

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

C.P. No.D-2975 of 2019.

Petitioner. Zeeshan v Federation of Pakistan and others through
Mr Amer Raza Naqvi, Advocate

Respondents/State. NAB through Mr Shahbaz Sahotra, Special
Prosecutor NAB assisted by Mr. Omair, I.O.

C.P. No.D-3560 of 2019.

Petitioner Muhammad Sohail v Federation of Pakistan and
others through M/s Haider Waheed and Rehan
Kayani, Advocates

Respondents/State. NAB through Mr Shahbaz Sahotra, Special
Prosecutor NAB assisted by Mr. Umair, I.O.

C.P. No.D-3869 of 2019.

Petitioners. Waseem Akhtar Thebo and others v. Federation of
Pakistan and others through M/s Raj Ali Wahid
Kunwar and Raghib Ibrahim Junejo, Advocates.

Respondents/State. NAB through Mr Shahbaz Sahotra, Special
Prosecutor NAB assisted by Mr. Umair, I.O.

C.P. No.D-4312 of 2019.

Petitioner: Sharjeel Inam Memon v. Chairman NAB and others
through M/s Munir A. Malik, Shamail Sikandar and
Salman Mirza, Advocates

Respondents/State. NAB and others through Mr. Shahbaz Sahotra,
Special Prosecutor NAB assisted by Mr. Umair, I.O.

C.P. No.D-4702 of 2019.

Petitioner Agha Ahsan through M/s. Raj Ali Wahid Kunwar
and Raghib Ibrahim Junejo, Advocates

Respondents/State. NAB through Mr Shahbaz Sahotra, Special
Prosecutor NAB assisted by Mr. Umair, I.O.

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C.P. No.D-4703 of 2019.

Petitioner: Subhan through M/s. Raj Ali Wahid Kunwar and Raghbir Ibrahim Junejo, Advocates.

Respondents/State: NAB through Mr. Shahbaz Sahotra, Special Prosecutor NAB assisted by Mr. Umair, I.O.

C.P. No.D-8032 of 2019.

Petitioners: Sadaf Sharjeel and others through M/s. Raj Ali Wahid Kunwar and Raghbir Ibrahim Junejo, Advocates.

Respondents/State: NAB and others through Mr. Shahbaz Sahotra, Special Prosecutor NAB assisted by Mr. Umair, I.O.

C.P. No.D-1697 of 2020.

Petitioner: Izhar Hussain through Mr. Ahmed Masud, Advocate

Respondents/State: Federation of Pakistan and others through Mr. Shahbaz Sahotra, Special Prosecutor NAB assisted by Mr. Umair, I.O.

Dates of hearing: 18.08.2020 and 19.08.2020.

Date of announcement: 19.08.2020.

ORDER

Mohammad Karim Khan Agha, J.- Petitioners Sharjeel Inam Memon, Mst. Sadaf Sharjeel, Ms. Zeenat Inam Memon, Zeeshan, Subhan, Agha Ahsan, Shaukat Ali Thebo and Wassem Aktar Thebo have all sought confirmation of the interim pre arrest bail which was granted to them earlier by this court whereas petitioners Izhar Hussain and Muhammed Sohail have applied for post arrest bail. Since all these petitions arise out of the same reference we shall decide the same through this common order.

2. The brief facts of the case are that petitioner Sharjeel Inam Memon has been accused under S.9 of the National Accountability Ordinance 1999 (NAO) for offences of corruption and corrupt practices on account of having assets beyond his known sources of income which he was not able to account for and hence the National Accountability Bureau (NAB) through its chairman filed **Reference**

No.15 of 2019 State V Sharjeel Inam Memon and 11 others. The 10 other accused arrayed in the Reference were in essence alleged to be accomplices, aiders and abettors and/or benamidar holders of assets which actually belonged to petitioner Sharjeel Inam Memon and had been purchased out of monies acquired by petitioner Sharjeel Memon through corruption.

3. According to the reference the petitioner Sharjeel Inam Memon had acquired assets of approx RS 2.2 Billion through corrupt practices which he was unable to account for. Such assets essentially divided into 5 parts;

- 1 Properties in the name of petitioner Sharjeel Inam Memon and his wife petitioner No.2 Mst Sadaf Sharjeel and his mother petitioner No.3 Zeenat Inam Memon as set out in the table below;

S #	Property	Year of purchase	Cost price shown in nomination /FBR	Cost actually paid (Rs.)	Owner
1.	2 x Flat No.T2-307 (1485 Sq, Ft) GR Penorma Dubai	2016	50,000,000	50,000,000	Sharjeel Inam
2.	Villa No.24, Meadows-9 Dubai	2013	98,900,000	98,900,000	Sadaf Sharjeel
3.	Office at Burlington Tower Dubai	30.06.18	21,000,000	21,000,000	Sadaf Sharjeel
4.	Jewelry	30.06.18	300,000	300,000	Sharjeel Inam
5.	Furniture & Fittings	30.06.18	3,000,000	3,000,000	Sharjeel Inam
6.	Rental Agricultural land - Deposit Tando Allahyar	30.06.18	3,200,000	3,200,000	Sharjeel Inam
7.	Personal weapons	30.06.18	2,500,000	2,500,000	Sharjeel Inam
8.	International Gulf Group (wife)	2011	3,000,000	3,000,000	Sadaf Sharjeel
9.	IGP Business Services (mother)	2011	3,000,000	3,000,000	Zeenat Inam
10.	Motor Vehicle Purchased in the name of Son in Dubai	30.06.18	5,000,000	5,000,000	Zeenat Inam
11.	Jewelry 10,000 Grams	30.06.18	5,000,000	5,000,000	Zeenat Inam
12.	Household Effect	30.06.18	500,000	500,000	Zeenat Inam
13.	Personal Item	30.06.18	1,000,000	1,000,000	Zeenat Inam

