Form No: HCJD/C-121.

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2839 of 2018.

Mian Muhammad Nawaz Sharif.

Vs

The State through Chairman, National Accountability Bureau, etc.

DATE OF HEARINGS :	10-09-2018, 11-09-2018, 12-09-2018, 13-09-2018, 17-09-2018, 18-09-2018 & 19-09-2018.
PETITIONERS BY :	Khawaja Haris Ahmad, Ms Ayesha Hamid, Mr Muhammad Amjad Pervaiz, Mr Muhammad Zubair Khalid, Mr Muhammad Aurangzeb, Mr Sher Afghan Asadi, Mr Abraheem Haroon and Mr Munawar Iqbal Duggal, Advocates for the petitioners in their respective petitions.
RESPONDENTS BY :	Mr Muhammad Akram Qureshi, Special Prosecutor, NAB. Mr Jehanzaib Rahim Bharwana, Additional, PGA, NAB. Sardar Muzaffar Ahmad Khan, DPGA, NAB. Mr Imran Shafiq, Mr Asghar Awan, Mr Irfan Ahmad Boola and Mr Zain Akram, Advocates / Special Prosecutors NAB.

ATHAR MINALLAH, J;- This single order shall dispose of the instant constitutional petition as well as *W.P. No. 2841 of 2018 (Maryam Nawaz Sharif versus National Accountability Bureau, etc) and W.P. No. 2841 of 2018 (Capt. Retd. Muhammad Safdar versus National Accountability Bureau, etc).*

2. Through these petitions the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the ***"Constitution"***), seeking suspension of their respective sentences handed down by the learned Accountability Court No.1 vide judgment, dated 06.07.2018 (hereinafter referred to as the ***"Judgment"***).

BRIEF BACKGROUND:

3. Briefly, the facts leading to the conviction and sentences of the petitioners, namely, Mian Muhammad Nawaz Sharif, son of Mian Muhammad Sharif (hereinafter referred to as the ***"Petitioner No.1"***), Maryam Nawaz (Maryam Safdar) daughter of Mian Muhammad Nawaz Sharif (hereinafter referred to as the ***"Petitioner No.2"***) and Captain Retd. Muhammad Safdar, son of Muhammad Ishaq (hereinafter referred to as the ***"Petitioner No.3"***), (they shall be referred to collectively as the ***"Petitioners"***) are that in April 2016 the International Consortium of Investigative Journalists had released information relating to leaked documents of a private law firm, namely, M/S Mossack Fonseca, which is stated to be based in Panama. Some of these leaked documents had reference to one of the petitioners. The documents disclosed details of offshore companies incorporated under the laws of the British Virgin Islands. The reference in the documents to one of the petitioners was regarding two offshore companies, namely, M/S Nescoll Limited and Nielson Enterprises Limited. The titles of

apartments no. 16, 16 A, 17 and 17 A, Avenfield House, Park Lane, London UK (hereinafter referred to as ***"Avenfield Apartments"***) were transferred in the name of the aforementioned companies on 01.06.1993, 23.07.1996, and 31.07.1995 respectively. Petitions were filed before the august Supreme Court, which were entertained under Article 184(3) of the Constitution. By a majority of three to two Hon'ble Judges of the apex Court, a Joint Investigation Team (hereinafter referred to as the ***"JIT"***) was constituted to carry out thorough investigations. Two Hon'ble Judges had declared Petitioner no.1 to be disqualified to hold public office. The Judgment of the august Supreme Court is reported as *"Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others" [PLD 2017 S.C. 265]*. The JIT concluded its investigations and thereafter submitted a detailed report. The august Supreme Court, after examining the JIT report and other material which was placed on record, observed that a prima facie case, triable under the National Accountability Ordinance, 1999 (hereinafter referred to as the ***"Ordinance of 1999"***), was made out. Simultaneously, the august Supreme Court declared Petitioner No.1 to be disqualified to hold the public office to which he was elected. The august Supreme Court gave directions and the judgment is reported as *"Imran Ahmed Khan Niazi vs. Mian Muhammad Nawaz Sharif" [PLD 2017 S.C. 692]*. Pursuant to the said judgment, the National Accountability Bureau (hereinafter

referred to as the ***"Bureau"***) filed an interim Reference No.20 of 2017 on 07.09.2017, alleging the commission of offences defined under section 9(a)(iv)(v) and (xii), punishable under section 10 of the Ordinance of 1999, read with serial no.2 and 3 of the Schedule thereto. Besides the Petitioners, Hussain Nawaz and Hassan Nawaz Sharif, both sons of Mohammad Nawaz Sharif, were also arrayed as accused. The latter two were proclaimed as absconders after fulfilling the legal requirements. The learned trial Court framed the charge against the Petitioners on 19.10.2017 for offences under section 9(a)(iv)(v) and (xii) punishable under section 10 of the Ordinance of 1999 read with serial nos.2 and 3(a) of the Schedule thereto. Serial no. 3(a) of the Schedule was included in the charge, dated 19.10.2017, in respect of the Trust Deed, dated 02.02.2006 (Ex.PW.14/2), which was alleged to be false and fabricated. The learned Accountability Court, vide order dated 08.11.2017, held that section 30 of the Ordinance of 1999 had prescribed the mechanism for taking cognizance of offences in respect of false and fabricated evidence. It was also observed that the offence under serial no.3 (a) of the Schedule was not mentioned in the Reference filed by the Bureau. The learned trial Court, therefore, deleted section 3(a) of the Schedule of the Ordinance of 1999 and, thereafter, framed a fresh charge on 08.11.2017, whereby serial no. 3(a) of the Schedule of the Ordinance of 1999 stood deleted. The Bureau filed a supplementary Reference on 22.01.2018. The Petitioners pleaded not guilty. The prosecution produced eighteen (18) witnesses, while the

Petitioners preferred not to be examined on oath and, therefore, their respective statements were recorded under section 342 of the Criminal Procedure Code (hereinafter referred to as the ***"Cr.P.C"***). The learned Accountability Court, after affording an opportunity of hearing to the parties, rendered the Judgment. The Petitioners were acquitted in the case of the offence under section 9(a)(iv) while they were convicted, inter alia, under section 9(a)(v) of the Ordinance of 1999. They were convicted and sentenced in the following terms;

