

**IN THE HIGH COURT OF SINDH AT KARACHI**

Before: Mr. Justice Ahmed Ali M. Shaikh.  
Mr. Justice Muhammad Karim Khan Agha.

C.P. No. D-7576 of 2015  
Abdul Qavi Khan

Vs

Chairman NAB

C.P. No.D-6044 of 2015  
Shazia Faisal

Vs

Province of Sindh & others

C.P. No.D-7588 of 2015  
Muhammad Nasir Sheikh

Vs

NAB & another

C.P. No.D-7516 of 2015  
Rashid Aqeel

Vs

NAB & another

C.P. No. D-6854 of 2015  
Mumtaz ul Haq

Vs

NAB & others

C.P. No.D-527 of 2016  
Akhlaq Ahmed & another

Vs

NAB & others

Date of hearing:	18-02-2016
Date of Order	24-02-2016
Petitioners	Through 1. Mr. Amir Mansoob Qureshi, Advocate for petitioner in C.P. No.D-7576/2015 2. Mr. Shahzad Qamar Abbas, Advocate for petitioner in C.P. No.D-6044/2015, 3. Mr. Muhammad Rehman Ghous, Advocate for petitioner in C.P. No.D-7588/2015, 4. Mr. Muhammad Farooq, Advocate for petitioner in C.P. No.D-7516/2015 and 5. Mirza Sarfaraz Ahmed, Advocate for petitioner in C.P. No.D-6854/2015 and C.P. No.D-527/2016.
Respondents NAB	Through Mr. Noor Muhammad Dayo, ADPG NAB alongwith I.O. Jawad Hasan. Mr. Saeed Ahmed Memon, Standing Counsel.

### **ORDER**

**Muhammad Karim Khan Agha, J.** By this common order, we propose to dispose of 7 bail applications which all stem from National Accountability Bureau (NAB) Reference 49//2015 State v. Mumtaz Ul Haq and 20 others which is pending before an Accountability Court in Karachi.

2. Out of the seven applications three of the applicants (Mumtaz ul Haq, Akhlaq Ahmed and Muneer Ahmed Khan ) had been granted ad-interim pre-arrest bail by this Court by orders dated 4-11-2015 and 28-01-2016 respectively whilst the other four applicants (Abdul Qavi Khan, Rashid Aqeel, Naisr Shaikh and Faisal Siddiqui, ) are in custody and had applied for post arrest bail. It may be mentioned that out of the 21 accused in the reference 11 are absconding.

3. The brief facts of the case as per NAB Ref 49/2015 (State V Mumtaz ul Haq and 20 others) filed by the NAB on 16-12-2015 before the Administrative Accountability Courts 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 .

4. During the investigation, it was established through the evidence which was collected that 13 plots bearing Nos. B-149/1 to B-149/13,

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Block-1, Gulistan-e-Juahar, 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 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-Juahar through fraudulent means.

5. According to the evidence 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. A list of allottees and their attorney holders is as follows:

S #	Name of the fake allottees.	Korangi Plot #	Name of holder of power of attorney.	Gulistan-e-Johar Plot No.
1.	Saeed Ullah Siddiqui s/o Waheed Ullah Siddiqui.	B-388	Mukhtar Hussain S/o Abrar Hussain.	B-149/1
2.	Zarina Begum w/o Firdous Khan	B-379	Syed Kausar Hussain S/o Mazhar Hussain.	B-149/2
3	Shandar Fatima w/o Farooq Ali	B-392	Mukhtar Hussain S/o Abrar Hussain.	B-149/3
4	Munawar Ahmed Siddiqui s/o Qasim Ahmed Siddiqui	B-382	Abdul Wasi Khan S/o Abdul Hayi Khan	B-149/4
5	Muzammil Hussain s/o Afzal Hussain.	B-387	Abdul Wasi Khan S/o Abdul Hayi Khan	B-149/5
6	Muhammad Abdul Raheem s/o Muhammad Atta	B-390	Syed Kausar Hussain s/o Mazhar Hussain.	B-149/6
7	Surayya Begum w/o Manzoor Ahmed	B-391	Syed Kausar Hussain s/o Mazhar Hussain.	B-149/7
8	Muhammad Amin S/o Rasool Bux	B-385	Mukhtar Hussain s/o Abrar Hussain.	B-149/8

