

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C.P No.D-1109 of 2025  
(*Sikandar Hayat Buriro v. The State & others*)

Before:

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Riazat Ali Sahar

Counsel for Petitioner:

M/s Ashok Kumar K. Jamba and  
Asadullah Soomro, Advocates.

Counsels/ Representatives for  
Respondents:

Mr. Syed Naveed Ahmed Shah, D.A.G.  
Mr. Adnan Arshad Jatoi, Special  
Prosecutor, NAB, Sukkur. Mr. Ali  
Raza Baloch, Additional A.G Sindh.  
Mr. Gulzar Ahmed Malano, APG for  
the State along with SIP Maqsood  
Ahmed of ACE Sukkur.

Date of Hearing:

25-09-2025

Date of Judgement:

25-09-2025

## J U D G M E N T

**RIAZAT ALI SAHAR, J:** - Through this Constitutional Petition, the petitioner states that he was originally implicated in NAB Reference No. 13 of 2020 (The State v. Rahul Kumar & others) before the Accountability Court, Sukkur. However, following the amendments to the NAB Ordinance, 1999, the case was transferred to the Court of the Special Judge, Anti-Corruption (Provincial), Sukkur. Subsequently, by virtue of Notification dated 19.05.2025, the Government of Sindh amended the Enquiries and Anti-Corruption Establishment Rules, 1993, inserting Rules 8-A and 8-B, in consequence whereof, the record of the case was transmitted to the Chairman, Enquiries and Anti-Corruption Establishment, Karachi, pursuant to the order dated 11.07.2025 of the learned Special Judge. The petitioner asserts that despite having been in custody since 24.04.2024, no FIR stands registered against him, the NAB reference has ceased to exist, and no criminal case is pending before any Court,

leaving only enquiry by the Anti-Corruption Establishment pending against him; thus seeking following reliefs:

*“a) That this Honourable Court may be pleased to grant post-arrest bail to the petitioner in Reference No. 13 of 2020, now re-numbered as Special Case No. 24 of 2024 (Re: The State v. Rahul Kumar & Others), under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.*

*b) To grant any other alternate relief which this Honourable Court deems fit and proper in the circumstances of the case.”*

2. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in NAB Reference No.13 of 2020, the same was transferred to the Court of Special Judge, Anti-Corruption, Sukkur, whereby same has been re-numbered as Special Case No.24 of 2024. It was argued that the petitioner, being merely a Supervisor/Incharge at WPC-PK Mazari and Rounti, had no role in the alleged shortage or dispatch of wheat, and that the investigation itself failed to attribute any direct or documentary evidence establishing criminal intent or personal gain. Learned counsel further submitted that despite the special case having been returned by the Special Judge, Anti-Corruption Court Sukkur Camp @ Ghotki to the Chairman, Enquiry and Anti-Corruption Establishment, Sindh, Karachi, the petitioner continues to remain behind bars without lawful justification. It was, therefore, contended that his continued detention is illegal, and that he deserves to be released on post-arrest bail, particularly as he is willing to furnish surety to the satisfaction of this Court.

3. Notices were issued and Respondent No. 3 submitted their comments stating that the Government of Sindh, through Notification dated 19.05.2025, amended the Enquiries and Anti-Corruption Establishment (E&ACE) Rules, 1993, by inserting Rules 8-A and 8-B, which authorize the E&ACE to enquire into any

complaint, enquiry, or reference received from any other department, agency, authority, or court of law under the relevant anti-corruption laws and submit reports to the Prosecutor General Sindh or the competent court as appropriate. Accordingly, the special case No.24 of 2024 re: The State Versus Rahul Kumar & others will be dealt with under these new provisions. It was therefore prayed that no cause of action arises against Respondent No.3.

4. Heard and record perused. The record reveals that the petitioner, Sikandar Hayat, was arrayed as an accused in NAB Reference No.13 of 2020 titled "*The State v. Rahul Kumar & Others*," filed by the NAB Authority on the allegation of misappropriation of wheat stocks while serving as Supervisor/Incharge WPC-PK Mazari and Rounti. It was alleged that a shortage of approximately 140 metric tons of wheat was detected and attributed to him for failure to submit P.B. forms during the reconciliation process. The petitioner was initially arrested after dismissal of his pre-arrest bail application by the learned trial Court on account of non-suspension of non-bailable warrants, and his subsequent post-arrest bail application was also dismissed vide order dated 15.07.2024. Thereafter, he approached this Court through Criminal Bail Application No.69 of 2024, but during its pendency, the Honourable Supreme Court ordered return of the NAB reference from the Accountability Court to the Anti-Corruption Court, Sukkur on the ground of pecuniary jurisdiction, whereupon the petitioner withdrew his bail application vide order dated 22.10.2024. He then filed a fresh bail application before the learned Special Judge, Anti-Corruption Court, Sukkur, which too was dismissed on 11.11.2024. The petitioner again approached this Court by way of Criminal Bail Application No.S-843 of 2024; however, during its pendency, the Special Judge, Anti-Corruption Court, Sukkur Camp @ Ghotki, vide order dated 11.07.2025, returned Special Case No.24 of 2024 to the Chairman, Enquiry and Anti-Corruption Establishment, Government of Sindh, Karachi, as the proceedings were rendered infructuous. Consequently, the petitioner withdrew his bail