> *"The guilt of the accused Mian Muhammad Nawaz Sharif u/s 9(a)(v) NAO, 1999 read with Serial No.2 of the schedule attached with the said Ordinance punishable u/s 10 of NAO, 1999/said Serial No.2 of schedule. Therefore, he/accused Mian Muhammad Nawaz Sharif is hereby convicted and sentenced to Rigorous Imprisonment for a term of ten years with fine 08 million pounds. He is also convicted and sentenced under offence cited at Serial No.2 for one year. Both the sentences shall run concurrently."*
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> *"The trust deeds produced by the accused Maryam Nawaz were also found bogus. She/accused Maryam Nawaz was instrumental in concealment of the properties of his father accused Mian Muhammad Nawaz Sharif. This accused Maryam Nawaz aided, assisted, abetted, attempted and acted in conspiracy with her father accused Mian Muhammad Nawaz Sharif who was holder of Public Office. Therefore, prosecution has*

succeeded to establish her guilt within the meaning of Section 9(a)(v)(Xii) NAO, 1999 read with Serial No.2 of the schedule and punishable u/s 10 and schedule attached therewith. In view of the role of this accused Mst. Maryam Nawaz, she is convicted and sentenced to Rigorous Imprisonment for seven years with fine of two million pounds under section u/s 9(a)(v)(xii) NAO, 1999/read with section 10 of NAO 1999 and simple imprisonment for one year under Serial No.2 of the schedule. Both the sentences shall run concurrently."

"The accused Muhammad Safdar had signed the trust deeds as witness, he also aided, assisted, abetted, attempted and acted in conspiracy with the accused Mian Muhammad Nawaz Sharif and Maryam Safdar within the meaning of Section u/s 9(a)(v)(xii) NAO, 1999 read with section 10 of NAO 1999 and Serial No.2 of the schedule and he is convicted and sentenced to rigorous imprisonment for one year u/s 9(a)(v)(xii) NAO, 1999 read with section 10 of NAO 1999 and one year Serial No.2 of schedule attached with NAO, 1999."

4. The Petitioners preferred appeals under section 32 of the Ordinance of 1999, assailing the Judgment. It is noted that, pursuant to the directions of the august Supreme Court, two other References were also filed which are pending trial before the learned Accountability Court. The trial is being conducted on a day today basis so that they could be concluded within the time frame prescribed by the august Supreme Court. The

appeals were filed and fixed before a learned Division Bench of this Court which directed fixation thereof after the summer vacations. The Petitioners had simultaneously filed these constitutional petitions and the learned Division Bench, vide order dated 17.07.2018, admitted the same and directed issuance of notices to the respondents. Further direction was also given for fixation of the petitions in the last week of July, 2018 before an available Bench. After a preliminary hearing and with the consent of the learned counsels, the petitions were adjourned to 13.08.2018. On 13.08.2018, the petitions were fixed and arguments were also heard. However, during the course of the arguments it was brought to our notice that the appeals had been directed to be fixed for hearing after the summer vacations. We, therefore, deemed it appropriate to keep the petitions pending and vide order, dated 20.08.2018, it was observed that they could be pressed in case of delay in deciding the appeals. It is noted that a time frame has been prescribed under section 32 of the Ordinance of 1999 to decide the appeals. On behalf of the Petitioners, C.M. No. 3485 of 2018 was filed, wherein it was prayed that these constitutional petitions be taken up and decided since it would not be possible to advance arguments in the appeals on the grounds mentioned therein. We were satisfied that in the peculiar facts and circumstances of this case, the grounds raised in the application were cogent, forceful and reasonable. We were also mindful of the fact that any conclusive decision in the appeals may prejudice the case of either party before the learned

Accountability Court in the pending trials. In order to meet the ends of justice, C.M. No. 3485 of 2018 was allowed vide order dated 10.09.2018. With the consent of the learned counsels, a schedule was prescribed so as to give them reasonable opportunity to advance arguments in these petitions. The appeals were, therefore, adjourned and directed to be fixed on their turn.

CONTENTIONS OF THE LEARNED COUNSEL FOR PETITIONER NO.1:

5. Petitioner No.1 was represented by Khawaja Haris Ahmed, Senior A.S.C., who has argued that; the conviction and sentences recorded by the learned trial Court are, prima facie, not sustainable in the eyes of law; the obvious legal defect and lacuna floats on the surface of the Judgment and is identifiable on the basis of tentative assessment of evidence recorded in the case; a plain reading of the Judgment shows that, prima facie, no conviction could have been recorded nor sentence passed against Petitioner No.1; the latter has been held guilty of the offence of having acquired assets disproportionate to known sources of his income; the essential ingredients which were required to be established by the prosecution have not been fulfilled; the price at which the assets i.e. 'Avenfield Apartments' were allegedly acquired at the relevant time i.e. between 1993 to 1996 had not been determined; without determination of the price at the relevant time, which was a condition precedent so that it could be compared with the known sources of income, the mandatory obligation on the part of the prosecution was not

discharged; it is settled law that in order to prove the offence of acquiring assets disproportionate to known sources of income, the onus is on the prosecution to prove 'quite objectively' that such assets were acquired and that they were disproportionate to the known sources of income; the prosecution failed to bring on record positive evidence to prove, on the one hand, the price at which the assets were acquired and, correspondingly, the known sources of income of the accused at the relevant time; it is a mandatory obligation of the prosecution to quantify both the price of the assets as well as the known sources of income for the purpose of establishing the offence and only then the onus shifts to the accused; the prosecution has led no evidence whatsoever to even remotely indicate the price at which Avenfield Apartments were alleged to have been acquired by the Petitioner No.1; in this regard, during cross examination, a specific question was put to PW.16 but he was unable to refer to any document showing the price at which the apartments had been purchased at the relevant time; no other prosecution witness had deposed during the trial regarding the price and, therefore, no comparison with known sources of income could have been made; the Reference, Charge and the Judgment do not refer to the price nor reflects that the known sources of income had been quantified; the Judgment, therefore, prima facie, suffers from an obvious legal error and lacuna; the ingredients which are required to be established by the prosecution for the purposes of evidence under section 9(a)(v) of the Ordinance of 1999 have been highlighted by the august

Supreme Court in the cases titled *"Khalid Aziz versus State" [2011 SCMR 136], "Ghani-ur-Rehman versus NAB, etc" [PLD 2011 S.C.1144] and "Pir Mazharul Haq versus State, etc" [PLD 2005 S.C. 63]*.

6. Learned counsel further submitted that a purported chart of assets and liabilities of Petitioner No.1 (Ex.P.W.18/13) was tendered in evidence by Mr Imran Dogar, Investigating Officer of the Bureau; an objection was promptly raised and recorded by the learned trial Court; the objection was to the effect that Mr Wajid Zia (PW.16), who had appeared on behalf of the JIT, had not stated that such a document was prepared during the investigations; the said document was also not produced or exhibited during his deposition; Mr Imran Dogar, the Investigating Officer who had tendered the document in evidence, had admitted during cross examination, inter alia, that he had no concern with the preparation thereof nor knew when it was prepared and by whom; despite the legal objection regarding admissibility of the chart i.e. Ex.P.W.18/13, the same was not decided and the learned trial Court had explicitly recorded that a decision thereon shall be taken later; without deciding the crucial objection raised regarding admissibility of the document Ex.P.W.18/13, the learned trial Court placed reliance thereon; the Judgment, therefore, suffers from an obvious error; a specific charge was framed against Petitioner No.1 under section 9(a)(iv) of the Ordinance of 1999, alleging that Avenfield Apartments were acquired by corrupt, dishonest or illegal means.

