

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Muhammad Humayon Khan

C. P. No. D-1657 of 2017

Sultan Qamar Siddiqui ----- Petitioner

Versus

National Accountability Bureau & others ----- Respondents

- 1) **For hearing of CMA No. 11836/2017.**
- 2) **For hearing of CMA No. 11837/2017.**
- 3) **For hearing of CMA No. 8272/2017.**
- 4) **For hearing of main case.**

Date of hearing: 21.04.2017.

Date of order: 21.04.2017.

Petitioner: Through Mr. Khawaja Shamsul Islam along with Muhammad Shahzad Advocates.

Respondents: Through Mr. Muhammad Altaf Special Prosecutor NAB along with Irfan Ali I.O./AD NAB.

ORDER ON CMA AT S.No.2

Muhammad Junaid Ghaffar, J. This is an application (CMA No. 11837/2017) under Article 199 of the Constitution being supplemental in nature to the instant petition, filed on behalf of the Petitioner with a prayer to suspend order dated 18.4.2017 passed by the learned Judge Accountability Court No.II at Karachi, whereby, the Petitioner has been remanded to jail custody and consequently to release the Petitioner forthwith.

2. Learned Counsel for the Petitioner submits that previously the Petitioner was in custody of Rangers from 17.6.2015 to 26.10.2015 and thereafter, was allegedly implicated in FIR No. 195/2015 and was

accordingly arrested. He further submits that this FIR was then transferred to the Military Court; however, vide order dated 12.5.2016 the said Court after having found no evidence, exonerated the Petitioner but he was not released and instead was sent to Central Jail without any lawful authority. Per learned Counsel thereafter, vide order dated 29.12.2016 passed in C.P. No. D-5564/2016 the Petitioner was directed to be released. However, once again a call up notice dated 10.3.2017 was issued by NAB and the Petitioner immediately filed instant Petition and on 20.3.2017 ad-interim pre-arrest bail was granted but again on 18.4.2017 the Petitioner was arrested and produced before the Accountability Court and despite presentation of the order of ad-interim pre-arrest bail, the learned Judge of the Accountability Court remanded the Petitioner to Jail custody on the ground that a Reference bearing No. 12/2017 has been filed, hence this application. Learned Counsel has referred to Section 17(d) and Section 18 of the NAB Ordinance, and contends that the NAB Authorities have acted malafidely by discreetly filing the Reference on 28.3.2017, whereas, on 10.4.2017 in the instant Petition they had sought time to file comments and on such date they did not disclosed to the Court that any Reference has been filed. Learned Counsel has also referred to C.P. No. D-25/2017 filed by the wife of the Petitioner, wherein, NAB Authorities filed comments, but in that case also they did not disclosed that any Reference has been filed. He has also referred to Section 10 of the NAB Ordinance and submits that even if there are two alleged offences, the punishment is to be given in terms of Section 10 *ibid*, whereas, in terms of Section 17(d) of the NAB Ordinance even if there are more than one offence of the same kind the accused is to be charged with and tried at one trial for any such number of offences. In support of his contention he has relied upon *Proceedings against:- Justice (R) Iftikhar Hussain Chaudhry and 10 other Judges (PLD 2011 SC 197)*, *The State V. Nasir Javed Rana, Civil Judge 1st Class/Magistrate Section 30, Rawalpindi (PLD 2007 KARACHI 469)*, *(PLD 2005 SC 86)*, *Ghulam Hussain Baloch and another V. Chairman, National Accountability Bureau Islamabad and 2 others (PLD 2007 Karachi 469)*, *Raja Muhammad Zarat Khan V. Federation Of Pakistan through Secretary, Ministry of Cabinet Division & 2 others (PLD 2007 Karachi 597)*, *Sardar Amin Farooqui V. Chairman NAB and another (SBLR 2014 Sindh 766)* and while concluding he submits that the Petitioner is under illegal detention as time and again he has been put behind the bars for no justifiable reason; therefore, this Court while

exercising the Constitutional Jurisdiction under Article 199 is competent to set the Petitioner at liberty.