application on 15.07.2025. The petitioner remains behind bars since his arrest (24.04.2024) and now seeks post-arrest bail through the instant constitutional petition, asserting his innocence and contending that his continued detention has become illegal in the absence of any subsisting proceedings before a competent Court.

5. It is an admitted position that after the return of NAB Reference No.13 of 2020 and its transmission to the Anti-Corruption Establishment, no FIR or charge is presently pending against the petitioner in any court of law. In these circumstances, the petitioner's continued incarceration has no lawful footing, and prima facie offends his fundamental right to liberty guaranteed by Article 9 of the Constitution, which commands that "*No person shall be deprived of life or liberty save in accordance with law.*" When jurisdiction to try an accused is disputed or in flux, it does not mean that the accused can be consigned to a legal limbo. The constitutional guarantee of security of person in Article 9 read with the right to fair trial under Article 10A brooks no situation where a citizen's liberty is curtailed indefinitely without competent legal proceedings. The maxim *ubi jus ibi remedium* (where there is a right, there is a remedy) is fully engaged here – for every right infringed, especially so fundamental a right as liberty, the law must provide a remedy. Even if the proper forum is unclear or not immediately available due to jurisdictional controversies, that cannot translate into prolonged imprisonment by default. An individual cannot be told to languish in custody while the State sorts out its internal jurisdictional issues; to do so would be antithetical to the very concept of "due process of law" and would render the constitutional protections illusory.

6. The record reflects that the petitioner has been behind bars since 24.04.2024. This period of incarceration – about seventeen months to date – has run far beyond what the law contemplates as a reasonable time to keep an under-trial accused in custody. Indeed, the Criminal Procedure Code itself, via the statutory **third proviso to Section 497(1)**, creates an *outer limit* to pre-conviction detention. It stipulates that if a person accused of an offence not punishable by

death has been detained for over one year without conclusion of trial, “the Court shall... direct that [such] person shall be released on bail” (except where the delay is occasioned by the accused’s own act or omission). Even for offences punishable by death, the maximum pre-trial custody is capped at two years, beyond which bail becomes a right. In the present case, the petitioner’s continued detention has exceeded the one-year statutory threshold (his case not being one of capital punishment). There is nothing on record to suggest that the delay in concluding proceedings is attributable to the petitioner; on the contrary, the delay flows from intervening legislative changes and the resulting forum wrangles, which are entirely beyond the petitioner’s control. In such circumstances, a *statutory right* to be released on bail has unequivocally accrued to the petitioner under the law. The **Hon’ble Supreme Court** has consistently underscored that where an under-trial prisoner has undergone incarceration for a period beyond the prescribed limit without conclusion of trial, he should be enlarged on bail as of right, absent exceptional circumstances. In *Talat Ishaq v. NAB* (PLD 2019 SC 112), for instance, the apex Court termed an unduly prolonged custody an “inordinate and unconscionable delay” and affirmed that such delay furnishes a good ground for bail. Thus, by statutory mandate as well as precedent, the prolonged custody of the petitioner is prima facie untenable.

7. Even apart from the statutory delay rule, Pakistan’s jurisprudence firmly frowns upon keeping an accused in perpetual custody without progress in the case. In *Ahrar Muhammad v. The State* (PLD 1974 SC 224), the Hon’ble Supreme Court cautioned that while mere routine delay may not by itself justify bail, an “inordinate or unjustified delay in the prosecution of a case amounting to an abuse of process of law” can and should be treated as a sufficient ground for release on bail. The present scenario starkly illustrates such an abuse of process: the petitioner is confined with no trial at all underway – a situation far worse than a slow trial. Likewise, the Superior Courts have held that an accused “cannot be kept in lock-up

for an indefinite period because law does not countenance it”. To allow an open-ended detention would be to convert the presumption of innocence into a punishment in itself – a result abhorrent to fundamental rights and basic criminal justice norms. The courts are, therefore, duty-bound to intervene where an accused is effectively abandoned in custody due to bureaucratic or jurisdictional indecision, for the law *never* permits a person’s liberty to be the casualty of institutional lapses.