7. Learned counsel further submitted that no shred of evidence could be brought on record to even remotely prove that Avenfield Apartments had been acquired by Petitioner No.1 through corrupt, dishonest or illegal means for himself or for his dependents and, therefore, the learned trial Court acquitted Petitioner no.1 and other Petitioners relating to the said specific offence; in the face of this finding, Petitioner No.1 could not have been convicted under section 9(a)(v) of the Ordinance of 1999 and in this regard the learned counsel has referred to paragraph 8 of the Judgment rendered by the august Supreme Court in *Ghani-ur-Rehman* case, supra; section 9(a)(v) of the Ordinance of 1999 is an offence through fiction of law and, therefore, once the learned trial Court, on the basis of appreciation of evidence, had acquitted the Petitioners in the context of the offence under section 9(a)(iv), then conviction and sentence under section 9(a)(v) was not warranted nor sustainable; the charge framed by the learned trial Court had attributed ownership to all the three Petitioners while the Judgment has held Petitioner no.1 to be the owner and thus he was convicted under section 9(a)(v); this finding is based on mere presumption since the Judgment does not refer to any oral or documentary evidence which would even remotely establish a connection between Petitioner No.1 and the ownership of Avenfield Apartments; Mr Wajid Zia (PW.16) and Mr Imran Dogar (PW.18), had both admitted during their respective cross examinations that no such oral or documentary evidence could be collected during investigations.

8. Learned counsel further submitted that it was the stance of Petitioner no.1 before the JIT that he had absolutely no concern with the acquiring of or with any transaction leading to the purchase of the Avenfield Apartments; the learned trial Court, on mere assumptions, has concluded that the children at the relevant time were the dependents of Petitioner no.1; the observations made in the Judgment, which draws inference regarding financial dependency, are without any basis and on unsupported presumptions; it is on record and it was conceded by Mr Wajid Zia (PW.16) that there was absolutely no evidence to the effect that the children of Petitioner No.1 were his dependents; during recording of his deposition, Mr Wajid Zia (PW.16) had deposed that Petitioner No.1 had, inter alia, stated before the JIT that all the expenses relating to the stay of Hassan Nawaz and Hussain Nawaz in London were met by money sent by their grandfather, namely, Mian Muhammad Sharif; Mr Wajid Zia (PW.16) had also admitted during his cross examination that family members had given statements and referred to the manner and conduct of Mian Muhammad Sharif and he had further stated before the JIT that during his life time Mian Mohammad Sharif used to apportion shares in his business to all his children and grandchildren and that he even used to determine their pocket money; the witness, namely Mr Wajid Zia (PW.16), had unambiguously admitted that no witness had appeared before the JIT to state that Maryam Nawaz, Hassan Nawaz and Hussain Nawaz were dependent on Mian Muhammad Nawaz Sharif for their business or livelihood; the

said deposition was neither considered nor discussed by the learned trial Court in the Judgment; while recording his statement under section 342 of the Cr.P.C., Petitioner No.1 was never asked whether the children were his dependents, rather it was suggested to him that they were benamidars; dependents and benamidars have been separately mentioned in section 9(a)(v); the definition of benamidars under the Ordinance of 1999 does not show that it includes dependents; the conviction recorded against Petitioner No.1 under section 9(a)(v) of the Ordinance of 1999, based on the presumption that his children were financially dependent upon him is, prima facie, not sustainable; this assumption is the incriminating piece of evidence on the basis of which conviction has been recorded against Petitioner No.1 and no such question was put to him so as to illicit his explanation; reliance has been placed on the cases titled *"Abdul Lateef Brohi versus NAB" [2014 P.Cr.L.J. 334] and "Muhammad Shah versus State" [2010 SCMR 1009]*; the only witness who had stated, while deposing, that the children were benamidars of Petitioner No.1 was PW.18, namely, Mr Imran Dogar, but he too had unequivocally admitted during cross examination that no witness had appeared before him in support of the said claim.

9. Learned counsel further submitted that the offence under serial no.2 of the Schedule is not attracted in the case of Petitioner No.1; the call up notices did not require Petitioner no.1 to provide information, therefore, refusal thereof has no

relevance; the call up notices, also, did not mention that in case of refusal to give specific information, proceedings under serial no.2 of the Schedule would be initiated; the practice of putting an addressee to notice regarding penal action was admitted by the Investigating Officer, namely, Mr Imran Dogar (PW.18); reply was sent by Petitioner No.1 and there was no further communication or follow up by the Bureau; an offence under serial No.2 of the Schedule to the Ordinance of 1999 was, therefore, not made out and conviction thereunder is not sustainable; the bar contained under section 9(b) of the Ordinance of 1999 has by now been interpreted by the august Supreme Court in a chain of judgments; the august Supreme Court has consistently held that despite the ouster clause i.e. 9(b) of the Ordinance of 1999, in an appropriate case relief can be granted by exercising jurisdiction under Article 199 of the Constitution; reliance has been placed on the cases titled *"Muhammad Saeed Mehdi versus State" [2002 SCMR 282], "Abdul Aziz Khan Niazi versus State" [PLD 2003 S.C. 668], Olas Khan versus Chairman NAB" [PLD 2018 S.C. 40] and "Peer Mukaram ul Haq versus NAB" [2006 SCMR 1225]*; the principle and law relating to section 426 of the Cr.P.C. has been recently highlighted by the august Supreme Court in the case titled *"Soba Khan versus State" [2016 SCMR 1325]*; reliance has also been placed on the case titled *"Abdul Rehman versus State" [2008 SCMR 1381]*; the august Supreme Court, in Soba Khan's case, supra, has held that if a case is made out, then release should not be withheld because, if ultimately the appeals are

allowed, then the accused cannot be compensated, while if he is released and subsequently the appeals are dismissed, then obviously he would have to serve his or her sentence and in such an eventuality the State and the complainant will stand compensated; the august Supreme Court, therefore, has taken a liberal view.