14	Prize Bonds	30.06.18	4,500,000	4,500,000	Zeenat Inam
15	Bungalow No.3-B/1, 29 th Street, Khayaban-e-Shamsheer phase-V, DHA Karachi (mortgage amount paid)	2009 to 2019	----	25,617,348 (verified)	Sharjeel Inam
16	Bungalow No 42/2, 28 th Street, Khayaban-e-Mujahid in phase-V, DHA Karachi (mortgage amount paid)	2008 to 2019	----	39,427,617 (verified)	Sharjeel Inam
17	Agricultural land measuring 19 acres 23 ghuntas situated in Deh Dali; Wadi Taluka/District Hyderabad	20.07.16	7,00,000	28,383,750 (verified)	Zeenat Inam
18.	Agricultural land measuring 26 acres 31 ghuntas situated in Deh Daliwadi Taluka/District Hyderabad	26.08.16	9,37,125	28,823,750 (verified)	Zeenat Inam
19	Agricultural land measuring 29 acres 13 ghuntas situated in Deh Daliwadi Taluka/District Hyderabad.	19.10.16	459,375	41,521,250 (verified)	Zeenat Inam
20	Agricultural land measuring 06 acres 02 ghuntas situated in Deh Rahoki, Taluka/District Hyderabad	10.04.17	260,000	9,000,000 (verified)	Zeenat Inam
21	Agricultural land measuring 56-01 acres situated in Deh Rahooki, Tappa A, Tando Qaiser, Taluka & District Hyderabad	16.05.14	1,12,00,000	56,000,000 (verified)	Sharjeel Inam
22.	Agricultural land measuring 4-12 acres situated in Deh Barchani, Taluka/ District Hyderabad	09.04.14	5,00,000	20,000,000 (verified)	Sharjeel Inam
23	Land measuring 21 acres, 20 Ghunta & Construction cost	2009-2010	15,080,000	920,000 (land) + 27,290,000	Sharjeel Inam

	of House in Nagarparkar.			(construction cost). 28,210,000	
24.	Plot No.116 measuring 2000 Sq. Yds. in Khayaban-e-Qasim Phase-VIII, DHA.	17.09.14	50,00,000	100,000,000 (verified)	Zeenat Inam
25.	Plot No.118/I & 118/II measuring 1000 Sq. Yds. in Khayaban-e-Qasim Phase-VIII, DHA.	17.09.14	84,00,000	110,000,000 (verified)	Zeenat Inam

2. That petitioner No.3 Mst Zeenat Inam the mother of petitioner Sharjeel Inam Memon was the benamidar holder of land for petitioner Sharjeel Inam Memon as set out below;

S #	Details of Properties	Purpose	Date of Acquisition	Actual consideration
1.	19-23 Acres situated in Deh Daliwadi Taluka/District Hyderabad	Agricultural land	26.07.16	Rs.28,383,750
2.	26-31 Acres situated in Deh Daliwadi Taluka/District Hyderabad	Agricultural land	26.08.16	Rs.38,823,750
3.	29-13 Acres situated in Deh Daliwadi Taluka/District Hyderabad.	Agricultural land	19.10.16	Rs.42,521,250
4.	6-02 Acres situated in Deh Rahoki Taluka/District Hyderabad.	Agricultural land	10.04.17	Rs.9,000,000
5.	Plot No.116 measuring 2000 Sq. Yds in Khayaban-e-Qasim Phase-VIII, DHA Karachi.	Residential Plot	17.09.14	Rs.100,000,000
6.	2 x Plot No.118/I and 118/II each measuring 1000 Sq. Yds in Khayaban-e-Qasim Phase-VIII, DHA Karachi.	Residential Plot	17.09.14	Rs.110,000,000

3. That petitioner Sharjeel Inam Memon illegally transferred ill gotten money amounting to approx RS1.2 Billion by hawala and hundi through petitioner No.6 Muhammed Sohail who was working for DD money exchange to himself in Dubai which was collected by him or on his behalf from Sajwani exchange based in Dubai.
4. That the properties listed below were held in the name of petitioners 4,6,9,10,11 and 12 being respectively Zeeshan, Subhan, Ahmed Ahsan, Shoukat Ali Thebo, Waseem Akhtar Thebo and Kamran Gul (absconder) as benamidars on behalf of Sharjeel Inam Memon;

S #	Property	Year of purchase	Purchased in name of benamidars	Purchase amount
1.	Reliance cotton factory & Oil Mill	11.04.18	Waseem and Shoukat Thebo	73,591,400
2	Construction cost of Rawal Farm House	2015 & onwards	Kamran Gul	346,974,582
3.	Agricultural land measuring 54-11 Acres situated in Deh Dahi wadi and 40-24 acres situated in Deh Rahooki Taluka/District Hyderabad	15.05.15	Zeeshan	376,00,000
4.	Agricultural land measuring 30-22 Acres situated in Deh Dahi wadi Taluka/District Hyderabad	15.08.15	Zeeshan	18,330,000
5	Bungalow No.26/II, 7 th Commercial Street Phase-IV, DHA, Karachi	02.05.17	Nazrana Izhar W/o. Izhar Hussain	65,000,000
6	Plot No.P/25, Area 1.5 Acres situated at Site Area Kotri	13.11.13	Subhan Khan	12,000,000
7.	Plot No H/47, Area 05 Acres situated at Site Area Noriabad	22.11.13	Subhan Khan	20,000,000/-
8	Plot No.H/48, Area 0.5 Acres situated at Site Area Noriabad	04.12.13	Agha Ahsan	20,000,000
9	Plot No.B/243, Area 1 Acres situated at Site Area Noriabad	22-11-13	Subhan Khan	7,000,000
10	Plot No.NA, Area, 1 Acres situated at Site Area Hyderabad	31.03.14	Izhar Hussain	755,000
11	Plot No P/33, Area 0.25 Acres situated at Site Area Hyderabad	22.11.13	Izhar Hussain	375,000

