JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.138-2025

Dr. Tashfeen Khan

Versus

NAB through its Chairman and another.

Petitioner by:	Barrister Qasim Wadud, Mr. Shumayl Aziz, Barrister Waleed Ahmed Jadoon, Advocates.
Respondents by:	Mr. Muhammad Rafay Maqsood, Sr. Special Prosecutor, NAB. Rauf Alam, A.D/I.O, NAB.
Date of Hearing:	04.06.2025.

.....

MOHSIN AKHTAR KAYANI J., Through the instant writ petition, the petitioner, Dr. Tashfeen Khan, has called in question the inquiry conducted by the respondent/NAB and the conversion of the same into an investigation, as well as the call-up notices and questionnaires issued to the petitioner.

2. Brief facts referred in the instant case are that Dr. Tashfeen Khan (petitioner) and his spouse have been called upon to explain the accumulation of assets beyond their known sources of income. In this regard, NAB authorities initially confronted the petitioner through a call-up notice. The petitioner, being a retired ex-Additional Secretary of the Government of Pakistan, was confronted with details of his properties, including bank accounts. As per record, he owns eight properties in UAE and the United Kingdom, whereas he owns approximately 11 properties in Pakistan comprising

apartments, shops, plots, houses, agricultural properties, and vehicles; that petitioner has submitted all the requisite documents claimed by the respondent/NAB, including but not limited to title documents as well as bank details of all the properties, including immovable and movable assets, bank balances, and foreign bank accounts. As per his claim, he and his wife possess assets with a total value of Rs. 316,117,764, as calculated and summarized on 30.03.2023.

3. Learned counsel for the petitioner contends that the initiation of inquiry by the NAB authorities is illegal, as they have not *prima facie* collected the requisite information to cross through the threshold of five hundred million rupees settled in the NAO 1999, especially after the amendments therein. He further contends that the conversion of inquiry into investigation under Section 18(c) of the NAB Ordinance, 1999 requires to fulfill the condition that offence committed under the ordinance is substantiated with material evidence. Unless such information is substantiated, the inquiry cannot be converted into an investigation. Moreover, he further contends that the petitioner and his wife have already declared all their assets in the FBR record and nothing has been concealed in any manner. The income tax authorities have never challenged their income tax returns or charged them with tax evasion under the Income Tax Ordinance. Furthermore, learned counsel claims that after the first Amendment in NAO, 1999, the phrase of “corrupt and dishonest means” and two Explanations are inserted in Section 9(a)(v), which has raised the threshold of evidence and set

separate requirement under the law to substantiate the corrupt and dishonest means. Therefore, the very conversion of inquiry into investigation is illegal and the petitioner has been harassed without any justiciable basis. Even the antecedents of the petitioner are clean throughout his entire service career, and no misconduct has ever been mentioned against him, especially when the Establishment Division has not provided any such information, where any charge was ever made against him of corruption, corrupt practices, or living beyond known sources of income. Thus, as per Section 4(2) (G) no funds, interest or property of the appropriate government was involved and there is no loss to the government or public exchequer on the record or in inquiry report.

4. Conversely, learned Special Prosecutor, NAB contends that multiple call-up notices and questionnaires were issued to the petitioner and his family members, but they have not been cooperating in the inquiry or investigation, nor have they provided the source of income, especially considering that the petitioner was a civil servant. During his entire service, he never declared ownership of such large-scale assets, commercial shops, plots, apartments, houses, agricultural land, and foreign assets in UAE and the UK. He failed to explain the channels through which he transmitted sale consideration to foreign vendors, who transferred assets into his name. Therefore, a presumption is raised against the petitioner.

5. Arguments heard. Record perused.

6. Perusal of the record reflects that the petitioner is an ex-civil servant, retired from the Government of Pakistan as an Additional Secretary. After his retirement, he was served with a call-up notice under Section 19 of NAO 1999 for the purpose of inquiry in terms of Section 9(a)(v) of NAO 1999.