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9	Afroz Jahan W/o Sanaullah	B-386	Mukhtar Hussain S/o Abrar Hussain.	B-149/9
10	Muhammad Ismail s/o Muhammad Kareem.	B-389	Muhammad Ashfaq s/o Abdul Rasheed	B-149/10
11	Mashallah Khatoon W/o Muhammad Mubeen Khan	B-381	Muhammad Ashfaq s/o Abdul Rasheed	B-149/11
12	Khan Hussain Ali S/o Ashraf Ali.	B-383	Mirza Arif Akhtar Ali Baig	B-149/12
13	Syed Nasir Jaffery S/o Syed Raza Jaffery.	B-384	Mirza Arif Akhtar Ali Baig	B-149/13

6. During the course of investigation, the role of accused persons as established is as follows:-

- a. That the accused No.1 (Mumtaz Ul Haq) in his capacity of being Additional Director (R) KDA issued illegal allotment orders of plots of Scheme-36, despite the fact that original allottees did not appear before him and attorney holders held only notarized GPAs which were not duly registered.
- b. That the accused No.2 (Mukhtar Hussain) was one of the 2 financiers of the scam and holder of GPAs of properties in his name as well as in the names of his front men. Despite knowing about the cancellation of allotment, he sold these properties to other persons illegally.
- c. That the accused No.3 (Abdul Qavi Khan) purchased 2 plots in the name of his brother Abdul Wasi Khan. He sold these plots to other persons, and received funds in his accounts as well as his daughter's, as such he is beneficiary of the proceeds of crime.
- d. That the accused No.4 (Abdul Wasi Khan) was attorney holder of 2 of the plots, which he had purchased together with his brother Abdul Qavi Khan.
- e. That the 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 SBICA rules.

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- f. That the accused No.6 (Muhammed Ahsan alias Chunnu Mamu) purchased 6 of the plots from Anjum Jameel Siddiqui. He knew about the illegal allotment of plots at the time of purchase and afterwards he got constructed flats on each of the plots which were not in line with approved building plans of SBCA.
- g. That the accused No.7 (Faisal Masroor Siddiqui) was front man of accused No.6 namely Muhammad Ahsan alias Chunnu Mamu, and as such he was given GPA by him for 4 of the plots, which he used to execute sub-leases of the apartments built on these plots in favour of other private persons.
- h. That the accused No.8 (Muhammed Asif Lania) constructed flats on 1 of the plots and he managed to arrange a fake and forged file of adjacent plot No.R-19/1 in collaboration with Faisal Masroor Siddiqui. He sold flats on that plot to private persons.
- i. That the accused No.9 (Shah Mohammed Misbah) approved the recommendations of Director Planning & Urban Design (DPUD) for creation of part plan on the subject land illegally.
- j. That the accused No.10 to 12 (Munir Ahmed Khan, Akhlaq Ahmed and Rashid Aqeel) signed Part Plan of the area showing an inaccurate depiction of the water board's land reserved for water conduit and manipulated the area so created for creation of subject plots.
- k. That the accused No.13 to 17 (Ghulam Mohiuddin Qadri, Mohammed Anwar Farooqui, Syed Abdul Jaleel, Syed Mohammed Ajaz and Syed Shah Yousaf Inam) are the Officers of KDA and KW&SB who conducted and signed the illegal joint physical survey which manipulated the on ground facts to show inaccurate picture of the area. Accused No.13 & 14 also issued site plans of the area despite the fact that these allotments were cancelled.
- l. That the accused No.18 (Mohammed Nasir) illegally and fraudulently initiated minute sheet for issuance of Transfer Orders of subject plots in 2008.

