

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Constitutional Petition Nos. D-1199 and 214 of 2016**

**Present:**

**Mr. Justice Aqeel Ahmed Abbasi.**

**Mr. Justice Sadiq Hussain Bhatti.**

**Shoaib Warsi and another..... Petitioners**

**Versus**

**Federation of Pakistan& others -----Respondents**

**Date of hearing: 01.07.2016**

**Date of order: 01.07.2016**

**Petitioners: Through Khawaja Shams-ul-Islam a/w  
Mr.Emran Taj & Mr. Farooq H. Naek a/w  
Mr.Obaid-ur-Rehman, Advocates for  
petitioners.**

**RespondentNo.1: Through Mr. Noor Muhammad Dayo, Spl.  
Prosecutor, NAB along with SIO Abdul Fatah,  
NAB.**

**O R D E R**

**Aqeel Ahmed Abbasi, J.** Since the facts of both the petitions and the allegations as contained in NAB Reference No.19/2016 against both the petitioners are similar, therefore, by consent of learned counsel for the petitioners and the Special Prosecutor, NAB duly assisted by the SIO Abdul Fatah, NAB, the above petitions are being disposed of by this common order in the following terms:

2. The brief facts relevant for the purpose of disposal of above petitions as stated in Const. Petition No.D-1199/2016 in respect of petitioner, namely, Shoaib Warsi are that on 26.08.2015 at about 7:30 p.m., petitioner namely Shoaib Warsi, Deputy Managing Director of SSGC was picked up by the officials of Pakistan Rangers Sindh outside the head office of SSGC from his official Prado Jeep bearing registration No.BD-1370

(golden colour) along with Driver, namely, Khalid and Gunman, namely, Muhammad Khan, whereas, such arrest was reportedly witnessed by large number of persons and such news was also highlighted in the electronic and print media. The arrest of the petitioner was shown by the Pakistan Rangers Sindh under Section 11EEEE(1) of the Anti-Terrorism Act, 1997, and the petitioner remained under detention by the Pakistan Rangers Sindh for a period of about three months (Ninety days), whereafter, his custody was given to NAB officials, however, without any Court's order. On 27.11.2015, the officials of respondent No.1 tried to obtain the remand of the petitioner from the concerned Judicial Magistrate, which was declined on the ground that the said Magistrate had no jurisdiction to grant remand as the matter pertains to NAB. On 28.11.2015, SIO Abdul Fatah, Deputy Director, NAB moved an application before the NAB Court, Karachi, by raising frivolous allegations and grounds for obtaining 15 days physical remand of the petitioner, which was granted until 11.12.2015, whereas, further remand was obtained by the NAB authorities, which was granted on 11.12.2015, 07.12.2015, 30.12.2015, 05.01.2016, 10.01.2016 and 20.01.2016 respectively, and thereafter the petitioner was remanded to judicial custody on 21.09.2016. The petitioner being aggrieved by his illegal arrest and detention filed a Constitutional Petition No.D-7571/2015 seeking his release on bail, however, the same was dismissed vide order dated 18.02.2016 for the reasons that since, the S.I.O. NAB is yet to record the statement of witnesses and to collect the material against the petitioner, therefore, the concession of bail to the petitioner could not be extended at the initial stage of inquiry and investigation. However, since a Reference bearing No.19/2016 has now been filed before the Accountability Court, Sindh at Karachi, after inquiry and investigation, the petitioner has filed instant petition for seeking his release on bail on various grounds on merits, besides the grounds that the entire proceedings against the petitioner, starting from his illegal arrest by the Pakistan Rangers, Sindh on 26.08.2015 under purported exercise of Section 11EEEE(1) of the ATA, 1997, his illegal detention for ninety days without any material or evidence, and thereafter, handing over the custody of petitioner by the Pakistan Rangers, Sindh to NAB authorities on 26.11.2015 without Court's order, is patently illegal without lawful authority and tainted with malice.

3. Similarly, the brief facts as stated in Const. Petition No.D-214/2016 in respect of petitioner, namely, Zuhair Siddiqui, remained Managing Director, SSGCL with the approval of the competent authority w.e.f. 08.11.2012 to 12.03.2013 and stood retired on attaining the age of superannuation on 12.03.2013 from SSGCL, and thereafter his services were continued by the orders of the competent authority from 12.03.2013 to 16.07.2014 on contractual basis, until he tendered his resignation. On 27.08.2015, at late hours of night at about 3.00 a.m, the house of the petitioner was raided by the Pakistan Rangers, Sindh, who was arrested, whereas, on the next date in the morning i.e. 28.08.2015, his physical remand was obtained for Ninety days by the Pakistan Rangers, Sindh, under Section 11E(1) of ATA, 1997. During his arrest by the Pakistan Rangers Sindh, the petitioner was reportedly interrogated by the NAB authorities as well on various occasions. On expiry of 90 days remand on 26.11.2015, the custody of the petitioner, namely, Zohair Siddiqui, was handed over by the Pakistan Rangers Sindh to National Accountability Bureau, Karachi, whereas, on 28.11.2015 the SIO NAB obtained remand of the petitioner for 15 days from the Accountability Court at Karachi, which was granted until 11.12.2015. Petitioner's further remand was obtained from the Accountability Court at Karachi on 11.12.2015 to 17.12.2015, 17.12.2015 to 30.12.2015, 30.12.2015 to 05.01.2016 and 05.01.2016 to 11.01.2016, however, during above extensive remand period, according to petitioner, the NAB authorities could not collect any tangible material or evidence against the petitioner, who was being detained, initially by Pakistan Rangers, Sindh and thereafter by NAB authorities, without any legal basis, just to cause harassment and humiliation to the petitioner.

4. However, since NAB authorities have now filed Reference No.19/2016 before the Accountability Court at Karachi, therefore, both the petitioners seek their release on bail during pendency of trial through instant petitions on various grounds, whereas, such grounds and the arguments of both the learned counsel for petitioners i.e. M/s Khawaja Shamsul Islam (C.P.No.D-1199/2016) and Farooq H. Naek (C.P.No.D-214/2016) Advocates can be summarized in the following terms.

5. Learned counsel for the petitioners argued that the illegal arrest and detention of the petitioners on 26.08.2015 and 28.08.2015 respectively, by the Pakistan Rangers,

Sindh in the absence of any criminal case or any incriminating material under the purported exercise of authority under Section 11EEEE(1) of the ATA, 1997, and, thereafter, instead of releasing them after expiry of ninety days, handing over their custody to the NAB authorities, without any order of the Accountability Court or the competent authority, besides being patently illegal and contrary to provisions of NAB Ordinance, 1999, was based on malafide. According to learned counsel, the arrest of the petitioners by the NAB authorities in Reference No.19/2016, in the absence of any authorization by the competent authority i.e. Chairman NAB, for initiating any inquiry or investigation against the petitioners in the aforesaid reference was equally illegal and without any lawful authority. Learned counsel for the petitioners further contended that the repeated remands obtained from the NAB Court by the NAB authorities were also without lawful authority and tainted with malice, as according to learned counsel, no reasonable grounds were disclosed nor any incriminating material could be produced by the NAB authorities while seeking repeated remands of the petitioners. It has been further submitted that at the time of arrest of petitioners by the NAB authorities, there was no legally instituted inquiry or investigation against the petitioners by the competent authority, nor there was any incriminating material which could be collected either by the Pakistan Rangers (Sindh) or the NAB authorities during illegal detention of the petitioners since their arrest, and inspite of such facts, the petitioners have remained in custody, initially by Pakistan Rangers (Sindh) and now by NAB authorities for a period of about one year, whereas, neither charge has been framed nor the trial has commenced so far. Learned counsel for the petitioners further contended that the petitioners were never served with any call up notice in terms of Section 19 of NAB Ordinance, 1999, by the NAB authorities, nor have ever been confronted with the allegations as contained in the above reference before their arrest, whereas, no valid reasons, whatsoever, have been disclosed by the competent authority while issuing warrant of arrest in respect of the petitioners. It has been further contended by the learned counsel that on 20.11.2015 there was no inquiry and investigation duly authorized by the competent authority in respect of allegations as contained in Reference No.19/2016, whereas, the grounds as stated for the arrest of the petitioners while issuing warrant of arrest were signed by the I.O. and not by the Chairman, NAB as required by law. Per learned counsel, in the

