

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Const. Petition No. 2951 of 2018

Petitioner Abdul Latif Brohi son of Abdul Aziz Brohi.
Respondent Federal of Pakistan & two others.
Petitioner Through Mr. Ovais Ali Shah,
Advocate.
Respondents Through Barrister Yasir Siddiq, Special
Prosecutor NAB a/w Qamar Abbasi, DD
NAB.
Mr. Abdul Jabbar Rajput, Assistant Attorney
General for Pakistan.
Dates of hearing 09.08.2018, 06.09.2018 & 07.09.2018.
Date of recording reasons 13.09.2018

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ORDER

SHAMSUDDIN ABBASI, J:- Petitioner Abdul Latif Brohi, nominated in Reference No.23 of 2017, under Section 16 (c) of National Accountability Ordinance, 1999 (NAO), seeks post arrest bail and also an injunctive order restraining the respondents from taking any coercive action including arrest, detention and harassment against the petitioner, beside he has made a prayer to declare the aforesaid Reference as unconstitutional, ultra vires the Ordinance, 1999, void ab initio and illegal.

2. On the basis of an inquiry/investigation, the Director General, National Accountability Bureau, Karachi (NAB), filed a reference against the petitioner Abdul Latif Brohi son of Abdul Aziz Brohi as accused No.1 and Mohammad Ibrahim son of Abdul Jabbar as accused No.2 under the National Accountability Ordinance, 1999 (NAO) for the offence of corruption and corrupt practices as envisaged under Section 9(a)(vi) of NAO punishable under Section 10 of the Ordinance.

3. The facts which led to the filing of reference are that on the information, conveyed by Mr. Abdul Khaliq Jamali, the then Mukhtiarkar, Scheme No.33, Karachi (East) vide his Report No.1153 dated 31.10.2006, with regard to corruption and corrupt practices in the office of Revenue Department, Scheme No.33, Karachi (East), the Director General, National Accountability Bureau (NAB), Karachi, was authorized to conduct an inquiry into the allegations with respect to fake ownership of one fake Rahi Khan son of Zari Khan of 36-00 acres of prime land, situated at Deh Songal, Scheme No.33, Karachi (East) vide one fake revenue entry No.28 made in the year 1934 in (VF-VII) of Deh Songal, which was purchased by one Abdul Jabbar son of Rehmat Ullah (deceased since 2013) from the said fake Rahi Khan for a consideration of Rs.39,600/- on oral statement in the year 1956 and by this way another fake revenue entry No.34 dated 01.12.1956 was inserted in the said Deh Register in favour of Abdul Jabbar, who mutated the said land in the name of his son, Muhammad Ibrahim {accused No.2} through registered gift deed executed on 17.12.2003.

The inquiry was thereafter converted into investigation vide Authority Letter No.NAB 2016050959184/1/W-2/CO-C/T-1/NAB (K)/2017-123 dated 18.01.2017 and Mr. Ghulam Abbas Abbasi, Senior Investigation Officer/Deputy Director, IW-II conducted a thorough investigation into the allegations and submitted a final investigation report on 15.09.2017.

According to the said report, the offence was committed during the tenure of petitioner as Mukhtiarkar, Scheme No.33, Karachi (East) from 26.03.2002 to 24.04.2002 and 27.12.2003 to 03.09.2004 when various correspondences with regard to confirmation of ownership of said land, NOCs for sale, formation of survey numbers etc. were made between the offices of Mukhtiarkar, Scheme No.33, Karachi, and Survey Superintendent, Karachi, originals whereof were not found to be available in either office and it was informed by the office of Survey Superintendent that the original record relevant to the land in question was burnt in the incident took place in the year 2007-2008 while the office of Mukhtiarkar, Scheme No.33 informed that the original record has been lost on account of frequent transfer of