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m. That the accused No.19 (Muhammed Aman ul Haq) illegally issued Transfer Orders of the plots in 2008, despite the fact that allotments had already been cancelled in the year 2001.

n. That the accused No.20 & 21(Fayyaz Ahmed Alvi and Nadeem Ahmed Khan) were posted at Scheme 36 when KW&SB had informed SBCA that construction is being carried out on a land owned by KW&SB, yet they intentionally ignored this information and issued proposed building plan approvals of 6 of the 13 plots, in the subsequent time period even after receipt of such information.

7. During the course of investigation, the evidence collected in terms of statements of witnesses under S.161 and documents have revealed that the accused mentioned above 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 general public and have therefore committed the offence of corruption & corrupt practices as defined under section 9(a) of National Accountability Ordinance 1999 (NAO) and punishable under section 10 thereof.

8. Learned counsel for accused No.7, Faisal Masroor Siddiqi, who was a private person and engaged in the property business at the time of the scam submitted that the accused is completely innocent and had nothing to do with the affairs of KDA and making any fake files which facilitated land grabbing; that he was an employee of accused No.6, Muhammad Ahsan alias Chunnu Mamu and at all times he acted on the instructions of accused No.6 through GPA. The learned counsel submitted that the role of the accused cannot be connected with the offence; that the accused has been in custody since 14.9.2015 and it was a settled principle that accused cannot be held in custody for indefinite period and bail should not be used as punishment. In support of his contentions, he relied upon **Arif Sharif V Chairman NAB (2004 SCMR 1805)**

9. Learned counsel for accused No. 3, Abdul Qavi Khan, submitted that the accused was completely innocent and that he had nothing to do with the scam. He simply received some money in his bank account on account of

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the sale of the plots in issue. He also submitted in his pleadings that the accused is entitled to bail on medical ground as he is suffering from various ailments such as diabetes mellitus, cervical, right cerebellar stroke, lung disorders and kidney problems. He attached medical reports in support of his contention. He placed reliance on an unreported Judgment of the Sindh High Court dated 18-12-15 by a Divisional Bench of this Court whereby bona fide purchasers of plots were granted post arrest bail.

10. Learned counsel for accused No. 18, Muhammad Nasir, who was Deputy Director, KDA submitted that the case against the accused was based on his preparation of the part plan for the scheme on the basis of directions given by the land Department and as such he only carried out the instructions of his superiors and could not be held criminally liable.

11. According to learned counsel the case it seems is largely based on the allegations that the allottees were bogus. He submitted that the all allottees through their GPA's were present at that time, as such the allottees were genuine persons and not fake persons; that the accused had not signed any document and that the decision of the Exchange Committee was not binding on the KDA. He emphasized that all transactions were carried out fairly, transparently and that there was no illegality on the part of the accused. He further submitted that there was no mens rea on the part of the accused and that bail should not be withheld as a punishment and the accused should not be kept in custody for indefinite period. In this regard, he relied upon **Sanjay Chandra V Central Bureau of Investigation 2012 SCMR 1732, Ameer Hamza alias Hmaza V State 2015 P.Cr.L.J. 1402, Muzzamil Niazi V State PLD 2003 Kar 526,**

12. Learned counsel for accused No.1, Mumtaz ul Haq, who was a member and secretary on the Exchange Committee at the relevant time pursuant to the KDA's Governing Body Resolution 51 dated 1-9-1997 whose role was to scrutinize all cases where an alternate exchange of plot was involved submitted that the Committees recommendations would be subject to the Governing Body's approval or otherwise and as such were not binding on the KDA and hence he could not be held responsible for the action which the KDA took on the Committees recommendations.

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13. As per minutes of a meeting of the Exchange Committee held on 25-10-1997 which he attended as a member and Secretary he contended that all applicants were present and were interviewed and recommendations were made on the merits to the deserving candidates. The allottees were therefore genuine and existed and even otherwise their approval was subject to the Governing body and that although approval was given subject to verification these allotments were later cancelled and as such there was no wrong doing. He stressed that it was not his duty to verify the genuineness of the applicant.

14. Learned counsel for accused No. 12, Rashid Aqeel, who was Director Planning of Master Plan SBCA, Karachi at the relevant time submitted that the accused was innocent and that his role was only to sign the part plan for the scheme which he did on the basis of directions given by the land Department which was subject to the approval of DG KDA. He did not make any allotment and did not get any benefit from the same and as such he is entitled to bail.