CONTENTIONS OF THE LEARNED COUNSEL FOR PETITIONERS NO.2 and 3:

10. Mr Muhammad Amjad Pervaiz, A.S.C., while arguing on behalf of Petitioners No.2 and 3 has contended that; in the absence of proof of ownership of Avenfield Apartments by the principal accused i.e. Petitioner No.1, the question of abetment does not arise; Petitioner No.2, namely, Maryam Nawaz, has not been convicted nor could have been convicted for allegedly submitting forged or fabricated documents because the learned trial Court had deleted the offence under serial no.3(a) of the Schedule of the Ordinance of 1999; no case is made out under section 9(a)(v); it is the case of the prosecution that the Avenfield Apartments were acquired between 1993 to 1996, while Petitioners No.2 and 3 have been convicted and sentenced on the basis of a document, dated 02.02.2006; there is no evidence on record to show that Petitioner No.2 had in any manner abetted / assisted in acquiring the Avenfield Apartments between 1993 and 1996; the findings recorded by the learned trial Court relating to assisting and abetting Petitioner No.1 are based on conjectures; the Trust Deed, dated 02.02.2006, could only have been conclusively held to be forged or fabricated after

holding a summary trial under section 30 of the Ordinance of 1999, which has not been done; the learned trial Court has recorded the finding that Petitioner No.2 had become a beneficial owner of the Avenfield Apartments in 2006; the learned trial Court, on the basis of an assumption, has mentioned in the Judgment that some documents show the ownership prior to 2006 but has not referred to any such document; no such document exists; the time of the alleged occurrence is between 1993 to 1996 and, therefore, on the basis of the Trust Deed, dated 02.02.2006 it could not be inferred that Petitioners No.2 and 3 had aided or abetted in any manner in the acquiring of the Avenfield Apartments; several reservations and objections were raised but the learned trial Court, without deciding the same, has recorded findings which are not sustainable in law; the learned trial Court has also not properly appreciated the deposition of PW.14, namely, Robert William Radley; reliance has been placed on the cases titled *"Muhammad Nawaz v. The State" [1996 P.Cr.L.J. 1250], "Allah Din and others v. Special Judge, Anti-Terrorism Court No.1, Lahore and others" [PLD 2008 Lahore 74] and "Raja Shamshad Hussain v. Gulraiz Akhtar and others" [PLD 2007 S.C. 564]*.

CONTENTIONS OF THE LEARNED COUNSELS FOR THE BUREAU:

11. The Bureau was represented by most able and competent counsels which included Mr Muhammad Akram Qureshi, Special Prosecutor, NAB, Mr Jehanzaib Bhurwana,

Additional PGA, NAB and Sardar Muhammad Muzaffar Khan, DPGA, NAB. The gist of their arguments is that; the petition under section 561-A of the Cr.P.C. was not competent; the order, dated 20.08.2018, could not have been reviewed and the appeals ought to have been heard; section 9(b) of the Ordinance of 1999 starts with a non-obstante clause and places a bar, inter alia, in respect of exercising powers under section 426 of the Cr.P.C.; the said provision has been explicitly ousted; the Anti-Terrorism Act 1997 also contains a similar ouster provision; on behalf of the Petitioners, merits have been agitated; disputed questions of fact cannot be raised while exercising jurisdiction under Article 199 of the Constitution; delay in deciding the appeals is attributed to the Petitioners and, therefore, the petitions seeking suspension of sentences are not maintainable; the accused to whom delay is attributed cannot take benefit of his/her acts; reliance has been placed on the case titled *"Shahbaz v. The State" [1992 SCMR 1903]*; the learned trial Court was vested with jurisdiction to presume certain facts and in this regard reference has been made to Articles 129, 125 and 122 of the Qanoon-e-Shahadat Order, 1984; reliance has been placed on the cases titled *"Mian Muhammad Nawaz Sharif and others v. The State and others" [PLD 2002 Karachi 152], "Abdul Karim Nausherwani and another v. The State through Chief Ehtesab Commissioner" [2015 SCMR 397] and "Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9*

others" [PLD 2017 S.C. 265]; the law laid down by the august Supreme Court in the case of *Khalid Aziz*, supra and *Ghani-ur-Rehman*, supra are distinguishable in the instant case; the facts and circumstances of the instant case are altogether different; the Petitioners had avoided appearing before the learned trial Court and they had failed to bring on record any material in their defence; they had also avoided to depose under oath; reliance has been placed on the case titled *"Hashim Babar v. The State" [2010 SCMR 1697]*; the Bureau had established that Avenfield Apartments were in the possession of the Petitioners and therefore the burden of proof was on the latter to show their known sources of income and the factum that they were not disproportionate thereto; in 1993 the children of Petitioner No.1 had no source of income; the father is a natural guardian of his children; the stance taken by the accused that they were dependents of their grandfather could not be substantiated; the onus was on the accused to establish that they were not dependents of their father; Avenfield Apartments are not situated in Pakistan and, therefore, *Khalid Aziz* case, supra and *Ghani-ur-Rehman* case, supra are distinguishable; the Avenfield Apartments were acquired on 01.06.1993, 23.07.1996 and 31.07.1995, respectively through offshore companies, namely, Nescoll Limited and Nielsen Enterprises; the purchase of the said properties and possession thereof by the children of Petitioner No.1 coincide.

12. Learned counsel has placed reliance on *"Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime*

Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others" [PLD 2017 SC 265]; it was argued that the burden that the flats were in question, which were in possession of the accused and were owned by him was on his shoulders; the children were dependents of Petitioner No.1 and they had no source of income; there is no explanation to the effect that the said properties could be treated as having come in their possession through inheritance; the statement of PW.16, namely, Mr Wajid Zia, despite lengthy cross examination, remained unshaken; section 19 of the Ordinance of 1999 makes it mandatory for the accused to provide any information sought by the Bureau; the Petitioners and the absconding accused did not give any explanation; the analysis chart was prepared on the basis of tax returns of the Petitioners; the Petitioners kept changing their stance regarding the source of acquiring Avenfield Apartments; they had misstated facts before the august Supreme Court; the role of Petitioner No.2, namely, Maryam Safdar became obvious on the basis of Ex.P.W.16/74 and Ex.P.W.16/75, which were obtained by the JIT pursuant to Mutual Legal Assistance; it shows that Petitioner No.2 was the beneficial owner of Avenfield Apartments in 2012; Petitioner No.2, without having any source of income, had become a beneficial owner of Avenfield Apartments; it is extremely difficult to trace ownership in the case of offshore Companies; the relevant law was amended in 2006 and, thereafter, Petitioner No.2 got the bearer share certificates registered in her name; the Trust Deed, dated

02.02.2006 has been proved to be fabricated and false and in this regard the learned trial Court has rightly placed reliance on the evidence of PW.14; it is a settled principle of law that a person who is found guilty of aiding, abetting or assisting in the commission of an offence is liable to the same punishment as that of the main accused; reliance has been placed on the case titled *"Wajid Ali v. Mumtaz Ali Khan" [2000 MLD 1172]*.

