

184

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Naimatullah Phulpoto.
Mr. Justice Mohammed Karim Khan Agha.

C.P. No. D-7755 of 2015

Anjum Jameel

Vs

The Director General NAB & another

Date of hearing:	16-11-2016
Date of Order	24-11-2016
Petitioner	Through Barrister Khawaja Naveed Ahmed, Advocate for petitioner.
Respondents NAB	Through Mr. Muhammad Altaf, Special Prosecutor NAB. Mr. Ghulam Shabbir Baloch, Standing Counsel.

ORDER

Mohammed Karim Khan Agha, J. By this order, we propose to dispose of the above petition for the grant of post arrest bail, which arises out of National Accountability Bureau (NAB) Reference 49/2015 State v. Mumtaz ul Haq and 21 others which is pending before the Accountability Courts at Karachi.

2. The brief facts of the case as per NAB Reference 49/2015 (State V Mumtaz ul Haq and 21 others) filed by the NAB on 16-12-2015 before the Accountability Court at Karachi are that NAB (Sindh) at Karachi upon receipt of interrogation reports from a law enforcement agency related to land grabbing/china cutting in Karachi through its Chairman constituted a Joint Investigation Team consisting of officers from NAB, FIA and Sindh Rangers to jointly inquire into the case which on 18-11-2015 was converted into an investigation.

3. During the investigation, it was established through the material which was collected that 13 plots bearing Nos. B-149/1 to B-149/13, Block-1, Gulistan-e-Jauhar, Scheme-36, Karachi, each measuring 293.33 sq. yards were illegally created and constructed upon land reserved for water conduit of KW&SB and High Tension Line of K-Electric by the officials of KDA in connivance with the officials of Master Plan Department (MPD), KW&SB and SBCA. The

(185)

files of these plots located in "University Hill Villas" indicated that all these 13 plots were illegally and fraudulently allotted under the garb of exchange/alternate basis, i.e. the allottees of these plots had shown/claimed properties in Korangi Township which could not be allotted to them due to double allotment. Therefore they were compensated through allotment of plots at Gulistan-e-Jauhar through fraudulent means.

4. According to the material collected during the investigation, all the fake allottees of Korangi Township had given General Power of Attorney's (GPAs) of their respective properties to other persons who had further sold on these properties for profit. None of the original allottees appeared before the KDA during the allotment process, nor were their whereabouts found out during the course of investigation.

5. During the course of investigation, the role of petitioner as per reference is as follows:-

"That the petitioner / accused No.5 (Anjum Jameel Siddiqui) was the principal purchaser of these 13 plots. Despite knowing about the cancellation of allotments, he purchased these plots and sold them further to other persons. He further constructed buildings on these plots in violation of SBCA rules".

6. During the course of investigation, the material collected in terms of statements of witnesses under S.161 Cr.PC and documents have revealed that the petitioner along with the other co-accused are responsible for causing loss to the government exchequer to the tune of Rs.500,000,000/- by creating plots on government land and selling them to the general public and have therefore committed the offence of corruption and corrupt practices as defined under section 9(a) of National Accountability Ordinance 1999 (NAO) and punishable under section 10 thereof. Hence Reference 49/2015 (State V Mumtaz ul Haq and 21 others) was filed by the NAB against the petitioner and other co-accused.

7. Learned counsel for the petitioner submitted that he is innocent and has not committed any offense under the NAO. He argued that the petitioner had purchased the plot from open market on market rate, developed the land at his own expenses, regularized and leased out the plots after paying all government

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dues and raised construction according to approved construction plans by the competent authority. After completing the project, he had sold the same to the buyers who are now legally residing in the said houses. He next argued that the petitioner had not benefited from this project and has actually suffered a financial loss on account of the hurdles created by Town Nazims, the KWSB, political interference and through coercion by the land mafia.

8. In support of his contentions learned counsel placed reliance on the unreported order dated 18-12-2015 by a Division Bench of this Court in CP D 3790/2015 and 17 other petitions which also concerned a land scam.

9. On the other hand learned Special Prosecutor NAB has opposed the grant of post arrest bail to the petitioner and submitted that NAB has sufficient material to connect the petitioner to the offence as charged and that such material establishes the guilt of the accused beyond a reasonable doubt.

10. We have perused the record, considered the arguments of learned counsel for the petitioner and Special Prosecutor NAB and the authorities cited by them at the bar.

11. As per settled law we have only to make a tentative assessment of the material placed before us and this order shall not prejudice the case of either party at trial which shall be decided by the trial court based on the evidence before it.

12. From a perusal of the record it appears that 7 of the co-accused in the reference had filed petitions for grant of bail; 3 for pre-arrest bail (Mumtaz ul Haq, Akhlaq Ahmed and Muneer Ahmed Khan) and 4 for post arrest bail (Abdul Qavi Khan, Rashid Aqeel, Nasir Shaikh and Faisal Siddiqui) all of which petitions were dismissed vide composite detailed order of this court dated 24-02-2016.

