

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.M. No.485 of 2023  
in  
Crl. Appeal No.121 of 2018  
Mian Muhammad Nawaz Sharif  
**Versus**

State through Chairman, National Accountability Bureau and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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<b>26.10.2023</b>	<b>M/s Muhammad Amjad Pervaiz and Azam Nazeer Tarar, Advocates for the applicant. Applicant 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.</b>
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Through this order, we propose to decide civil misc. application No.485/2023 (filed in criminal appeal No.121/2018) and civil misc. application No.487/2023 (filed in criminal appeal No.01/2019). Through the said applications the applicant, Mian Muhammad Nawaz Sharif, seeks the restoration / resurrection of (i) criminal appeal No.121/2018 filed by him against his conviction through judgment dated 06.07.2018 passed by Accountability Court No.I in reference No.20/2017 known as the Avenfield Case, and (ii) appeal No.01/2019 filed by him against his conviction through judgment dated 24.12.2018 passed by Accountability Court No.II in reference No.19/2017 known as the Al-Azizia Case.

2. Both the appeals were dismissed by this Court vide judgments dated 23.06.2021 reported

as **PLD 2022 Islamabad 13**. The dismissal of these appeals was not on merits but due to the applicant having been proclaimed as an absconder by this Court vide order dated 02.12.2020.

3. Learned counsel for the applicant made submissions in reiteration of the contents of the applications under disposal. He further submitted that the applicant had proceeded abroad on 19.11.2019 on the strength of the order dated 16.11.2019 passed by the Hon'ble Lahore High Court in writ petition No.68815/2019 and could not return to Pakistan until 21.10.2023 due to his health condition. He further submitted that the dismissal of the applicant's appeals against conviction was not on merits but because he had been proclaimed as an absconder. He sought the restoration of the appeals and in this regard placed reliance on the law laid down in the judgments reported as **PLD 2020 SC 456**, **PLD 2016 Balochistan 102**, **PLD 1970 SC 177**, **1968 PCr.LJ 212**, **1968 SCMR 59** and **PLD 1967 SC 498**.

4. The learned Prosecutor General, National Accountability Bureau ("NAB") tendered appearance and drew the attention of the Court to Section 8(a)(ii) of the National Accountability Ordinance, 1999 ("NAO") as amended by the National Accountability (Amendment) Act, 2022. He submitted that the Prosecutor General, NAB has a statutory obligation to render independent advice to the Chairman, NAB and is required to ensure fair, consistent, uniform, non-

discriminatory, and expeditious prosecution of cases and in doing so is required to protect and accord all lawful rights and interests of the accused persons. He further submitted that the position taken before this Court on behalf of NAB on 24.10.2023 to the effect that NAB had no objection to the restoration / resurrection of the appeals was based on the mandate enshrined in Section 8(a)(ii) of the NAO; that it is the duty of the Prosecutors to watch the interests of the State in order to secure the ends of justice; that Prosecutors are also duty bound to protect the lawful interests of the accused; that if during an inquiry, any document favourable to the accused's version surfaces, the Prosecutor or Inquiry Officer must not conceal such document from the Court; that the Prosecutor is not to cause any prejudice to an accused person; that the office of the Prosecutor General is a neutral office and must look after the accused's rights and legal remedies; and that Article 4 of the Constitution obligates all to act strictly in accordance with the law.

5. The learned Prosecutor General, NAB submitted that NAB does not have any objection to the restoration / resurrection of the applicant's appeals.

