 21*) that the petitioner is accused of the offence(s) of corruption and corrupt practices, under section 9 (a) of the National Accountability Ordinance, 1999 (**"the Ordinance"**) and Schedule thereto. The NBW has been issued by the D.G Nab (Karachi) by exercising his powers under Section 34-A read with Sections 18 (e) and 24 (a) of the Ordinance. Section 18 (e) (*ibid*) authorizes the Chairman NAB and such members, officers or servants of the NAB to exercise for the purpose of an inquiry and/or investigation the power to arrest any person, and all the powers of an officer In-charge of a police station under the Code of Criminal Procedure, 1898. Section 24 (a) (*ibid*) empowers the Chairman NAB, at any stage of the inquiry or investigation under the Ordinance, to direct that the accused, if not already arrested, shall be arrested. In the case of *Khan Asfandyar Wali and others vs. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607)*, the Apex Court has held that Section 24(a) is *ex-facie* not *ultra vires* the Article 25 of the Constitution. Section 34-A (*ibid*) authorizes the Chairman NAB to delegate any of his powers to and authorize performance of any of his functions by an officer of the NAB as he may deem fit and proper for carrying out the purposes of the Ordinance. In the instant case, the D.G Nab (Karachi) has issued the NBW against the petitioner by exercising his delegated powers under Section 34-A (*ibid*). Needless to mention here that a Warrant of Arrest is required to

be executed soon after its issuance by the competent authority, and there is no legal embargo on its execution on the same day.

As regards the observation of the Administrative Judge, Accountability Courts Karachi, it is suffice to say that the observation so made by the Court while granting or rejecting a bail application is always of tentative nature and no defence can be made by an accused on the basis thereof.

In the case of *Muhammad Iqbal Khan Noori (supra)*, the Honorable Supreme Court while admitting the said petitioner on bail has held that the High Court under Article 199 of the Constitution has power to judicially review the order passed by the NAB, regarding arrest and detention of a person. We are conscious of the fact that this Court under Article 199 of the Constitution can pass appropriate orders for the enforcement of the Fundamental Rights. However, in the case in hand, the petitioner has failed to establish that the issuance of NBW by the D.G. NAB (Karachi) was without jurisdiction and his arrest was not for an offence under the Ordinance.

For the foregoing facts and reasons, we find no merit in this Constitution Petition, which is dismissed, accordingly.

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