

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh, CJ.
Mr. Justice Mohammad Karim Khan Agha J

CPD- Nos. alongwith petitioners.

1. C.P. No. D-6754 of 2015
Muhammad Aslam Parekh S/o Abdul Razzaq Parekh
2. C.P. No. D-6819 of 2015
Muhammad Ikhlq Memon S/o Haji Muhammad Farooq.

Respondents

NAB & another & Federation of Pakistan & another.

Counsel for the petitioners

1. Mr. Muhammad Ashraf Kazi, Advocate alongwith petitioner in C.P. No.D-6754 of 2015.
2. Mr. Haider Waheed, Advocate alongwith petitioner in C.P. No.D-6819 of 2015.

Counsel for the Respondents.

Mr. Muhammad Altaf, Special Prosecutor, NAB alongwith Jawad Hasan, IO.

Date of hearing: 16.08.2017

Date of order: 22-08-2017

ORDER

Mohammed Karim Khan Agha, J. By this common order, we propose to dispose of the above mentioned petitions submitted on behalf of the petitioners (Mohammed Aslam Parekh petitioner No.1 and Mohammed Ikhlq Memon petitioner No.2) respectively for the confirmation of their ad interim pre arrest bail granted by this Court vide orders dated 29-10-2015 and 20-11-2015 respectively.

2. The case in hand was initially taken up by the Anti-Corruption Establishment (ACE) Karachi through FIR No. 48 of 2015, in which challan No.03/2016 was submitted in the Court of Special Judge Anti-Corruption (Provincial), Karachi against both the petitioners along with other co-accused. The case was later transferred to the National Accountability Bureau (NAB) under section 16-A (a) of the National Accountability Ordinance 1999 (NAO).

3. After further investigation the NAB filed Reference No.46/2016 **State Verses Ashfaq Ali Ansari and others** on the allegations of corruption and corrupt practices by the petitioners and the other co-accused under S.9 of the NAO on 18-01-2017.

4. As per the reference the brief facts of the case are that Plot No.29, FT-3, Frere Town Quarters, Clifton, (Old Survey No.4), is owned by KMC and was allotted to one Muhammad Rashid Chawla in the year 1951. However, the allotment was cancelled by KMC as the allottee failed to fulfill the conditions of allotment and ownership of the plot reverted back to KMC. Later on, KMC constructed bungalows for its officers on the plot which was not further allotted to anyone and remained in the possession of the KMC.

5. According to the NAB in the year 2011-12, a conspiracy was planned to acquire this plot by some private persons (including the petitioners) in connivance with government officials by misusing their authority in order to make huge illegal profits (benefit) for both the Government officials and the petitioners who are beneficiaries of the scam. The plan in essence was to make fake entries in the BOR through forged and fabricated documents in order to transfer the plot from the ownership of the KMC to different fake owners and then to sell on the plot to Ms Maple Development (Pvt) Ltd at a throw away price.

6. According to NAB in essence after the plot reverted back to KMC as mentioned above the modus operandi set out below was used by the accused (including the petitioners) in the reference in order to corruptly and illegally acquire the plot at a throwaway price.

7. Accused No.1 Ashfaq Ali Ansari who at the time of the scam was the then Additional Director Land at KMC connived with the other co-accused (including the petitioners) in the reference to illegally transfer the plot which was legally owned by the KMC through making fake entries in the records of the BOR showing false and fictitious purchasers through false and fictitious unregistered sale deeds whereby the plot was put in the name of accused No.2 Ms. Mut-ul-Zehra without paying any consideration to KMC who gave a fake and illegal power of attorney to Mohammed Rafique accused No.4 to sell the plot (which she had no legal title or

interest in) who in turn gave a sub power of attorney to Mohammed Aslam Parekh (accused No.5 and petitioner No.1) enabling him to sell the plot to Mohammed Ishlaq Memon (accused No.6 and petitioner No.2) being a Director of Maple Developments (Pvt) Ltd at a throwaway price which lead to a huge loss to the KMC and gave a huge benefit to the other accused especially petitioners 1 and 2 (petitioner 1 received 4 crores for a plot which he had no valid legal title to and petitioner No.2 received a plot valued at approx one billion rupees). Hence the accused in connivance with each other had committed acts of corruption which fell within the ambit of the NAO and hence the NAB filed the abovementioned reference.