the office from District East to District Malir and back to District East and raids conducted by Anti-corruption Establishment in various inquiries. However, owing to frequent complaints with regard to forgery in the revenue record leading to land fraud in the jurisdiction of Scheme No.33, original record of Deh Registers of VF-VII and VF-II of Deh Songal, Scheme No.33, Karachi, was taken into custody by High Court vide order dated 15.05.2008 passed in Suit No.857 of 2005. A clue was also found that copies of various documents and important correspondence relevant to the land in question were filed and annexed by the offices of Mukhtiarkar and Survey Superintendent, Karachi, alongwith concise statements in Suit No.887 of 2003, filed by Abdul Jabbar (deceased) and Suit No.476 of 2006, filed by Mohammad Ibrahim (accused No.2), same were obtained in the form of certified copies. It was also revealed that registration of lease/gift deeds concerning the land in question were also made and executed at that relevant time through which the original record was also gotten preserved by way of microfilming and such record of microfilming was also obtained in the form of certified copies. It was also revealed that Abdul Jabbar (deceased) in connivance with the petitioner committed forgery in the record of rights through fake and fabricated revenue entry No.28 dated Nil, showing to be made in the year 1934, in favour of one fake Rahi Khan son of Zari Khan and subsequently through entry No.24 dated 01.12.1956 in his own name through which he claimed to be the owner of 36-00 acres of valuable land situated in Na Class 112 and Na Class 63 of Deh Songal since 1956 and moved an application to the survey department for demarcation of the said land for fresh survey numbers, but the survey department did not issue official Ghat-Wadh Form. Meanwhile, Abdul Jabbar (deceased) executed General Power of Attorney in favour of one Irfan son of Saleemuddin in respect of an area of 18-00 acres, out of the total area of 36-00 acres, and also entered into a sale agreement with said Irfan for a consideration of rupees 4.5 million and received rupees one million in advance. Later on, Abdul Jabbar (deceased) filed Suit No.887 of 2003 in High Court making a false claim on oath that he was the owner of open plot of kabuli land, measuring 36-00 acres, and also claimed that the petitioner confirmed his ownership, but the concerned office did not issue Ghat-Wadh Form and on notice of the suit, the survey

department filed unofficial and unsigned Ghat-Wadh Form (without assigning any number) in Court, copy whereof was obtained by Abdul Jabbar (deceased) and the petitioner and thereafter the petitioner transacted an illegal revenue entry No.131 dated 30.03.2004 in VF-VII of Deh Songal, Scheme No.33, Karachi, in favour of Abdul Jabbar (deceased) by referring a fake letter purportedly issued by the office of Survey Superintendent. The said Ghat-Wadh Form mentions the area of 26-19 acres only instead of 36-00 acres, which is contrary to the claim of Abdul Jabbar (deceased) as raised in the suit. It was also revealed that fake survey numbers from 124 to 131 were given to various small pieces of vacant land, situated alongwith the corridor of the super highway, which measured 26-19 acres in total. Abdul Jabbar (deceased) despite receiving rupees one million from Irfan did not fulfill his liability and executed declaration of oral gift in favour of his son, Mohammad Ibrahim (accused No.2), and the petitioner made a note in favour of Mohammad Ibrahim (accused No.2) on the face of entry No.131 and thereafter Abdul Jabbar (deceased) withdrawn his suit.

It was also revealed that petitioner, in the capacity of Mukhtiarkar, Scheme No.33, Karachi (East), issued multiple confirmation letters and illegally confirmed the fake ownership in favour of Abdul Jabbar (deceased) and his son, Mohammad Ibrahim. He initially made entry No.131 dated 30.03.2004 and written down a note on the face of this entry transferring the ownership of the said land from Abdul Jabbar (deceased) to his son Mohammad Ibrahim (accused No.2). The petitioner also issued official letters confirming the ownership of Mohammad Ibrahim (accused No.2) over the said land and issued NOCs for sale and based on this Mohammad Ibrahim (accused No.2) leased out 21-10 acres of land in favour of Irfan son of Saleem Dawood and remaining land of 5-9 acres in favour of one Furqan Ahmed son of Ehsan Ahmed and received Rs.6,406,950/- as occupancy value and Rs.6,342,880/- as ground rent from both transactions and thereafter filed Suit No.476 of 2006 against Irfan. It was also revealed that entries 28/34 in VF-VII in favour of Rahi Khan and Abdul Jabbar were fake and fabricated and were illegally inserted in the record of rights as contained in report No.1153 dated 31.10.2006 of the then Mukhtiarkar, hence the same were cancelled

by the then Executive District Officer (EDO) Revenue, CDGK vide order dated 19.05.2009.