13. The learned counsels appearing on behalf of the Bureau have placed reliance on an unreported judgment of the august Supreme Court rendered in C.P. No. 1305 of 2014 titled *"Muhammad Arshad versus Tassaduq Hussain alias Mittu and others"* in support of their contention that when a special law provides for an ouster clause such as 9(b) of the Ordinance of 1999, then an accused can be released on bail when the latter is able to show to the satisfaction of the Court that denying the relief would tantamount to extreme hardship.

14. All the learned counsels were also given an opportunity to submit the respective written synopsis of their arguments. Each learned counsel has duly placed on record their written submissions / synopses.

15. The learned counsels have been heard and the record perused with their able assistance.

16. Through these petitions, the Petitioners are seeking suspension of their respective sentences handed down by the learned Accountability Court vide the Judgment. It is an

admitted position that the Bureau has not preferred appeals against the acquittal of the Petitioners for an offence under section 9(a)(iv) of the Ordinance of 1999 nor has it sought enhancement of the sentences, despite the fact that the maximum punishment prescribed under the law has not been awarded. The learned Accountability Court in the Judgment has also not recorded reasons for handing down lesser sentences. At the very outset we had asked the learned counsel for the Bureau as to why no appeal had been preferred against the acquittal of the Petitioners for the specific offence under section 9(a)(iv) relating to Avenfield Apartments and in response he stated that the Bureau was satisfied with the convictions and sentences awarded under a distinct offence i.e. section 9(a)(v).

OBJECTIONS TO THE MAINTAINABILITY OF THE PETITIONS:

17. The learned counsels for the Bureau have raised an objection regarding maintainability of the petitions on the ground that a case of hardship is not made out. They have placed reliance on an unreported judgment of the august Supreme Court, dated 28.11.2014 titled *"Muhammad Arshad versus Tassaduq Hussain alias Mittu and others"* passed in C.P. No. 1305 of 2014 in support of their contention that existence of extreme hardship is a condition precedent for granting relief by way of suspension of sentences in accordance with the guidelines provided under section 426 of the Cr.P.C., since section 9 (b) is in the nature of a statutory ouster clause. They have argued that merely on the basis of tentative assessment,

relief under section 426 of the Cr.P.C. cannot be granted in the absence of extreme hardship. It is noted that the august Supreme Court in the said case has interpreted the statutory ouster clause provided under the Anti-Terrorism Act 1997. The said statute prescribes a maximum sentence of death while in the case of the Ordinance of 1999, the offences are punishable as rigorous imprisonment for a term which may extend to fourteen (14) years and a fine. By now the law in the context of section 9(b) of the Ordinance of 1999 is well settled. The august Supreme Court in the case titled *"Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others" [PLD 2001 S.C. 607],* after examining the vires of the Ordinance of 1999 and its provisions, has held in the context of section 9(b) that it is well settled that superior Courts have the power to grant bail under Article 199 of the Constitution independent of any statutory source of jurisdiction such as section 497 of the Cr.P.C. and had further held that section 9(b) of the Ordinance of 1999, to the extent of excluding constitutional jurisdiction of a High Court, was ultra vires of the Constitution. The august Supreme Court has consistently reaffirmed the said principles and law and reference in this regard may be made to the cases titled *"Muhammad Mehdi v. The State and 2 others"[2002 SCMR 282], "Abdul Aziz Khan Niazi v. The State through Chairman, NAB, Islamabad" [PLD 2003 S.C. 668], "Olas Khan and others v. Chairman, NAB through Chairman and others" [PLD 2018 S.C. 40], "Peer Mukaram Ul Haq v. National Accountability Bureau through*

Chairman NAB and others" [2006 SCMR 1225], "Dr. Abdul Quddus, Deputy Director, Pakistan Agriculture Research Council (PARC), Rawalpindi v. The State" [2002 YLR 3996] and "Abdul Lateef Brohi v. National Accountability Bureau through Director General" [2014 P.Cr.L.J. 334]. In a recent judgment, the principles and law relating to exercising powers in relation to section 426 of the Cr.P.C. have been elaborated in the case tilted *"Soba Khan v. The State and another" [2016 SCMR 1325]*. Reference may also be made to the cases titled *"Muhammad Arif Muhammad Hussaini v. Amanullah and others" [2008 SCMR 1381] and "Peer Mukaram Ul Haq v. National Accountability Bureau (NAB) through Chairman and others" [2006 SCMR 1225]*. It is not the case of the Bureau that this Court is bereft of jurisdiction under Article 199 of the Constitution to release an accused by suspending sentence while seeking guidance from the principles and law relating to section 426 of the Cr.P.C. despite there being a statutory ouster clause such as section 9(b) of the Ordinance of 1999. It is the case of the learned counsels for the Bureau that such exercise of jurisdiction would be justified only if a case of hardship is made out. The principles and law laid down by the august Supreme Court in the case titled *"Soba Khan v. The State and another" [2016 SCMR 1325]* would be crucial and taken into consideration while deciding these petitions. Whether or not a case of hardship is made out can also be answered after a tentative assessment has been made. Suffice it to mention at this stage that a High Court, while exercising jurisdiction under Article 199 of the

Constitution, is not bereft of jurisdiction to suspend a sentence handed down under the Ordinance of 1999.

PRINCIPLES GOVERNING APPLICABILITY OF SECTION 426 CR.P.C. FOR SUSPENSION OF SENTENCE:

18. It would also be relevant to discuss the principles and law relating to section 426 of the Cr.P.C because they would guide us in deciding these petitions. It is by now settled law that deeper appreciation of evidence cannot be undertaken while considering suspension of a sentence in the context of section 426 of the Cr.P.C. A Court of appeal is empowered to suspend the sentence if, on a bare perusal of the judgment, it reflects that the appreciation of evidence made by the learned trial Court was against the law declared. The Court of appeal has to confine itself to the infirmities in the judgment which are apparent and, prima facie, indicate that the conviction and sentence may ultimately not be sustainable. In a recent judgment rendered by the august Supreme Court in the case titled *"Soba Khan v. The State and another" [2016 SCMR 1325]*, the law and principles in the context of section 426 of the Cr.P.C. have been highlighted. The august Supreme Court has held that the powers of the appellate Court in granting bail at post conviction stage shall be guided by the criteria / principles provided under section 497 of the Cr.P.C. It has been further held that a Court of appeal or a High Court, as the case may be, shall not conclusively decide the guilt or innocence of the accused by entering upon reappraisal of evidence during pendency of an appeal. However, the august Supreme Court