authorization letters dated 18.09.2015 and 22.09.2015, there is no reference to allegations against the petitioners, namely, Shoaib Warsi and Zuhair Siddiqui, as contained in Reference No.19/2016, whereas, through letter dated 18.09.2015, the Director General, NAB, Karachi, was delegated powers by the Chairman, NAB to authorize inquiry against Dr. Asim and others **for misuse of authority and corruption in SSGCL through illegal benefits extended to KESC**, whereas, through letter dated 22.09.2015, the I.O. Abdul Fateh, Deputy Director, NAB was authorized by the Director General, NAB, to conduct inquiry against Dr. Asim Hussain & others **for alleged corruption and extending undue benefits to K-Electric under Inquiry No.242118-Karachi only**. Per learned counsel, the investigation report was prepared on 01.03.2016, however, the witnesses were examined under Section 161 Cr.P.C. by the Investigating Officer on 28.11.2015, even prior to authorization of such inquiry and investigation by the competent authority. It has been contended by the learned counsel for the petitioners that the petitioners, who remained as Deputy Managing Director and Managing Director respectively of SSGCL for a very short span of period, have been roped in a frivolous reference on the allegations of having facilitated the Petroleum Minister Dr. Asim on the charges of corruption and misuse of authority and to cause loss to public exchequer, however, in the absence of any incriminating material to support such allegations, merely on the basis of some Record of Discussion (ROD). Per learned counsel, such ROD was subsequently, placed and discussed in the Board's Meeting, which was attended by majority of Board's Members, including Minister of Petroleum and officials of OGRA and SSGCL, whereas, both the petitioners were merely one of the members of the Board in such meeting, and had no decisive role to either present such proposal or to get the same approved by the majority members of the Board of Directors. Per learned counsel, allegations as referred in the Reference against petitioners, besides being false and frivolous, are otherwise based on surmises and conjectures, whereas, no specific role has been assigned to the petitioners relating to allegations of misuse of authority, causing loss to the public exchequer, or to extend any financial benefit to JJVL.

6. It has been further contended by the learned counsel for the petitioners that the prosecution could not collect any material regarding illegal gain, if any, which could be

attributed to the petitioners, whereas, the similar allegations as contained in the aforesaid reference relating to violation of PEPRA Rules while awarding contract to JJVL or extending undue benefits to JJVL, and to have caused purported loss to the public exchequer, was already subject matter of the Constitution Petition No.5 of 2011 before the Hon'ble Supreme Court, which has been disposed of by the Hon'ble Supreme Court with the directions to the respondents to constitute a Committee comprising of Mr. M. H. Asif (former member OGRA) and Mr. Shabbar Raza Zaidi, partner of Messrs A.F. Ferguson & Co. Chartered Accountants, to scrutinize the accounts by affording opportunity of being heard to both SSGCL and JJVL, and to submit report, which according to learned counsel for the petitioners, has been submitted from time to time and the matter is still under scrutiny before the Hon'ble Supreme Court. Learned counsel further argued that the NAB authorities have roped the petitioners in frivolous proceedings under the NAB Ordinance, 1999, on the basis of same set of allegations, which amounts to vexing the petitioners twice for the same alleged offence, and also reflects upon their malafide. While concluding their arguments, it has been argued by the learned counsel that NAB authorities, inspite of lapse for more than a year since arrest of petitioners, could not collect any material nor could bring anything on record which could possibly establish the allegations of corruption, misuse of authority, loss of public exchequer, or financial benefit or gain to M/s. JJVL or to the petitioners out of alleged acts or omissions as referred in Reference No.19/2016 filed by the NAB against Dr.Asim and others, including petitioners namely, Dr.Shoaib Warsi and Zuhair Siddiqui, before the Accountability Court. It has been prayed that arrest of the petitioners under the aforesaid circumstances amounts to illegal detention, whereas, there is inordinate delay on the part of NAB Authorities in the trial, as even the charge has not yet been framed and there is no likelihood that in near future the trial may proceed or could be concluded. Per learned counsel, matter requires further inquiry, even to make out a cognizable offence against petitioners, therefore, petitioners may be released on bail as almost all the other co-accused are on bail in above reference. In support of their contention, learned counsel for petitioners have placed reliance on the following case laws:

- (1) Wakeeluddin and others v. The State and others (2007 P.Cr.L.J. 1515)

- (2) Khawaja Muhammad Asif v. Federation of Pakistan and others (PLD 2014 SC 206)
- (3) Syed Mansoor Ali and others v. Chairman, NAB and others (PLD 2016 Sindh 41)
- (4) Anwarul Haq Qureshi v. NAB and another (2008 SCMR 1135)
- (5) Khan Asfandyar Wali and others v. Federation of Pakistan and others (PLD 2001 SC 607)
- (6) Raja Muhammad Zarat Khan and another v. Federation of Pakistan and 2 others (PLD 2007 Karachi 597)

7. Conversely, learned Special Prosecutor, NAB duly assisted by SIO Abdul Fatah, Deputy Director, NAB, Karachi, opposed grant of bail to the petitioners on the grounds that petitioner has been nominated with specific role in the reference filed by the NAB authorities before the Accountability Court on the allegations of corruption, misuse of authority and extending illegal benefits and gain to M/s.JJVL by causing huge losses to the public exchequer. It has been further contended by the learned Special Prosecutor that the arrest of the petitioners was made in accordance with law, whereas, repeated remand of the accused persons was obtained on reasonable grounds, i.e. to collect material and evidence against the petitioners. Learned Special Prosecutor further submits that inquiry and investigation has been conducted by the SIO, NAB, after due authorization by the Director General, NAB/Chairman, NAB in accordance with law and there has been no violation of any provision of NAO, 1999, as alleged by the learned counsel for the petitioners. According to learned Special Prosecutor, NAB, the petitioners have not only violated the provisions of PPRA Rules, 2004, while awarding contract to M/s. JJVL but have also extended illegal concession and benefits to M/s. JJVL, which has caused loss of huge public exchequer, to their personal advantage and gain as well as to the advantage and gain to M/s. JJVL. Learned Special Prosecutor submits that there is sufficient material to connect the petitioners with the alleged crime, whereas, the Hon'ble Supreme Court has also examined the violation of PPRA Rules, 2004 and also the illegalities committed by the petitioners along with other co-accused persons, while deciding Petition No.05 of 2011, wherein, Committee of two persons, comprising of Mr. M.H. Asif and Mr. Shabbar Raza Zaidi has been constituted to scrutinize the accounts and the allegations and to submit report. It has been prayed that petitioners are not entitled to be released on bail in view of allegations as contained in the aforesaid

reference and the material gathered by the SIO, NAB against the petitioners regarding their misuse of authority and corruption.