5 That between the years 2010 and 2016 petitioner Sharjeel Inam Memon and his family (including his wife petitioner No.2 Mst Sadaf and his mother petitioner No.3 Mst Zeenat) spent approx RS 1 crore on air tickets.

4 Learned counsel for petitioner Sharjeel Inam Memon contended that it was a complete case of malafide against the petitioner and his family which also included his wife petitioner No.2 Mst Sadaf Sharjeel, petitioner No 3 his mother Zeenat Inam Memon and petitioner 4 Zeeshan who was his brother in law as the

NAB were determined to arrest him at all costs on account of political victimization and engineering as he was a sitting MPA whose political party was in opposition to the Government at the Federal level. In this respect he referred to an order passed by this court dated 24.06.2019 and the fact that in that order NAB had deliberately given the incorrect date of investigation in order to arrest him before in this reference whilst he was in jail and his bail petition was being heard in that case and NAB's intention was to keep him behind bars for years on end and thereby exert political pressure on him at the behest of the Federal Government. He also submitted that it was a dishonest investigation as well as despite NAB knowing full well that he had disposed of two plots in order to purchase agricultural property the NAB had also contended in the reference that he still owned these plots; that NAB in calculating his total income had deliberately suppressed some of his agricultural income and had not even considered other agricultural land which belonged to him, that NAB had contended that his wife and his mother were housewives with no source of income and as such had jumped to the incorrect assumption that since they had no source of funds any property which they held in their own names they were doing as benamidars on his behalf which had been acquired through his corruption whereas the NAB had not even investigated either his wife's or his mothers source of funds and if they had done so NAB would have found that his wife had her own resources to purchase the properties in question through a business in Dubai which she had been running from 2007 before her husband held public office; that his mother had inherited large amounts of property from her deceased husband; that NAB in terming his wife and mother as housewife's had totally failed to appreciate that they had been paying tax since 2014 and as such they were independent persons and not his dependants; that NAB had not carried out a proper investigation into either his, his wife's, his mother or brother in law's (Zeeshan) sources of income prior to and after the purchase of the properties in their respective names and had mainly relied on his tax returns and assets declarations where the NAB had massively inflated the value of the properties to reach the conclusion that he had assets beyond his known sources of income which was insufficient investigation as the NAB had to **positively investigate** independently from his tax return and assets declaration and investigate his, his wife, his mother and his brother in laws sources of income; with regard to properties listed in the UK these belonged to another person known as **Muhammed** Sharjeel Inam Memon and not him and yet the NAB had failed to investigate this position; that NAB had no originals of the documents of

the properties which were allegedly owned by him; that the petitioner was not a pauper and had a large amount of assets from the outset due to the various businesses he was involved in, in particular travel agencies and real estate and the NAB had not looked into this matter, that the petitioner's assets had been wrongly valued by the NAB at ridiculously high rates and if they had been valued in accordance with Rule 3 of West Pakistan Land Assessment Revenue Rules 1968 (which they were not) the assets he had would have fallen within his means, that he did not send any money to Dubai and there was no evidence that he did so and even otherwise he had earned sufficient money legally to send money abroad which was not a crime, that the so called farm house was only rented by him and was owned by absconding accused No.12 Kamran Gul and thus for all the above reasons petitioners Sharjeel Inam Memon, his wife petitioner Mst Sadaf Sharjeel and his mother petitioner Zeenat Inam Memon should be granted pre arrest bail. In support of his contentions he placed reliance on **Muhammad Hashim Babar v. The State and another** (2010 SCMR 1697), **Ghani-ur-Rehman v. National Accountability Bureau and others** (PLD 2011 Supreme Court 1144), **Khalid Aziz v. The State** (2011 SCMR 136), **Syed Qasim Shah v. The State** (2009 SCMR 790), **Hakimali Zardari v. The State** (SBLR 2007 Sindh 755), **Farrukh Javed Ghumman v. The State** (PLD 2004 Lahore 155), an order passed by Sindh High Court **Agha Mussihuddin Khan Durrani v. Chairman NAB** in (C.P. No.D-1437 of 2019) and an order passed by Hon'ble Supreme Court in C.P. No.3427 of 2018 (**Alli Sajjad Bhutta v Chairman NAB**)