has emphasized the importance of the liberty of a person and has held that the relief by way of suspension of sentence cannot be granted in a vacuum and, rather, a tentative assessment of the evidence is required to be made. The provisions of section 426 of the Cr.P.C. have been held to be analogous to those of section 497 of the Cr.P.C. It has been noted by the august Supreme Court that, after conviction, the initial presumption of innocence in favor of the accused disappears and that this will have little bearing while the appellate Court considers the case in the context of section 426 of the Cr.P.C., because an appeal is construed to be a continuation of the same proceedings and that a fair balance is to be struck between two extreme views so that justice is done in all circumstances. It has been further highlighted by the august Supreme Court that a person cannot be denied relief on the basis of technicalities emanating from procedural law because, in such a case, the latter cannot be compensated for his or her incarceration. In this regard, the august Supreme Court has referred to sub-section (3) of section 426 of the Cr.P.C. which provides that, while computing the sentence of the convict, the period during which his sentence was suspended and he was released on bail shall be excluded from the total period of sentence he had to undergo. It is on this basis that the august Supreme Court has held that ultimately the State or the complainant can be compensated while no such relief has been provided under the law if the convict remains incarcerated. It has been emphasized by the august Supreme

Court in the said judgment that a High Court ought to take extra-ordinary caution and care so as not to leave a convict to rot in jail by undergoing sentence even if it is of life imprisonment and that in appropriate cases through tentative assessment of the evidence on record, if the case of any convicted person is found fit for grant of bail then denial of the same would tantamount to patent injustice. The august Supreme Court has also explained the scope of tentative assessment of evidence / materials and in this regard has reaffirmed the earlier view taken in the case titled *"Khalid Javed Gillan v. State" [PLD 1978 S.C. 256].* The august Supreme Court has also held that the Court of appeal can slightly touch upon the merits of the case without recording conclusive findings.

19. It was in the light of the above principles and law enunciated by the august Supreme Court that the learned counsels were explicitly asked to confine their arguments to the Judgment itself and to satisfy us within the parameters laid down therein whether or not a case is made out for suspension of the sentences in the petitions before us.

PRINCIPLES ENUNCIATED BY THE APEX COURT REGARDING SECTION 9(a)(v) AND SECTION 14(c) OF THE ORDINANCE OF 1999 AND THEIR APPLICATION TO THE INSTANT CASE:

20. The learned counsels for the Bureau have taken a novel stance that the law and principles enunciated by the august Supreme Court in the cases of *Khalid Aziz*, supra and

Ghani-ur-Rehman, supra are not attracted in the case of the Petitioners and that they are thus distinguishable. They have unambiguously stated at the Bar and also in the written arguments that, since the possession of Avenfield Apartments stood established, the prosecution had discharged its burden in terms of section 14 (c) of the Ordinance of 1999 and that the onus had then shifted to the Petitioners. A plain reading of the Judgment shows that the learned Accountability Court itself was cognizant that the principles and law expounded by the august Supreme Court in the above mentioned judgments was binding and attracted in the case of the Petitioners. It is an admitted position that the Petitioners have been acquitted in respect of the offence under section 9 (a)(iv) and convicted under section 9(a)(v) of the Ordinance of 1999. Section 14(c) of the Ordinance of 1999 contemplates a reverse onus as opposed to the settled law that in criminal cases the onus is always on the prosecution to establish its case beyond reasonable doubt. Section 14, for the first time, was interpreted by the august Supreme Court in the case titled *"Khan Asfandyar Wali and others v. Federation of Pakistan through the Cabinet Division, Islamabad and others" [PLD 2001 S.C. 607]* and it was held therein that the prosecution has to establish the preliminary facts and, after that, the onus shifts and the defence is then required to disprove the presumption. For safer dispensation of justice and in the interest of good governance the august Supreme Court, in the context of section 14(d), observed and held that the prosecution shall first make out a reasonable case

against the accused charged under section 9(a) (vi) and (vii) of the Ordinance of 1999 and in case the prosecution succeeded in making out a reasonable case to the satisfaction of the learned Accountability Court only then it would have deemed to have discharged the prima facie burden of proof and, in such an eventuality, it would shift to the accused so that the latter rebuts the presumption of guilt. The above principles and law were reiterated by the august Supreme Court in the cases titled *"Pir Mazhar Ul Haq and others v. The State through Chief Ehtesab Commission, Islamabad"* [PLD 2005 S.C. 63], *"Syed Qasim Shah v. The State"* [2009 SCMR 790], *"Muhammad Siddiqul Farooq v. The State"* [2010 SCMR 198], *"Hashim Babar v. The State"* [2010 SCMR 1697] and *"Khalid Aziz V. The State"* [2011 SCMR 136]. In the latter case the apex Court affirmed the judgment rendered by a learned Division Bench of the High Court of Sindh, titled *"Hakim Ali Zardari v. State"* [2007 MLD 910], wherein in the context of the offence under section 9(a)(v), read with section 14 (c), it was held that the prosecution is required to prove four basic ingredients; first, it must establish that the accused was the holder of a public office; second, the nature and extent of the pecuniary resources of property which were found in his possession; third, it must be proved as to what were the known sources income of the accused i.e. known to the prosecution after thorough investigations and, lastly, it must prove, quite objectively, that such resources were disproportionate to the known sources of income. The august Supreme Court held; "Thus it is clear that

the prosecution has to establish the above four ingredients and then the burden would shift upon the appellant to explain his position as required under section 14 (c) of the Ordinance."

21. The august Supreme Court has eloquently summed up the law and principles in the case titled *"Ghani ur Rehman v. National Accountability Bureau and others"* *[PLD 2011 S.C. 1144]*, relating to the onus which is required to be discharged by the prosecution before it is shifted to the accused. The relevant portions are, therefore, reproduced as follows;-

> *"The law now stands settled that in order to prove commission of an offence under section 9(a)(v) of the National Accountability Bureau, 1999 it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources or property of the accused person were disproportionate to his known sources of income and it is after such proof has been led and the necessary details have been provide by the prosecution that the onus shifts to the accused person to account for such resource or property because mere possession of any pecuniary resources or property is by itself not an offence but it is failure to satisfactorily account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence. In the case in hand the appellant's sources of income had never been brought on the record by the*

prosecution and had never been quantified by it at any stage of this case and, therefore, it was not possible for the learned trial court to conclude or to hold that the appellant or his dependants or so-called benamidars owned or possessed assets or pecuniary resources disproportionate to the appellant's income. It is unfortunate that the investigating officer of this case as well as those responsible for prosecution of this case before the learned trial court had probably on account of their sheer incompetence, utterly failed to do the needful in this regard and it is regrettable that even the learned trial court as well as the learned appellate court had completely failed to advert to this critical aspect of the present case."