8. The peculiar facts of this case reveal a “jurisdictional void” – the NAB Reference against the petitioner has been rendered infructuous and no other court has assumed cognizance of the matter so far; therefore, no other alternate and efficacious remedy is available with the petitioner. The question of which forum (if any) will ultimately try the petitioner remains unresolved. However, the constitutional imperative is **that** jurisdictional ambiguities cannot be used as a pretext to derogate from fundamental rights. If anything, when regular legal proceedings are delayed or unavailable, the High Court’s extraordinary jurisdiction under Article 199 of the Constitution becomes a vital refuge to protect individual liberty. It is well established that High Courts, as sentinel of the Constitution, can grant relief including bail to ensure that fundamental rights are not infringed by **inaction or** uncertainty in the ordinary process. The Supreme Court in *Syed Raza Hussain Bukhari v. State* (PLD 2022 SC 743) elucidated that the High Court, while hearing a bail matter, in fact exercises its constitutional jurisdiction to safeguard the fundamental rights of the accused, transcending technical impediments of ordinary law. The present petition – though unusual in form as a writ for post-arrest bail – is justified by the unusual vacuum in which the petitioner finds himself. The law would be feckless if it did not afford a remedy in such a scenario; “**ubi jus ibi remedium**” is not just an abstract maxim but a guiding principle of our legal system. Where the normal forum cannot be approached or has ceased to exist, the right to life and liberty under the Constitution itself demands that a remedy be fashioned to

prevent arbitrary detention. **The** alternative – leaving a citizen to rot in custody without trial merely because two departments or courts each disclaim jurisdiction – is unconscionable and unconstitutional.

9. It also does not escape our notice that the petitioner’s predicament is a direct consequence of the shifting legal landscape and judicial orders: first, the NAB amendments leading to transfer of the case to the Anti-Corruption Court, and then the Special Judge’s order returning the case as infructuous under newly inserted **Rules 8-A/8-B of Sindh Enquiries and Anti-Corruption Rules, 1993**. These are acts in which the petitioner had no say. The law has long recognised the maxim “*actus curiae neminem gravabit*” – an act of the court shall prejudice no one. If a litigant suffers owing to circumstances created by the workings of the legal system or court directives, it is the duty of the courts to undo that injustice. In the present case, the procedural oscillation (from NAB to Anti-Corruption to nowhere) has left the petitioner in a *custodial limbo* through no fault of his. Therefore, on the principles of fairness and justice too, the petitioner cannot be made to bear the brunt of this jurisdictional confusion. The only just course is to restore his liberty unless and until the State properly arraigns him before a competent court.

10. For the foregoing reasons, we are convinced that the petitioner’s continued detention, in the absence of any pending trial or even a charge before a court of competent jurisdiction, is **manifestly unlawful** and in violation of Articles 9 and 10A of the Constitution. The case for granting post-arrest bail is fortified not only by constitutional guarantees but also by statutory law (Section 497 Cr.P.C.’s proviso) and ample judicial precedents of the Superior Courts, which all forbid indefinite or unreasonable deprivation of liberty. Accordingly, by a **short order** announced on **25.09.2025**, we had **allowed** this petition and admitted the petitioner to bail, subject to surety, as already specified therein. The above are the detailed reasons in support of that short order. The petitioner is entitled to freedom unless required to be detained in

some other case, and the investigating agencies/authorities remain at liberty to adopt proper procedure against him in accordance with law. For ready reference, it would be appropriate to reproduce the short order, which reads as under:

*“The case of the petitioner is that he was initially booked in NAB Reference No. 13 of 2020 (The State-Versus Rahul Kumar & others), which was pending before the Accountability Court, Sukkur. However, pursuant to amendments made to the NAB Ordinance, 1999, the matter was transferred to the Court of the Special Judge, Anti-Corruption (Provincial), Sukkur. Subsequently, the Government of Sindh, vide Notification dated 19.05.2025, amended the Enquiries and Anti-Corruption Establishment (E&ACE) Rules, 1993, by inserting Rules 8-A and 8-B therein. On the basis of the said amendment, the record and proceedings of the special case were transmitted to the Chairman, Enquiries and Anti-Corruption Establishment, Government of Sindh, Karachi, in terms of the order dated 11.07.2025 passed by the learned Special Judge, Anti-Corruption (Provincial), Sukkur. It is further case of the petitioner that he has been in custody since 24.04.2024, despite the fact that the aforementioned NAB reference is no longer in existence, no FIR has been registered against him, and no criminal case is pending before any court. Presently, he is only facing enquiries initiated by the Anti-Corruption Establishment.*

*Heard learned counsel for the respective parties and perused the entire material available on record. For the **reasons to follow**, instant petition is **allowed**. The petitioner, namely, Sikandar Hayat s/o Shabbir Ahmed Buriro is admitted to bail subject to his furnishing solvent surety in the sum of Rs.500,000/-(Five Lac) and PR bond in the like amount to the satisfaction of the Additional Registrar of this Court. After furnishing required surety by the petitioner, he shall be released forthwith, if not required in any other custody case”.*

JUDGE

JUDGE

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