5. Learned counsel for Zeeshan contended that that he had been malafidely roped into the reference because he was the brother in law of the Sharjeel Inam Memon; that the original complaint to NAB was by an election rival who wanted to falsely implicate him in this case; that the call up notice which was sent a year after NAB received the complaint was contradictory to the complaint received by NAB which showed that NAB was malafide engineering a case against him; that the IO had completely failed to investigate the case against him as if he had done so he would have found that he was a person of considerable means and was not a pauper. For example, he had inherited 10 properties which the NAB had completely ignored, that he had a cattle business since 2015 from which he made substantial earnings and even had concerns in a sugar mill thus he personally had more than enough income to account for the properties in his name and was not a benamidar of petitioner Sharjeel Inam Memon, that NAB only had photo copies of his documents and not the originals and thus for all the above reasons

petitioner Zeeshan should be granted pre arrest bail. In support of his contentions he has placed reliance on **Waris Mean v. (1) The State (2) The State Bank of Paksitan** (PLD 1957 SC 157), **Pakistan Telecommunication Co. Ltd. Through Chairman v. Iqbal Nisar and others** (PLD 2011 SC 144), **Khalid Aziz v. The State** (2011 SCMR 136), **Chairman, National Accountability Bureau, Islamabad through Prosecutor-General Accountability, Islamabad** (PLD 2019 SC 445), **Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division Islamabad and others** (PLD 2001 SC 607) and **Ghulam Hussain Baloch & others v. The Chairman NAB & another** (SBLR 2007 Sindh 1436)

6. Learned Counsel for petitioners Agha Ahsan, Subhan, Shoukat Ali Thebo and Waseem Akthar Thebo contended that they had been malafidely implicated in this case simply because some documents relating to them were recovered from the office of petitioner Izhar Hussain who is the personal assistant of petitioner Sharjeel Inam Memon. He has contended that none of the above petitioners are benamidars of petitioner Sharjeel Inam Memon. He has taken us through various documents which show that the NAB has massively over valued the properties which they own and has in particular pointed to documents which reveal the true value of the properties and has also pointed us to documents which show that each petitioner has sufficient funds to buy the properties in question out of their own income and that NAB only had photo copies of his documents, he also explained why some of the copies of their documents were with Sharjeel Inam Memon's PA and thus for all the above reasons petitioners Agha Ahsan, Subhan, Shaukat Ali Thebo and Waseem Akthar Tebo should be granted pre arrest bail. In support of his contentions he placed reliance on an order dated 03.12.2019 passed by the Supreme Court of Pakistan in C.P. No.3427 of 2018 (**Ali Sajjad Bhutta v. Chairman NAB**), an order passed by the Honorable Supreme Court in C.P. No.1357 of 2019, C.P. No.1385 of 2019 and C.P. No.1386 of 2019, an order dated 22.04.2020 passed by this Sindh High Court in C.P. No.D-44 of 2020 and other connected petitions (**Syed Khursheed Ahmed Shah v. Chairman NAB and another**) and an order dated 18.12.2019 passed by the Islamabad High Court in W.P. No.769 of 2019 (**Amjad Mustafa Malik v. DG NAB and others**)

7. Learned counsel for petitioner Muhammed Sohail who has applied for post arrest bail has contended that the only allegation against him is that through DD Money exchange he transferred approx RS one Billion to Dubai via the

hawala /hundi system which funds allegedly belonged to petitioner Sharjeel Inam Memon; that he has absolutely no association with DD Exchange in any capacity; that any USB which was recovered contains ledgers which are unsigned and only have the name of "Failed Shahid Bhai" which has nothing to do with either him or petitioner Sharjeel Inam Memon and in any event this case does not fall within the jurisdiction of NAB but might be a case falling under the Anti Money Laundering legislation and since he cannot be connected with the offense he should be granted post arrest bail.

8. Learned counsel for petitioner Izhar Hussain who has applied for post arrest bail has contended that he was not a Government employee but rather he was the personal assistant privately employed by petitioner Sharjeel Inam Memon whose job was to keep Sharjeel Inam Memon's dairy, book tickets, prepare tax returns etc and this is why copies of some documents concerning petitioner Sharjeel Inam Memon and his family were with him. It has been alleged that he was a benamidar of Sharjeel Inam Memon in respect of a bungalow in defense and a property in SITE. He took us through various documents which showed not only that he had sufficient sources of income to buy the properties which were in his own name but that the price attributed to such properties had been massively inflated by the NAB and as such since he cannot be connected with the offense he should be granted post arrest bail.

9. On the other hand learned special prosecutor NAB has contended that NAB through the documents on record have established that petitioner Sharjeel Inam Memon had acquired assets disproportionate to his known sources of income which he could not reasonably account for and that the other petitioners either aided and abetted him in this respect and/or were his benamidars. In support of his contentions he placed reliance on **Gulsher Ahmed Chachar and others v. National Accountability Bureau through Chairman and others** (2019 YLR 1016), **Rana Abdul Khaliq v. The State and others** (2019 SCMR 1129), **Rana Muhammad Arshad v. Muhammad Rafique and another** (PLD 2009 Supreme Court 427), **Ali Dino Gahoti and others v. Director General NAB and others** (2017 P. Cr.LJ Note 138), **Muhammad Arif Teevno v. National Accountability Bureau through Chairman and others** (2017 YLR Note 144) and **Rai Muhammad Khan v. NAB through Chairman and others** (2017 SCMR 1152).

10. We have heard the arguments for the parties, considered the record along with the relevant law including that cited at the bar.

11. At the outset we would like to make it clear that this order is based on only a tentative assessment of the evidence on record and shall have no bearing on the trial which shall be decided by the trial court based on merit whilst considering the evidence before it.

12. **Turning to the cases of the petitioners on pre arrest bail namely Sharjeel Inam Memon, Mst Sadaf Sharjeel, Ms Zeenat Inam Memon, Zeeshan, Subhan, Agha Ahsan, Shaukat Ali Thebo and Wassem Aktar Thebo.**

13. It is well settled by now that pre arrest bail is an extra ordinary relief which can only be granted if there is malafide on the part of the investigating agency. In this respect reliance is placed on **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427). In our view the petitioners on pre arrest bail have been able to make out a case of malafide against them on the part of the NAB.