Based on the recommendation of Senior Investigation Officer/Deputy Director, IW-II, the Director General, NAB, Karachi, has filed the present reference, wherein it has been stated that petitioner being Mukhtiarkar, Scheme No.33, Karachi (East), with conscious knowledge misused his authority and extended illegal benefits to others by playing forgery and land fraud in connivance with Abdul Jabbar (deceased) and Mohammad Ibrahim (accused No.2), thereby committed offences of corruption and corrupt practices and issued various letters to different offices confirming fake ownership of both Abdul Jabbar and his son Mohammad Ibrahim initially for 36-00 acres and subsequently for 26-19 acres of land, situated at Deh Songal, District East, Karachi, and also issued various NOCs for sale, from time to time, to cause illegal gain to both Abdul Jabbar and his son Mohammad Ibrahim, thereby they have committed offences of corruption and corrupt practices as envisaged under Section 9(a)(vi) of National Accountability Ordinance, 1999 punishable under Section 10 of the Ordinance and schedule thereto.

4. Learned counsel for the petitioner has contended that the petitioner has falsely been implicated in this case with malafide intention and ulterior motives because of past altercation between him and certain officials of NAB; the allegations against the petitioner are general, vague and after thought; he acted in accordance with law and did not make any bogus entry in the revenue record; the petitioner while posted as Mukhtiarkar, Scheme No.33, Karachi (East) received an application from one Abdul Jabbar, seeking demarcation survey of land, measuring 36-00 acres, which was forwarded to the office of the District Officer for further process and after completing the legal formalities, the Survey Superintendent issued a Ghat-Wadh Form and survey and demarcation plan and on basis of said form the petitioner made a note but no mutation was carried out on the basis of Ghat-Wadh Form and mere note was affixed by the petitioner regarding the form in the register; the entire matter has been conducted through various judicial proceedings; while filing the reference the NAB officials have deliberately concealed various judicial proceedings and orders which have a substantial

impact on the case; Ghat-Wadh Form is not a title document and not required for any transfer or mutation of record; the petitioner being Mukhtiarkar at the relevant time was not responsible for assigning of survey numbers as such it is not possible for the petitioner to have manipulated a Ghat-Wadh Form, which falls in the domain of survey department; proper survey numbers were allotted to the land in question which can only be done by the Incharge of survey register, the Ghat-Wadh Form was first introduced by Survey Superintendent in Suit No.887 of 2003l and the impugned reference has been filed just to disrepute and question the untarnished reputation of the petitioner; that no liability can be imposed on the basis of entry kept on record in the year 1956 and as per section 52 of Land Revenue Act entries kept on the record would be presumed to be true until proved contrary to record or a new entry is lawfully substituted; that section 19 of West Pakistan Land Revenue Act, 1967 provides procedure for revenue officers, which has been followed by the petitioner; that NAB authorities have malafidely implicated him in this case whereas subsequent entries were kept on the record and the same were duly verified but none of them have been shown as accused in this case instead they have been cited as witness of the case; that NAB authorities have adopted a procedure of pick and choose on their own whims and wishes; that these entries were maintained by revenue authorities thrice by passing different orders; he has referred to statement under Section 161, Cr.P.C. of Chandar Kumar, wherein it has been stated that he has signed one form and one site sketch, which were prepared by Ejaz, posted at Surveys Tappeddar in the office of Survey Superintendent, Karachi, and he has also signed some documents in capacity of Tappeddar but surprisingly they have not been made accused in this reference. the petitioner was granted interim pre-arrest bail by this Court in CP No.D-6245 of 2016, but later on, the same was recalled vide order dated 02.03.2018 on account of absence of the petitioner. He then approached the Hon'ble Supreme Court of Pakistan for seeking pre-arrest bail, which was dismissed with direction to approach the High Court and file a fresh application for bail and as soon as he came out from the Hon'ble Supreme Court, he was taken into custody by NAB authorities and he is in jail since last about nine months. He further contended that co-accused Muhammad Ibrahim, whose bail plea was declined, is a