3. On the other hand, learned Special Prosecutor NAB submits that the ad-interim pre-arrest bail granted by this Court pursuant to a call up notice is in respect of a different inquiry, whereas, Reference No. 12/2017 has been filed in respect of a separate inquiry. He further submits that Section 9(a) provides different offences, whereas, in respect of the Reference in question no call up notice was required to be issued as the plea of the Petitioner was already recorded while in custody, and therefore, he has been rightly arrested in the said Reference. In support he has relied upon *Noor Muhammad & others V. The State and others (2015 P.Cr.L.J. 1569)* and orders passed in C.P. No. 298-K/2015 and other connected matters.

4. We have heard the learned Counsel for the Petitioner as well as Special Prosecutor NAB along with the Investigation Officer. This case has a chequered history and for proper appraisal, it would be relevant to record certain facts which are though not directly connected with this Petition and the listed application, but in our opinion are necessary to be discussed. We may also observe that along with this application a contempt application has also been filed on behalf of the petitioner, wherein, the Investigation Officer as well as the learned Judge, Accountability Court No.II at Karachi, who passed the order for jail custody, have been cited as alleged contemnors, on which no counter affidavit has been filed by the Investigation Officer, whereas, we have not yet issued any formal notice to the learned Judge, Accountability Court, and have only called for comments to have proper assistance, therefore, the observations hereinafter, shall not prejudice the case of alleged contemnor(s), and adverse findings, if any in this order, again shall not be an obstacle for them to defend the contempt application which shall be decided on its own independent merit and findings.

5. The Petitioner was appointed as Director of the Fisherman Cooperative Society Limited in 2014 and thereafter, was elected as its Vice Chairman. It appears that his brother was first taken into custody on 27.5.2015 and was released on 6.6.2015 but again Rangers arrested his brother on 3.7.2015. Simultaneously, the Petitioner was also arrested on 17.6.2015 and was produced before Anti-Terrorism Court

No.I at Karachi on 18.6.2015 and an order of his preventive detention was obtained for three months pursuant to Crime No. 195/2015 at P.S. Sachal. From 17.6.2015 till 26.10.2015 he was confined at Mitharam hostel which accidentally is also a declared Police Station of NAB. During this period, it is stated that he was interrogated continuously for his assignment as Vice Chairman and Acting Chairman of the Fisherman Cooperative Society Limited. Subsequently, on 26.10.2015 his custody was handed over to Superintendent Central Prison, Karachi when through a Notification, FIR No. 195/2015 at P.S. Sachal was transferred to the Military Court. The Petitioner challenged these proceedings through a Petition bearing No. 134/2016 but the said Petition was dismissed. Thereafter, the Petitioner was tried by the Military Court at Malir Cantt., however, nothing was found against the Petitioner and he was honourably acquitted from the charges by the Military Court but again the Petitioner was involved in FIR No. 624/2015 at P.S. Shahrah-e-Faisal. Thereafter, a Petition was filed by the wife of the Petitioner bearing No. 5564/2016 and vide order dated 29.12.2016 the Petitioner was released by a learned Division Bench of this Court. It further appears that Petitioner's family was also issued notice by NAB Authorities and after a call up notice was issued to the wife of the Petitioner, a Petition bearing No. 25/2016 was filed and she was granted bail on 2.11.2016. Thereafter, the Petitioner was also issued a call up notice dated 10.3.2017 against which instant Petition was filed and he was granted ad-interim pre-arrest bail by this Court vide order dated 20.3.2017 and the matter was posted for 10.4.2017 for confirmation of bail or otherwise and on 10.4.2017 the Special Prosecutor NAB sought time to file comments. It further appears that on 28.3.2017 a Reference was filed by NAB under Section 18(g) read with Section 24(b) of the NAB Ordinance, which was duly signed by the Director General NAB on 17.3.2017 against the Petitioner wherein, he was shown as not arrested. Since there was no Administrative Judge designated amongst the Judges of the Accountability Court(s), the Reference was kept pending. On 7.4.2017 on the basis of Notification dated 3.4.2017 issued by Ministry of Law and Justice, Government of Pakistan, Islamabad, a learned Judge of the Accountability Court No. III was appointed / designated as Administrative Judge of Accountability Courts and the Reference was placed for perusal and vide order dated 10.4.2017 the said Reference was assigned to Accountability Court No. II and on the very same date i.e. 10.4.2017 after receiving the Reference