7. Before proceeding further, it is important to reproduce Section 9(a)(v) of the NAO, 1999, both pre and post amendment:

Pre- First Amendment	Post First Amendment
9. Corruption and Corrupt Practices: (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices— … (v) if he or any of his dependents or benamidars owns, possesses, or has acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income;	(a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices— … (v) if he or any of his dependents or other benamidars, through corrupt and dishonest means, owns, possesses or acquires rights or title in assets substantially disproportionate to his known sources of income which he cannot reasonably account for. **Explanation I.**– The valuation of immovable property shall be reckoned on the date of purchase either according to the actual price shown in the relevant title documents or the applicable rates prescribed by District Collector or the Federal Board of Revenue whichever is higher. No evidence contrary to the later shall be admissible. **Explanation II.**– For the purpose of calculation of movable assets, the sum total of credit entries of bank account shall not be treated as an asset. Bank balance of an account on the date of initiation of inquiry may be treated as a movable asset. A banking transaction shall not be treated as an asset unless there is evidence of creation of corresponding asset through that transaction.”

8. Upon comparing both versions, the principal provision remains the same i.e. a person must explain acquisition of property, assets, or rights substantially disproportionate to known sources of income. The amendment has introduced the phrase of “corrupt and dishonest means” and Explanations I and II, which were not part of the original text and which have significantly altered the framework.

9. After the amendment to the NAB Ordinance, Section 14(c) has been omitted, therefore, previously existing adverse presumption has been removed. Now the NAB authorities are under an obligation to prove that the accused has accumulated substantially disproportionate assets through corrupt and dishonest means. This requirement was not earlier part of the law. Previously, in the case of a civil or public servant, an adverse presumption in case of assets beyond means was there unless contrary is proved and the public office holder had to provide an explanation or reasonable source for his assets to prove his case. After the amendment, additional safeguards have been provided to the holder of public office through the application of Explanations I and II under Section 9(a)(v).

10. Another important provision is Section 5(o) of NAO 1999, which defines the term "offence", which means corruption and corrupt practices and other offences defined in the Ordinance with a threshold value not less than Rs.500 million and includes offences specified in the Schedule to the Ordinance. This provision sets a valuation threshold relevant to Explanations I and II of Section 9(a)(v), especially for the

purpose of valuation of immovable properties, movable assets, bank accounts, etc. The section, after amendment lays down the following conditions and criteria to collect the material evidence to substantiate the offence under the Ordinance:

i. *Assets substantially disproportionate to his known sources of income.*
ii. *The immovable property shall be reckoned from the date of purchase and the value of property must be*
    - *Either the actual price (mentioned in any titled document collected by I.O as an evidence).*
    - *Or the rate prescribed by the DC or FBR on the date of purchase of the immovable property.*

iii. *In case of moveable assets, the credit entries of the bank account shall not be treated as assets unless there is evidence of creation of corresponding asset through that transaction. (Emphasis added)*

11. The explanation II further puts a condition that to consider bank transaction as assets the onus is on I.O to provide that a corresponding asset was established from those exact bank transactions. Otherwise, the entries of bank account shall not be treated as assets. Thus, the instant matter falls under Section 9(a)(v) and as per the interpretation of Section 4(2)(g), the presumption is attached that the government interest or loss is involved because the petitioner was a public office holder but after the omission of Section 14 an adverse presumption cannot be drawn that all the assets were obtained through corruption and dishonest means. The inquiry authorities have to collect material evidence to substantiate the offence. And the cumulative value of all the assets (that can be read as evidence) must cross the threshold of 500 million

Rupees. Therefore, after issuance of a call-up notice, the Inquiry Officer must collect sufficient material that meets the threshold of Rs.500 million under Section 5(o). Offences below this value fall outside the purview of NAO 1999.

12. Upon the plain reading of the relevant provisions, it is apparent that the Inquiry Officer is under a legal obligation to discharge the initial onus to fulfill the threshold under the law. The NAO, 1999 is silent as to detailed inquiry or investigation rules, and no such rules prescribe the factors or ingredients to be examined to convert an inquiry into an investigation.