8. We have heard the parties and have carefully gone through the record. In essence learned counsel for Mohammed Aslam Parekh petitioner No.1 contended that petitioner No.1 was merely a sub attorney and was completely unaware of any wrong doing and as such he was entirely innocent and petitioner No.1's ad interim pre arrest bail should be confirmed. In essence learned counsel for Muhammed Ikhlal Memon petitioner No.2 contended that petitioner No.2 had no knowledge of any scam and was entirely innocent, that he was a bona fide purchaser of the plot and had even filed civil suit No.1823/2015 on behalf of MS Maple Development (pvt) Limited against the Province of Sindh and KMC for declaration, damages and permanent injunction against the KMC disposing of the plot which he claimed to have purchased and which lease agreement/sale deed had been cancelled by the Commissioner of Karachi Division on 01-06-2016 for which he had been given interim relief and thus petitioner No.2 was entitled to the confirmation of his ad interim pre arrest bail. On the other hand special prosecutor for the NAB had vehemently opposed the confirmation of bail to either of the petitioners as according to him this was a land grabbing scam which had caused massive loss to the KMC and there was more than sufficient material on record to link both petitioners 1 and 2 to the offense for which they had been charged.

9. Regrettably it is an increasing trend in Karachi to grab/usurp valuable Government land by private individuals and the so called land mafia with the active connivance of the Government officials in order to make huge profits and create havoc with the infrastructure of the city by continuously building commercial skyscrapers or enormous multi storied apartment buildings. In our view this is a classic case of such an act which

would not have been possible without the active connivance and involvement of **all** the accused in the reference who each played a role in the offense to a greater or lesser extent and are thus all individually liable for the offense for which they have been charged.

10. It is now well settled law that pre arrest bail is an extraordinary relief and is only available in cases where there has been malafide on the part of the complainant or the police. In this regard reference may be made to the case of case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) which held at P. 431 that the following conditions need to be satisfied before pre arrest bail can be granted as set out below:

“9. Even since then, the said interpretation so made, the said powers so found and the parameters so prescribed, have been regularly and repeatedly coming up for scrutiny by the Superior Courts including this Court. But each time the matter was re-examined, the same was only re-affirmed. The said concept as it was initially propounded; as it developed and as the same stands today, may be summarized for the benefit of us all as under:--

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations **to protect innocent persons against victimization through abuse of law for ulterior motives;**
- (b) **pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;**
- (c) **bail before arrest can not be granted unless the person seeking it satisfies the conditions specified subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;**
- (d) **not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;**
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.”(bold added)

11. The requirement of malafide in order to qualify for pre arrest bail has recently been emphasized by the Hon'ble Supreme Court in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066) as under:-

“..... This Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person **unless** the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police”

12. In this case neither petitioner No.1 nor petitioner No.2 has been able to make any case of malafide out against the NAB. In fact the complete lack of malafides on the part of the NAB is shown by the fact that they initiated the inquiry on a complaint in connection with the above land scam received from transparency international and did not initiate the inquiry against the accused on their own motion. In addition along with the NAB inquiry a parallel inquiry was also being carried out by the ACE which had been directed to carry out the same by the KMC on the directions of the Commissioner of Karachi at the time when he cancelled all the illegal entries in the BOR register. Furthermore all the accused in the reference including petitioners 1 and 2 were already challoned by the ACE when NAB transferred the case under S.16 (A)(a) NAO for itself to deal with.

13. Thus, since there has been no malafide on the part of the NAB in this case the ad interim pre arrest bail of petitioners No.1 and 2 deserves to be recalled on this ground alone.