and on the ground that the Petitioner was not shown as not arrested non-bailable warrants were issued against the Petitioner by adjourning the matter to 26.4.2017 and on the basis of non-bailable warrants on 10.4.2017 the Petitioner was arrested and was produced before the Court with a submission report and on the said report through an autographic order dated 18.4.2017 the Petitioner was sent to jail custody.

6. The first concern of the Court in this matter is regarding the conduct of NAB Authorities during pendency of this Petition as well as the earlier Petition bearing No. D-25/2017. The said Petition was filed by the wife of the Petitioner seeking the following prayer(s):-

- “a) **Direct the Respondents to provide details of cases registered against the husband of the Petitioner namely Sultan Qamar Siddiqui and his brother namely Hussain Umer Siddiqui or his immediate family members in entire Sindh by the Respondents or their officials.**
- b) Prevent the Respondents not to cause harm or coercive action through officials to the husband of the Petitioner, his brother and their family members.
- c) Restrain the Respondents, their officials or subordinates from harassing, torturing, coercing and arresting the husband of the Petitioner, his brother and their families in any manner whatsoever.
- d) Direct the Respondents to place all the material available against the husband of the Petitioner and his brother including the complaint(s) if any with the gist of allegations.
- e) **Direct the officials of the Respondents No. 4 & 5 (D.G. NAB, Sindh) to place all the record and gist of inquiry conducted from Sultan Qamar Siddiqui and Hussain Umer Siddiqui when they were in custody with the Rangers during the months of June, 2015 to September, 2015.**
- f) Direct the Respondents No. 1 to produce the R & P of the trial conducted by the Army Court against Sultan Qamar Siddiqui and Hussain Umer Siddiqui in FIR No. 195/2015 of P.S. Sacchal, Karachi.
- g) Grant permanent protection to Sultan Qamar Siddiqui and Hussain Umer Siddiqui from their arrest in any case without the permission of this Honourable Court.
- h) Direct the Respondents and their subordinates not to arrest Sultan Qamar Siddiqui and Hussain Umer Siddiqui in any case without the permission of this Hon’ble Court till the disposal of this Petition.
- i) Grant any other relief or reliefs, which this Hon’ble Court may deem fit and proper under the circumstances.”
(Emphasis Supplied)

7. It appears that in the aforesaid Petition the NAB Authorities filed comments on 28.3.2017 and relevant Para No. 3 reads as under:-

“That in respect of contents of Para 3, it is submitted that the answering Respondent has completed investigation against the husband of Petitioner in respect of allegations of accumulation of assets beyond known source of income and an inquiry in respect of allegation of misuse of authority during his tenure as Vice-Chairman Fisherman Cooperative Society Ltd is being conducted. (Copies of the authorization letters are annexed herewith for ready reference and marked as D5/A and D5/B).

