ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3333 of 2023
Mian Muhammad Nawaz Sharif
Versus
State through Chairman, National Accountability Bureau

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.10.2023	**M/s Muhammad Amjad Pervaiz and Azam Nazeer Tarar, Advocates for the petitioner along with petitioner in-person.** **Syed Ehtisham Qadir, learned Prosecutor General, M/s Naeem Tariq Sanghera, learned Deputy Prosecutor General, NAB Headquarters, Muhammad Rafay Maqsood, learned Senior Special Prosecutor, NAB, Rawalpindi and Muhammad Afzal Qureshi, learned Special Prosecutor, NAB Headquarters.** **Through this order we propose to decide writ petitions No.3333/2023 and 3334/2023. Through these writ petitions filed under Article 199 of the Constitution, the petitioner, Mian Muhammad Nawaz Sharif, seeks the grant of protective bail so as to enable him to submit and surrender to the due process of justice and avail the remedies permissible under the law.** **2. The petitioner was tried and convicted vide judgment dated 06.07.2018 passed by the learned Judge Accountability Court No.I, Islamabad in reference No.20/2017 as well as judgment dated 24.12.2018 passed by the learned Judge Accountability Court No.II in reference No.19/2017. The petitioner's co-accused were also tried and convicted in reference No.20/2017 vide the said judgment passed by Accountability Court No.I.**

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CRIMINAL APPEAL NO.121/2018

3. Against the judgment dated 06.07.2018 passed by Accountability Court No.I in reference No.20/2017, the petitioner had filed criminal appeal No.121/2018 before this Court. Vide order dated 19.09.2018 reported as **PLD 2019 Islamabad 38**, the sentences awarded by Accountability Court No.I to the petitioner and his co-accused were suspended and they were enlarged on bail. The appeal filed by the National Accountability Bureau (**"NAB"**) against the said order was dismissed by the Hon'ble Supreme Court vide order dated 14.01.2019 reported as **PLD 2019 SC 445**.

4. As the petitioner had proceeded abroad and did not appear before this Court on several dates of hearing in the appeal, this Court, vide order dated 02.12.2020, proclaimed him as an absconder after complying with the requirements set out in Section 87 of the Code of Criminal Procedure, 1898 (**"Cr.P.C."**).

5. Since the petitioner's absconsion continued, this Court, vide order dated 23.06.2021, dismissed the petitioner's appeal (criminal appeal No.121/2018) against the judgment dated 06.07.2018 passed by Accountability Court No.I. In the said order, this Court had observed that *"the appellant may file an application before this Court, as and when he surrenders or is captured by the authorities for decision of the appeal on merits."*

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6. The appeals filed by the petitioner's co-convicts were heard and decided on merit vide judgment dated 29.09.2022 whereby the co-convicts were acquitted.

CRIMINAL APPEAL NO.01/2019

7. As regards reference No.19/2017, the petitioner had filed criminal appeal No.01/2019 against the judgment dated 24.12.2018 passed by Accountability Court No.II. After the said judgment was announced, the petitioner was arrested and lodged in Kot Lakhpat Jail, Lahore to serve his sentence.

8. The petitioner had filed writ petition No.32/2019 before this Court seeking the suspension of his sentence on merits. This petition was dismissed as withdrawn. Subsequently, he filed writ petition No.352/2019 seeking the suspension of his sentence on medical grounds. This petition was dismissed vide order dated 20.02.2019 reported as **PLD 2019 Islamabad 343**. The said order dated 20.02.2019 was assailed before the Hon'ble Supreme Court through civil petition No.639/2019 which was decided vide judgment dated 26.03.2019 reported as **2019 SCMR 734** whereby the petitioner was granted bail for a period of six weeks only on medical grounds. On the lapse of the six-week period for which he was granted bail, the petitioner, on 07.05.2019, surrendered before the jail authorities at Kot Lakhpat Jail, Lahore. Thereafter, he filed writ petition No.1986/2019 before this Court seeking the suspension of his sentence. This petition was

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dismissed by this Court vide order dated 20.06.2019.