14. It is also interesting to note that out of the 8 accused in the reference 5 of them have absconded and been declared proclaimed offenders by the trial court. That another accused Syed Zeeshan Haider Naqvi who allegedly took the land record book away from the KMC to conceal the illegal allotments made by the BOR on accused No.1 Mr. Ansari's direction had his petition (CP 5108/16) for confirmation of pre arrest bail fixed before us at the same time as the above mentioned petitions and was present in court when the proceedings began but absconded from the court room during the proceedings and thus had his interim pre arrest bail immediately recalled. That Muhammed Mujeeb Ullah Siddique who was brokering the transaction between the parties admitted his guilt and entered into a

voluntary return with NAB thereby repaying his share of the ill gotten gain which he illegally received.

15. Thus, the trial is now proceeding only against the petitioners where the charge has been framed and one witness has already been examined.

16. All the accused, including petitioners No. 1 and 2, have been given a specific role in the reference. On a brief and tentative assessment of the material placed before us it is evident that accused No.1 Ashfaq Ali Ansari sent a fabricated letter dated 12-12-2012 to the Asst. Commissioner and Asst. Collector grade one BOR that the plot had been sold on numerous occasions and lastly to Accused No.2 Ms Umtal Zehra which lead to the BOR making the relevant illegal entries in their record **in back date** despite such entries being fabricated and not appearing in the KMC record (which was hidden by accused No.7 Syed Zeeshan Haider Naqvi) as is made clear by the S.161 statements of Muhammed Tariq Khan deputy director lease/land saddar II KMC, Rooh ul Ameen Qazi, the then tapedar civil lines Karachi, Allah Rakha Sipio the then Mukhtiarkar civil lines Karachi, Attullah Nohrio, the then Assistant Commissioner civil lines Karachi and Mohammed Musa Mukhtiarkar civil lines Karachi.

17. Accused No.2 Ms Zehra, as per S.161 statement of her husband Shabaz Mirza, could not have purchased the plot as she was not in Pakistan at the time when according to the fake letter sent to the BOR by accused No.1 Ansari she allegedly purchased the plot. Furthermore, if her name had been registered in the KMC records in 1989 there could have been no question of the KMC deciding to auction the plot in 1996. This shows that Ms Zehra is therefore not the legal owner of the plot and she had no right to sell it yet she illegally gave a power of attorney to accused No.4 Mohammed Rafique which included the power to sell the plot which shows her connivance in this matter. It is just common sense that Ms Zehra must have known Mr.Rafiq very well in order to repose such trust in him bearing in mind the value of the plot which she allegedly owned and thus it is but obvious that Mr.Rafique must have known that Ms Zehra was not the lawful owner of the plot and that he was part of the plan to grab valuable government land at a throwaway price. Mr.Rafiq, then, quite incredibly, inexplicably and illegally without the consent of Accused No.2 Ms Zehra then in effect delegated his power of attorney to Mohammed Aslam Parekh

petitioner No.1 by way of sub power of attorney which again included the power to sell the property. This illegal sub power of attorney was illegally executed by accused Najeeb Ur Rehman Sub Registrar Clifton without requiring the presence of Ms Zehra who had given the original power of attorney to Mr. Rafique and Mr Najeeb has now absconded and has been declared a proclaimed offender by the Court which all goes to show his role in this scam especially as the broker between petitioner 1 and 2 Mr. Siddique as mentioned above has already entered into a VR with NAB in connection with his unlawful activities connected with the scam.