8. Perusal of the aforesaid comments filed on 28.3.2017 reflects that when these comments were presented before this Court, Reference No.12/2017 had in fact already been signed by the competent authority on 17.3.2017 and on this very date i.e. 28.3.2017, it was already presented or was to be presented before the Accountability Court; however, no such disclosure regarding signing of the Reference and its presentation on the very same date when these comments were presented in Court was disclosed. Based on these comments and for the reason that there was no call up notice issued to the Petitioner in respect of any such inquiry till that date, the Petition was dismissed as withdrawn on 5.4.2017. It may be of relevance to mention that by such date the call up notice in respect of one inquiry had been issued on 10.3.2017 and the Petitioner had obtained ad-interim pre-arrest bail on 20.3.2017 through instant petition. The Special Prosecutor NAB as well as the I.O. were confronted as to why on 28.3.2017 the signing of the Reference and its presentation before the Accountability Court on the very same date was not disclosed, whereas, in the Petition (C.P. No. D-25/2017) the main prayer was to the effect that all such matters including Reference inquiry etc. pending against the Petitioner be disclosed as the history of the Petitioner reflects that time and again he had been arrested in one case or the other. The learned Special Prosecutor NAB as well as I.O. could not satisfactorily respond to us. It is further noted that even on 10.4.2017 when this Petition was fixed before this Court again no such disclosure regarding the Reference filed before the Accountability Court was made and instead time was sought to file comments. This conduct of NAB Authorities is not appreciable. It appears that they were acting discreetly and with some mischief by not disclosing the true facts before the Court. Once they had filed the comments on 28.3.2017, they were duty bound to disclose the entire

facts before the Court including but not limited to signing of the Reference by the concerned Authorities on 17.3.2017 and its filing before the Accountability Court on the very same date i.e. 28.3.2017. Instead they only chose to state that investigation in one case has been completed, whereas, inquiry in respect of other is going on. They even failed to disclose the two distinct inquiry Numbers already assigned by them.

9. The filing of Reference and its procedure is dealt with in Section 24 of the NAB Ordinance It would be advantageous to refer to the said provision which reads as under:-

“24. [Arrest]

- (a) The Chairman NAB shall have the power, at any stage of the [inquiry or] investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested.
- (b) If the Chairman, NAB [or an officer of the NAB duly authorized by him.] decides to refer the case to a [****] Court, such reference shall contain the **substance of the offence or offences** as the case may be alleged to have been committed by the accused and a copy of such reference shall be forwarded to the Registrar of the [****] Court to which the case has been sent to try the accused, and **another copy shall be delivered to the accused.**
- (c)
- (d)
- (e)
- (f)

Perusal of subsection (b) of Section 24 which is relevant in this matter reflects that if the Chairman NAB or an officer duly authorized decides to refer the case to a Court, such reference shall contain the **substance of the offence or offences** alleged to have been committed by the accused and a copy of such reference shall be forwarded to the Registrar of the Court to which the case has been sent to try the accused, and **another copy shall be delivered to the accused.** On our repeated query we have not been properly assisted nor satisfied as to when the copy of the Reference was delivered to the accused. The Special Prosecutor NAB and the I.O. of the case present in Court

submits that as a routine and practice, the copy of Reference and other related material including the investigation report and 161 Cr.P.C statements are submitted before the Registrar of the Accountability Court with extra copies of the same for onward delivery to the accused. Perusal of the order passed by the Registrar in this matter on 28.3.2017 also reflects the same position that prosecution has also filed (02) sets of instant Reference along with the documents, however, it has not been brought to our knowledge that in what manner and how and when the copy of Reference was delivered to the accused in compliance of Section 24(b) of the NAB Ordinance. The Special Prosecutor NAB contends that such copies are provided to the accused in terms of Section 265-C, Cr.P.C at the time of trial.

In reply to our calling of comments on the contempt application and before the reasons could be recorded, the learned Judge, Accountability Court No.II, at Karachi vide report dated 26.4.2017 furnished through MIT-II has stated as follows;

It is further submitted that accused was arrested and presented before this Court before date of hearing and all the documents in compliance of Section 265-C Cr.P.C. will be provided to the accused on date of hearing, i.e. 26.04.2017. Learned Counsel has not even demanded copies. Today this court has supplied all copies to the accused Sultan Qamar Siddiqui as required u/s 265-C Cr.P.C.