It was further observed and held;

"The learned counsel for the appellant has also been found by us to be quite justified in maintaining that the Reference filed against the appellant as well as the Charge framed against him by the learned trial court had alleged that the appellant had accumulated the relevant assets and pecuniary resources by misusing his authority as Chairman of the District Council and as a Provincial Minister but the prosecution had not produced any evidence worth its name before the learned trial court to establish any misuse of his authority by the appellant as Chairman or Provincial Minister so as to develop and establish any nexus between misuse of his authority and

amassing of wealth or accumulation of assets by him. In the complete absence of any evidence brought on the record by the prosecution in the above mentioned regard it could not have been held by the learned courts below that the Charge, as framed against the appellant, stood established by the prosecution."

22. The above principles and law have been laid down specifically in the context of an offence for which the Petitioners have been convicted and sentenced i.e. section 9(a)(v) of the Ordinance of 1999. The learned counsels for the Bureau were repeatedly asked whether the above expounded principles and law in the context of an offence under section 9(a)(v) and section 14 (c) of the Ordinance of 1999 was revisited or overruled. They answered in the negative but took the stance that it was not attracted or, rather, was distinguishable in the instant case. We were not able to fathom this proposition because the above law and principles in the context of the offence under section 9(a)(v), read with section 14 (c), is binding and this acknowledgment by the learned Accountability Court is also obvious from the Judgment. As would be discussed later, this stance was adopted by the learned counsels for the Bureau in response to reliance placed by the learned Accountability Court on a document tendered in evidence by Mr Imran Dogar, Investigating Officer, who had entered the witness box as PW-18, regarding which objection had been raised by the defence.

WHETHER IN THE LIGHT OF THE ABOVE DESCRIBED PRINCIPLES A CASE FOR SUSPENSION OF SENTENCES IS MADE OUT:

23. Finally we advert to the Judgment so as to consider whether, prima facie, it suffers from an obvious legal infirmity or lacuna, resulting in forming a tentative opinion within the ambit of the above discussed principles and law for reaching a conclusion as to whether a case for suspension of the sentences of the Petitioners is made out. It is obvious from a plain reading of the Judgment that, inter alia, a specific charge was framed and the Petitioners were tried for an offence under section 9(a)(iv) of the Ordinance of 1999. By charging the Petitioners for the said offence they were alleged to have acquired Avenfield Apartments by corrupt, dishonest or illegal means. The learned Accountability Court in the Judgment has held that *"Prosecution have not brought evidence in respect of section 9(a)(iv) NAO, 1999. So the accused are acquitted under that section of law".* The Bureau, in its wisdom, has not challenged the said acquittal. There is no cavil to the proposition that the offence under section 9(a)(v) is distinct. However, there is force in the argument raised by the learned counsel for Petitioner No. 1 that, having been specifically charged under section 9(a)(iv), the learned Accountability Court should have considered whether, on the same evidence and relating to the same property, a conviction could be handed down under section 9(a)(v) by

assuming, through a fiction of law, that Avenfield Apartments had been acquired through corruption and corrupt practices. He has emphasised that this is a question of first impression and that the learned Accountability Court should have considered the law laid down by the august Supreme Court enunciated in paragraph 8 of the judgment rendered in the case of *Ghani-ur-Rehman*, supra. The learned counsels for the Bureau were not able to show that the said question and the law referred to by the august Supreme Court was considered by the learned trial Court.

24. The learned Accountability Court has rightly held in the Judgment that, in the light of the law settled by the august Supreme Court, the prosecution was required to discharge its obligation by establishing the four ingredients of the offence under section 9(a)(v) before the onus could shift to the accused. The learned Accountability Court has held Petitioner No. 1 to have acquired Avenfield Apartments between 1993 and 1996 and thus convicted and sentenced him for the offence under section 9(a)(v) of the Ordinance 1999. The Reference filed by the Bureau, the charge framed by the learned trial Court and the Judgment itself do not refer to Petitioner No. 1's exact income, the sources of his income or the details of resources so that the same could be set up against the value of the Avenfield Apartments for alleging that he had acquired them disproportionate to his known sources of income. Guidance in this regard is sought from the law enunciated by the august Supreme Court in

Ghani-ur-Rehman's case, supra. The only document referred to in the Judgment in this context is 'analysis chart of assets and liabilities relating to Petitioner No. 1' i.e Ex 18/13. The said document was tendered in evidence by Mr Imran Masood, Investigating Officer, NAB, who had appeared as PW-18. The objection raised was not decided then and the same has been reproduced at page 59 of the Judgment which is as follows;

> *"Under objection that firstly that this document is not prepared by this witness, secondly Mr. Wajid Zia appeared as head of JIT as PW-16, and he never stated that this document was prepared by JIT, nor did he get this document exhibited nor produced this document during his deposition and, therefore, this document is not admissible in the statement of this witness"*

25. The learned trial Court however has recorded *"overruled, reasoning is given herein discussion"*. It has not been denied before us that the witness who had tendered this crucial document had admitted during his cross examination that he had no concern therewith nor knew when it was prepared or by whom. We have carefully gone through the Judgment but could not find the reasoning recorded by the learned Accountability Court for holding the document Ex PW.18/13 as admissible. The determination of the evidentiary value of this document was crucial after taking the recorded evidence into consideration, particularly the deposition of PW.16 and PW.18. There is yet another

important question which has been raised by the learned counsel for Petitioner No. 1 to the effect that there has been no determination of the value of the Avenfield Apartments at the time when they were alleged to have been acquired. There is no mention of this aspect in the Judgment. We asked the learned counsels for the Bureau to show us the relevant portion in the Judgment, or any document tendered in evidence, reflecting the value of the apartments when they were alleged to have been acquired i.e. between 1993 and 1996, so as to meet the requirements highlighted by the august Supreme Court in the case of *Ghani-ur-Rehman*, supra. Rather than referring to the Judgment or any document from the record they stated that values could be obtained through *"Google"*. This answer was not expected from learned counsels who have enviable professional experience and competence, because after conclusion of trial no document other than those which have been brought on record can be considered or the appellate Court takes further evidence under section 428 of the Cr.P.C. They, however, took the stance that the principles and law expounded by the august Supreme Court in the cases of *Khalid Aziz*, supra and *Ghani-ur-Rehman*, supra were not attracted and were distinguishable. Nonetheless, despite their able assistance they could not give any plausible explanation in this regard whereas Petitioner No. 1 has been held to have acquired the Avenfield Apartments and has been convicted under the offence defined under section

9(a)(v) of the Ordinance of 1999. Whether or not the ingredients of the offence under section 9(a)(v) of the Ordinance of 1999 have been established could be conclusively determined after reappraisal of evidence while hearing the appeals. This indeed would require deeper appreciation of evidence. At this stage, while confining ourselves to the Judgment and tentative assessment of the evidence, we are, prima facie, of the opinion that it could not be shown to us that the ingredients were established in accordance with the principles and law laid down by the august Supreme Court in the cases of *Khalid Aziz*, supra and *Ghani-ur-Rehman*, supra. This opinion is subject to deeper appreciation of evidence which would obviously be undertaken at the time of hearing the appeals. This ground alone is sufficient at this stage to form a prima facie opinion that the convictions may not be ultimately sustainable unless through deeper appreciation of evidence it could be shown otherwise.