8. We have heard the learned counsel for petitioners, Spl. Prosecutor NAB and perused the record with their assistance. It will be relevant to examine the role of accused, namely, Zuhair Siddiqui, which has been detailed in para 18 at page 26, whereas, the role of accused, namely, Shoaib Warsi, has been detailed in para 18 at page 27 in the following terms:-

**Zuhair Ahmed Siddiqui, Ex MD/DMD SSGCL:**

- a. *The accused being DMD willfully failed to exercise his authority to prevent illegal award of KPD gas field to JJVL by OGDCL.*
- b. *Accused after assuming charge as MD SSGCL illegally approved and allowed co-accused Shoaib Warsi, the then SGM (Transmission) for diversion/supply of KPD gas to JJVL without any tender. In this manner more than 100 MMCD gas of KPD field was illegally handed over to JJVL.*
- c. *Accused being MD SSGCL, after announcement of Supreme Court Judgment dated 4<sup>th</sup> Dec 2013, willfully and with mala fide intention did not implement the said judgment in letter and spirit, rather continued to supply at more favourable terms and conditions.*
- d. *Accused being MD SSGCL, illegally and with mala fide intention facilitated /compensated JJVL, illegally by signing three MoUs on 26<sup>th</sup> May 2014 regarding KPD, Sinjoro, Naimat Basal gas fields to JJVL although, tendering of said gas fields had been initiated on 25<sup>th</sup> May 2014. Through the said MoUs un-evaluated / exorbitant process charges of \$ 237 per metric ton were illegally given to JJVL resulting into illegal payment of billions of rupees.*
- e. *Accused being MD SSGCL, illegally and with mala fide intention allowed JJVL to retain extracted LPG and NGL worth billions of rupees.*
- f. *Accused after leaving the SSGCL on 17<sup>th</sup> July 2014, joined JJVL subsidiary company i.e. M/s Pakistan Gasport Ltd (PGPL) as Chief Executive Officer which shows his active connivance with accused beneficiary resulting into unlawful favour in the shape of prized appointment.*

**Shoaib Warsi, Ex SGM (Transmission) and Ex-MD SSGCL**

- a. *The accused during 2013 was given charge as SGM (Transmission) SSGCL. He being SGM (T) illegally and with mala fide intention facilitated the supply of more than 100 MMCD KPD gas to JJVL. It has also been*



*established that said supply was made without any tender process and even without the approval of BoD.*

- b. *Accused, after assuming the charge of MD SSGCL, illegally signed Record of Discussion (RoD) / agreement dated 24 Oct 2014 through which he unauthorizedly allowed JJVL to make payment due to SSGCL at its own accord. Thus he willfully failed to protect the interest of public exchequer thereby giving undue benefits to JJVL in respect to the timely recovery of due amount / cost of retained LPG and NGL.*
  - c. *The accused being MD SSGCL illegally cancelled the tendering process of KPD, Sinjoro and Naimat Basal, and willfully allowed JJVL to continue extracting LPG and NGL from Badin, KPD, Bobi, Sinjoro, and Naimat Basal gas fields without any tender.*
  - d. *The accused being MD SSGCL illegally supplied gas without cost to JJVL for their compressor fuel, resultantly loss worth millions of rupees has been caused to national exchequer.*
  - e. *The accused in his capacity as MD SSGCL, vide "Note for Director" dated 4<sup>th</sup> November 2014, by concealing the actual facts, illegally recommended retention of more than 50% of extracted LPG by JJVL. Moreover, the record reveals that due to his act since November 2014 more than 60% of LPG has been illegally retained by JJVL being the share of SLL which is subsidiary of SSGCL.*
  - f. *The accused being MD SSGCL, by suppressing the true facts, submitted a "Note for Director" dated 16<sup>th</sup> September 2014, wherein he recommended signing of MoU for Badin field, which is against the spirit of the honorable Supreme Court's judgment dated 4<sup>th</sup> December 2013 and also against the interest of SSGCL.*
  - g. *The accused being MD SSGCL, in active connivance with other accused officials of SSGCL and JJVL, illegally allowed retention of 100% extracted NGL worth billions of rupees to JJVL without any provision even in MoU, which resulted into loss of billions of rupees to the public exchequer.*
9. It will be equally relevant to reproduce hereunder the correspondence between the officials of NAB relating to delegation of authority and authorization of inquiry and investigation, produced by the SIO, NAB, i.e. (i) the letter dated 18.09.2015 issued by Chairman, NAB to the Director General, NAB, Karachi, delegating powers to authorize an inquiry against Dr. Asim Hussain and others, (ii) the letter dated 22.09.2015 issued by

Director General, NAB, Karachi, to the Deputy Director/SIO, NAB Karachi, namely, Abdul Fatah, authorizing inquiry against Dr. Asim Hussain and others (Case No.242118-KHI), (iii) the letter dated 19.02.2016 issued by Chairman, NAB to Director General, NAB, Karachi, authorizing investigation against Dr. Asim Hussain and others, and (iv) the letter dated 19.02.2016 issued by Director General, NAB, Karachi, to Deputy Director/SIO Abdul Fatah, authorizing investigation against Dr. Asim Hussain and others:

“(i)

RESTRICTED

GOVERNMENT OF PAKISTAN  
NATIONAL ACCOUNTABILITY BUREAU  
G-5/2,Ata Turk Avenue  
Islamabad

To,

The Director General,  
National Accountability Bureau,  
Karachi.

Subject: DELEGATION OF POWERS TO AUTHORIZE AN INQUIRY AGAINST DR.ASIM HUSSAIN AND OTHERS FOR MISUSE OF AUTHORITY AND CORRUPTION IN SSGC THROUGH ILLEGAL BENEFITS EXTENDED TO KESC

Dr. Asim Hussain and others are prima facie involved in the commission of offence(s) under the provisions of National Accountability Ordinance (NAO) 1999, through misuse of authority and corruption in SSGC through illegal benefits extended to KESC and it is necessary and appropriate to initiate proceedings against them.

2. In exercise of powers vested in me under Section 34A of National Accountability Ordinance (NAO) 1999, **Director General National Accountability Bureau, Karachi** is authorized to refer the matter for inquiry within the meanings of section 18(c) NAO 1999.

Sd-  
(Qamar Zaman Ch.)  
Chairman  
National accountability Bureau

No.3-2/(1)(67)/K/MW-II/NAB HQ/2015 dated 18<sup>th</sup> September, 2015”

(ii)

CONFIDENTIAL

GOVERNMENT OF PAKISTAN  
NATIONAL ACCOUNTABILITY BUREAU (KARACHI)  
PRCS BUILDING 197/5, DR.DAUDPOTA ROAD  
KARACHI CANTONMENT

SAY NO TO CORRUPTION
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To,

Mr.Abdul Fatah Ghambir  
Deputy Director/SIO  
NAB, Karachi.

Subject: Authorization of Inquiry Against Dr.Asim Hussain, & others for Misuse of Authority and Corruption in SSGC Through Illegal Benefits Extended to KESC/K-Electric Case No.242118-Khi.

Ref: NAB HQ Islamabad letter No.3-2(1)(67)K/MW-II/NAB HQ/2015 Dated 18-09-2015

Dr.Asim Hussain & others are prima facie involved in commission of scheduled offence(s) of corruption and corrupt practices punishable under National accountability Ordinance, 1999.

2. You are directed to hold formal inquiry and submit your final report together with the evidence and other material collected by you for appraisal of the undersigned.

Sd/-

(Lt Col (R) Siraj ul Naeem)  
Director General  
NAB Karachi

No.242118-Khi/FC/W/1/CO-B/NAB(K)/2015/ 5727 dated 22 September, 2015.

(iii)

GOVERNMENT OF PAKISTAN  
NATIONAL ACCOUNTABILITY BUREAU  
G-5/2,Ata Turk Avenue  
Islamabad

To,

The Director General,  
National Accountability Bureau,  
Karachi.

Subject: Authorization of Investigation U/s 18 (c) NAO, 1999 against Dr.Asim Hussain, Ex-Minister Petroleum & Natural Resources, Officials of OGDCL,SSGCL & others

Dr. Asim Hussain, Ex-Minister Petroleum & Natural Resources, Officials of OGDCL, SSGCL & others are prima facie involved in commission of offence(s) of corruption & corrupt practices by **Misuse of Authority in illegal award of contract for extraction of LPG & NGL to Jamshoro Joint Venture Ltd etc**, which is cognizable under section 9(a), punishable under section 10 of National Accountability Ordinance, 1999 and schedule thereto.

2. You are directed to depute Investigation Officer/Team for Investigation into the matter and submit final Investigation Report together with the evidence and other material collected for appraisal and necessary legal action under the provisions of NAO,1999.