beneficiary and during investigation the NAB authorities have traced out his money trail but the case of the petitioner is totally on different footing inasmuch neither any money trail has been traced out during investigation nor any other evidence has been collected to establish case against the petitioner, therefore, the case of the petitioner falls within the ambit of further inquiry and finally he prayed for grant of bail to the petitioner on the ground, *inter-alia*, that reference is unconstitutional, ultra vires the Ordinance, 1999, void ab initio and illegal. In support of his submissions, the learned counsel has placed reliance on 2016 P.Cr.L.J. 79, 2017 P.Cr.L.J. 269, 2015 YLR 108, 2015 YLR 108, PLD 2017 Sindh 243, 2018 YLR 176, PLD 2008 Supreme Court 571 and an unreported order dated 29.11.2017, passed by Hon'ble Supreme Court of Pakistan, in Civil Petition No.540-K of 2017.

5. Conversely, Learned Special Prosecutor NAB has opposed the grant of bail on the ground that the petitioner is involved in a heinous crime of corruption and corrupt practices; he has misused his power and authority as Mukhtiarkar, Scheme No.33, Karachi (East) and made various correspondences illegally, entered fake and illegal entries just to extend illegal benefits and cause illegal gain to Abdul Jabbar and his son Mohammad Ibrahim. It is next submitted that this Court has already dismissed the petition of co-accused Muhammad Ibrahim, seeking pre-arrest bail, on merits vide order dated 11.04.2018, he then approached the Hon'ble Supreme Court of Pakistan in a petition for grant of pre-arrest bail, which too was dismissed and then he was taken into custody by NAB from outside the Supreme Court. It is also submitted that during period of his posting from 2002 to 2004 in two phases, the petitioner has managed fake, false and fabricated entries in the revenue record vide entry No.28 in the name of Rahi Khan son of Zari Khan showing it to be placed in year 1934 and entry No.34 in the name of Abdul Jabbar, father of accused No.2 Muhammad Ibrahim, showing it to be kept in year 1956 when said Abdul Jabbar was 19 years of age. He submits that a land of 36-00 acres has been shown in the name of Abdul Jabbar in a compact position in one piece whereas during investigation NAB authorities have obtained map of Deh Songal, which shows that the land in question of was in scattered pieces of

land situated at some distance from each other. It is further submitted that the petitioner with malafide intention has placed entry No.34 in Village Form-VII in the name of Abdul Jabbar and put his note showing the land as agricultural land whereas he has also kept entry in Village Form-II and issued VF-II showing the land for residential/commercial purposes. He further submits that the present petitioner has misused his authority and placed various fake entries in the name of Abdul Jabbar, issued fake sales certificates in favour of Abdul Jabbar as well as in the name of his son Muhammad Ibrahim, he also malafidely kept on record gift deed, executed by Abdul Jabbar in favour of his son Muhammad Ibrahim {accused in this reference } and thereafter issued sale certificate in favour of Muhammad Ibrahim and on the basis of sale certificate Muhammad Ibrahim has sold out the land in question to other persons and after cancellation of these entries, having created the third party interest, the aggrieved parties filed suits before this Court wherein the Advocate General has filed his comments pertaining to the issue of said land to be of Government property. He submits that during investigation sufficient documentary evidence has been collected against the petitioner to connect him with the commission of crime; that no reasonable ground has been agitated to show any malafide or ill will on the part of NAB authorities for his false implication in this reference; that the allegations of corruption and corrupt practices are of heinous nature attracting prohibitory clause, hence the petitioner does not deserve concession of bail and prayed for dismissal of petition.

6. We have heard the respective parties, considered the relevant law, and perused the entire material available before us with their able assistance.

7. A bare perusal of the record reveals that entry No.28 in VF-VII was originally recorded in favour of Abdul Karim and Esso, both sons of Shakal, in respect of survey Nos.16, 18, 75 and 82 on Yaksala lease rights for the year 1937-1938 in Deh Songal whereas another entry No.28 of VF-VII was inserted at the same place, whereby a land of 36-00 acres was granted in favour of Rahi Khan on permanent tenure though entry No.28 was with respect to a lease of

