

ORDERSHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Constitution Petition No.D-1051 of 2023

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**DATE**                      **ORDER WITH SIGNATURE OF JUDGE**

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*Justice Mrs. Rashida Asad.*  
*Justice Mr. Khadim Hussain Soomro,*

1. For orders on office objection.
2. For hearing of main case.

**28-09-2023.**

M/s Mujeeb-ur-Rehman Soomro, Bahawaluddin Shaikh and Mir Ali Nawaz Jagirani, Special Prosecutors NAB.

Mr. Hamayoon Shaikh advocate for respondent No.2.

**ORDER**  
**06-10-2023**

**KHADIM HUSSAIN SOOMRO, J.** The petitioner being aggrieved and dissatisfied with the impugned order dated 14-04-2023, passed by learned Accountability Court-III, Sukkur, in Reference No. 03/2020 [Re. The State Vs. Iqbal Hussain Jmani & others], whereby the learned Accountability Court-III, Sukkur, returned the reference to Chairman NAB through D.G NAB, Sukkur, with direction to present it before the concerned Court/forum as provided under the law.

2. Facts of the case in brief are that upon a complaint regarding misappropriation of wheat stocks at different PRCs and Flour Mills of District Khairpur Mirs, an inquiry was authorized, which was subsequently upgraded into investigation vide letter dated 31 May 2019. In the light of allegations pertaining to a huge shortage in wheat stock, physical verification of Government wheat stocked at different PRCs and Flour Mills was carried out in the presence of officers/officials of the Food Department and Judicial Magistrate, Khairpur Mirs. It is further come on record that 6 PRCs and 4 Flour Mills/PRCs were visited, and at 9 places, wheat shortage was unearthed. The investigation report revealed that after physical verification, it was established that accused No.1 to 5, being in-charge of PRCs, in active connivance of accused No.6 to 7 (Haresh Mal

and Faisal Memon, who entered into PB), have misappropriated wheat stock of the Government.

3. The investigation report further revealed that accused Haresh Mal against the allegation of misappropriation caused a loss to the Government exchequer of Rs. 452,068,370/- and Muhammad Faisal Memon caused a loss to the Government exchequer of Rs. 69,891,250/- who entered into a plea bargain in instalments which was approved by Accountability Court.

4. The investigation report further unveils that Abdul Shakoor Memon was released by Accountability Court U/S 9(c) of NAO, 1999; therefore, he is not arrayed as an accused. The evidence collected during the investigation has established that the accused No.1 to 7, in connivance and in collusion with each other, entered into a plea bargain (Haresh Mal & Muhammad Faisal Memon) dishonestly misappropriated Government wheat stock which caused a huge loss to Government Exchequer by misappropriating 19,118x Jute and 586,676x PP bags, weighing a total of 31,245.600 metric tons from wheat stock of District Khairpur Mirs, amounting to Rs. 101,6,724,670/-. During the investigation, accused Haresh Mal and Faisal Memon entered into PB in instalments for a total amount of Rs. 521,959,620/-. The recovered amount is Rs. 294,039,505/- (the remaining amount Rs. 227,920,115/- defaulted, it will be recovered U/S 33 (e) of NAO, 1999 as per agreement); the Reference was filed for embezzled amount of Rs. 494,765,050/-. The accused persons committed the offence of corruption and corrupt practices as defined under Section 9 (a), (iii) and (xii), punishable U/S 10 of NAO, 1999 and Schedule thereto.

5. The accused filed an application before the Accountability Court-III, Sukkur, for the return of the reference, which has been allowed by the learned Accountability Court-III, Sukkur, vide impugned order dated 14.04.2023 with direction to return the reference to Chairman, NAB through D.G NAB Sukkur, hence liable to be set aside.

6. Learned Special Prosecutor, NAB argued that the learned trial Judge has failed to appreciate that amount of Plea Bargain is part of offence, as described in NAO; as such, the learned trial court has jurisdiction to proceed with the reference in accordance with the law. Per prosecutor,

learned trial Judge has also failed to appreciate section 5(O) of NAO, which prescribes that the amount of offence must be of Rs. 500 Million or above and in present case, the amount of offence is above Rs.500 Million, which also includes amount of Plea Bargain; he further argued that there is no such provision under the NAB law which empowers the trial Court to return or transfer the pending references to the Bureau on its own without consultation of concerned authority. Learned Prosecutor further argued that recently amended Act, 2022 is also silent regarding the return of reference to NAB by the Accountability Court, even though nowhere is expressly provided that the Accountability Court can return the reference to the NAB; on the contrary, he contended, has ample powers to decide the reference on merits and in accordance with the law; hence the impugned order passed by the learned Accountability Court is all along out of the way without adopting the proper procedure provided under the NAB law, therefore, the impugned order is liable to be set aside and the learned trial/Accountability Court be directed to proceed with the matter in accordance with law.

7. We have heard the learned counsels for the parties and perused the material available on the record. The Accountability Ordinance, 1999 ("NAB Ordinance") by the National Accountability (Amendment) Act, 2022 ("First Amendment") and the National Accountability (Second Amendment) Act, 2022 ("Second Amendment") were called into questions in **Constitution Petition No. 21/2022, and C.M.A. 5029/2022, Imran Ahmad Khan Niazi v. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another**, whereby the Supreme Court of Pakistan declared those amendments as null and void, with further directions to the trial courts to proceed with the matters in accordance with the law.

The relevant para of the judgment is reproduced as under:-

"49. On account of our above findings, all orders passed by the NAB and/or the Accountability Courts placing reliance on the above Sections are declared null and void and of no legal effect. Therefore, all inquiries, investigations and references which have been disposed of on the basis of the struck down Sections are restored to their positions prior to the enactment of the 2022 Amendments and shall be deemed to be pending before the relevant fora. The NAB and all Accountability Courts are directed to proceed with the restored proceedings in accordance with law. The NAB and/or all other fora shall forthwith return the record of all such matters to the relevant fora and in any event not later than seven days from today which shall be proceeded with in

accordance with law from the same stage these were at when the same were disposed of/closed/returned.”

8. It is a matter of fact and record that in the wake of the Apex Court judgment, all the references have been returned to the respective trial courts. However, the counsel for the respondents informed that the respondents, after obtaining bail, have joined the trial; hence, the instant petition has become infructuous.

9. In view of the above, this petition has achieved its purpose; therefore, it has become infructuous. Accordingly the same is **disposed of** as being infructuous.

10. These are the reasons for our short order dated 28-09-2023.

J U D G E

J U D G E

Nasim/PA