9. While the petitioner was serving his sentence, he was arrested by NAB and taken to the said Bureau's office at Lahore on 21.10.2019. From there, he was shifted to the Services Hospital, Lahore on account of his deteriorating health condition. A Special Medical Board had been constituted by the Government of Punjab to examine the petitioner. It was in these circumstances that the petitioner filed writ petition No.63511/2019 before the Hon'ble Lahore High Court seeking bail after arrest on medical grounds in the case in which NAB had arrested him. The said petition was allowed vide order dated 25.10.2019.

10. The petitioner filed writ petition No.3716/2019 before this Court again seeking the suspension of the sentence awarded by Accountability Court No.II. Vide order dated 29.10.2019, the petitioner was granted bail for a period of eight weeks by suspending the sentence handed down by Accountability Court No.II vide judgment dated 24.12.2018. In the said judgment, this Court had observed that in the event the petitioner's health does not improve and he needs further medical attention, the Government of Punjab may on its own decide the issue regarding suspension of the sentence. It was also held that the petitioner could approach the Government of Punjab under Section 401(2) Cr.P.C. and in case of non-exercise of duty by the Government of Punjab or misuse of discretion

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etc., the matter may be agitated before the Court of law for an appropriate remedy. The said order dated 29.10.2019 is reported as 2020 PCr.LJ 213.

11. The Medical Board constituted by the Government of Punjab on 07.11.2019 submitted a report recommending that the petitioner be shifted to an advanced medical care facility abroad where appropriate diagnostic and interventional facilities are available.

12. Since the petitioner's name had been placed on the Exit Control List ("ECL") vide memorandum dated 20.08.2018, an application was submitted to the Secretary, Ministry of Interior for the removal of his name from the said List. This application was submitted so as to enable the petitioner to travel abroad for medical treatment. A report had been sought from the Specialized Healthcare and Medical Education Department of the Government of Punjab so as to ascertain the petitioner's medical condition. In the report dated 11.11.2019, it was mentioned *inter alia* that *"no public sector hospitals in Pakistan [have] the required facilities nor the expertise to deal with this complicated case"* and that *"bleeding and thrombosis can both be fatal in this case. Any coronary carotid, renal or infectious complications can prove fatal at any time."*

13. The matter as to whether the petitioner should be allowed to proceed abroad for treatment was also taken up and discussed at the meeting of the Sub-Committee of the Cabinet which, after hearing the Convener of the Medical

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Board and the Secretary, Health Department, Government of Punjab, decided to grant one time permission to the petitioner to proceed abroad for a period of four weeks subject to furnishing an indemnity bond of GB Pounds 8 million or its equivalent in Pakistan rupees; and US Dollars 25 million or its equivalent in Pakistan rupees; and Rs.1.5 billion. The said decision was assailed by the petitioner's brother, Mian Muhammad Shahbaz Sharif, through writ petition No.68815/2019 before the Hon'ble Lahore High Court. The Hon'ble High Court had required the Head of the Medical Board to submit a report on the petitioner's health condition. Vide order dated 16.11.2019, the Hon'ble High Court suspended the condition as to the furnishing of an indemnity bond. An undertaking was also obtained from the petitioner to the effect that he would return to Pakistan within four weeks or as soon as he is declared fit and healthy to travel back to Pakistan by his doctors. Vide the said order dated 16.11.2019, the petitioner was granted one time permission to travel aboard as an interim arrangement for four weeks and was required to return *"when certified by doctors that he has regained his health and is fit to return back to Pakistan."*

14. The petitioner proceeded abroad on 19.11.2019 and did not return to Pakistan until after the filing of the instant petition. On 23.12.2019, the petitioner had submitted an application under Section 401(2) Cr.P.C. before the Government of Punjab seeking the

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suspension of his sentence handed down vide judgment dated 24.12.2018 by Accountability Court No.II in reference No.19/2017. Vide order dated 27.02.2020, the said application was dismissed.