Sd-  
(Qamar Zaman Ch.)  
Chairman NAB

No.7-2/(13)/K/IW-III/NAB-HQ/2016 dated 19<sup>th</sup> February,2016

(iv)

CONFIDENTIAL

GOVERNMENT OF PAKISTAN  
NATIONAL ACCOUNTABILITY BUREAU (KARACHI)  
PRCS BUILDING 197/5, DR.DAUDPOTA ROAD  
KARACHI CANTONMENT

SAY NO TO CORRUPTION

To,

Mr. Abdul Fatah Ghambir  
Deputy Director/SIO  
NAB, Karachi.

Subject: **Authorization of Investigation U/s 18 (c) NAO, 1999 against Dr.Asim Hussain, Ex-Minister Petroleum & Natural Resources, Officials of OGDCL,SSGCL & others.**

Ref: NAB HQ Islamabad's letter No.7-1/(13)/K/IW-III/NAB-Q/2016  
dated 19-02-2016

Dr. Asim Hussain, Ex-Minister Petroleum & Natural Resources, Officials of OGDCL, SSGCL & others are prima facie involved in commission of offence(s) of corruption & corrupt practices by **Misuse of Authority in illegal award of contract for extraction of LPG & NGL to Jamshoro Joint Venture Ltd etc**, which is cognizable under section 9(a), punishable under section 10 of National Accountability Ordinance, 1999 and schedule thereto.

2. You are directed to hold formal investigation and submit you final investigation report together with the evidence and other material collected by you for appraisal of the Competent Authority.

Sd/-  
19/2/16  
(Lt Col(R) Siraj ul Naeem)  
Director General  
NAB Karachi

NO.24218Khi/IW-III/CO-B/NAB(K)/2016/874

10. From perusal of statement of facts as recorded in the subject reference i.e. Reference No.19/2016 and the Investigation Report in the instant case against the petitioners, it appears that NAB has initiated proceedings against the aforesaid petitioners and other co-accused persons in Reference No.19/2016 on the basis of some **source report**, which interalia revealed that the Federal Minister, officials of MP & NR Oil and Gas Development Company Ltd. (OGDCL) and Sui Southern Gas Company Ltd. (SSGCL) were involved in misappropriation of funds by providing illegal benefits to Jamshoro Joint Venture Ltd. (JJVL). Meanwhile, the NAB Authorities reportedly received complaint from one Anwar Sehto, Ex-Employee of SSGCL, wherein, interalia, it was alleged that gas worth billions of rupees has been illegally and fraudulently delivered to JJVL. However, it is pertinent to note that the prosecution has not placed on record either **source report** or the **complaint** received by the NAB Authorities for verification of the allegations against the petitioners. It further appears that the petitioners were neither issued any call up notice in terms of Section 19 of the NAB Ordinance, 1999, nor have been confronted with any material, including the source report or the complaint of Anwar Sehto, ex-employee of SSGCL, in spite of the fact that during course of arguments such specific plea on behalf of petitioners was raised by the learned counsel for the petitioners. Moreover, the respondents failed to deny such assertions by filing any specific rebuttal in this regard, nor they could produce any material contrary to such assertion. It has been further observed that the date of authorization of inquiry, in the Investigation Report prepared by SIO/Deputy Director, NAB, namely, Abdul Fateh, has been mentioned as **22.09.2015**, whereas, the date of authorization of investigation has been mentioned as **19.02.2016**. During the course of hearing of aforesaid petitions, the prosecution was directed to place on record all the letters of authorization of inquiry and investigation relating to aforesaid Reference No.19/2016, who have placed on record four letters as detailed in para-9 hereinabove, which reflect that first letter dated **18.09.2015** was issued by the Chairman, NAB delegating powers to the Director General, NAB Karachi, to authorise an inquiry against Dr. Asim Hussain and others for misuse of authority and corruption in SSGCL through illegal benefits extended to KESC. Such letter was followed by another letter dated **22.09.2015** issued by Director General, NAB, Karachi, authorising inquiry to SIO Abdul Fatah, Deputy Director, NAB, Karachi,

against Dr. Asim Hussain and others for misuse of authority and corruption in SSGCL through illegal benefit extended to KESC/K-Electric being Case No.242118/Khi. Perusal of hereinabove two letters clearly reflects that there was authorization of inquiry to the Deputy Director/SIO Abdul Fatah against **Dr. Asim Hussain and others on the allegation of misuse of authority and corruption in SSGCL through illegal benefit extended to KESC/K-Electric in Case No.242118-Khi only**, whereas, there has been no authorization of any inquiry or investigation against the petitioners in respect of allegations as detailed in the Reference No.19/2016 relating to corruption and corrupt practices by misuse of authority, and illegal award of contract to M/s. JJVL for extraction of LPG and NGL. The prosecution has also placed on record two letters of even date i.e. 29.02.2016, which have also been reproduced hereinabove para-9, one issued by the Chairman, NAB to the Director General, NAB, Karachi, for authorization of investigation under Section 18(C) of the NAB Ordinance, 1999, against Dr. Asim Hussain, Ex-Minister, Petroleum and Natural Resources and officials of SSGCL and others on the allegations of corruption and corrupt practices by misuse of authority and illegal award of contract to M/s. JJVL, for extraction of LPG and NGL, whereas, the second letter of even date has been issued by Director General, NAB, Karachi, to SIO Abdul Fatah, Deputy Director, NAB, Karachi, on the same subject. The aforesaid authorization letters of inquiry and investigation issued by the Chairman, NAB and the Director General, NAB, respectively, clearly reflect that at the time of arrest of the petitioners by the Pakistan Rangers and thereafter, handing over their custody to the NAB Authorities by the Pakistan Rangers, Sindh, on the expiry of ninety days on 26.11.2015, **there was no authorization of any inquiry or investigation in terms of Section 18 of the NAB Ordinance, 1999, against the petitioners in respect of allegation of corruption and corrupt practices by misuse of authority in SSGLC through illegal award of contract for extraction of LPG and NGL to JJVL, which is the subject matter of reference No.19/2016, filed by the NAB before the Accountability Court.**

11. Since the petitioners have vehemently disputed the legality of their arrest initially by the Pakistan Rangers, Sindh, in purported exercise under Section 11EEEE(1) of ATA, 1997, as well as their arrest by the NAB Authorities, by taking over their custody on

completion of ninety days detention from Pakistan Rangers, Sindh, on the grounds that entire proceedings in this regard have been initiated in violation of Article 10 of the Constitution of Islamic Republic of Pakistan, and also contrary to the provision of Sections 18 and 24 of NAO, 1999, it will be advantageous to examine the scope of the relevant provisions of Sections 18 and 24 of NAO, 1999, which read as follows:-

**“18. Cognizance of offences:**

- (a) *The [...] Court shall not take cognizance of any offence under this Ordinance except on a reference made by [the Chairman NAB or an officer of the NAB duly authorized by him].*
- (b) *A reference under this Ordinance shall be initiated by the [...] National Accountability Bureau on—*
  - (i) *a reference received from the [...] appropriate government; or*
  - (ii) *receipt of a complaint; or*
  - (iii) *[its] own accord.*
- (c) *Where the Chairman NAB, or an officer of the NAB duly authorized by him, is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, he shall refer the matter for inquiry or investigation.]*
- (d) *The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman [NAB][or by an officer of the NAB duly authorized by him].*
- (e) *The Chairman NAB and such members, officers [...] or servants of the NAB shall have and exercise, for the purposes of any inquiry [...] or investigation the power to arrest any person, and all the powers of any officer-in-charge of a Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, police officer or any other official or agency, as the case may be, is sought by the NAB such official or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman [NAB] or an officer [of NAB] duly authorized by the Chairman NAB.*
- (f) *Any Inquiry [or] Investigation under this Ordinance shall be completed expeditiously [...] as may be practical and feasible.*
- (g) *The [...] Chairman NAB, [or by an officer of the NAB duly authorized [...] him,] shall appraise the material and the evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further [and there is sufficient material to justify filing of a reference], he shall refer the matter to [a] Court.*