26. There is also force in the argument of the learned counsel for Petitioner No. 1 that a plain reading of the Judgment, prima facie, shows that the connection of the latter has been made with acquiring Avenfield Apartments between 1993 to 1996 on presumptions and, likewise, that the children were his dependents at the relevant time. According to the learned counsel, these findings, which are based on presumptions, are a result of misreading of evidence. The learned counsels for the Bureau have argued

that in this case the embedded principles enunciated for ensuring safe administration of criminal justice do not apply, so much so that benefit of doubt would also not be attracted. However, they could not give any plausible explanation as to how in a case of criminal conviction under the Ordinance of 1999 and particularly in this case the settled principles stand excluded. The conviction of the Petitioners for the offence under serial no. 2 of the Schedule is also not supported by reasoning based on proper appreciation of evidence. The call up notices in relation to which the convictions have been recorded did not put the Petitioners to notice that non compliance would attract penal consequences. The petitioners had admittedly responded to the call up notices and the learned trial Court has not recorded reasons in the Judgment which would show appreciation of evidence in this regard.

27. Regarding Petitioner No. 2, she has been convicted for aiding, assisting and conspiring with Petitioner No. 1 for concealing his ownership of Avenfield Apartments. She has been convicted under clause (xii) of section 9(a) on the basis of a document which is dated 02-02-2006 and titled as 'Trust Deed'. The learned Accountability Court has held the said document to be 'bogus'. However, she has not been convicted under serial 3(a) of the Schedule of the Ordinance of 1999 because, as noted above, the said offence was deleted from the Charge vide order dated 08.11.2017 and thereafter a fresh Charge was framed on

the said date. The learned counsel for Petitioner No. 2 has rightly stated that the learned Accountability Court could only have proceeded against Petitioner No. 2 pursuant to the order dated 08.11.2017 for the alleged offence of giving false or fabricated evidence in the manner prescribed under section 30 of the Ordinance of 1999. It is the prosecution's case that the Avenfield Apartments were acquired by Petitioner No. 1 between 1993 to 1996. It is also the case of the prosecution that at that time Petitioner No. 2 was his dependent. In the Judgment the learned Accountability Court has not referred to any evidence which would connect Petitioner No. 2 to have aided, assisted or conspired with Petitioner No. 1 at the time when Avenfield Apartments were said to have been acquired between 1993 and 1996. Whether or not the Trust Deed, dated 02.02.2006, would attract the offence under clause (xii) of section 9(a) of the Ordinance of 1999 requires deeper appreciation of evidence which can only be undertaken when the appeals are heard. Petitioner No. 3 has been convicted for witnessing the Trust Deed, dated 02.02.2006. Moreover, the convictions of both these Petitioners depend on whether the conviction handed down to Petitioner No. 1 would remain sustainable under the Ordinance of 1999.

28. In the light of the above obvious and glaring defects and infirmities in the Judgment we have formed a prima facie, tentative opinion that the convictions and sentences handed down to the Petitioners may not be

ultimately sustainable. This view formed by us is tentative and solely confined to the defects and infirmities which are obvious from a plain reading of the Judgment and tentative assessment of evidence permissible while considering a case for suspension of sentence in terms of section 426 of the Cr.P.C. We have not recorded any conclusive finding and our assessment or any observation made herein shall not in any manner prejudice the case of either party when the appeals will be heard. The appeals could not be decided within the time prescribed under section 32 of the Ordinance of 1999 nor is their fixation in sight, particularly when two other trials are pending before the learned Accountability Court against Petitioner No. 1. After forming a tentative opinion, as discussed above, it would lead to causing hardship to the Petitioners if the relief by way of suspension of sentences is withheld. We are also guided by the principles and law laid down by the august Supreme Court in the case titled *"Soba Khan versus State" [2016 SCMR 1325]*. We, therefore, allow these petitions in terms of the short order passed on 19.09.2018.

29. The learned counsels for the Bureau have placed heavy reliance during the course of their arguments on the judgment reported as *"Imran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others" [PLD 2017 S.C. 265]*. This reliance does not appear to us to be in consonance with the explicit

observations recorded by the august Supreme Court in the case titled *"Mian Muhammad Nawaz Sharif and others vs. Imran Ahmed Khan Niazi and others" [PLD 2018 S.C. 1]* and the relevant portion is as follows;

> *"The argument that this direction implies unambiguous approval of the material collected by the JIT whose probative worth is yet to be established is also misconceived as none of our observations projects any such impression. The trial court in any case would be at liberty to appraise evidence including the material collected by the JIT according to the principles of the law of evidence without being influenced by any of our observations. Even otherwise, all the observations made in the judgment, being tentative, would not bind nor would restrain the trial court from drawing its own conclusions from the evidence recorded before it in accordance with the principles and provisions of the law of evidence. The argument that the direction to the trial court for deciding the Reference within 6 months from the date of filing them also tends to prejudice the fair trial of the petitioner is also misconceived as the purpose behind such direction is not to prejudice the trial but to ensure expeditious conclusion of the case which more often than not has been extended even in the past by this Court, if the trial was delayed by any hardship or anything imponderable."*

30. The above are the detailed reasoning for our short order dated 19.09.2018, which is reproduced as follows;-

> *"For detailed reasons to be recorded, the instant petition i.e. W.P. no. 2839 of 2018 (Mian Muhammad Nawaz Sharif versus National Accountability Bureau, etc), W.P. no, 2841 of 2018 (Maryam Nawaz Sharif versus National Accountability Bureau, etc) and W.P. No. 2841 of 2018 (Cap. Retd. Muhammad Safdar versus National Accountability Bureau, etc), are* ***allowed****. The respective sentences awarded to the petitioners by the Accountability Court No.1, Islamabad, shall remain suspended till the final adjudication of the appeals filed by the petitioners. The petitioners shall be released on bail, subject to furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees five hundred thousand) each with one surety each in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court."*

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ATHAR MINALLAH)
JUDGE

Approved for reporting.

*Asad K/**