15. Be that as it may, apparently on 21.10.2023, an application was filed by the petitioner's lawyers before the Government of Punjab seeking the suspension of the said sentence under Section 401(2) Cr.P.C. on medical grounds. The Caretaker Chief Minister of Punjab, on 22.10.2023 constituted a committee comprising of (i) Minister for Specialized Healthcare and Medical Education, (ii) Minister for Primary and Secondary Healthcare, (iii) Additional Chief Secretary (Home), (iv) Secretary Law and Parliamentary Affairs Punjab, and (v) Advocate General, Punjab with the mandate to deliberate upon the matter and submit recommendations for consideration by the Caretaker Provincial Cabinet. The plea taken by the petitioner's counsel was *inter alia* that the petitioner was seventy-four years old and his medical condition was such that he ought not to be incarcerated in any prison. The said committee recommended that the Caretaker Provincial Cabinet may suspend the execution of the sentence awarded to the petitioner in reference No.19/2017 vide judgment dated 24.12.2018 by accepting the application under Section 401(2) Cr.P.C. The Caretaker Chief Minister of Punjab approved the said recommendations and directed that the same be placed before the Caretaker Provincial Cabinet

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through circulation. Through summary dated 23.10.2023, the said recommendations were placed before the Caretaker Provincial Cabinet. As per letter dated 24.10.2023 from the Services and General Administration Department, Government of Punjab, the Caretaker Provincial Cabinet accorded approval to the application under Section 401(2) Cr.P.C.

16. This petition was filed on 18.10.2023 and taken up for hearing on the same day. After the learned counsel for the petitioner made submissions in support of the petition, Mr. Muhammad Afzal Qureshi, Senior Special Prosecutor, NAB appeared without this Court having issued any notice. He submitted that he is under instructions not to raise any objection to the petitioner's travel to Pakistan. However, this Court issued a formal notice to the State through the Chairman, NAB.

17. The petition was taken up for hearing on 19.10.2023 on which date, NAB was represented by M/s Naeem Tariq Sanghera, learned Deputy Prosecutor General, NAB Headquarters; Muhammad Rafay Maqsood, learned Special Prosecutor, NAB, Rawalpindi; and Muhammad Afzal Qureshi, learned Special Prosecutor, NAB Headquarters. Mr. Naeem Tariq Sanghera, learned Deputy Prosecutor General, NAB Headquarters submitted that he had been instructed by the Prosecutor General, NAB to state that the prosecuting agency has no objection to the grant of the relief sought by the petitioner by way of protection from arrest in

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criminal appeals No.121/2018 and 01/2019. Since NAB had accorded its consent and had decided not to contest the petition, the petitioner was allowed to appear before this Court on 24.10.2023. Furthermore, it was ordered that he shall not be arrested on his arrival in Pakistan until he surrenders before this Court. The said order was passed with the consent of the learned Deputy Prosecutor General, NAB Headquarters.

18. On 24.10.2023, the petitioner appeared and surrendered before this Court. Learned counsel for the petitioner informed the Court that applications had been filed before this Court for the resurrection of criminal appeals No.121/2018 and 01/2019 in which notices had been issued to the prosecution. Since the prosecution had sought time to obtain instructions to make appropriate submissions, learned counsel for the petitioner sought the protection afforded to the petitioner to be operative until such date. Syed Ehtisham Qadir, learned Prosecutor General, NAB was in attendance and submitted that he has no objection to the extension of the protection granted to the petitioner. Therefore, the protection afforded to the petitioner vide order dated 19.10.2023 was extended till 26.10.2023. Additionally, the learned counsel for the petitioner was required to satisfy this Court on the maintainability of the instant petition.

19. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner had remained abroad from 19.11.2019 to 20.10.2023

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due to ill health; and that although the petitioner's health condition permitted him to travel to Pakistan he is not in a condition well enough to be lodged in prison to serve the remaining sentence awarded to him vide judgment dated 24.12.2018 passed by Accountability Court No.II in reference No.19/2017. He, however, submitted that since the petitioner has surrendered before this Court and also applied for the resurrection of his appeals against the convictions handed down by Accountability Courts No.I and II, Islamabad, the instant petition has been rendered infructuous.

