

IN THE HIGH COURT OF SINDH, AT KARACHI

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

Const. Petition No. D- 2095 of 2018
Const. Petition No. D- 5037 of 2018

Petitioners	1. Rauf Ahmed Rofi son of Nazir Hussain, 2. Manzoor Ahmed Rofi son of Nazir Hussain, Through Mr. Ali Asghar Buriro, Advocate.
Respondents	Chairman, NAB & two others, Through Mr. Yasir Siddique, Special Prosecutor NAB a/w Muhammad Kamran.
Petitioners	Muhammad Farooque Shaikh & 260 others Through Mr. Nadeem Ahmed Pirzada, Advocate.
Respondents 1 & 2	Chairman NAB & another Through Mr. Yasir Siddique, Special Prosecutor NAB a/w Muhammad Kamran.
Respondent No.3	Rofi Builders & Developers Through Mr. Ali Asghar Buriro, Advocate.
Respondent No.4	Humair Associates Builders (Pvt) Ltd Through Mr. Rehman Ghous, Advocate.
Date of hearing	11.09.2018
Date of order	17.09.2018

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ORDER

SHAMSUDDIN ABBASI, J:- Petitioners Rauf Ahmed Rofi and Manzoor Ahmed Rofi, in CP No.D-2095 of 2018, seek post arrest bail in NAB Reference No.09 of 2018 under Section 16 (c) of National Accountability Ordinance, 1999 (NAO) and also a direction to the NAB authorities to expedite the matter of their plea-bargain, besides they have made a prayer to direct the private respondents to complete the final transaction of land with them, sale considerations whereof have already been paid by them.

2. The petitioners in CP No.D-5037 of 2018, who are the effectees of allotment of plots, seek directions against respondent No.3 {Rofi Builders & Developers} to handover vacant, peaceful and

physical possession of their respective plots of land in the project “Rufi Global City”, situated in Survey Nos.83, 84 and 90, Deh Dozen, Taluka & District Malir, Karachi, after obtaining permissions/ approvals from the relevant authorities, execute sub-lease in their favour, besides they have also prayed for an injunctive order restraining them from pressurizing the petitioners and endorse any plea-bargain not containing specific time for approval of layout plan.

3. In essence the allegations against the petitioners, as per reference, are that the petitioners launched a project in the name of “Rufi Global City” {hereinafter referred to as the said project} and for this purpose a land of 42-00 acres was purchased from M/s Humair Associates {Pvt} Limited {Respondent No.4 in CP No.D-5037 of 2018} through a sale agreement dated 19.02.1999 and in response thereto two General Power of Attorneys bearing registered No.2016 dated 23.12.1998 and registered No.122 dated 20.02.1999 were executed in favour of petitioner No.1 and petitioner No.2 respectively for construction and development of said project for which dimension and number of plots were approved by the Cantonment Board, Malir {CBM} as under:-

{a}	150 square yards	109 residential plots
{b}	200 square yards	105 residential plots
{c}	240 square yards	177 residential plots
{d}	400 square yards	73 residential plots
{e}	200 square yards	143 commercial plots
Total		<hr/> 607 plots on 42-00 acres

The petitioners in violation of sale agreement and approved layout plan, illegally carved out 600 residential plots of 80 and 120 square yards, and sold out the same to general public. However, M/s Humair Associates {Pvt} Limited, based on such illegal action of petitioners, cancelled both General Power of Attorneys vide revocation deeds bearing registered No.535 dated 22.06.2000 and registered No.536 dated 23.06.2000. Against such cancellation, the petitioners filed Suit No.474 of 2000 before this Court seeking declaration and injunction, which was dismissed while M/s Humair Associates {Pvt} Limited filed Suit No.1461 of 2004 and obtained injunctive orders against petitioners with regard to creating third party interest. The

petitioners, however, continued their delaying tactics through civil litigations and never attempted to resolve the issue, on the contrary they collected hundreds of millions of rupees from general public by allotting 1296 plots, files whereof were seized. During investigation the general public was informed through public notices published in newspapers and through call-up notices to submit their claims and in response thereto 516 claimants/effectees appeared and filed their claims with NAB alongwith relevant documents, which come to Rs.408.5 million as principal amount and Rs.726.3 million after applying KIBOR and present market value thereof is Rs.1.57 billion. In particular the petitioners being owners/partners of M/s Ruff Builders & Developers, cheated the general public by launching the said project without having title of land, illegally sold out plots, and collected billions of rupees from them, which constitutes charges of cheating and fraud, based on mala fide intention, with the general public/effectees of the allotment of plots. During investigation, the petitioners offered for a settlement with NAB by way of plea-bargain and filed an application under Section 25(b) of NAO, 1999 through Accountability Court, which was rejected on 02.03.2018, hence the captioned reference was filed on 07.03.2018.