13. As the terms "inquiry" and "investigation" appear in the section 18(c) indicates that the legislature intended to give them different meanings. Since both these terms are not defined in the NAO, 1999 and are no inquiry or investigation rules formulated under the Ordinance as well, therefore, I took guidance from the FIA (Inquiries and Investigation rules), 2002 and the FIA's Directions and Guidelines regarding verification and enquiries etc. of 2020, which support this view that 'inquiry' is different from 'investigation'. In ***1989 PCr.LJ 1921 (Adamjee Insurance Company Ltd. Vs. Assistant Director, Economic Enquiry Wing)***, a Divisional Bench of the Sindh High Court stated that the above-mentioned two terms are different and "*they connote two different meanings. In our view inquiry can be termed as the first step towards investigation."* It wouldn't be wrong to conclude that inquiry under NAO is "inquisitorial" and it demands explanation from the accused, which helps the I.O to formulate an "opinion" that enough incriminating

material is available and prima facie a case can be established against the accused thus the inquiry can be converted into investigation.

14. It is settled law that the Criminal Procedure Code (Cr.P.C.) is applicable to proceedings under the NAO 1999. The concept of "investigation" explained in Chapter XIV of the Cr.P.C. deals with the investigation of cognizable and non-cognizable offences. Although "investigation" is not defined in the PPC or Cr.P.C., a combined reading of those statutes, along with Police Order, 2002 and Police Rules 1934, makes clear that investigation consists of spot inspection, collection of evidence, ascertainment of facts, and apprehension of accused, provided that evidence connects the accused with the charge. If the investigator concludes that the evidence is sufficient, a final report is to be prepared. The investigator may also cancel the criminal case if evidence is lacking.

15. The term "investigation" must not be confused with inquiry, "verification" or "reinvestigation." Investigation involves collection of evidence in accordance with law. It is the duty of the prosecution to prove the ingredients of the offence. In cases under Section 9(a)(v), the prosecution must establish:

(i) That the accused was a holder of public office;
(ii) The nature and extent of pecuniary resources, property, and assets in his possession;
(iii) The known sources of income;
(iv) That the resources or property found in possession were disproportionate to known sources of income.

These principles were laid down by the Hon'ble Supreme Court of Pakistan in case law reported as ***2010 SCMR 169 (Syed Mohammad Hashim Babar Vs. The State)***. Another relevant

provision is Section 18 of NAO 1999, which deals with cognizance of offences by the Court, Section 18(c) has an independent role in determining when inquiry may be converted into investigation. Therefore, it is necessary to reproduced Section 18(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. [If after completion of inquiry the allegations of commission of an offence under this Ordinance are substantiated with material evidence, the matter shall be converted into investigation.*

16. On plain reading of the provision, emphasis is placed on the requirement of “substantiated with material evidence”, which implies that the Inquiry Officer must collect material that visibly meets the legal threshold. The Oxford Dictionary defines "substantiate" as to prove, give proof of, show to be true, justify, vindicate, validate, corroborate, verify, authenticate, confirm, endorse, give credence to, and establish. These terms relate to the concept of "evidence" whether admissible or not and the Inquiry Officer must collect material sufficient to demonstrate a valid justification for treating a civil or ex-civil servant as an accused for not explaining known sources of income.

17. The concept of "presumption" arises when the accused fails to reasonably account for the disproportionate assets. Such presumption goes against the civil servant and the case is to be treated under Section 9 of NAO 1999 as one involving corruption and corrupt practices.

18. In this regard, this Court confronted the Inquiry Officer with the question that what material had been collected. In response, the Inquiry Officer relied solely on the Inquiry report, specifically paragraph 6 in the following manner:

i. *During the proceedings of inquiry, it has transpired that the accused Tashfeen Khan and his spouse accused Rubina Tashfeen Khan have accumulated assets beyond their known sources of income. They not only mis-declared the purchase price of properties but also laundered money by transferring funds multiple times in their different bank accounts to hide origin of funds.*
ii. *The bank record reveal that the accused persons and their family possess 44 x bank accounts. The analysis of these bank accounts reveals that the total debit and credit turn-over in these accounts are Rs. 1.547 Billion and RS 1.561 Billion respectively which does not commensurate with sources of income of accused persons.*
iii. *Further, the accused purchased Gold 350 Tola in various years declaring purchase price to be Rs.2.9 million which was the rate much lesser than the then prevailing market rates of gold.*
iv. *The accused Rubina Tashfeen, prima facie, purchased an apartment in Silver Oaks, Islamabad in name of one Amjad Farooq (Benamidar) to launder black money.*
v. *The accused Tashfeen Khan purchased several properties including shops, plots and agricultural land, mis-declaring their purchase prices. He also did not possess reasonable sources of income for purchase of some of the properties.*
vi. *The accused Rubina Tashfeen purchased multiple properties and reportedly mis-declared the actual price / amount involved to defeat the process of justice. She was issued call-up notice to appear before the CIT for presenting her plea, however, she avoided to attend the proceedings of inquiry and mislead the inquiry team through flimsy replies.*