20. Since we had required the learned counsel for the petitioner to satisfy this Court on the maintainability of the instant petition, we propose to decide the said question in the first instance. It is not disputed that when the instant petition was filed, the petitioner was abroad and by virtue of the order dated 02.12.2020 passed by this Court in criminal appeal No.121/2018, his status was that of an absconder.

21. The instant petition has been filed on the strength of the power of attorney executed by the petitioner in the United Kingdom in favour of Mr. Atta Ullah Tarrar. The *vakalatnama* / power of attorney which accompanied the instant petition is by Mr. Atta Ullah Tarar in favour of Mr. Azam Nazeer Tarar and others. The validity of this power of attorney shall also be determined along with the question of the maintainability of the instant petition.

22. It may well be that the petitioner had proceeded abroad on the strength of the order

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dated 16.11.2019 passed by the Hon'ble Lahore High Court in writ petition No.68815/2019, but the fact remains that this Court, vide order dated 02.12.2020 passed in criminal appeal No.121/2018, had proclaimed the petitioner as an absconder. This order was in the field when the instant writ petitions were filed.

23. It is no longer *res integra* that the Court would not act in aid of a person who is a fugitive from justice. It was on the basis of this principle that this Court vide judgment dated 23.06.2021 dismissed criminal appeal No.121/2018 in default of the petitioner's appearance without a decision on merits. In the said judgment, reference was made to the case of Awal Gul Vs. Zawar Khan (PLD 1985 SC 402) in which it was held *inter alia* that a fugitive from law loses some of the normal rights granted by procedural and also substantive law, and that unexplained noticeable abscondance disentitles a person to the concession of bail notwithstanding the merits of the case.

24. In the case of Chan Shah Vs. The Crown (PLD 1956 Federal Court 43), Cornelius J speaking for the Federal Court held that the Court would not act in aid of a person who was a fugitive from justice. Furthermore, it was held that it was an essential condition for the administration of justice in a case affecting an individual or individuals, that the persons concerned should submit to the due process of justice, and that a more flagrant violation of this condition cannot be conceived than where the

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individual seeks the interference of the sovereign to obtain revision of a judicial order, when he is himself engaged in setting that judicial order at naught. In the said judgment, Cornelius J also frowned on Advocates who appear for absconders.

25. In the case of Gul Hassan Vs. The State (PLD 1969 SC 89), the Hon'ble Supreme Court reiterated the law laid down in the case of Chan Shah Vs. The Crown *(supra)* and held that where a prisoner decamps he thereby forfeits his right of audience. In the said report, the Hon'ble Supreme Court went further by holding as follows:-

> ***"...[A]ttorney and members of the bar will bear in mind that serious consequence of committing contempt of this Court in moving on behalf of a prisoner who is a fugitive from law. The appeal filed by the counsel on the basis of the power-of-attorney executed by Gul Hassan in favour of Khawaja Muhammad Khan before his absconsion was thus not properly constituted and should have been dismissed by the High Court on that ground alone."***

26. In the case of Hayat Bakhsh Vs. The State (PLD 1981 SC 265), the Hon'ble Supreme Court dealt with the question relating to the right of an accused person to a hearing in criminal appeals against a conviction when he has not surrendered his person in pursuance of the process issued under the authority of law. After making reference to the law laid down in the cases of Chan Shah Vs. The Crown *(supra)* and Gul Hassan Vs. The State *(supra),* the Hon'ble Supreme Court held that the principle laid down in the said cases does not merit any review. It was also explained that when a convict becomes a fugitive before