4. During pendency of the petitions, the petitioners again filed an application for plea-bargain and shown their willingness to pay the loss determined by the NAB against them to the effectees or to give plots to them, which too was rejected as such the petitioners sought time to amend the prayer of their petition for judicial review of the decision taken by the competent authority in rejecting plea-bargain application. Thereafter, an application was filed seeking amended prayer as follows, which was taken on record.

“To consider the reason for rejection of plea-bargain application of the petitioners and after perusal may further be pleased to set-aside the said rejection, narrated by the NAB authorities in the larger interest of justice and accept the plea bargain already submitted”.

Thereafter, the petitioners did not press the prayer of plea-bargain and applied for bail on medical grounds and at their requests this Court constituted a medical board on 15.08.2018 comprising Prof.

Khawar Abbas {Cardiology}, Aamir Hameed, Associate Professor {Cardiology} and M. Nasir Rahim Assistant Professor {Cardiology} of Aga Khan University Hospital, Karachi with a direction to examine the petitioners and submit a report by 13.09.2018 but before a report was submitted by the board, the petitioners did not press medical ground for bail and at their request the order constituting medical board was recalled on 28.08.2018.

5. At the outset, learned counsel for the petitioners has contended that the petitioners have failed to handover possession of plots to the effectees due to pendency of civil litigations with M/s Humair Associates {Pvt} Limited {Respondent No.4 in CP No.D-5037 of 2018} and now they have resolved all the issues with M/s Humair Associates {Pvt} Limited and all pending civil litigations have come to an end by way of compromise and petitioners have acquired 25-00 acres of land and ready to redress the grievances of the effectees by delivering possession of their respective plots to them. He further submits that issues in between petitioners, M/s Humair Associates {Pvt} Limited and effectees has been resolved but NAB authorities are not ready to settle the matter by way of plea-bargain and they have rejected their plea-bargain applications without assigning cogent and valid reasons. It is also submitted that the petitioners were arrested on 13.12.2017 and since then they are in custody. The learned counsel submits that the petitioners would only be able to resolve all pending issues and to apply a fresh layout plan in accordance with law, if they are enlarged on bail and prayed accordingly.

6. In contra, the learned Special Prosecutor NAB has opposed the grant of bail on the ground that the project was started in 1999 and since then the effectees of allotment are running from pillar to post and they have not been arrayed as parties to the petition. It is next submitted that since 1999 to 2017 the petitioners kept silent and did not attempt a single effort for compromise/settlement with effectees and only after their arrest, they started efforts for compromise. He submits that NAB authorities have carefully examined the applications for plea-bargain and rejected the same with cogent and valid reasons. He further submits that Cantonment Board, Malir {CBM} has cancelled the layout plan of

the project in 2009 on account of default as the petitioners have failed to deposit the requisite charges. He lastly submitted that the petitioners are very clever and dishonest persons and malafide is very much surfaced from the record that they did not pay the requisite charges to the concerned quarters with respect to land in question, carved out plots in violation of approved layout plan, collected billions of rupees from general public towards allotments of plots, never made sincere efforts to settle and resolve the grievances of the effectees of the allotment and tried to usurp their amounts by playing fraud and cheating, hence do not deserve any leniency or concession of bail.

7. The counsel appearing on behalf of the petitioners in CP No.D- 5037 of 2018 has submitted that the petitioners are effectees and they have suffered physical and mental agony on account of the acts and deeds of M/s Rufi Builders & Developers and they are running pillar to post since 1999. It is next submitted that M/s Rufi Builders & Developers have approached the effectees with some proposal and they have no objection for grant of bail to the petitioners, if M/s Rufi Builders & Developers ensures redressal of their grievances and delivery of possession of their respective plots within a stipulated time.

8. The counsel appearing on behalf of M/s Humair Associates (Pvt) Limited did not oppose the grant of bail on the basis of settlement arrived at between them and M/s Rufi Builders & Developers.