- (h) *If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any person, the Chairman [NAB] or Deputy Chairman NAB or [an officer of the NAB duly authorised by the Chairman NAB], may refer the matter to the court, and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.*

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) *The provision of sub-section (a) shall also apply to cases, which have already been referred to the Court.*
- (d) *Notwithstanding anything contained in the Code, were the holder of a public office or any other person accused of an offence is arrested by NAB under this Ordinance, NAB shall, as soon as may be, inform him of the grounds and produce him before the [Court] [...] within a period of twenty-four hours of arrest excluding the time necessary for the journey from the place of arrest to the [Court] and such person shall, having regard to the facts and circumstances of the cases, be liable to be detained in the custody of NAB for the purpose of inquiry and investigation for a period not exceeding ninety days [and the Court may remand an accused person to custody not exceeding fifteen days at a time and for every subsequent remand the Court shall record reasons in writing copy of which shall be sent to the High Court.]*
- [(e) *All persons presently in custody shall immediately upon coming into force of this sub-section, unless previously produced before [a] Court be produced before such Court as provided in sub-section (d) and the Order authorizing retention of custody by NAB shall be deemed to relate to the date of arrest; and]*
- [(f) *The Chairman NAB may declare and notify any place as [a Police Station or] a sub-jail at his discretion.”*

12. From perusal of provisions of Section 18(a) of NAO, 1999, hereinabove, it is clear that the NAB Court is precluded from taking cognizance of any offence under the National Accountability Ordinance, unless there is a reference made by the Chairman,



NAB or an officer of the NAB duly authorized by him. Whereas, in terms of Section 18(b) of NAO, 1999, a reference under the NAO can be initiated by the National Accountability Bureau, (i) on a reference received from the appropriate government or (ii) receipt of complaint, or (iii) its own accord. Similarly, in terms of Section 18(c) the Chairman, NAB or an officer of the NAB duly authorized by him, before initiating any proceedings against any person or referring the matter for inquiry or investigation, shall form an opinion to the effect that it is necessary and appropriate to initiate such proceedings against any person, and thereafter the matter may be referred for inquiry and investigation. However, such opinion should be formed by examining the allegations as may be contained in a reference received from the appropriate government, or the allegations as may be contained in a complaint made to the NAB Authorities in writing, or the material or evidence available with the NAB while initiating reference on its own accord. Whereas, initiation of proceedings under the NAO, 1999, against any person or authorizing inquiry and investigation in the absence of any incriminating material or some substantial allegations, is not permissible in law. Conducting any fishing or roving inquiry or investigation, without proper application of mind by the Chairman, NAB or an officer of the NAB duly authorized by him in this regard, is beyond the scope of Section 18(c) of the NAO, 1999. Section 18(d) provides that responsibility for any lawfully instituted inquiry and investigation of an offence alleged to have been committed under the NAO, 1999, shall vest on the NAB to the exclusion of any other agency or authority, unless such agency or authority is required to do so by the Chairman, NAB or by any officer of the NAB duly authorized by him for the purposes of conducting an inquiry and investigation. Section 18(e) provides that the Chairman, NAB and such officers of the NAB shall have, and exercise, for the purpose of an inquiry or investigation, the powers to arrest any person, and all the powers of an officer-in-charge of a Police Station under the Code. However, no person should be arrested without permission of the Chairman, NAB or any officer of the NAB duly authorized by the Chairman, NAB. Section 18(f) makes it incumbent upon the officials of the National Accountability Bureau that any inquiry or investigation under the NAO shall be completed expeditiously, keeping in view the scope and mandate of the NAO, 1999. Section 18(g) of the NAO provides that the Chairman, NAB, or an officer of the NAB duly authorized by him, before he decides to

refer the matter to the Accountability Court, is required **to appraise the material and evidence placed before him during the inquiry and investigation and shall further satisfy himself that there is sufficient incriminating material available on record which may connect an accused person with the alleged offence, cognizable under the NAO, 1999, and would justify filing of a reference before the Accountability Court. Meaning thereby, that even after conclusion of the inquiry and investigation, the Chairman, NAB, has the discretion either to refer the matter by filing a reference before the Accountability Court, or to decline filing of such reference, if sufficient material has not been produced by the Investigating Officer before the Chairman, NAB.** Whereas, Section 18(h) provides that in case of conclusion of an inquiry and investigation initiated pursuant to a complaint, if it is found that such complaint was prima-facie frivolous, and has been filed with intent to malign or to defame any person, the Chairman, NAB or Deputy Chairman, NAB, or an officer of the NAB duly authorized by the Chairman, NAB, may refer the matter to the Court, and if the complainant is found guilty, he shall be examined for punishment of imprisonment for one year, with fine or with both. Aforesaid provision of law reflects upon the intention of the legislature to ensure that **no one shall be proceeded against under NAO, 1999, on the basis of some frivolous or baseless complaints, whereas, the NAB Authorities are required to thoroughly examine the allegations and the material, which may be placed before them through a complaint, before even initiating inquiry or investigation, or to file a reference before the Accountability Court.** They are further required not to file any reference without proper application of mind, in the absence of substantial incriminating material made available during the course of inquiry and investigation, whereas, in such type of complaints, the complainant is liable to be proceeded against, for having moved the State machinery for the abuse of process of law to cause harm and injury to any person on false and frivolous allegations.

13. To sum up the scope and application of the provisions of Section 18 relating to cognizance of offences under the NAO, 1999, it can be safely concluded that great caution and care is required by the NAB Authorities while initiating proceedings or authorizing inquiry or investigation against any person under NAB Ordinance, 1999, and

unless, there is some concrete material and evidence in support of the allegations against any person, connecting him with the commission of a cognizable offence under NAB Ordinance, 1999, no frivolous proceedings or reference should be initiated. Similarly, the Accountability Court, while taking cognizance of any offence under the NAO on a reference filed by the Chairman, NAB or an officer of the NAB duly authorized by him, has to examine as to whether reference filed before the Accountability Court has been initiated either on a reference received from the appropriate government or on the basis of a complaint received by the National Accountability Bureau, or on its own accord. Because, in any of the aforesaid situation, the onus to support the allegations against any person to make out a prima-facie case under the NAO, 1999, would be different. For instance, the onus to make out a prima-facie case against a person for initiating the proceedings, including inquiry and investigation by the Chairman, NAB, on its own accord, should be more stringent as compared to a situation whereby the proceedings under the NAO are initiated on the basis of a receipt of a complaint, whereas, it would be less stringent in the case where a reference is received from appropriate government, as in such situation, the allegations would be based upon some tangible incriminating material available with the appropriate government or the complainant, which would have been placed before the National Accountability Bureau in order to establish a prima-facie case, so that further probe would be made by initiating inquiry and investigation against such person(s). In the aforesaid petitions, the proceedings under the NAO, 1999, as per contents of Investigation Report and the Reference, appears to have been initiated on the basis of some **source report** i.e. on its own accord by the National Accountability Bureau, followed by a **purported complaint** received by the National Accountability Bureau from one, Anwar Sahito, ex-employee of SSGCL. However, record shows that it relates to the allegations of misuse of authority and corruption in SSGCL through illegal benefit extended to **KESC/K-Electric being case No.242118/Khi only**, as the respondents could not place on record any authorization of inquiry or investigation by the Chairman, NAB, in respect of alleged misuse of authority and corruption by the petitioners through illegal benefits extended to M/s. JJVL. It has also come on record that the delegation of authority as well as authorization of investigation under Section 18(c) of NAO, 1999, against Dr. Asim

Hussain, and the officials of SSGCL and OGDCL, has been subsequently made by the Chairman, NAB, and the Director General, NAB, Karachi respectively vide their two letters of even date i.e. 19.02.2016 when both the petitioners had already been arrested and proceeded against by the NAB authorities, however, without any lawful delegation of authority and authorization of inquiry or investigation by the Chairman NAB. Record further reveals that the statements of witnesses under Section 161 Cr.P.C. were recorded even prior to aforesaid date (i.e. 19.02.2016) of delegation of authority and authorization of investigation in respect of allegations/offences as detailed in the aforesaid reference. 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 11EEEE(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 malafide 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.