14. This is because it seems that the NAB is hell bent on keeping petitioner Sharjeel Inam Memon behind bars. Petitioner Sharjeel Inam Memon has already spent almost two years behind bars in another reference before being released on post arrest bail. Before however he was released on bail during his bail hearing the NAB attempted to arrest him in this case whilst he was in jail which conduct was deprecated by this court in its order dated 24.06.2019 since it appeared to be an attempt to ensure that petitioner Sharjeel Inam Memon remained in jail which tends to demonstrate NAB's malafides. It is also observed in that order that NAB was claiming that an investigation had already been authorized and that a reference was on the verge of being filed yet in the instant reference it shows that no investigation had been authorized at that time and showed the desperation of the NAB to keep the accused in jail even if he got bail in the other case which would lead to his continued incarceration. Interestingly this reference was filed much after petitioner Sharjeel Inam Memon's release on bail in the other case which prima facie indicates that his arrest in this case **at that stage** was not justified. It is trite law that the denial of bail is not to be used as a punishment. It is also not without significance that petitioner Sharjeel Inam Memon is an opposition politician to the current majority party in the Federal Government and when confronted by this court whether any Federal or Provincial politician associated with the majority party now governing the country was facing any reference before the accountability courts in Pakistan the Special Prosecutor NAB and IO could not provide any satisfactory answer despite their being serious

allegations of corruption against some such politicians. However, apparently the NAB have also prepared yet another case against petitioner Sharjeel Inam Memon in Islamabad. We are also cognizant of the fact that such a situation has potentially recently been noticed by the Supreme Court in another NAB bail case of **Khawaja Salman Rafique and Another V NAB** dated 17.03.2020 in Civil Petitions No.2243L and 2986L where it was held as under at para 67;

“The bureau seems reluctant in proceeding on one side of the political divide even in respect of financial scams of a massive proportion while those on the other side are being arrested and incarcerated for months and years without providing any sufficient cause.”

15. Even otherwise malafide is very hard to prove and as such it can also be inferred from the facts and circumstances of the case and as such in this case we also make such an inference of malafide by the NAB against the petitioners who are on pre arrest bail who are in one way or another associated with petitioner Sharjeel Inam Memon mainly being his family members.

The law on cases of assets beyond known sources of Income which the accused cannot reasonably account for.

16. The allegation against petitioner Sharjeel Inam Memon is that he acquired assets beyond his known sources of income which he cannot account for under S.9 (a) (v) of the NAO and in essence the other co-accused were either his aiders and abettors or benamidars.

17. In the case of **Hakim Ali Zardari v. The State** (2007 MLD 910), this court laid down the criteria required to be satisfied in cases under section 9(a)(v);

*“In order to prove the case, the prosecution is required to prove the ingredients of the offence, which are (1) it must establish that the accused was holder of a public office (2) the nature and extent of the pecuniary resources of property which were found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, after thorough investigation and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or property. Thus, mere possession of any pecuniary resources or property is by itself not an offence, but it is failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitute offence. If he cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and corrupt practices is required to be drawn. Reference is invited to a case **Biswa Bhushan Naik v.***

State (AIR 1954 SC 350) in which identical provision in Prevention of Corruption Act, 1947 were interpreted."

18. The Supreme Court in the case of **Muhammad Hashim Babar v. The State and another** (2010 SCMR 1697 SCMR 1697) approved **Hakim Ali Zardari's** case (Supra) as to what ingredients were required to be proved in an assets beyond know sources of income case under the NAO as under:-

"It is pertinent to mention here that in order to prove the case is the duty and obligation of the prosecution to prove the ingredients of the offence which are as follows:-

- (i) *It must establish that the accused was holder of a public office.*
- (ii) *The nature and extent of the pecuniary resources of property which were found in his possession.*
- (iii) *It must be proved as to what, were his known sources of income i.e known to the prosecution after a thorough investigation.*
- (iv) *It must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income.*

The foresaid ingredients are proved then the offence as defined under section 9(a)(v) is complete, unless the accused is able to account for such resources or Property. It is also settled proposition of law that mere possession of any pecuniary resources or property is by itself not an offence, but failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes offence meaning thereby that if an accused cannot explain, presumption under section 14(c) of the Ordinance that accused is guilty of corruption and corrupt practices is required to be drawn."

19. Such ingredients and principles in the above cases were again affirmed and approved by the Supreme Court in the later cases of **Khalid Aziz v. The State** (2011 SCMR 136) and **Ghani-ur-Rehman v. National Accountability Bureau and others** (PLD 2011 SC 1144) and more recently by followed by this court in the case of **Agha Massihuddin Khan Durrani V State** (PLD 2020 Sindh 365).

20. The only recent change to the ingredients is that the NAO applies to private individuals as well as public office holders following the case of **Abdul Aziz Memon V State** (PLD 2013 SC 594) with regard to the first ingredient of the offence.

21. It is also important to note that any omission of an asset in a tax form or assets declaration form will not automatically make a person

liable in an assets beyond known sources of income cases as was held in the case of **Khalid Aziz** (Supra) in the following terms at P.143 Para 11 as set out below in material part;

"The question as to whether these amounts were not mentioned in the Income Tax Department or that the resolution was not filed with the Registrar, Cooperative Societies is by itself will not affect the explanation or draw any adverse inference against the appellant as the appropriate action can be taken under the Income Tax Laws or by the Registrar, Cooperative Societies Act (sic) against the Firm under the relevant provisions of law, if such laws are violated."

22. We now need to examine whether the legal ingredients for an asset beyond known sources of income case have been satisfied with respect to petitioner Sharjeel Inam Memon and the other petitioners.