15. Learned counsel for accused No.10, Munir Ahmed, who was Assistant Director, Master Plan, advanced similar arguments as learned counsel for accused No.12 and particularly submitted that KW&SB had given no objection to the Master Plan as such the accused was not responsible for any wrong act. He further submitted that the petitioner is 73 years' old and is a heart patient and has been hospitalized for treatment. In support of his contention he provided medical reports.

16. Learned counsel for accused No. 11, Akhlaq Ahmed, who was Director, Planning & Urban Design, Master Plan, advanced similar arguments as learned counsel for accused No 10 and 12. He also submitted that the accused was blind having lost his eye sight in 2012 and that was also a consideration for granting him bail. He however failed to produce any medial Report or certificate in support of his blindness.

17. On the other hand Learned ADPGA for the NAB has opposed the confirmation of the applications for interim pre-arrest bail and the applications for post arrest bail. He submitted that NAB has sufficient

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evidence to connect the accused to the offence as charged and that such evidence establishes the guilt of the accused beyond a reasonable doubt.

18. We have perused the record, considered the arguments of learned counsel for the petitioners and ADPGA NAB and the authorities cited by them at the bar and made a tentative review of the evidence including S.161 statements of Muhammad Aslam, Syed Sultan Ahmed, Tabish Raza Hasnain, Aurangzeb Ali, Jarar Hussain Malik, Ilyas Ahmed and Muhammad Waseem Usmani and some of the documents which form a part of the reference.

19. At the outset, as we have done before in other similar NAB cases, we observe that cases of white collar crime are generally of an intricate and complex nature and the whole transaction and each component part of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offense. However, notwithstanding this observation it is settled law that in cases of bail each of the accused needs in some way to be connected with the alleged offense and in the case of non bailable offenses such as this there are reasonable grounds for believing that the accused is guilty of the offense charged.

20. It is settled law that at the bail stage we can only make a tentative assessment/analysis of the evidence. Reliance is placed on **Tariq Bashir v. State (PLD 1995 SC 34) which held as under at P.41**

**“For arriving at the conclusion as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or with ten years’ imprisonment, the Court will not conduct a preliminary trial/inquiry but will only make tentative assessment, i.e. will look at the material collected by the police for and against the accused and be prima facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So the Court will not minutely examine the merits of the case or plea of defence at that stage.” (bold added)**

21. The accused in this case all claim that they are entirely innocent and not connected to the offence in any way. Without going into a deep

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appreciation of the material on record it would appear that through the investigation report and evidence collected by NAB that all of the accused to a lesser or greater extent are connected to the commission of the alleged offence. It is more a question of degree.

22. With Regard to accused No.7, Faisal Masroor Siddiqui, who was a private person and engaged in the property business at the time of the scam he has been assigned a specific role connecting him with the scam.

23. In the Reference at Para's 4(h) and (i) his role is stated to be as under as per the evidence collected.

(h) That the accused No.7 was front man of accused No.6 namely Muhammad Ahsan alias Chunnu Mamu, and as such he was given GPA by him for 4 of the plots, which he used to execute sub-leases of the apartments built on these plots in favour of other private persons.

(i) That the accused No.8 constructed flats on 1 of the plots and he managed to arrange a fake and forged file of adjacent plot No.R-19/1 **in collaboration with Faisal Masroor Siddiqui**. He sold flats on that plot to private persons (bold added).

24. When the whole scam and the evidence is tentatively considered in a holistic manner it seems that accused No.7 was the front man of Muhammad Ahsan alias Chunnu Mamu (accused No.6) and not simply his employee. It is note worthy that in his bail application at grounds at Para © it is stated that he is a constructor, builder developer and has no connection with the business of Muhammad Ahsan alias Chunnu Mamu yet in his oral submission he claimed that he was his employee acting on instructions. He was also given 4 GPA's by Muhammad Ahsan alias Chunnu Mamu to sell on to private persons. This tends to show that accused no.7 was intricately involved in the scam.