13. It is observed that Mumtaz ul Haq, Akhlaq Ahmed and Muneer Ahmed Khan all appealed the detailed composite order dated 24-02-2016 dealing with this land scam to the Hon'ble Supreme Court which by order dated 26-04-2016 was pleased to

(188)

dismiss the same. The following observations in the Order of the Hon'ble Supreme Court are relevant:

6. Learned Division Bench of High Court of Sindh in its impugned order dated 24-02-2016 while recalling the ad-interim pre-arrest bail granted to three petitioners, named above, dismissed their Constitution Petitions **and in doing so it has elaborately taken into consideration the material collected by the Investigating Agency,** prima facie, connecting the petitioners with the crime alleged in the reference and has given a tentative opinion that the petitioners are connected with the offence and that there are reasonable grounds for believing that they have committed the offence.

7. We note that the case of the petitioners in the above two matters is that of pre-arrest bail. The grounds for grant of pre-arrest bail are obviously different from those which are available for after arrest bail. For grant of pre-arrest bail, petitioners were required to bring their case within the ambit of malafide, ulterior motive, causing of humiliation and harassment and irreparable injury to the reputation and liberty and of political consideration in making their arrest. **The petitioners' counsel before us did not raise any of such grounds for grant of pre-arrest bail rather addressed this court on merits.** We also note that the High Court in the impugned order has dealt with all the aspects of the matter and found the petitioners, named above, not entitled to the grant of pre-arrest bail.

8. On our own perusal of the record we also find the order of High Court to be based on proper exercise of discretion and nothing was shown to us on the basis of which a different view can be possible. More so, the case does not attract the grounds available for grant of pre-arrest bail. We find no merits in these petitions, which are dismissed and leave refused (bold added).

14. It is true that the grant of pre arrest bail has different considerations but the point in reproducing the above extracts of the Supreme Court Order is to show that the petitioners argued their case on merits which was rejected and it was observed that this Court had dealt with all aspects of the matter.

15. Likewise, all aspects of the matter were dealt with in the post arrest bail applications which were rejected by this Court through the aforesaid order dated 24-02-2016 none of which have been interfered with by the Hon'ble Supreme Court. ✓✓

(188)

16. In respect of post arrest bail this was dismissed by order dated 24-02-2016 in respect of Abdul Qavi Khan, Rashid Aqeel, Nasir Shaikh and Faisal Siddiqui. The role of Abdul Qavi Khan and Faisal Siddique whose post arrest bail was declined is similar to that of the petitioner. Namely, they purchased and/or sublet the illegally allotted plots. Notably they were only involved in 2 and 4 plots respectively whereas the petitioner was involved in purchasing a much larger number of these illegal plots being 13 in total. Significantly Abdul Qavi Khan also placed reliance on unreported order dated 18-12-2015 by a Division Bench of this Court in CP D 3790/2015 and 17 other petitions (which the petitioner is also placing reliance on) which was found by this Court not to be applicable in his case.

17. A tentative review of the S.161 Statements of Jarar Hussain Malik, Fahim Ahmed Khan and Ilyas Ahmed along with the other material placed on record by the NAB through its investigation report on a tentative analysis tend to show that when the land scam is viewed in totality and in a holistic manner the petitioner was instrumental along with the other co-accused in its execution.

18. The petitioner has attempted to rely on the unreported order dated 18-12-2015 by a Division Bench of this Court in CP D 3790/2015 and 17 other petitions to show that he is a bona fide purchaser of land and has suffered loss and as such he is similarly placed to the persons in the aforesaid order who were granted bail largely based on the case of **Anjum Aqeel Khan V National Police Foundation** (2015 SCMR-1348).

19. In our view the case of the petitioner is distinguishable based on the facts and circumstances of this case and the material on record. The petitioner was not an innocent bona fide purchaser of land whose plot was cancelled and who had lost his investment. The petitioner has shown no evidence of any loss which was caused to him. Furthermore, in our view he was not a bona fide purchaser of a plot but he had purchased 13 plots which he sold on to others for personal gain. In our view the material on record shows that he was an integral part of the land scam and was out to benefit from the same. Hence the aforesaid order is of no assistance to the petitioner.

20. In our view on a tentative assessment of the material placed before us prima facie there are reasonable grounds to connect the petitioner to the commission of the offence with which he is charged and as such his petition for post arrest bail is dismissed. The Accountability Court, however, which is hearing this reference, is directed to complete the trial within 3 months of the date of this order. The office shall immediately provide a copy of this order to the concerned Accountability Court for compliance.

Dated: 24-11-16

for
signature
of
the
Judge
of
the
Court