18. Mohammed Aslam Parekh petitioner No.1 then through this illegal sub power of attorney through Sale Deed dated 25-06-2013 (then) sold the plot to Muhammed Ikhlq Memon petitioner No.2 who actually was acting on behalf of Maple Developments (Pvt) Ltd being one of its Directors for the throwaway price of Rs 4 crore when the actual price of the plot at that time as per market value was approx RS one billion. The fact that petitioner No.2 knew that the whole deal was a scam is evidenced by the side sale agreement which he entered into with petitioner No.1 at the time of execution of the sale deed whereby he agreed to pay RS60 crore to petitioner No.2 and in effect petitioner No.2 was made his business partner to the tune of RS 50 crore based on the future development of the plot. In the event only 4 crores was paid. The above clearly indicates that petitioner No.2 was not a bona fide purchaser since in effect he knew the true value of the land as reflected in the side sale agreement and in effect entered into partnership with petitioner No.1 in connection with the future development of the plot which profit which would have been in the region of RS50 crore which would have been split according to the sale agreement between petitioners 1 and 2. Hence a loss of approx RS one billion was caused to the KMC through this illegal transaction. Receipts clearly show that RS 4 crore was paid to petitioner No.1 by petitioner No.2 which petitioner No.1 has pocketed and who based on the receipts paid a share to the so called owner Ms Zehra and power of attorney holder Rafique and the other accused who were part of the scam and have now absconded. It is quite apparent however that the real beneficiary of the corrupt and illegal plan is Muhammed Ikhlq Memon petitioner No.2 who would have made a whopping RS50 crore profit on the transaction as evidenced by sale agreement referred to above which in effect made petitioners 1 and 2 business partners in the development of this most valuable piece of land

located near teen Talwar which is one of the most expensive and sought after areas in Karachi. It just does not appeal to reason that petitioner No.2 a premier builder would have entered into such a valuable in effect partnership agreement with a sub attorney who apparently he did not know before the sale. Such an agreement adds further weight to the fact that all the accused in the reference were acting in connivance with each other to illegally usurp KMC land at a throwaway price in order to make vast profits

19. From the material placed on record and the modus operandi of the scam it beggars belief that a builder and developer such as petitioner No.2 did not know that he was purchasing land with no legal title from an illegal sub attorney for a throwaway price and that he was a bona fide purchaser. Surprisingly he has not taken any legal action against petitioner No.2 who sold him the plot as sub attorney, nor accused Rafiq who gave the sub attorney to petitioner No.2 nor Ms Zehra who allegedly owned the plot and conned him into buying the plot which she had no valid title to sell through her various sham attorney's. Although described as a private person petitioner No.2 is in fact by occupation a builder/developer through his company Maple Developments (Pvt) Ltd and as such is not simply a naïve individual person purchasing the plot to build a family residence. In our view he was an integral part of the scam and as with the other accused in the reference was well aware that the land belonged to KMC when he purchased it on behalf of his company for development purposes at a throw away price. Thus, in our view both petitioners 1 and 2 played an integral role in this multi billion rupee mega scam and at a minimum were beneficiaries of the scam to the tune of tens of millions of rupees. As such based on the material placed on record we are also of the view that prima facie there is sufficient material to connect both the petitioners to the commission of the offense for which they have been charged apart from the lack of malafide on the part of NAB as discussed earlier.

20. Thus, for the above reasons both of the aforesaid orders of this court granting ad interim pre arrest bail to Mohammed Aslam Parekh petitioner No.1 and Muhammed Ikhlq Memon petitioner No.2 stand recalled with immediate effect. The concerned trial court is directed to complete the trial within 4 months of the date of this order which in our view is sufficient time bearing in mind that there are only 2 accused and not many witnesses to be examined. In particular no adjournment should be allowed on any

flimsy ground. A copy of this order shall be sent to the concerned Accountability Court for compliance by MIT II.

21. Furthermore we note with concern that despite being filed more than 2 years ago and an ex parte stay order being granted in favour of Maple Development (Pvt) Limited Suit No.1823/2015 has not been fixed for hearing during this 2 year period being, "discharged as discussed with High Court Bar," by Assistant Registrar Roster. Under these circumstances we hereby direct the office to fix this Suit for hearing on 29-08-2017 at 11:00 a.m. before the concerned bench of this court as per roster which bench shall proceed with this suit expeditiously and dispose of the same within 3 months of the date of this order.

22. It is made clear that this order is based only on a tentative assessment of the material placed before us and will have no bearing on the trial of the petitioners which shall be decided by the trial court on merit based on the evidence before it.

23. Both the petitions stand disposed of in the above terms.