1. That Sharjeel Inam Memon is a holder of public office has been satisfied.
2. The nature and extent of the pecuniary resources of property which were found in his possession has been satisfied.
3. It must be proved as to what, were his known sources of income **through thorough investigation and**
4. It must be proved, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income.

23. In our view 3 and 4 above have **not** been satisfied in respect of the properties listed in the first two tables cited above where properties are said to held in the names petitioner Sharjeel Inam Memon, his wife and mother for the following reasons;

- (a) As per the ingredients NAB had to carry out a **thorough investigation** and it appears that NAB has failed to do so. This is because NAB failed to check whether either Sharjeel Inam Memon's wife (petitioner Mst Sadaf Sharjeel) or mother (petitioner Mst Zeenat Inam Memon) had any independent source of income which could enable them to purchase the properties in their own name. We have been shown documents that show that petitioner Mst Sadaf Sharjeel had profitable businesses in Dubai **before** her husband (petitioner Sharjeel Inam Memon) held public office which would have enabled her to purchase the properties in NAB's table in their reference in her own name and has provided a statement which has been taken on record

which shows her complete money trail. Like wise we have been shown documents that show that petitioner Mst Zeenat Inam Memon had inherited sufficient property/assets which have been filed along with her affidavit and have been taken on record after the death of her husband which would have enabled her to purchase the properties in NAB's table in their reference in her own name and as such these petitioners (Mst Sadaf Sharjeel and Mst Zeenat Inam Memon) cannot be deemed to be the benamidar holders of these properties on behalf of petitioner Sharjeel Inam Memon. When confronted by this court the IO candidly conceded that he had not investigated any independent source of funds that either Mst Sadaf Sharjeel (wife of Sharjeel Inam Memon) and petitioner Mst Zeenat Inam Memon (mother of Sharjeel Inam Memon) may have had to enable them to purchase properties in their own names as according to him they were both non earning housewife's. It appears that the IO simply assumed that because the petitioners were the wife and the mother of petitioner Sharjeel Inam Memon what ever assets they had in their own names were being held as benamidar on behalf of Sharjeel Inam Memon without thoroughly investigating the position as he was required to do in respect of such offenses. In particular, with regard to the second table reproduced in this order apparently properties listed at No.5 and 6 were sold in order to purchase properties No.1 to 4 and as such the purchase of properties at No.1 to 4 have been accounted for and like wise the properties at serial No.5 and 6.

- (b) Furthermore, both petitioner Mst Sadaf Sharjeel (wife of Sharjeel Inam Memon) and petitioner Mst Zeenat Inam Memon (mother of Sharjeel Inam Memon) have been filing **independent** tax returns since 2014 **in their own names where these properties are revealed in their own names and as such they are not dependants of petitioner Sharjeel Inam Memon** and for tax purposes are separate and independent persons.
- (c) In addition the IO when confronted by this court conceded that he had hardly any of the original documents in respect of the properties listed in the tables.
- (d) Thus all the properties/assets listed in the tables in the references in the names of petitioner Mst Sadaf and petitioner Mst Zeenat Inam Memon cannot prima facie be proved to belong to Sharjeel Inam Memon and purchased from funds provided by him for which NAB has not produced any evidence. At a minimum it is a case of further inquiry in respect of these properties.
- (e) With regard to petitioner Sharjeel Inam Memon through a statement filed in court he has also produced documents so show that rather than being a pauper **before** he entered public life he was a successful business man who owned numerous Travel Agencies and Real Estate companies which were extremely

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profitable. Again **before** entering public office he has annexed statements of various bank officials to the effect that huge transactions on account of his various business enterprises used to go through his various bank accounts.

- (f) In petitioner Sharjeel Inam Memon's statement filed before this court documents have also been annexed which show that some of the properties in Dubai in petitioner Sharjeel Inam Memon's name do not belong to him and belong to another person named Muhammed Sharjeel Memon which aspect of the case needs further inquiry.
- (g) The NAB has included two properties in the table which are subject to mortgage and as such cannot be assets but rather liabilities; we have also seen documents which show that some of the petitioners agricultural income has been suppressed and that income from some lands has not been accounted for at all
- (h) With regard to the farm house this is not in the name of petitioner Sharjeel Inam Memon and by his own admission he rents the same. The IO has conceded that he does not have the original documents for this property. The farmhouse is in the name of petitioner No.12 Kamran Gul who has absconded and as such at the bail stage we cannot go into a deeper assessment of evidence which will need to be done at the time of trial as to who is the actual owner of the farmhouse which question is one of further inquiry.
- (i) The real issue it would seem in connection with properties which are held in the name of petitioner Sharjeel Inam Memon and are listed in the tables in the reference and which he admittedly disclosed in his tax returns is the correct value of these properties (as conceded by NAB) as both petitioner Sharjeel Inam Memon and NAB have given different valuations and according to petitioner Sharjeel Inam Memon such value as shown in his table has been massively inflated by the NAB. Attached below is a table attached with petitioner Sharjeel Inam Memon's valuation of his properties and NAB's valuation. The correct value of these properties is to be determined at trial only after recording evidence which in our view also makes this a case of further inquiry in respect of petitioner Sharjeel Inam Memon vis a vis the properties in his name and whether he could have afforded them out of his legally acquired income.