9. We have given anxious consideration to the submissions of respective parties and perused the entire material available before us.

10. The allegations relate to fraud and cheating, based on malafide intention, with general public in the name of allotment of plots in the project launched by the petitioners in the year 1999 in the name of "Rufi Global City", situated in Survey Nos.83, 84 and 90, Deh Dozen, Taluka & District Malir, Karachi, whereby billions of rupees were collected from the allottees but the possession of their respective plots were not delivered to them as per agreed terms and

condition, hence the effectees of allotment, who are 516 in numbers, out of them 261 have approached this Court and filed a joint petition bearing CP No.D-5037 of 2018 seeking delivery of possession of their respective plots and execution of sub-lease in their names and favour. The record reflects that the petitioners during pendency of investigation entered into a settlement with NAB by way of plea-bargain in terms of section 25(b) of NAO, 1999, which was rejected on 02.03.2018. It is also a matter of record during pendency of the petitions, the petitioners again filed an application for plea-bargain and shown their willingness to pay the loss determined by the NAB against them to the effectees or to give plots to them, which too was rejected. After such rejection, the petitioners sought amended prayer for setting aside the rejection note of the NAB on the application for plea-bargain and acceptance of such application. The petitioners, however, did not press the prayer of plea-bargain and applied for bail on medical grounds, which was also not pressed. This position clearly reflects malafide and dishonest intention on the part of the petitioners. It is also to be noted that as per approved plan of Cantonment Board, Malir {CBM}, the petitioners were granted permission to carve out 109 residential plots of 150 square yards each, 105 residential plots of 200 square yards each, 177 residential plots of 240 square yards each, 73 residential plots of 400 square yards each and 143 commercial plots of 200 square yards each, but they in violation of sale agreement and approved layout plan, illegally carved out 600 residential plots of 80 and 120 square yards, allotted them to general public and collected billions of rupees, hence such approval was later on cancelled by CBM. It is also a matter of record that M/s Humair Associates {Pvt} Limited, with whom the land in question was purchased, based on illegal acts of the petitioners cancelled both General Power of Attorneys made and executed in favour of Ruff Builders & Developers and thereafter the parties entered into civil litigations. During investigation 1296 files with respect to allotments of plots were seized and through publication the general public was informed to raise their claims and in response thereto 516 claimants/effectees filed their claims with NAB alongwith relevant documents, which comes to Rs.408.5 million being principal amount and Rs.726.3 million after applying KIBOR, present market value of which comes Rs.1.57 billion. It has also come in

investigation that the petitioners without having title of land, illegally sold out plots and collected billions of rupees, which comes within the ambit of fraud and cheating. There seems to be clear malafide on the part of the petitioners inasmuch as they never attempted to settle and resolve the grievances of the effectees since 1999 and only after their arrest in 2017 they tried to settle the matter by way of plea-bargain/V.R., firstly during investigation and secondly after filing of the reference and during pendency of the petitions but their applications were declined. While rejecting the applications for plea-bargain, the NAB authorities have based its findings on "malafide" and remarked that, *"the accused are not willing to pay market value of the plots to the affectees; the accused have not got title of the land of the scheme/project titled "Rufi Global City so far; the affectees want to be compensated (through PB) by giving them their plots which at present the accused are not in position to do so (around 167 affectees have approached NAB in this regard, so far); approved layout plan of the scheme has also been cancelled by the cantonment Board Malir; agreed with the recommendation of I.O and C.O."*

11. The conduct of the petitioners clearly manifests malafide on their part and sufficient to prove them dishonest persons, hence they do not deserve to be treated with leniency.

12. From tentative assessment of record, sufficient incriminating material and reasonable grounds exist to believe that the petitioners are connected with the charges leveled in the reference. 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 petitioners in this reference. Thus, we are of the considered view that the petitioners are not entitled for the relief(s) claimed through their petition including concession of bail. The petitioners, however, are at liberty to file fresh application for entering into a settlement with NAB by way of plea-bargain/V.R. with some sound, feasible and concrete proposal so as to redress the grievances of the effectees. In case such a proposal is made, the NAB authorities shall pay due weight, with a positive response, and consider/decide the same strictly in accordance with law preferable within a period of six weeks.

13. Needless to mention 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.

14. 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 petitioners on merits.

15. Both the petitions stand disposed of in the foregoing terms.

JUDGE

JUDGE

Naeem