

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

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

**Constitutional Petition No. D- 4254 of 2018**

Petitioner	Akhtar Pathan son of Muhammad Yousif Pathan.
Respondents	The Director General, NAB & another.
Petitioner	Through Mr. Mukesh Kumar Khatri, Advocate.
Respondents	Through Mr. Yasir Siddique, Special Prosecutor, NAB.
Date of hearing	05.09.2018
Date of order	14.09.2018

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**ORDER**

**SHAMSUDDIN ABBASI, J:-** Through captioned petition, the petitioner seeks post arrest bail in NAB Reference No.57 of 2016 under Section 16 (c) of National Accountability Ordinance, 1999 (NAO), pending adjudication before Accountability Court, at Karachi.

2. Facts as set out in the reference are that during inquiry against Management Committee of Pakistan Post Office Employees Cooperative Housing Society Limited {PPOECHS} and others an additional complaint was received against Management of Pakistan Post Office Workers Cooperative Housing Society Limited {PPOWCHS}. Consequently, a separate inquiry was authorized against Shabbir Khan, Ex-Honorary Secretary, PPOWCHS and other members of the managing committee, which was later on upgraded into investigation.

3. In the investigation, it was revealed that the PPOECHS was allotted a piece of land, measuring 25 acres, in Sector 36-A, KDA Scheme No.33, Gulzar-e-Hijri, Karachi, by the Government of Sindh, Land Utilization Department vide order No.Lu-11/3-12-79-G(k)1/1 dated 13.01.1973 for the benefit of the society. The employees and workers of the Post Office on knowing about the allotment of 25 acres

of land to PPOECHS Limited, Karachi, contacted the management of the society to be enrolled as members however their requests were declined. The matter came before the then Deputy Registrar, Cooperative Societies, Karachi, who was of the opinion that another Cooperative Society be registered and the employees and workers of the Pakistan Post Office be enrolled as members. Also, the management of PPOECHS Limited, Karachi, through the Honorary Secretary, Mr. Yousaf Saeed Hashmi, gave an undertaking on 03.04.1979 to surrender the 25 acres of land to the proposed Pakistan Post Office Workers Cooperative Housing Society Limited, Karachi. Consequently, Pakistan Post Office Workers Cooperative Housing Society Limited, Karachi, was registered with Cooperation Department, Government of Sindh on 09.04.1979 and subsequently an agreement dated 06.04.1980 was executed between PPOECHS Limited, Karachi, and Pakistan Post Office Workers Cooperative Housing Society Limited, Karachi. It was further revealed that the present petitioner while posted as Deputy Registrar of the Society has malafidely conducted the departmental audit of the society without verifying and scrutinizing the basic record including society bank accounts and expenditures and illegally verified the expenses of the society in respect of internal development works and conducted the audit proceedings himself alone without association of an Inspector, which is the basic requirement of standard procedure audit, just to cover the illegal action and embezzlement made by the co accused persons, nominated in the reference, who in connivance with each other have embezzled and misappropriated an amount Rs.92,463,186/- in the name of internal development works of the Society and a further amount of Rs.23,825,000/- under the garb of payment against purchase of 27 acres of agricultural land in Deh Dozen, Tappo Songal, KDA Scheme No.33, Karachi. They have also auctioned 13 x S.B. plots contrary to the approved layout plan to the family and associates of deceased accused Nafees Nabi Ahmed, the then District Officer Cooperation {DOC}, and also got allotted F.L. Site, measuring 4120 square yards, in the name of his sister-in-law without auction.

4. Learned counsel for the petitioner has contended that the audit was conducted under the directives of Registrar, Cooperative

Societies under Section 22 of Cooperative Societies Act, 1925, which empowers the Registrar to conduct the audit himself or through authorize person, hence no liability can be imposed to the petitioner. It is also submitted that the audit report itself mentions that audit was conducted in accordance with the rules and regulations of Cooperative Societies Act, 1925 and this fact has also been admitted by the Assistant Registrar, Cooperative Department in his cross-examination, hence no case of whatsoever nature is made out against the petitioner. He is in custody since last nine months, yet the trial has not been concluded and out of eighteen witnesses the prosecution has been able to examine only seven witnesses. It is next submitted that the petitioner earlier filed petition bearing CP D- 6014 of 2016, seeking pre-arrest bail, which was dismissed as not pressed vide order dated 20.09.2017 inasmuch as the petitioner was arrested in another reference. Learned counsel lastly submits that the Hon'ble Supreme Court of Pakistan in Civil Petition No.4264 of 2017 has granted pre-arrest bail to co-accused, Muhammad Younis, hence the applicant deserves concession of bail on the rule of consistency. In support of this contention, the learned counsel for the applicant has placed on record bail grant order dated 22.01.2018.