Though we had made a specific query from the Accountability Court while calling for comments, as to when, how and in what manner copy of Reference No.12 of 2017 was delivered to the accused as provided under Section 24(b) of NAB Ordinance, 1999, but to our dismay and surprise, the reply as above does not answer our query in any satisfactory manner. It only states that copies will and were supplied to the accused in terms of Section 265-C, Cr.P.C. This in our considered view is not the issue before us. We, in the peculiar facts of this case are more concerned about compliance of Section 24(b) of the NAB Ordinance, and not with the procedure as provided under the Criminal Procedure Code, whereas, the reply as above clearly reflect that the said provision was never complied with nor the Accountability Court is either bothered about it, being content with the procedure as laid down in the Criminal Procedure Code.

10. Nonetheless, the peculiar facts of this case demands, that why in this matter, copy of Reference was neither disclosed nor delivered to the accused, notwithstanding the fact that it was available duly signed, when comments were filed in CP No.D-25/2017 on 28.3.2017. We have asked the Special Prosecutor NAB as well as the I/O that whether any call-up Notice was issued to the petitioner before filing of Reference No.12/2017, to which their stance is that no call-up Notice was required to be issued in this matter as the accused was in custody when NAB had recorded his plea, but despite query of the Court no such copy of the Petitioner's statement or plea has been placed on record. Once the Reference was signed on 17.3.2017 the NAB Authorities were duty bound to place it before the Court or at least disclose it while filing comments in C.P. No. D-25/2017 or should have delivered the same in this Petition when they were on notice before the Court on 10.4.2017 on which date they again discreetly obtained non-bailable warrants for the arrest of Petitioner. We have also been informed that no such copy of Reference as a matter of routine and practice is delivered to the accused as mandated in Section 24(b) of the NAB Ordinance and rather the procedure as provided in Section 265-C Cr.P.C is followed. With respect we may observe that this is a special law and provides that the provision of this Ordinance will prevail wherever deemed necessary and therefore, in our considered view the provisions of Section 24(b) of the Ordinance are required to be mandatorily followed. Section 3 of the NAB Ordinance clearly provides that the provision of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force. This provision does not need any further interpretation when Section 24(b) clearly provides that when the Reference is filed before the Accountability Court, a copy of the Reference is to be delivered to the accused and by the word delivered in our considered view, it means that it must be provided to the accused either if he is in custody or otherwise. It may be of relevance to observe that legislature has consciously used the words "**delivered**" in this sub-section, which ordinarily means "*to carry and turn over (letters, goods etc) to the intended recipient*" as against the word "**sent**", as has been used commonly in various other statutes. This in our view has specific significance and therefore cannot be ignored or brushed aside so lightly as if its Non-compliance has no material effect. It has such significance and bearing in view of the fact that even before filing a Reference, inquiry and

investigation goes on, and even during such proceedings, accused can be arrested on the directives of Chairman NAB as provided in Section 24 of the NAB Ordinance. It is not the case in this matter that the accused was not available with the NAB Authorities, on 17.3.2017 when this Reference was signed, as the Petitioner's wife was very much before the Court wherein, on 28.3.2017 NAB Authorities filed their comments but neither did they disclosed signing and filing of Reference nor a copy was provided and further it was also not disclosed to the Court that on the very same date the Reference was presented before the Accountability Court. In fact in the comments there is no disclosure of any Reference and it is only stated that investigation in this regard has been completed. It is not a case wherein they could not locate the accused for delivering the Reference accordingly.

11. It is also noted with concern that Investigation Officer has produced before us two separate authorizations bearing Nos. 242126 dated 24.8.2016 in respect of alleged offence of having assets beyond known sources of Income, and authorization No. 242147 dated 9.12.2016 (surprisingly both are in Serial Nos. i.e. ...146 and ...147 but have different dates) in respect of alleged offence of misusing authority as holder of public office. In both the authorizations, though it is stated that such offence is cognizable under Section 9(a) and is punishable under Section 10 of the NAB Ordinance, but in both these authorizations there is no specific mention of any sub-section of Section 9(a) *ibid*, so as to specify the alleged offence and to draw any inference that whether the case will be proceeded with separate and distinct References or not. All along the NAB authorities have not acted with clean hands and we are not sure that whether they have acted so only in this particular matter, or is it a matter of routine and practice for them. Once they say that there are two separate inquiries pending against the petitioner, then from day one they should have disclosed them in clear and express words stating the inquiry number(s) distinctly and so also the alleged offence with specific sub-section of Section 9(a) of the Ordinance so as to apprise the accused during inquiry that they intend to proceed with these inquiries separately and after conclusion, there will be separate references, if any.