14. It will be equally relevant to examine the provision of Section 24 of the NAO, 1999, which relate to the powers of arrest by the Chairman, NAB or an officer of the NAB duly authorized by him in this regard. In terms of Section 24(a) of the NAO, 1999, the Chairman, NAB, has been authorized to arrest an accused at any stage of the inquiry or investigation under NAO, 1999. Section 24(b) requires the Chairman, NAB or an officer of the NAB duly authorized by him to decide to refer the case to Court by preparing a reference which shall contain the substance of the offence or offences as the case may

be alleged to have been committed by the accused, whereas, copy of such reference is to be sent to the Registrar of the Court to which a case has been sent to try the accused, and another copy is to be delivered to the accused. Section 24(c) provides that provision of sub-section (a) shall also apply to cases, which have already been referred to the Court. Section 24(d) provides that an accused of an offence if arrested by the NAB Authorities under the NAO, 1999, the NAB shall, as soon as may be, **inform him of the grounds and substance on the basis of which he has been arrested and to produce him before the Court within a period of twenty four hours of arrest.** The Court in appropriate cases on the basis of valid grounds may remand an accused person to the custody of the NAB Authorities, however, not exceeding 15 days at a time, whereas, for other subsequent remand the Court is required to record reasons in writing copy of which is to be sent to the High Court for information. Section 24 (e) provides that all persons presently in custody shall immediately upon coming into force of this sub-section, unless previously produced before a Court be produced before such Court as provided in sub-section (d) and the Order authorizing retention of custody by NAB shall be deemed to relate to the date of arrest. Section 24(f) authorizes the Chairman, NAB to declare and notify any place as a Police Station or a sub-jail at his discretion.

15. To sum up the scope and application of the provisions of section 24 as referred to hereinabove, read with provisions of Section 17 of the NAO, 1999, relating to application of provisions of Criminal Procedure Code (Cr.P.C.), it can be concluded that arrest of an accused required under the NAO, 1999, can be made at three different stages in terms of the proceedings. First stage being that if, after receipt of any information as provided under Section 18(b) of the NAO, 1999, Chairman, NAB, **forms an opinion that reasonable complaint has been made or credible information has been received or reasonable suspicion exists that accused is involved in the case cognizable under the NAO, 1999,** then he may arrest the accused person, provided that there is some inquiry or investigation, duly authorized by the competent authority, pending against the accused under the NAO, 1999. **Second stage** of arrest is provided under Section 18(e) of the NAO, 1999, where, Chairman NAB can make arrest of an accused if conditions as mentioned in Section 54 Cr.P.C. are fulfilled, or if the Investigating Officer conducting

such inquiry or investigation requests for permission to arrest the accused, then he can grant such permission of arrest of the accused, however, after examining the grounds/reasons and the incriminating material produced by the Investigating Officer which may justify such permission of arrest. The **third stage** is visualized under Section 24 (a) of the NAO, 1999, under which, if accused is neither arrested by the Chairman, NAB initially, nor as provided under Section 18(e) of the NAB Ordinance, then Chairman, NAB can direct that such accused person may be arrested, however, before making arrest or issuing warrant of arrest or awarding permission to any Investigating Officer to arrest the accused, Chairman, NAB, is required under the law to first satisfy himself as to whether there is any tangible evidence or incriminating material available against the accused connecting him with the alleged offence(s) cognizable under the NAB Ordinance, 1999, and the conditions as detailed in Section 54 Cr.P.C. are fulfilled. If Chairman, NAB forms an opinion on the material placed before him, only then, he can make arrest or permit Investigating Officer to make arrest of the accused, otherwise, an accused cannot be arrested on the basis of mere allegations or suspicion, in the absence of sufficient incriminating material or the evidence available with the NAB Authorities. **The authority vested in the Chairman, NAB, to arrest an accused at any stage of inquiry and investigation is neither absolute nor gives the Chairman, NAB unfettered powers to deprive a citizen his inviolable right to liberty, which is to be safeguarded jealously, keeping in view the constitutional mandate under Article 10 of the Constitution of the Islamic Republic of Pakistan, 1973. Whereas, it is also well settled that an accused under the NAO, 1999, cannot be arrested by the NAB Authorities, without fulfilling the conditions as detailed under Section 54 Cr.P.C.** It will not be out of place to observe that greater the authority, the greater is the responsibility which is required to be demonstrated by such authority, which in the instant case, is the Chairman, NAB, who has been saddled with great responsibility to curb corruption in respect of offences committed by the holder of a public office or any other person, as defined in clause (l) and (n) of Section 5 of the NAB Ordinance, 1999. The offences cognizable under the NAO, 1999, primarily relate to white collar crimes which have been defined in Section 9 of the NAO, 1999, however, while charging an accused in terms of Section 9, it is to be established that holder of a public office or any other

person, is said to commit or to have committed corruption and corrupt practices. Various instances of corruption and corrupt practices have been defined under Section 9 sub-section (a) clauses (i) to (xii), however, perusal of such clauses reflects that an accused under the NAO is either the beneficiary himself, of the alleged corruption and corrupt practices, by causing loss to the public exchequer, having or rendered any undue benefit or favour to anyone which could have been prevented by exercising the authority vested in the accused. For smooth administration of justice, while invoking the provisions of NAO, 1999, particularly, provisions relating to arrest of any person even prior to inquiry or investigation, the Chairman, NAB and any other officer authorized by him to carry out the functions under the NAO, 1999, are required to conduct themselves justly, fairly and equitably for the advancement of purposes of NAO, 1999, strictly in accordance with law, and in conformity to Section 24-A of the General Clauses Act, 1897. Whereas, any abuse of authority or violation of provision of NAO, 1999, or the relevant provisions of Cr.P.C. particularly while initiating any proceedings by authorizing any inquiry or investigation against an accused, or making arrest of an accused, may render the proceedings under the NAO, in appropriate cases, as illegal and contrary to law. Similarly, unnecessary haste, if demonstrated by the NAB Authorities, while making arrest of an accused, without having any lawful authorization of inquiry and investigation by the competent authority, or where, the arrest is made without disclosing some reasonable grounds in the warrant of arrest, may also render the entire proceedings as dubious and tainted with malice, if not altogether illegal, in a case where a reference has been filed before the Accountability Court. 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 & 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. We have also noted that there has been inordinate delay in the conclusion of inquiry and investigation, whereas, the matter has not proceeded before the Accountability Court inspite of considerable lapse of time as no witness appears to have been examined so far. Both the petitioners are behind the bar for more than one year from the date of their arrest, initially by the Pakistan Ranger, Sindh, under the purported authority in terms of Section 11EEEE(1) of ATA, 1997, and thereafter, by the NAB Authorities. The allegations as contained in the aforesaid reference against the petitioners spreading over couple of years, even beyond the period, when the petitioners occupied their offices as Managing Director/Deputy Managing Director of SSGCL, appears to be vague, whereas, prosecution has not been able to specify the allegations against the petitioners nor could specifically identify the role of the petitioners with regard to the allegations of misuse of authority and corruption, whereas, the decisions in this regard were made pursuant to Board's resolutions in its meetings, comprising of Minister of Petroleum and Natural Resources, officials of OGRA and the SSGCL. It further appears that the prosecution has not been able to refer to any material which may suggest that petitioners are the beneficiaries of the alleged benefits extended to M/s. JJVL. Moreover, on the basis of similar allegations, the Hon'ble Supreme Court had already taken cognizance of the matter in the case of Khawaja Muhammad Asif v. Federation of Pakistan reported as PLD 2014 SC 206, wherein, the Honourable Supreme Court, while disposing of the aforesaid petition in terms of para 40 (at page 230 of the said decision) constituted a two



members Committee, comprising of Mr. M. H. Asif, former Member, OGRA and Mr. Shabbar Raza Zaidi, partner of M/s. A.F. Ferguson and Co. Chartered Accountants by elaborately defining the scope of such Committee in the following terms:-