25. Furthermore, his business partner Mohammed Majibullah Siddique has already admitted his guilt by entering in to a Voluntary Return with

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NAB and he himself at one point had applied for a plea bargain under the NAO. It is also significant that accused No.8 (Muhammad Asif Lania) who as indicated above acted in corroboration with accused No.7, Faisal Masroor Siddiqui has applied to enter into a plea bargain with NAB which in effect is an admission of his guilt.

26. Having shown that the accused is connected with the offense the next consideration is whether there are reasonable grounds to believe that he is guilty of the offense charged.

27. Guidance as to what are "reasonable grounds" can be found in the following 2 cases decided by the Hon'ble Supreme Court as referred to below:

28. In the case of **Sikandar A. Akram v. State 1995 SCMR 387**, which was concerned with the grant of bail, under the proviso to section 497(2), Cr.P.C reasonable ground was defined as follows:-

**"Reasonable ground is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, "grounds" being a word of higher import than "suspicion". However, strong a suspicion may be, it would not take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or rejection. The reasonableness of the grounds has to be shown by the prosecution by displaying its cards to the Court, as it may possess or is expecting to possess as demonstrating evidence available in the case both direct and circumstantial. If such grounds exist tending to connect the accused with the crime, bail should be refused, without the need to go into a deeper appreciation of the merits of those grounds and the evidence on which they are rested, which functions are to be assumed at the trial stage. However, if it is found that the charge is groundless, that is, to say unsupported by any evidence or instead of the grounds being reasonable, their absurdity stands exposed on a plain view, or the charge on its face value is reduced to a minor one which is not punishable with death or transportation for life, as for example where it is a case of accidental and unintended death caused by simple hurt, the limitation on the Courts' discretion is in favour of the grant of bail (bold added).**

29. In the case of **Tariq Bashir v. State PLD 1995 SC 34** the reasonable grounds are defined at page 41 as under:-

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“(8) The case-law on the subject of bail is very much clear that the bail order must be carefully balanced and weighed in scale of justice and requirement of relevant law. **Reasonable grounds mean grounds which appeal to a reasonable and prudent man.**” (bold and italics added)

30. It was also held by the Honourable Court in the above case as under:-

“(7) As regards the first category of offences (punishable with death, or imprisonment for life, or with ten years’ imprisonment) the provisions of section 497(1) are not punitive in nature. There is no concept of punishment before judgment in the criminal law of the land. **The question of grant of bail is to be determined judiciously having regard to the facts and circumstances of each case. Where the prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime falling in the first category the Court must refuse bail.**” (bold added)

31. Reasonable grounds therefore are such as would appeal to a reasonable and prudent man based on a tentative analysis of the evidence

32. On a tentative view of the evidence we find that there are reasonable grounds to believe that the accused has committed the offense.

33. We agree with the accused contention that bail should not be used as a punishment and that an accused cannot be held in custody for an indefinite period however we consider that at this stage these considerations are not particularly relevant as the accused has been confined in NAB Custody for less than 6 months whereas in the case of **Arif Sharif V Chairman NAB (2004 SCMR 1805)** cited by the accused the accused had in that case been in custody for 25 months which was a far grater period.

34. We cannot also rule out the possibility that the accused may interfere with Mujibullah Siddiqui for making a Voluntary Return and Accused No.8 Asif Lania for applying for a plea bargain both of whom could yet become Prosecution witnesses.

35. With regard to accused No. 3, Abdul Qavi Khan a specific role has been assigned to him in the reference at Para 4 (c) as under:

(c) That the accused no.3 purchased 2 plots in the name of his brother Abdul Wasi Khan (who is absconding accused No.4 in this

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Reference). He sold these plots to other persons, and received funds in his accounts as well as his daughter's as such he is beneficiary of the proceeds of crime.

36. During arguments the learned Counsel for the accused could not adequately explain how the funds relating to the sale of the plots had been credited to both to his and his daughter's bank accounts. This belies his claim of being innocent and having no involvement with the offense. This evidence shows that the accused is linked to the offense and that there are reasonable grounds to believe that he has committed the offense as at least a beneficiary of the scam.