12. After having perused the record and the above discussion, in our considered view, this case with its peculiar facts appears to be a case

wherein the NAB Authorities have prima facie acted with mischief and malafide. They acted discreetly by withholding proper disclosure before the Court as well as in defiance of the mandatory provisions of the NAB Ordinance including Section 24(b). It further appears that even if the contention of the NAB Authorities is accepted that they are making two inquiries in respect of different offences as provided in Section 9(a) of the Ordinance, even then apparently both these inquiries were going on simultaneously and in fact according to their own version the investigation in respect of which Reference has been filed stood completed when the Petitioner was in custody and his plea was recorded therein. We fail to understand that what prevented the NAB Authorities from arresting the Petitioner when he was already in custody. They kept the inquiry pending though they had recorded the plea of the Petitioner, and therefore, never issued any call up notice in respect of the Reference in question and as soon as he sought ad-interim pre-arrest bail in respect of the other inquiry, he was arrested by filing the Reference and withholding such information from the Court as well as the Petitioner. It is needless to mention that life and liberty of a person is guaranteed under the Constitution, whether he is an accused or otherwise. The Constitution provides basic fundamental rights to every citizen including an accused and the law as well gives mandatory protection and to be dealt with in accordance with law is an inalienable right of a citizen. Since this is only an order on an application, we have refrained ourselves from giving any final declaration in the matter.

13. A learned Division Bench of this Court in the case of ***Shoaib Warsi and another v. Federation of Pakistan and others*** (**PLD 2017 Sindh 243**) has strongly deprecated the conduct of NAB authorities, who without issuance of call-up Notices as mandated under Section 19 of the NAB Ordinance, proceed further for the purposes of further inquiry / investigation from accused who are already under custody in some other cases and even go to the extent of making arrests. In that case the petitioners were in a similar situation in that they were also under custody / detention under Section 11EEEE(1) of the ATA, 1997, and were thereafter taken into custody by NAB in pending References. The relevant observations are as under;

13.....Moreover, the petitioners have never been issued any Notices under Section 19 of NAO, 1999 nor appears to have ever been confronted with the allegations as contained in the aforesaid Investigation Report or reference application, hence, have been condemned unheard. The arrest of petitioners by the Pakistan Rangers, Sindh, under the garb of authority vested in terms of Section 11 EEEE(1) of the ATA, 1997, for ninety days in the absence of FIR or any Criminal Case under Anti-terrorism Act, 1997, and thereafter, handing over their custody to the NAB Authorities without any orders from the competent authority or the Accountability Court, in a dubious manner, also lends support to the contention of the petitioners that due to mala fide intention, the petitioners were denied to protect their right of liberty as guaranteed under Article 10 of the Constitution of Islamic Republic of Pakistan, 1973, as well as their right to fair trial, by the NAB Authorities, who according to learned counsel for the petitioners, have acted in gross violation of express provision of Constitution and the NAO, 1999, with particular reference to provisions of Sections 18 and 24 of the NAB Ordinance, 1999, read with Section 54 Cr.P.C.

15.....We have observed in number of cases that NAB Authorities do not follow the legal course as provided under the NAB Ordinance, 1999, and also violate the principles of Natural justice, while initiating proceedings under the NAO, 1999, against an accused person, even without proper authorization of inquiry and investigation, and in most of the cases, instead of providing an opportunity to the accused to explain the allegations against him by issuing notice in terms of Section 19 of the NAO, 1999, the arrest of the accused is made against the spirit of provisions of Section 19 and 24 of the NAO, 1999 and also in violation of express provision of Section 54 Cr.P.C., hence deprive a citizen his fundamental right of liberty and fair trial as guaranteed under the constitution of Islamic Republic of Pakistan, 1973.