- “(7) A Committee comprising of (i) Mr. M. H. Asif, former Member, OGRA and, (ii) Mr. Shabbar Raza Zaidi, Partner of Messrs A.F. Ferguson and Co., Chartered Accountants, is constituted for the following purposes:-
- (a) to calculate royalty payments (on the LPG extracted to date on the basis of the Saudi Aramco reference price plus freight, has been operational; this shall be done within 15 days from the date of this Order; an opportunity or hearing shall be afforded to SSGCL and JJVL while making the calculation;
  - (b) to determine an acquisition price for the LPG extraction Plant, as nearly as possible in accordance with the LOI dated 28.06.2002 and clause 18 read with Schedule 5 of the draft Implementation Agreement dated 19.05.2003 relating to a JJVL Event of Default; this shall be done within 15 days from the date of this Order;
  - (c) to suggest a management mechanism to the Court for appropriate orders including, if necessary, for the appointment of an independent manager/receiver; this may be done within 15 days of this Order and until then the Plant shall be managed by two senior persons, one each to be nominated by SSGCL and JJVL respectively; and deadlock between them shall be resolved by a decision of the Committee;
  - (d) to obtain from SSGCL and JJVL such information and data as may be necessary for the Committee to fulfil its responsibilities;
  - (e) to suggest ways in which the supply of LPG to end consumers continues unabated and without disruption;
  - (f) to seek such clarifications or further orders from the Court as may be considered necessary by the Committee.
8. The Office shall make available copies of the record to the Committee.
  9. The fee of the Committee shall be determined on the basis of the extent and nature of the work.
  10. The amount already deposited in Court by virtue of our order dated 23.05.2013 shall be paid to the party entitled, after determination of the amount of royalty payments on the basis indicated above.
  11. The FIA shall inquire into the matters which have been noted and highlighted in this judgment and submit a report which shall identify all those who are responsible for the failings, including acts of criminal negligence, corruption, corrupt practices or other offences. FIA shall also inquire into and investigate such other matters which may come to light from examination of any documents and records during the course of inquiry/investigation. The report shall be submitted by FIA in Court within 30 days from today.”

17. In the case of *Abdul Qadir v. Federation of Pakistan* **2002 SCMR 1478** the Hon’ble Supreme Court while interpreting the provision of Article 10 of the Constitution of

Islamic Republic of Pakistan read with provision of Section 24 of the NAO, 1999, has been pleased to hold as under:-

*“Conveyance of the, grounds and substance on the basis of which the accused is arrested, is the first essential ingredient of the above provisions of law, which is mandatory in nature and has to be complied with in letter and spirit as it is based on the Constitutionally guaranteed right providing safeguards as to arrest and detention of a person embodied in Article 10 of the Constitution of Islamic Republic of Pakistan, which reads as follows:--*

*10. Safeguard as to arrest and detention.--(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended-by a legal practitioner of his choice.*

*(2) Every person who is arrested and detained in custody shall be produced before a Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the nearest Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.*

- (3)-----*
- (4)-----*
- (5)-----*
- (6)-----*
- (7)-----*
- (8)-----*
- (9)-----*

8. *The first and foremost requirement of the aforesaid Constitutional provision is that any person who is arrested and detained has to be informed, as soon as may be, of the grounds of his arrest and detention and no person can be arrested and detained in custody without complying with the above requirement. The second requirement is that no person so arrested or detained can be denied the right to consult a legal practitioner of his choice for his defence. Non-compliance of the above requirements would be violative of the fundamental rights and Constitutional guarantees. Requirement of clause (2) of the said Article is that the person arrested and detained in custody has to be produced before a Magistrate within 24 hours of his arrest excluding the time spent in journey, for obtaining a remand. Clauses (1) and (2) of Article 10 deal with punitive arrest and detention and restrictions have been imposed on the law making bodies not to make any law beyond the limits of the said provisions. The provisions of section 24(d) of the Ordinance with regard to the arrest and detention of an accused and his production before a Magistrate or competent Court within a period of twenty-four hours for remand are synonymous with the provisions of Article 10 (1)*

and (2) of the Constitution which provide safeguard and protection to personal liberty as the liberty of a person in a State, is inviolable.

9. The expression 'as soon as may be' used both in Article 10(1) of the Constitution as well as in section 24(d) of the Ordinance means as soon as possible, as it is the first right of the person arrested and detained to know it black and white, as soon as possible, the grounds and substance on the basis of which he has been arrested to enable him to be defended by a legal practitioner of his choice. The second right of the arrested and detained person is that he has to be produced before a Magistrate or the competent Court within 24 hours of his arrest for remand after excluding journey time so as to ensure his protection. In the present case, no doubt, the detenu was produced before the competent Court within 24 hours but the first condition of informing him, as soon as may be, of the grounds and substance on the basis of which he was arrested, has not been complied with. The non-compliance of the aforesaid provisions of the Constitution and the Ordinance would render the arrest and detention of the detenu illegal.

10. The phrase 'as soon as may be' has also been used in the law relating to preventive detention but in such laws it is to be construed with reference to period prescribed therein for communication of the grounds to the arrested and detained person on the basis of which he is arrested. Reliance can be made in the case of *Government of East Pakistan v. Roshan Bijaya Shaukat Ali Khan (PLD 1966 SC 286)* this Court observed:--

*“It is fundamental right of a person who is arrest or detained to know, both under the punitive as well as under the preventive laws, about the grounds arid substance in black and white, on the basis of which he was arrested and detained. It is also his right to consult a legal practitioner of his choice for his defence and, he has to be produced before-a Magistrate within 24 hours excluding the time of journey for obtaining remand.”*

18. In the case of *Anwar-ul-Haq Qureshi v. The State (2008 SCMR 1135)* while releasing the accused on bail on the ground delay has been pleaded to hold as under:-

*“4. We have gone through record and noticed that petitioner was arrested on 20-11-2006 and since then he was behind the bar whereas, reference was filed on 4-6-2007. As far as legal position is concerned, reference can be made to provision of section 24(d) of the Ordinance which is reproduced as under:*

*‘(d) Notwithstanding any contained in the Code, where the holder of public office or any other person, accused of an offence is arrested by NAB under this Ordinance, NAB shall as soon as may be, inform him of the grounds and substance on the basis of which he has been arrested and produced him before the Court within a period of twenty four hours of*

*arrest excluding the time necessary for the journey from the place of arrest to the Court and such person shall having regard to the facts and circumstances of the case, be liable to be detained in the custody of NAB for the purpose of inquiry and investigation for a period not exceeding ninety days and the Court may remand an accused not exceeding fifteen days at a time and for every subsequent remand, the Court shall record reasons in writing copy of which shall be sent to the High Court.'*

On perusal of above provision of law, it is clear that a person cannot be detained for the purpose of investigation/inquiry for a period exceeding ninety days and for every remand, reasons have to be recorded. Petitioner is in judicial lock up since his arrest i.e. 20-11-2006, whereas, as pointed out by learned Addl. Prosecutor General NAB reference was filed on 04-06-2007 but no progress whatsoever has taken place towards the conclusion of trial. This Court in the case of *Asif Sharif v. Chairman, NAB* **2004 SCMR 1805** granted bail to accused against whom the reference was filed after about two years from date of his arrest. It was also held in the case *Aga Jehanzeb v. NAB and others* 2005 SCMR 1666 that if trial of case is not concluded within 30 days from date of submission of challan, accused would automatically become entitled to grant of bail. This Court has also held in the case of *Abdul Qadir v. Federation of Pakistan through Secretary Ministry of Interior, Government of Pakistan and others* **2002 SCMR 1478** that conveyance of the grounds and substance on the basis of which the accused is arrested, is the first essential ingredient of section 24(d) of the Ordinance which is mandatory in nature and has to be complied with in letter and spirit as the same is based on constitutionally guaranteed right providing safeguards as to arrest and detention of a person embodied in Article 10 of the Constitution of Pakistan, 1973. Non-compliance of such provisions of the Constitution and the Ordinance would render the arrest and detention illegal."