37. His reliance on the unreported Judgment of the Sindh High Court dated 18-12-15 by a Divisional Bench of this Court whereby bona fide purchasers of plots were granted post arrest bail is of little assistance to him as the evidence does not tend to suggest that he was bona fide purchaser. Rather it suggests that he was involved in a scam in order to make financial gain rather than being an innocent party.

38. With regard to his grant of bail on medical grounds although he has placed medical reports on record in our view nothing has been shown in those reports to suggest that he cannot be adequately treated by the prison hospital for his condition or his further confinement in jail is detrimental to his life. Thus, bail on medical grounds is also declined.

39. With regard to accused No. 18 Muhammad Nasir Para 4 (L) of the Reference has set out his role in the offense as under:

(L) That the accused No.18 illegally and fraudulently initiated minute sheet for issuance of Transfer Orders of subject plots in 2008.

40. We do not find his assertion that he only signed the part plan to be of any substance in terms of granting him bail. Without the signature and approval of the part plan the whole scam could not have taken place. Bearing in mind his position he would have known that the Master Plan could not be altered in such a manner. Furthermore, the whole scam could not have taken place without him initiating the minute sheet for issuance of Transfer Orders of subject plots in 2008.

41. It seems therefore that he was an essential link in the ability for the offense to be committed.

42. With regard to his submission that all the applicants were present in person at the time for interviews for allotment hardly any proof has been produced for this contention. No CNIC's were a part of the record and none of the allottees have been traced. The fact that all the allottees were represented by persons holding GPA's none of which were registered and were all photocopies tends to show that the allottees were fake.

43. The fake allotment letters was one of the key aspects of the scam and had this been picked up through proper verification the scam could not have taken place.

44. With regard to mens rea this will be for the trial Court to determine, often through inferences, after the evidence has been lead and the matter is looked at in a holistic manner.

45. The above all tends to suggest that the accused was connected to the offense and there are reasonable grounds to believe that he is guilty of the same.

46. Once again we agree with the settled law that bail should not be withheld as punishment and the accused should not be kept in custody for indefinite period. In this regard, the accused relied upon **Sanjay Chandra V Central Bureau of Investigation 2012 SCMR 1732**, **Ameer Hamza alias Hamaza V State 2015 P.Cr.L.J. 1402**, **Muzzamil Niazi V State PLD 2003 Kar 526**.

47. **Sanjay Chandra V Central Bureau of Investigation 2012 SCMR 1732** is an Indian Case which was heavily relied upon by the accused. In this case bail was granted in respect of an economic crime which caused a huge loss to the Exchequer. In this case one of the considerations was that the trial due to the huge number of witnesses and voluminous documents might take longer to complete than the sentence if handed down on conviction. This is far from the position and facts of this case where the

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accused have been in NAB custody for less than 6 months and the maximum sentence is 14 years on conviction. This case also accepted that the seriousness of the charge was also a factor to be considered in granting bail.

48. In this case the charges are of extreme gravity with the acts of the accused causing loss of billions of Rupees to the State which factor must be considered. Furthermore, if there is undue delay in concluding the trial on the part of the Prosecution the accused may apply for statutory bail. As such we do not consider this case to be of much assistance to the accused based on the facts and circumstances of this case.

49. **Ameer Hamza alias Hmaza V State 2015 P.Cr.L.J. 1402**, is of little assistance to the accused as it concerned the question of benefit of doubt on a criminal appeal as opposed to a bail application.

50. **Muzzamil Niazi V State PLD 2003 Kar 526** is also of little assistance to the accused as it concerned mens rea which has been discussed above. Furthermore, the facts in this case suggest a well planned criminal act as opposed to any project falling into the doldrums which the Muzzamil case referred to.

51. The current case, as with many NAB cases, is more a case of a joint criminal enterprise whereby every accused plays their role in order to achieve a criminal object all of which they were aware of and could not have been achieved without the active participation of all involved.