6. Perusal of the judgments dated 23.06.2021 whereby this Court had dismissed the applicant's appeals shows that the said judgments were not passed on merits. The appeals had been dismissed because the applicant had been

proclaimed as an absconder and while remaining so had disobeyed the orders, directions and process of the Court. For the purpose of clarity, the common operative part of the said judgments is reproduced herein below:-

*“12. ... [I]n case reported as PLD 1981 SC 265 and while concluding the matter, it was stated that absconders before hearing of the appeals of the co-convicts can appear and make application for hearing case on merits, the same would be fixed before fixation of appeals of co-convicts. Much emphasis was laid on Article 10-A of the Constitution by Mr. Hassan Nawaz Makhdoom, ASC viz that right of fair trial, is a must in every case. In this behalf, Article 10-A of the Constitution provides for the determination of civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. In case reported as Hayat Bakhsh supra, the Hon’ble Supreme Court observed that there is no bar on the Supreme Court to dispose of a criminal appeal on consideration that the accused person has abused the process of the Court. It was also stated that there is nothing in the Constitution or the Rules to compel the Court to decide on merits an appeal filed by an accused person who has chosen to be fugitive from justice and while remaining so decides to disobey or frustrate the orders, directions and process of the Court from which he seeks justice. Appellant was provided fair trial and now has absconded from justice at the time of hearing of appeal hence the referred Article of Constitution, is of no avail to him. Mian Muhammad Nawaz Sharif was provided a fair trial inasmuch as learned trial court provided him opportunity of hearing as well as cross-examining the prosecution witnesses and only after the proper trial, his conviction was recorded; he despite being on bail, proceeded abroad and did not appear before this Court and without any justification or basis, remained absent on a number of dates of hearing hence this Court was left with no option but to follow the procedure as provided in Code of Criminal Procedure, 1898 and declare him as fugitive from law.*”

*13. In view of foregoing, since appellant is fugitive from law hence has lost his right of audience before this Court and we are left with no choice except to dismiss his appeal.*

*14. For the above reasons, instant appeal is dismissed. 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. Needless to observe that the said application, if and when is made, shall be decided in accordance with law.*

**(Emphasis added)**

7. As can be gathered from the said judgment, the applicant was given a right to file an application as and when he surrenders or is captured by the authorities, for a decision of the appeal on merits. This is in line with the law laid down by the Hon'ble Supreme Court in the cases reported as Ikramullah Vs. The State (2015 SCMR 1002) and Hayat Bakhsh Vs. The State (PLD 1981 SC 265).

8. The dismissal of the applicant's appeals by this Court was in accordance with the long established practice to the effect that this Court will refuse to entertain or hear an appeal when the applicant has not surrendered in accordance with the sentence awarded to him. The order dismissing the applicant's appeals was tantamount to a refusal to entertain or hear the appeals. The dismissal of the appeals was not through an order made under the provisions of the Code of Criminal Procedure, 1898, and such an order was certainly not a "judgment" within the meaning of Sections 367 and 369 of the said Code.

9. There is no denying the fact that the appeals had been admitted for hearing and therefore they ought to be decided on merits. We have not come across any precedent from the Superior Courts where an application filed by a convicted person, after his appeal is dismissed on the sole ground of being declared an absconder, has been rejected.

10. Vide order dated 19.09.2018 reported as **PLD 2019 Islamabad 38**, this Court had suspended the sentence awarded by Accountability Court No.I vide judgment dated 06.07.2018 in reference No.20/2017 known as the Avenfield Case to the applicant and he was 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**. Subsequently, after the applicant was proclaimed as an absconder, his appeals against the judgment dated 06.07.2018 passed by the learned Judge Accountability Court No.I and judgment dated 24.12.2018 passed by Accountability Court No.II were dismissed by this Court vide judgments dated 23.06.2021. As regards the sentence handed down by the Accountability Court No.II vide judgment dated 24.12.2018 in reference No.19/2017 known as the Al-Azizia Case, the Government of Punjab, pursuant to a decision taken by the Caretaker Provincial Cabinet, suspended the applicant's sentence under Section 401(2) of Cr.P.C.

11. The applicant was in attendance on 24.10.2023 when this Court issued notices to NAB. Today again he is in attendance. On a specific query made by this Court, the learned Prosecutor General, NAB stated in unequivocal terms that NAB does not want to arrest the applicant, and that this Court ought to grant the prayer made by him for the restoration / resurrection of the appeals.

12. Since the learned Prosecutor General, NAB did not oppose the applications for the restoration / resurrection of the appeals, the applications are allowed and the appeals are restored with all legal consequences.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)  
JUDGE