S #	Property	Declared By Petitioner	Assessed by NAB	Difference
1	2 x Flat No.T2-307 (1485 sq ft) & T2-508 (1365 sq ft), GR Penorma Dubai	50,000,000	50,000,000	
2	Jewelry	300,000	300,000	
3	Furniture & Fittings	3,000,000	3,000,000	
4	Rental Agricultural land - Deposit TandoAllahyar	3,200,000	3,200,000	

5	Personal Weapons	2,500,000	2,500,000	
6	Bungalow No.3-B/1, 29 th Street Khayaban-e-Shamsheer Phase-V, DHA Karachi (mortgage amount paid)	-----	25,617,348 Verified	25,617,348
7	Bungalow No.42/2, 28 th Street, Khayaban-e-Mujahid in Phase V DHA Karachi (mortgage amount paid)	-----	39,427,617 Verified	39,427,617
8	Agricultural land measuring 59-01 Acres situated in Rahooki, Tappa A-Tando Qaiser, Taluka District Hyderabad	1,12,00,000	56,000,000 Verified	44,800,000
9	Agricultural land measuring 4-12 acres situated in Deh Barchani, Taluka & District Hyderabad	5,00,000	2,000,000 Verified	1,500,000
10	Land measuring 21 Acres, 20 Ghunta & Construction cost of House in Nagarparkar	15,080,000	920,000(land) + 27,290,000 (Construction cost) Rs.28,210,000	13,130,000
11	Toyota Land Cruiser Model 2008 BG-3333	10,000,000	10,000,000 Not verified	
12	Toyota Jeep Model 2004 BD-9181	3,150,000	3,150,000 Not verified	
13	Toyota Lexus Model 2013 BZ-8888	26,420,000	29,242,000 Verified	2,822,000
14	Vehicle Purchased by Zeenat in the name of son		5,000,000 Not verified	5,000,000
SUM ADDED BY NAB				132,296,965

24. In respect of the money allegedly transferred abroad by petitioner Sharjeel Inam Memon through DD Exchange a ledger has been produced by NAB which was printed off a USB recovered from petitioner No.6 Muhammed Sohail which shows monetary transactions between Pakistan and Dubai. However, the ledger account is in the name of Failed Shahid Bhai which prima facie indicates that the accounts belong to him. NAB made no efforts to track down this person. Some copies of non verified transaction forms have been printed off with the name Sharjeel Inam Memon but these do not come anywhere near the RS1.2 billion which he allegedly transferred to Dubai. These forms are all unsigned and there is no evidence that either petitioner Sharjeel Inam Memon or anyone else on his behalf collected such money if it was transferred. Furthermore, the NAB have not been able to link these funds sent to Dubai to Sharjeel Inam Memon or any one acting on his behalf. We can also not lose sight of the fact that petitioner Sharjeel Inam Memon's family already had

profitable businesses in Dubai prior to these transactions and NAB has not been able to show that any of such funds were linked to any asset which his family purchased in Dubai. Once again the admissibility and veracity of such documents can only be determined at trial after recording evidence and as such again the alleged money transfers come within the ambit of further inquiry. Likewise with regard to petitioner No.6 Muhammed Sohail there is very little evidence to link him to DD Exchange and Sharjeel Inam Memon. He is not named in the unsigned, unverified ledger and no employment contract has been produced so show that he worked for DD Exchange or ever transferred any monies and as such his case is one of further inquiry as to his role in this alleged transfer of money

25. With regard to petitioners Zeeshan, Subhan, Ahmed Ahsan, Shoukat Ali Thebo, Waseem Akhtar Thebo and Izhar Hussain who are listed in the third table set out in this order as benamidars on behalf of Sharjeel Inam Memon we are satisfied through the various documents which have been shown to us that all petitioners prima facie had sufficient sources of funds to purchase the properties in their names and at the price which they paid which NAB was unable to rebut and that again the main dispute is one of the actual cost/value of the properties at the time of purchase. It appears prima facie from NAB's own record that it has been valuing these properties at market value rather than their value at the time of purchase by an unqualified person despite some of the properties being in SITE which prices are fixed by the Government and thus the question of the actual value of the properties and whether the aforesaid petitioners could actually afford to buy them is a matter of further inquiry which can only be determined at trial after leading evidence.

26. For example, a letter dated 17.05.2019 from SITE to NAB which NAB is relying upon to show that the properties purchased by some of the above petitioners prima facie tends to show that the purchase price claimed to be paid by the petitioners at the time of purchase as opposed to NAB's market value evaluation is the correct purchase price. A copy of the said letter is produced as under;

Sindh Industrial Trading Estates (Guarantee) Limited
Manghopir Road, Karachi-75700

No.4454

Dated 17-05-2019

Mr. Kashif Noor,
Deputy Director/Co-C(IW-1),
National Accountability Bureau, Karachi

⚡

PRCS Building, 197/5,
Dr. Daudpota Road,
Karachi Cantonment,
Karachi.

SUBJECT: CALL UP NOTICE TO THE WITNESS U/S 19 READ WITH 28
NAO, 1999 - INQUIRY AGAINST SHARJEEL INAM MEMON,
MPA, SINDH ASSEMBLY 7 OTHERS.

Reference: Your letter N.NABK201804123108/IW-1/MUM-C/SIM/2019/3349
Dated 02/05/2019.

With reference to your letter cited above, following are the details required by you with respect to the subject inquiry.