19. In the case of *Muhammad Nadeem Anwar v. NAB (PLD 2008 SC 645)* the Hon'ble Supreme Court while granting bail of an accused under the NAO, 1999, on the ground of delay has been pleased to hold as under:-

*"National Accountability Ordinance, 1999 was promulgated in order to provide effective measures for detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse and abuse of power or authority, misappropriation of property, taking kickbacks, commissions and for matters connected and ancillary or incidental thereto. Object of National Accountability Ordinance, 1999, in its preamble, is to provide expeditious trial of scheduled offences within the shortest possible time. Accused was entitled to expeditious and inexpensive access to justice, which included a right to fair and speedy trial in transparent manner without any unreasonable delay. Such intention had been re-assured in section 16 of National Accountability Ordinance, 1999, laying down criteria for day to day trial and its conclusion within thirty days. Such object did not appear likely to be*

*achieved anywhere in the near future and would not constitute a bar for grant of bail to accused. Truth or otherwise of charges leveled against accused could only be determined at the conclusion of trial after taking into consideration the evidence adduced by both the parties. Supreme Court converted petition for leave to appeal into appeal as accused were entitled to grant of bail pending conclusion of trial."*

20. In the case of *Syed Maqsood Ahmed v. The State through NAB and another in C.P.No.620-K/11*, the Hon'ble Supreme Court of Pakistan has been pleased to release the accused on bail on the ground of delay in the following terms:-

*"7. Reverting to the proceedings of the case at hand before the Accountability Court, we find there is no denial of the fact that even before framing of charge, for no fault on his part, the petitioner remained in judicial custody for a period of over 11 months and even thereafter, as discussed above, for delay in the proceedings of the case for a period of over nine months, he is not responsible to the extent that he can be denied the benefit of above reproduced provision of law, which entitles him for grant of bail if he had remained in continuous custody for a period exceeding one year, as in the instant case."*

21. In the case of *Muhammad Jahangir Badar v. The State (PLD 2003 SC 525)* the Hon'ble Supreme Court has been pleased to hold as follows:-

*"7. There is no cavil with the proposition that the State machinery has a right to arrest the culprits and put them to trial, for the purpose of establishing guilt against them but it has not been bestowed with an authority to play with the liberty and life of an accused under detention because no one can be allowed to remain in custody for an indefinite period without trial as it is a fundamental right of an accused that his case should be concluded as early as could be possible particularly in those cases where law has prescribed a period for the completion of the trial. As in the instant case under section 16(a) of the Ordinance the Court is bound to dispose of the case within 30 days. It may be noted that inordinate delay in the prosecution case if not explained, can be considered a ground for bailing out an accused person depending on the nature and circumstances on account of which delay has been caused."*

22. In the case of *Balochistan Public Service Commission v. NAB through Chairman and two others (2013 P.Cr.L.J. 405)*, a Divisional Bench of Balochistan High Court has been pleased to hold as under:-

*"9. In view of the constitutional provision, no authority is above the law and even one must remain within the domain of the provisions of the Constitution and the law. Through this petition, the violation of the fundamental rights of the petitioner and the officials of the Commission by the respondent No.3 has been complained, therefore, it is necessary to dilate upon this aspect as well. This petition contains certain allegations against the respondent No.3 supported by an affidavit of the Chairman of*

*the Commission. The learned DPG NAB appeared on behalf of the respondents, opted not to file the counter affidavit or the rejoinder to the petition. By not doing so, the allegation levelled against the respondents remained un rebutted. It is a fact that the documents produced by the DPG NAB shows that the inquiry into the matter was sanctioned on 1st October, 2012, but the letter No.FCIW/NAB(B)/2012/320 dated 27th September, 2012, shows that the respondent No.3 had visited the office of the Commission and got into possession the record. It is a settled principle of law that when a thing is required to be done in a manner, then it should be done accordingly. Under the Ordinance, no one is empowered to start proceedings against any person, until and unless an inquiry or investigation is sanctioned by the competent authority. Admittedly, on 27th September, 2012, no inquiry was sanctioned into the matter, therefore, the raid conducted by the respondent No.3 in the office of the Commission was illegal and without jurisdiction.”*

23. In view of hereinabove peculiar facts and circumstances of both the petitions and by respectfully following the ratio of above referred judgments, we are of the opinion that undue haste has been demonstrated by the NAB Authorities while obtaining custody of both the petitioners from Pakistan Rangers, Sindh, after expiry of the period of ninety days detention of the petitioners under Section 11EEEE(1) of Anti-Terrorism Act, 1997, without any order by competent authority or the competent Court of jurisdiction. Whereas, prosecution has failed to produce any lawful authorization of inquiry and investigation by the competent authority in respect of allegations as contained in the investigation report and reference No.19/2016 filed before the Accountability Court. No sufficient incriminating material specifying the role of the petitioners relating to allegations of misuse of authority and corruption or the benefit derived by the petitioners or extended to M/s. JJVL has been produced by the NAB, therefore, the possibility of misuse of authority and the malafide on the part of NAB Authorities as alleged by the learned counsel for the petitioners cannot be ruled out. Moreover, the prosecution could not place on record any material, which may establish beyond reasonable doubt that petitioners have played some material role in the alleged offence i.e. misuse of authority or corruption in SSGCL through illegal benefit extended to M/s.JJVL. The prosecution has also failed to refer to any material, which may suggest that the petitioners are the beneficiary of the alleged misuse of authority and corruption. Decisions which have been taken in the meeting of Board of Directors otherwise cannot be attributed to the petitioners only as there is yet to be determined as to whether the alleged misuse of authority and corruption in the SSGCL while taking such decision in the meeting of Board

of Directors was the outcome of some ill intention to cause loss of revenue to public exchequer and to extend benefit to M/s. JJVL by the entire members of the Board of Directors, who participated in such meeting or it can be attributed to any specific member(s). Prosecution has filed the reference along with relevant documents, whereas, the petitioners are no more required for further investigation. Admittedly, inspite of considerable lapse of time i.e. more than a year since arrest of the petitioners, the trial has not yet commenced before the Accountability Court nor even the charge has been framed, whereas, there is inordinate delay in the trial which cannot be attributed to the petitioners, and such delay has not been explained by the prosecution. Inordinate delay in trial while keeping the accused person(s) behind the bar as punishment is contrary to the very spirit of the NAB Ordinance, 1999, which requires expeditious decision in the matters relating to NAB. We are of the opinion that the petitioners who are behind the bar for more than a year, whereas, other co-accused persons have been granted ad-interim pre-arrest bail in same reference, have make out a case for their release on bail subject to furnishing surety, as the matter requires further inquiry. Accordingly, the petitioners, namely, Shoaib Warsi in C.P.No.D-1199/2016 and Zuhair Siddiqui in C.P.No.D-214/2016, were admitted to bail vide short order dated 01.07.2016 subject to their furnishing solvent surety in the sum of Rs.2.000 million (Rupees Two Million Only) each with P.R. Bond in the like amount to the satisfaction of the Nazir of this Court with further directions to deposit their passports with the Nazir of this Court. Above are the reasons for such short order.

24. The observations made herein are tentative in nature and may not effect the trial pending before the Accountability Court, which shall be concluded expeditiously, strictly in accordance with law, on the basis of material and evidence, which may be produced by the parties in this regard.

25. However, it is clarified that if the petitioners will misuse the concession of bail in any manner, the learned trial Court shall be at liberty to proceed against the petitioners as per law.

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