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filing a petition for leave to appear before the Supreme Court, his petition would not be properly constituted, and where a convict after the filing of a petition becomes a fugitive and does not surrender, he deprives himself of the relief claimed in the petition. It was furthermore held that there would be no difference if he absconds after obtaining special leave to appeal or after obtaining a bail order. The ratio of the said case which squarely applies to the case at hand, was that *"it would be the negation of the principles enunciated by this Court (that a fugitive from justice loses the right of hearing if he defies the orders of the Court for his surrender and/or otherwise abuses its process) if, while he remains a fugitive, he is allowed to be represented by another person so that his plea might be heard."*

27. In the case of Mian Muhammad Nawaz Sharif Vs. State through Chairman, National Accountability Bureau (PLD 2022 SC 13), this Court spurned the suggestion that due to the insertion of Article 10A in the Constitution (Eighteenth Amendment) Act, 2010, there had been a shift in the approach of the Courts from the one adopted in the case of Hayat Bakhsh Vs. The State *(supra)*. As a matter of fact, the principles in the said case have been followed in the cases of Ikramullah Vs. The State (2015 SCMR 1002) and Lahore High Court Bar Association Vs. General (Retd.) Pervez Musharaf (2019 SCMR 1029).

28. Regardless of the fact that the petitioner had proceeded abroad on the strength of the

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order dated 16.11.2019 passed by the Hon'ble Lahore High Court in writ petition No.68815/2019, the fact remains that this Court had issued several notices as well as non-bailable warrants of arrest to the petitioner before proclaiming him as an absconder vide order dated 02.12.2020.

29. The upshot of the case is that by the time the instant writ petitions were filed on 18.10.2023, the Government of Punjab had not allowed the application filed on behalf of the petitioner under Section 401(2) Cr.P.C. for the suspension of his sentence handed down by Accountability Court No.II vide judgment dated 24.12.2018 passed in reference No.19/2017. As mentioned above, the said application was allowed vide letter dated 24.10.2023 from the Services and General Administration Department, Government of Punjab. The said letter was based on the decision taken by the Caretaker Provincial Cabinet after the Caretaker Chief Minister of Punjab approved the proposal for placing the recommendations of the committee (constituted to examine and make recommendations on the application filed on the petitioner's behalf under Section 401(2) Cr.P.C.) before the Caretaker Provincial Cabinet.

30. As regards the conviction handed down vide judgment dated 06.07.2018 by Accountability Court No.I in reference No.20/2017, if it is to be considered that the petitioner had to surrender before this Court, such surrender had not been made prior to the filing of the instant writ petition. He did however appear before this Court on 24.10.2023. This is because the interim relief was

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granted to him vide order dated 19.10.2023 until he appears before this Court.

31. In view of the above, we are sanguine that the power of attorney on the basis of which the instant petitions were filed was not properly constituted as it did not fulfill the requirements of the law laid down in the case of Gul Hassan Vs. The State *(supra)*. Consequently, we hold that the instant writ petitions are not maintainable. A different view would be in contrast to the law laid down by the Hon'ble Supreme Court in the aforementioned judgments.

32. The petitioner came to Pakistan and was not arrested on his arrival due to the interim order dated 19.10.2023 passed by this Court. The operation of the interim relief given to the petitioner was extended for two days vide order dated 24.10.2023. It ought to be borne in mind that these orders were passed after a clear, unequivocal and emphatic position was taken on behalf of NAB that such protection be afforded to the petitioner. The said orders dated 19.10.2023 and 24.10.2023 were passed with the consent of the Deputy Prosecutor General NAB and Prosecutor General NAB, respectively. The Prosecutor General, NAB was equally clear, unequivocal, and emphatic in his submission made on 24.10.2023 as well as 26.10.2023, that NAB has no intention to arrest the petitioner.

33. The petitioner had also filed applications for the resurrection of appeals No.121/2018 and 01/2019. On these applications, this Court had issued notice on 24.10.2023. Vide order dated

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26.10.2023, these applications were allowed and the appeals were resurrected. They are to be heard and decided by this Court on merits. On account of these developments, during the pendency of the instant petitions, no further proceedings are required and therefore, these petitions stand disposed of.

(CHIEF JUSTICE) **(MIANGUL HASSAN AURANGZEB)**
JUDGE

Ahtesham*

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