Yaksala granted to Abdul Karim and Esso. During enquiry the subsequent entry was found to be manipulated, replaced in comparison with the other entry just to usurp the valuable land belonging to government, while another entry No.34 was placed on revenue record in the year 1956 in favour of one Abdul Jabbar, who at that time was 19 years of age, which shows that Rahi Khan had sold out the said land through an oral statement in the sum of Rs.39,600/- (Rupees thirty nine thousand six hundred only) to Abdul Jabbar, who gifted out the said land to his son namely, Muhammad Ibrahim {accused in this reference} through registered gift deed dated 17.12.2003. The inquiry report of revenue department shows that the land involved in the present case belongs to government, value thereof in billions of rupees and a responsibility has been imposed on the petitioner, who initially recorded fake entry in the name of Rahi Khan, thereafter transferred the land in the name of Abdul Jabbar and subsequent thereto the same was gifted out to Muhammad Ibrahim {accused in this reference}. The record also reflects that all the entries were placed on revenue record during service tenure of present petitioner as Mukhtiarkar from 26.03.2002 to 24.04.2002 and 27.12.2003 to 03.09.2004 and petitioner is not only involved in placing fake entries on the revenue record but also involved in issuing NOC for sale certificates and other fake correspondences just to show the record as genuine. It is also to be noted that in Village Form-II the said land is shown for commercial/residential purposes whereas the earlier entries, which were placed by the present petitioner in the Village Form-VII show that the said land was purely for agricultural purposes. Record reflects that the petitioner has converted the said agricultural land into commercial/residential without the same being allowed by the competent authority.

8. It has been observed that usually revenue officers, who are involved in like cases, know revenue law well and they normally tried to fill the lacunas in these cases but in the present case, we have observed that while keeping fake entry No.28 dated Nil, showing to be made in the year 1934 on revenue record in favour of Rahi Khan, the petitioner purposely failed to apply his mind that in 1930's there was no policy of Government for lease of land on permanent basis and even the land was originally granted to one Abdul Karim on

the basis of Yaksala lease meaning thereby lease for one year but here in this case permanent lease was granted in favour of Rahi Khan and the same was kept on the record upto 1956 when Rahi Khan sold out said land to Abdul Jabbar on oral statement and Abdul Jabbar kept silent from 1956 to 2003 and after 47 years when the petitioner was posted as Mukhtiarkar in Deh Songal, Scheme No.33, District East, Karachi, appeared and moved an application for demarcation. It has been noticed that the correspondences in favour of Abdul Jabbar and his son Muhammad Ibrahim {accused No.2} were made only in the posting periods of present petitioner. The subject land is situated in prime location of Super Highway worth billions of rupees. It is pertinent to mention here that during investigation accused Muhammad Ibrahim has admitted that the land in question does not belong to him or his father Abdul Jabbar, they were only servants of one builder namely, Javed Iqbal, and have nothing to do with this land. He also sought bail by raising this plea but the same was not taken into consideration and his bail was turned down by this Court vide order dated 11.04.2018 as well by the Hon'ble Supreme Court of Pakistan.

9. From tentative assessment of material available on record, reasonable grounds exist to believe that the petitioner is prima facie involved in the present case. He not only placed fake entries in revenue record but also issued NOC for sale certificates, VF-II and other documents in favour of Muhammad Ibrahim {accused No.2} and his father Abdul Jabbar, hence deserves no leniency. So much so no evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the NAB authorities to falsely implicate the petitioner in this reference. As regards the case law cited by the learned counsel for the petitioner, in support of his submissions, is concerned, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the petitioner. Thus, we are of the considered view that the petitioner is not entitled for the relief claimed through instant petition including concession of bail. Resultantly, this petition was dismissed by our short order dated 07.09.2018 and these are the reasons thereof. It is, however, mentioned that in order to avoid

delay in the instant case and taking into account the right of the petitioner to an expeditious trial, we are optimistic that the trial Court would expedite the matter and complete the trial preferably within a period of six months under intimation to this Court through M.I.T-II. Office shall provide a copy of this order to the concerned Accountability Court for compliance.

10. Before parting with the order, it need not to state that the observations recorded herein above are of tentative assessment and relevant for the purpose of the instant petition, therefore, the trial court shall not be influenced in any manner whatsoever while deciding the case(s) of the petitioner on merits.

JUDGE

JUDGE

Naeem