NAME	PLOT NO.	AREA	ESTATE	DATE OF ALLOTMENT	PHYSICAL POSSESSION	PAYMENTS	PURPOSE	INTACT/CANCELLED
Subhan Khan s/o Sawat	P/25	1.50 Acre	Kotri	13/11/2013	Open plot	6,262,200	Petrol Pump	Intact
Subhan Khan s/o Sawat	H/27	0.50 Acre	Nooriabad	22/11/2013	Open plot	1,254,477	Petrol Pump	Intact
Agha Ahsan s/o Mumtaz Ali Shaikh	H/48	0.50 Acre	Nooriabad	04/12/2013	Open plot	1,289,139	Commercial	Intact
Subhan Khan s/o Sawat	B/243	1.00 Acre	Nooriabad	22/11/2013	Open plot	307,700	Industrial	Intact
Izhar Hussain s/o Ghulam Hussain	NA	1.00 Acre	Hyderabad	31/03/2014	NA	755,000	Industrial	Intact
Izhar Hussain s/o Ghulam Hussain	P/33	0.25 Acre	Hyderabad	22/11/2013	NA	375,000	Industrial	Intact

It is to place on your record that SITE Limited does not maintain the photocopies of the Pay orders / Cheques deposited by the tenants.

This is for your kind perusal and further necessary actions.

Sd/-
Secretary

27. With respect to the allegation of petitioner Sharjeel Inam Memon spending approx RS one crore along with his wife, mother and family over a 6 year period we do not find this amount to be that excessive or of huge consequence keeping in view the overall amounts in the reference and it has not been shown that the three petitioners could not have afforded such cost of air travel out of their own legal sources of income which also included other family members travel costs.

28. With regard to petitioners Izhar Hussain and Muhammed Sohail who have both applied for post arrest bail (and thus do not have to show malafides against the NAB) we have also taken into account the fact that these two petitioners **have been in jail for one year 4 months and one year 3 months respectively and yet the charge has still not been framed and no delay in this respect has been caused by either of them.** There are 64 PW's to be examined, numerous documents to be exhibited and 12 accused who will each have a separate right of cross examination in respect of each and every witness and as

such the trial is not likely to be concluded in the near future which factor also tilts the grant of post arrest bail in their favour **not with standing that there case is one of further inquiry.**

29. The fact that none of the petitioners are needed for further investigation in the reference and the reference is mainly of a documentary nature which makes it difficult for the petitioners to tamper with the same as such documents are with the NAB also tilts the balance of bail being granted in respect of all the petitioners **not with standing the fact that we have found the case of all the petitioners as being one of further inquiry and hence have granted them all bail** also keeping in view the settled law that bail cannot be withheld as a punishment.

30. Before parting with this order we would like to observe that in cases concerning assets beyond known sources of income that it is incumbent upon the IO to carry out a thorough and professional inquiry/investigation and ensure that all the legal ingredients of the offense as laid down by the Supreme Court are met. Perceptions and suspicions can never replace cogent, reliable and admissible evidence. **The IO needs to take an active and dynamic role in the investigation.** In this case however we regret to say that it appears that the IO seems to have carried out most of his investigation whilst sitting in his office and mainly relying on income tax returns and assets declarations of the petitioners. Out of all the numerous properties listed in the reference including agricultural land he only personally visited one property. He does not appear to have investigated the source of funds of the so called benamidars. The most striking example was when petitioner Zeeshan showed that he had received income through the sale of cattle from his farm yet the IO had not even gone to see if this cattle farm even existed or collected evidence of any such sales to check his source of funds and did not even know that he had inherited 10 properties. It seems, prima facie, that Zeeshan was simply lumped in the reference with the other petitioners because he was related to petitioner Sharjeel Inam Memon and owned property and therefore was assumed to be a benamidar. Many original documents also appear to have been either not seized as per memo of recovery or misplaced.

31. These are the reasons for our short order dated 19.08.2020 which reads as under;

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"Mr. Ahmed Masud, Advocate for the petitioner Izhar Hussain in C.P.No.D-1697 of 2020, who has applied for post arrest bail, has completed his submissions.

Special Prosecutor, NAB assisted by Investigating Officer Mr. Umair has made his submissions in respect of all the petitioners on both post arrest bail and pre-arrest bail.

For the reasons to be recorded later on, we hereby confirm the interim pre-arrest bail granted to Sharjeel Inam Memon vide order dated 21.06.2019 subject to his furnishing an additional surety in the sum of Rs.40,00,000/- (Rupees Forty Lacs) and P.R Bond in the like amount to the satisfaction of the Nazir.

With regard to Petitioners Sadaf Sharjeel and Zeenat Inam Memon initially they had sought their non-arrest in this case. However, we hereby convert their petitions into pre-arrest bail and grant them pre-arrest bail subject to furnishing solvent surety in the sum of Rs.10,00,000/- (Rupees Ten Lacs) each and PR Bond in the like amount to the satisfaction of the Nazir of this Court.

We hereby confirm pre-arrest bail granted to Zeeshan subject to his furnishing additional surety in the sum of Rs.17,00,000/- (Rupees Seventeen Lac) and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

Pre-arrest bail granted to the petitioners Subhan, Agha Ahsan, Waseem Akhtar Thebo and Shaukat Ali Thebo is hereby confirmed on the same terms and conditions.

With regard to the petitioners Izhar Hussain and Mohammad Sohail both petitioners are granted post arrest bail subject to furnishing solvent surety in the sum of Rs.20,00,000/- (Rupees Twenty Lac) and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

Names of all the aforesaid petitioners shall be placed on ECL. Copy of this short shall be sent through facsimile to the Secretary, Ministry of Interior, Government of Pakistan for compliance.

LATE DIARY.

It has erroneously not been mentioned in order sheet dated 19.08.2020 that NAB shall not immediately arrest either Sadaf Sharjeel or Zeenat Inam Memon, who are given 07 days' time to deposit their surety amount with the Nazir of this Court.

The petitions stand disposed of in the above terms."