vii. The accused Tashfeen Khan and Rubina Tashfeen also declared some properties as gift without any logical / reasonable justification to mislead the proceedings the inquiry.

viii. The accused also purchased various properties abroad without reasonable sources of income.

19. Upon plain reading of said findings, it is observed that the Investigation Officer (I.O) reached at the conclusion that the petitioner and his wife had accumulated assets beyond their known sources of income. However, the entire inquiry report is silent regarding any calculation of income from the date of appointment until retirement this being a minimum required yardstick or any other business income claimed by the petitioner in response to the call-up notice.

20. Therefore, this Court holds that under Section 18(c) of NAO 1999, the term “substantiated with material evidence” for conversion of inquiry into investigation requires minimum standards to be set for Inquiry Officers. The material should include:

i. Call-up notice under Section 19 of NAO 1999;
ii. Details of properties;
iii. Details of bank accounts;
iv. Details of properties in the names of family members falling within the definition of "family";
v. Details of Benami properties;
vi. Tax records;
vii. Official service record, including dates of appointment and posts held.
viii. Only after collecting such material may the inquiry officer issue a questionnaire to the accused/public servant to seek explanation of the sources of payment/The questioner shall call upon the accused/public servant to explain the payment details and the sale consideration paid to the vendors at the date of purchase of the immovable properties transferred in the name of the accused/public servant or his family members.
ix. The Inquiry Officer shall, at the minimum, prepare an account statement calculating the value of the assets

in terms of Explanation I and Explanation II provided in Section 9(a)(v) as per the amended NAB Ordinance. If the calculation requires technical support, the Inquiry Officer may hire a technical expert, such as an auditor or accountant, for the preparation of a calculation sheet with a timeline and dates starting from the date of appointment of the civil servant till the issuance of the call-up notice, with each valuation reflected against the immovable property as per the registered instrument.

x. The details of salary and financial benefits received by the accused/public servant from the first day of appointment till the issuance of the call-up notice shall be drawn in a mathematical format to at least examine the prima facie fulfillment of the Rs. 500 million threshold required for initiating investigation and trial under the NAB Ordinance.

xi. The Inquiry Officer shall also requisition the tax record from the concerned taxation circle and may also record the statement of the Income Tax Officer (ITO) after confronting him with all the tax returns filed by the accused. Further, the Inquiry Officer shall collect the service record from the Establishment Division or the concerned Ministry, as the case may be, with reference to any allegation of misconduct during service against the accused/public servant and the outcome of such departmental proceedings, including any penalty imposed and the final verdict in that regard.

xii. Any litigation related to the properties in question shall also be treated as relevant. The Inquiry Officer must demonstrate, at least to the extent of justifying that the total assets are beyond the known sources of income, that the report contains the value of declared known sources and any valuation which is not consumable or justifiable against the acquisition of any property.

xiii. Where the valuation of a property appears exorbitant and is not supported by any known source, a specific explanation shall be sought from the accused/public servant. The Inquiry Officer shall verify the valuation from the office of the Joint Sub-Registrar, real estate agents/companies, or official valuators, and such valuation must be appreciated on the basis of the registered documents.

xiv. If there is no registration document, the average market value of similar properties during the relevant period shall be considered for valuation in light of the Rs. 500 million threshold.