16. It is well settled law that this Court has to jealously safeguard, the fundamental rights as guaranteed by Constitution of Islamic Republic of Pakistan, particularly the right to life and liberty of a citizen, by invoking its extra ordinary constitutional jurisdiction under Article 199 of the Constitution. It is equally well settled that an authority is required to act strictly in accordance with law and to perform its duty in the manner in which it has been authorized under the law, whereas, violation of any statutory provisions, rules or regulations would make such act or the authority as illegal and unwarranted under the law. It has also been observed that reference in the instant matters has been admittedly filed after expiry of the requisite period provided under the NAO, 1999, whereas, no plausible explanation has been given by the respondents in this regard.....

14. In the case of ***Muhammad Aslam (Amir Aslam) and others v. District Police Officer, Rawalpindi (2009 SCMR 141)*** the Hon'ble Supreme Court has been pleased to observe as under;

7. The Courts have to safeguard the fundamental rights of every citizen and to protect the life and liberty from illegal, unauthorized and mala fide acts of omission or commission by an authority or person. In cases where the liberty of a citizen was involved, the action initiated by the police when found to be mala fide the Court should not hesitate to step in and grant relief to the citizens.

15. In the case of ***Abdul Rasheed Bhatti v Government of Punjab (PLD 2010 Lahore 468)***, a learned Single Judge of the Lahore High Court has been pleased to observe that;

13. From the above, it is clear that superior Courts have held that the liberty of every citizen of this country is to be protected and guaranteed under Articles, 4,9,10 and 15 of the Constitution. In fact, it is the duty of the State to jealously safeguard the liberty of every citizen "Wherever he may be". The Constitution provides safeguards against the violation of the fundamental rights of every citizen to life and liberty from illegal and mala fide acts of omission or commission of any governmental authority or person. Therefore, any action without sufficient cause depriving or restricting the liberty of a citizen is not envisaged by the Constitution of this country and any such action taken by the Government or any of its functionary will not be immune from scrutiny of this Court in exercise of its power under Article 199 of the Constitution.

16. We may also clarify before parting with this order that presently we are not concerned with the issue that whether two separate references can be filed regarding the alleged offence of misuse of authority and having assets beyond means. This question is not before us and can be dealt with independently as and when brought before this Court at an appropriate time. What we are concerned is that with the conduct as shown by the NAB authorities, a person can be put behind bars in a discreet and unlawful manner as above, by concealing material facts from the Court and by not disclosing true facts while filing comments and in defiance and derogation to the mandatory provision of section 24(b) of the Ordinance, which in the given facts could have been ordinarily complied with true disclosure and by providing the copy of Reference in question. One must not lose sight of the fact that time and again the petitioner in question has been put behind bars in one case or the other, be it under the Anti-Terrorism Act, or the Military Court or for that matter before the Accountability Court. While passing this order we have considered and kept in mind all these facts and we may also clarify that while citing this order as a precedent, if need be arises, one must keep in mind the very peculiar and distinctive facts of the petitioner's ordeal, sufferings and the chequered history behind his arrest and release(s).

17. Therefore considering the peculiar facts of this case coupled with the conduct of NAB as discussed hereinabove, we are constrained to exercise our Constitutional Jurisdiction as apparently we have come to the conclusion that NAB Authorities have not acted in accordance with

law and within the mandate of the NAB Ordinance by arresting the Petitioner, and therefore, by means of a short order on 21.4.2017 by exercising Constitutional jurisdiction and powers under Article 199 of the Constitution, the autographic order dated 18.04.2017 passed by the Judge, Accountability Court-II, Karachi was set aside and this application was allowed. The Petitioner was directed to be released from the jail custody by Superintendent Jail, Karachi forthwith. The above are the reasons thereof.

J U D G E

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ARSHAD/