52. With regard to the case of accused No.1 Mumtaz ul Haq, who was a member and secretary on the Exchange Committee at the relevant time a specific role has been attributed to him in the Reference at Para 4 (a) which is set out below:

- (a) That the accused No.1 in his capacity of being Additional Director (R) KDA issued illegal allotment orders of plots of Scheme-36, despite the fact that original allottees did not appear before him and attorney holders held only notarized GPAs which were not duly registered.

53. As mentioned earlier the allocation of plots to fake allottees was one of the key aspects of this offense and we consider on a tentative assessment of the evidence which we have reviewed that the allottees were fake and that under the circumstances it is difficult to see how accused No.1 justified his actions. It seems implausible to a reasonable man that even at the stage of the exchange committee no CNIC's were taken to ascertain the genuineness of the allottee and that the Committee blindly relied on photo copies of GPA's in respect of **all** the allottees.

54. As such we are of the view on a tentative assessment of the evidence that accused No.1 is connected to the offense and there is reasonable grounds for believing that he is guilty of the offense.

55. With regard to accused No. 12, Rashid Adel, who was Director Planning of Master Plan SBCA, Karachi, accused No.10, Munir Ahmed, who was Assistant Director, Master Plan and accused No. 11, Akhlaq Ahmed, who was Director, Planning & Urban Design, Master Plan at the relevant time all three of them have been assigned a specific role in the reference at Para 4 (j) as under:

- (j) That the accused No.10 to 12 signed Part Plan of the area showing an inaccurate depiction of the water board's land reserved for water conduit and manipulated the area so created for creation of subject plots.

56. A tentative analysis of the evidence on record indicates that they are connected with the offense and that there are reasonable grounds for believing that they have committed the offense at some level. Had they not have signed the plan then the offense could not have been committed. They would also have known, on account of the positions which they held, that no amendments could be made in the master plan but they never the less proceeded to sign the part plan. They did not even bother to survey the area to ensure that the part plan was accurate

57. With regard to the medical condition raised by accused No.10, Munir Ahmed, being a heart patient who had been hospitalized for

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treatment although he has annexed medical reports there is nothing in our view in those reports to show that his condition could not be adequately treated whilst in jail by the concerned prison doctors or even in the prison wing of a Government Hospital if so advised by a medical Board.

58. With regard to the medical condition raised by accused No. 11, Akhlaq Ahmed, being a blind person since 2012 he however failed to produce any medical report or certificate in support of his blindness to enable us to consider this aspect in connection with granting him bail.

59. Another important consideration is that if released on bail any of the accused may interfere with either Mr. Mujibullah Siddique or Asif Lania (accused No.8) who have already entered into a Voluntary Return and applied for a Plea Bargain respectively with NAB and may yet be witnesses and thereby damage the prosecution's case. It is also relevant in this case that 11 out of the 21 accused in the reference (over half) have already absconded. Further absconsion of any of the accused if enlarged on bail therefore cannot be discounted bearing in mind the gravity of the offense and the evidence against them.

60. Therefore, as mentioned earlier, without going into a deep appreciation of the material on record and on a tentative analysis of the material against each accused, his role in the commission of the offense, whether there are reasonable grounds to believe that he is guilty of the offense, taking into account the possibility of interfering with witnesses, the possibility of further absconsion, the large value of the land involved, the gravity of the offence and the active involvement and connection with the offence of the accused ad-interim pre-arrest bail was recalled in respect of Mumtaz Ul Haq, Akhlaq Ahmed and Muneer Ahmed and post arrest bail was declined to Faisal Masroor Siddiqui, Abdul Qavi Khan, Rashid Aqeel and Mohammed Nazir.

61. Before parting with this Order we deem it proper to direct the learned Judge of the Accountability Court which is hearing this Reference:

- (a) to separate the absconders from the trial and immediately proceed with the trial against the non absconding accused so as to avoid any undue delay and

- (b) to decide the Reference on merits without delay pursuant to S.16(a) NAO and submit a progress report fortnightly to this Court through MIT II.

62. It is made clear that the observations made in this order are only tentative in nature and shall not prejudice the case of any party at trial.

63. These are the reasons for our short order dated 09.02.2016.

Dated 24.02.2016