

HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No.D-319 of 2026

[Ghulam Fareed Mugheri vs. Federation of Pakistan and others]

Before:-
Mr. Justice Zulfiqar Ali Sangi,
Mr. Justice Arbab Ali Hakro,

Petitioner : Ghulam Fareed and others, *through* Mr. Abdul Mujeeb Shaikh, **Advocate**

Respondent No.1 : Federation of Pakistan, Through, Syed Naveed Ahmed Shah, **Deputy Attorney General, Pakistan.**

Respondent No.2 : Director General NAB Sukkur, through Mr. Mujeeb-ur-Rehman Shaikh, **Special Prosecutor NAB.**

Date of hearing : **23.07.2026**

Date of decision : **23.07.2026**

ORDER

ARBAB ALI HAKRO J.- The petitioners, who are arrayed as accused in Reference No.23 of 2020 titled “*The State v. Aijaz Hussain Jakhrani & others*” before the Accountability Court-I, Sukkur, have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking directions to respondent No.2, Director General NAB Sukkur, to transmit the said reference to the “competent Court of law”, and further to restrain the learned Accountability Court-I, Sukkur, from calling the petitioners before it till such entrustment.

2. A concise factual matrix, as emerges from the contents of the petition and the material placed on record, is that NAB initiated an investigation pursuant to directions of the Supreme Court of Pakistan in

Human Rights Case No. 66523-S/2018, culminating in Interim Reference No. 23 of 2020 against the petitioners and others, alleging misuse of authority and misappropriation of public funds in several Annual Development Programme schemes of the Machinery & Maintenance Division, Khairpur @ Shikarpur, for the years 2015 to 2019, causing loss to the national exchequer to the tune of Rs.31,15,66,848/-. The reference was filed before the Accountability Court-I, Sukkur, where a charge was framed on 05.04.2021 and evidence of prosecution witnesses commenced.

3. Upon promulgation of the National Accountability (Second Amendment) Act, 2022, the learned I/C Judge, Accountability Court-I, Sukkur, entertained an application on the point of jurisdiction under amended Section 5(o) of the National Accountability Ordinance, 1999 ("NAO, 1999"). Vide order dated 15.03.2023, the learned Accountability Court held that, in view of the amended definition of "offence" requiring the value of the offence to be "not less than five hundred million rupees", the instant reference, involving an amount of Rs.31,15,66,848/-, fell below the threshold; consequently, the Court lacked jurisdiction to proceed further. The learned Accountability Court therefore allowed the application, returned Reference No.23 of 2020, along with all relevant documents, to the Chairman NAB through the Director General NAB Sukkur, with a specific direction "to present it before the concerned Court/Forum as provided under the law as soon as possible under intimation to this Court", and regulated the bail status of the accused accordingly.

4. The petitioners' grievance, as articulated in the petition, is twofold: first, that despite the order dated 15.03.2023, respondent No.2 has allegedly withheld Reference No.23 of 2020 and has not transmitted it to any competent Court or forum; second, that the learned Accountability Court-I, Sukkur, continues to call the petitioners

on different dates, during which they allegedly remain present for the whole day without any effective proceedings, notwithstanding that the reference has been returned and the Court has itself declared a lack of jurisdiction. On this basis, the petitioners contend that their liberty is being adversely affected and that they are being subjected to harassment without lawful authority.

5. Learned counsel for the petitioners argued that, after the Second Amendment Act, 2022, Section 5(o) of NAO, 1999 has ousted the Accountability Court's jurisdiction in respect of offences involving less than Rs.500 million. He submitted that the learned Accountability Court has correctly held that it lacks jurisdiction and has returned the reference to the NAB authorities. However, according to him, respondent No.2 has failed to comply with the direction to present the matter before the competent Court/forum, thereby keeping the petitioners in a state of uncertainty and perpetual pendency. He further submitted that the continued calling of the petitioners by the learned Accountability Court, despite having returned the reference, is coram non judge and amounts to abuse of process. He urged that this Court, in exercise of its constitutional jurisdiction, may issue a writ of mandamus directing respondent No.2 to forthwith transmit the reference to the competent Court/forum and restrain the learned Accountability Court from summoning the petitioners until such entrustment, so that their fundamental rights to liberty and fair trial are protected.

6. Learned Deputy Attorney-General, appearing for the Federation, opposed the petition and submitted that no infringement of any enforceable fundamental right had been demonstrated. He contended that the directions sought by the petitioners fall squarely within the statutory and administrative domain of NAB and that Article 199 cannot be invoked to supervise internal prosecutorial processes. He further

argued that the petitioners have neither pleaded nor established mala fides or any act done without lawful authority, and that the petition is misconceived.