21. If all the above factors are mathematically calculated and the valuation crosses the threshold of Rs.500 million, a *prima facie* presumption shall arise that the initial burden has been discharged. Thereafter, the concept of disproportionate to

known sources of income stands attracted. At this stage, the burden shall shift upon the accused/public servant. This Court is fortified with the view referred in *Hashim Babar case (supra)*, which supports the stance of the prosecution.

22. Now adverting to the explanation rendered by the accused under Article 122 of the Qanun-e-Shahadat Order, 1984, the accused is required to explain his conduct and demonstrate that his known sources of income permitted him to acquire such properties. If such explanation is found satisfactory, the inquiry shall not be converted into an investigation, nor shall it proceed further.

23. This Court is also cognizant that, following the 2022 amendment, the statutory presumption under Section 14 of the National Accountability Ordinance, 1999 previously enabling the prosecution to presume illegal gratification has been omitted. Consequently, the assessment of pecuniary resources disproportionate to known sources of income must now be undertaken without the aid of such presumption. This legal position has been reaffirmed in ***PLD 2024 Supreme Court 102 (Imran Ahmad Khan Niazi Vs. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad)***. Accordingly, the responsibility now squarely rests on the Inquiry Officer to fulfill the statutory duty of conducting thorough preliminary proceedings. Any failure in this regard would render the conversion of an inquiry into an investigation unlawful, as an investigation must be based on the collection of admissible and incriminating material sufficient for prosecution.

24. In the present case, the issue of non-cooperation by the accused has been raised. However, no material has been placed on record to substantiate such claim. Hence, the primary burden still rests upon the Inquiry Officer to complete the threshold requirement and substantiate the case on the touchstone of admissible material before any conversion.

25. The insertion of the Explanation to Section 9(a)(v) is declaratory and intended to clarify the legislative intent underlying the provision. It does not alter or enlarge the substantive scope of the section but merely elucidates its meaning. It is a well-settled principle of interpretation that an explanation is not an enacting provision; rather, it serves to remove doubts or ambiguities, thereby aiding in the construction of the principal enactment. Reliance in this regard is placed on ***2024 SCMR 700 (Commissioner Inland Revenue, Lahore Vs. Millat Tractors Limited, Lahore)***, wherein the Hon'ble Supreme Court held that the purpose of an explanation is interpretative in nature and does not operate to expand the statutory ambit of the provision to which it is appended.

26. This Court is of the considered opinion that the Inquiry Officer has failed to complete the requisite process and has not collected the necessary material to substantiate and fulfill the requirement of Section 18(c) before recommending conversion of inquiry into investigation. The inquiry report is insufficient and not up to the mark. Material evidence must lead a prudent mind to the conclusion that the assets in the name of the accused or his family members are beyond his known sources

of income, assessed through proper mathematical calculation. Only in such cases should the inquiry be converted into investigation. Failing that, the Investigation Officer shall proceed to collect further admissible material to justify *prima facie* initiation of investigation.

27. In this case, no auditor's report or detailed calculation sheet justifying income from the date of appointment of the accused/public servant till retirement has been provided. The Inquiry Report, therefore, does not meet the legal standard. Accordingly, the Investigation Officer is directed to:

- Collect and compile all relevant material;
- Submit a detailed report to the competent authority;
- Include a mathematical calculation sheet justifying the Rs. 500 million threshold;
- Provide a valuation sheet and total income received by the petitioner being civil servant from day one of appointment;
- Proceed further in accordance with law.

28. Failing such compliance, the inquiry shall not be considered valid. Additionally, the NAB authorities are not debarred from initiating a fresh inquiry or re-inquiry, including but not limited to verifying the valuation of foreign assets and the source or mode of transfer of sale consideration to foreign vendors. The same must be demonstrated through legitimate means including banking channels, and the public servant shall be required to submit a valid explanation for transferring the sale consideration abroad. However, for the time being, this shall not form the basis of a corruption charge.

29. In view of the foregoing, instant writ petition is **ALLOWED**. Consequently, inquiry report as well as its conversion into an

investigation is **SET-ASIDE**. The NAB authorities are directed to fulfill the requisite legal formalities for conducting the inquiry and its subsequent conversion into an investigation, as discussed above, and to proceed further strictly in accordance with the law.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on_____

JUDGE

Approved for reporting

RAMZAN