5. In contra, the learned Special Prosecutor NAH has contended that bail plea of petitioner has already been declined by this Court and the present petition, seeking bail, has been filed without furnishing any fresh ground. It is next submitted that the petitioner is nominated in the reference with specific role that he being the Deputy Registrar of Cooperative Societies has conducted audit proceedings himself alone and prepared a false and bogus report, without mentioning the discrepancies and irregularities, just to cover up the wrong doings of co-accused persons, who have misappropriated and embezzled an amount of Rs.400 million, besides they have sold out 800 residential plots and 13 commercial plots whereas 467 residential plots and 06 commercial plots were shown in the approved layout plan and the present petitioner by misusing his authority gave clear chit to co-accused and prepared a fake and bogus audit report, knowingly and purposely, and verified the fake and huge expenses of the society. Learned counsel submits that as per standard procedure, audit is to be assigned to an Assistant

Registrar alongwith an Inspector but in the present case petitioner conducted the audit himself and despite of many discrepancies and irregularities in the internal audit of the society, the petitioner did not point out the same and prepared a false and bogus report in favour of co-accused without raising any objection. It is also submitted that the trial Court has already taken the cognizance in the matter of corruption and corrupt practices as defined under section 9(a) of NAO, 1999, which are heinous offences attracting prohibitory clause, hence the petitioner does not deserve concession of bail and prayed for dismissal of the petitioner.

6. We have heard the submissions of the respective parties, considered the relevant law, and perused the entire material available before us.

7. A bare perusal of the record reflects that accused persons in connivance with each other have withdrawn huge amount of Rs.109,472,060/- from the bank accounts of Society in the name of internal development works of the Society and a further amount of Rs.23,825,000/- under the garb of payment against fake purchase of 27 acres of agricultural land in Deh Dozen, Tappo Songal, KDA Scheme No.33, Karachi, and made payments to accused Muhammad Ismail. The record further reveals that accused have auctioned 13 x S.B. plots without approved layout plan and auction to the family and associates of accused deceased Nafees Nabi Ahmed, the then District Officer Cooperation {DOC} and got allotted F.L. Site, measuring 4120 square yards, in the name of sister-in-law of accused Nafees Nabi Ahmed without auction. It is also to be noted that accused persons in order to cover up all their wrong doings have endorsed this fraud by getting it approved in the audit report, prepared by the present petitioner. According to standard procedure and as per practice, the Assistant Registrar has to conduct audit alongwith an Inspector but herein the present case the petitioner has conducted the audit without association of an Inspector and prepared a false and bogus audit report, knowingly and purposely, without mentioning the discrepancies, irregularities and violation of rules and regulations in withdrawing huge amounts towards purchase of fake agricultural land and internal development works of the Society in

order to cover the illegal action and embezzlement made by the accused persons. Such allegations are substantial in nature and needs proper adjudication by the Court.

8. From tentative assessment of material available on record, reasonable grounds exist to believe that the petitioner is guilty of misusing his authority in terms of section 9(i)(vi) of NAO, 1999, therefore, no case for grant of bail is made out in favour of the petitioner on merits. Insofar as the plea of seeking bail on the principle of consistency is concerned, the case of the petitioner is totally different and distinguished from the case of co-accused Younis Baloch, who has been granted pre-arrest bail by the Hon'ble Supreme Court of Pakistan in Civil Petition No.4264 of 2017 vide order dated 22.01.2018, hence in our humble view this ground too is not available to the petitioner for seeking bail on the principle of consistency. Needless to mention here that the Hon'ble Supreme Court of Pakistan in Civil Petition No.619-K of 2017 has declined pre-arrest bail to co-accused Haji Muhammad Ismail vide order dated 14.12.2017 on merits.

9. For the foregoing reasons, this petition being devoid of any merit stands dismissed accordingly. However, as the matter is at the stage of recording evidence of prosecution witnesses and seven witnesses have been examined, out of eighteen witnesses, therefore, we are optimistic that the trial Court would expedite the matter and dispose it of at an earliest, preferably within a period of three months under intimation to this Court through M.I.T-II.

10. Before parting with the order, it needs no clarification that the observations recorded herein above are of tentative assessment and shall have no bearing on the merits of the case.

JUDGE

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