7. The Learned Special Prosecutor for NAB adopted the submissions of the Learned DAG and added that the order dated 15.03.2023 of the Learned Accountability Court-I, Sukkur, already contains a clear direction to present the returned reference before the competent forum “as provided under the law”. He submitted that NAB is presently examining the legal consequences of the amendments to NAO, 1999, including the determination of the appropriate forum, and that such exercise necessarily involves prosecutorial discretion, which cannot be controlled by a writ of mandamus. He further argued that the petitioners, being accused in a criminal reference, cannot dictate the manner or timeline in which NAB should proceed. As regards the grievance of being called by the Accountability Court, he submitted that any such listing is merely ancillary to the implementation of the Court’s own order and that the petitioners had an adequate remedy before the same Court for exemption or clarification, which they failed to avail.

8. Heard arguments and perused the record.

9. At the outset, it is to be noted that the impugned order dated 15.03.2023 of the learned Accountability Court-I, Sukkur, is not under challenge in the present petition; rather, the petitioners rely upon it. The learned Accountability Court, after reproducing Section 1 of the National Accountability (Second Amendment) Act, 2022, and the amended Section 5(o) of NAO, 1999, held that the amendment has retrospective effect from the commencement of NAO, 1999, and that, in the present reference, “the value of the offence as mentioned in the reference is Rs.31,15,66,848/-, which is less than Five Hundred Million Rupees, therefore, this Court has no jurisdiction to further proceed into the matter. If proceeded, the entire proceedings shall become coram

non judice and without jurisdiction.” On that basis, the learned Accountability Court allowed the application, returned the reference to NAB, and directed presentation before the competent Court/forum.

10. The petitioners’ primary prayer is, in substance, to enforce the said direction against respondent No.2 by a writ of mandamus. It is well-settled that a writ of mandamus lies to compel the performance of a public duty that is clear, specific and non-discretionary, imposed by law upon a public authority, where the authority has failed or refused to perform it. The constitutional jurisdiction under Article 199 is discretionary and is not to be exercised to supervise or micro-manage the internal administrative or prosecutorial decisions of statutory bodies, particularly in criminal matters, save where there is demonstrable mala fide, abuse of process or violation of fundamental rights.

11. In the present case, the direction in the order dated 15.03.2023 is to “present [the reference] before the concerned Court/Forum as provided under the law as soon as possible under intimation to this Court.” Identifying the “concerned Court/Forum” and determining the timing of such presentation necessarily involve interpreting and applying the amended NAO, 1999, considering pending litigation regarding the validity and scope of the amendments, and assessing the appropriate prosecutorial course. These matters fall squarely within NAB’s statutory domain and discretion, subject to any binding pronouncements of the superior Courts. No material has been placed before us to show that NAB has taken any decision contrary to law, that it has refused to act upon the direction of the Accountability Court, or that it is acting with mala fide intent to harass the petitioners. Mere delay or perceived inaction, without more, does not convert a discretionary statutory function into a rigid, enforceable duty amenable to mandamus.

12. Furthermore, the petitioners, being accused in a criminal reference, cannot claim a vested right that the reference must be transmitted to a particular forum within a particular time frame. Their rights to a fair trial and due process arise and are enforceable only when the matter is presented before a competent Court/forum; at that stage, they will have all remedies available under law, including challenging the jurisdiction, seeking bail, and proceeding to trial on the merits. At present, the reference stands returned by the Accountability Court-I, Sukkur, and is not being tried there. The petitioners have not shown any subsisting order of remand, custody, or coercive process issued by the Accountability Court after 15.03.2023 that infringes their liberty or property. The diary sheet placed on record, dated 10.11.2025, merely reflects that the reference was “called” and that certain accused were present on bail while others were absent; it does not disclose any substantive proceedings or orders adverse to the petitioners.

13. The second limb of the prayer, seeking restraint against the learned Accountability Court-I, Sukkur, from calling the petitioners, is equally misconceived. The learned Accountability Court has already held that it lacks jurisdiction and has returned the reference. Any further listing or calling of the case appears to be ancillary to the implementation of that order and to the regulation of bail and the custody of the accused pending presentation of the matter before the competent forum. This Court, in exercise of Article 199, cannot issue directions to a trial Court in a manner that would interfere with its control over its docket or its ability to ensure the presence of the accused in accordance with law, particularly when no specific illegal order is under challenge. Granting such a blanket restraint would amount to unwarranted interference in the functioning of the Accountability Court and would set an undesirable precedent.

14. It is also pertinent that the petitioners have an adequate and efficacious remedy before the very forum whose order they rely upon. If they are of the view that respondent No.2 has not complied with the direction contained in the order dated 15.03.2023, or that the continued calling of the case is inconsistent with that order, they may approach the learned Accountability Court-I, Sukkur, for appropriate clarification, enforcement or modification. The learned Accountability Court retains seisin to the limited extent of ensuring the implementation of its order and regulating bail and custody until the matter is presented before the competent forum. The petitioners have bypassed that remedy and have directly invoked Article 199, which, in the circumstances, is not warranted.

15. In view of the foregoing discussion, we are of the considered view that the present petition is misconceived, devoid of merit and not maintainable. Consequently, this Petition is dismissed.

JUDGE

JUDGE