

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.6185 of 2018
Constitutional Petition No.6075 of 2018
Constitutional Petition No.8002 of 2017
Constitutional Petition No.5653 of 2018
Constitutional Petition No.5252 of 2018
Constitutional Petition No.2314 of 2017
Constitutional Petition No.7747 of 2017

Date	Order with signature of Judge
------	-------------------------------

For hearing of main case.

.....

16.10.2018.

Mr. Moulvi Iqbal Haider, Advocate for Petitioner in CP D-6185 of 2018.

Mr. Muhammad Hafeez Sandhu, Advocate for Petitioner in CP D-6075 of 2018.

Mr. Muhammad Akbar Khan, Advocate for Petitioner in CP D – 5653 of 2018.

Mr. Khalid Mehmood Awan, Advocate for Petitioners in CP D – 2314 and CP D – 7747 of 2017.

Mr. Samsam Ali Khan, Advocate for Petitioner in CP D – 8002 of 2017.

Mr. Zain A. Jatoi, Advocate for Petitioner in CP D- 5252 of 2018.

Mr. Muhammad Akram Javed, Special Prosecutor NAB.

<><><><><>

Through their respective petitions, the petitioners Zulfiqar Hassan Ali, Shaukat Hussain and Nazar Ali seek post arrest bail whereas petitioners Karim Farishta, Essa Khan, Barkat Ali and Nizar Ali Fazwani seek pre-arrest bail and are on ad-interim pre-arrest bail granted to them without touching the merits of the case.

2. It has been informed by the learned Special Prosecutor NAB that investigation has been completed and Regional Executive Board has approved draft reference and sent the same to NAB Headquarters for approval and within 15 days, the reference would be filed. Learned counsel for the petitioners Zulfiqar Hassan Ali, Shaukat Hussain and Nazar Ali, however, have insisted for hearing of their petitions today on the ground that their clients are in custody for the last more than 90 days but NAB has failed to file any reference in the matter.

3. It is contended on behalf of petitioner Zulfiqar Hassan Ali that he has been falsely implicated in the case with malafide intention and ulterior motives; that the petitioner was Secretary

of Karimabad Ismailia Multipurpose Cooperative Housing Society Limited and he has no connection with the affairs of Society since 2001 as he had tendered his resignation from the management in the year 2001; that the petitioner received call upon notices and in response thereof he had joined inquiry, fully cooperated with the NAB authorities and furnished all the available details; that the petitioner never avoided to join the inquiry proceedings; that the petitioner has remained in custody for a sufficient time but NAB has failed to sort out any evidence towards misappropriation or a document to show the involvement of the petitioner with the scam; that the petitioner is a man of advance age and suffering from various diseases; that the NAB has no authority to enquire in the private affairs of the Society and the grounds mentioned in the remand orders are fake, hence he has prayed for grant of bail to the petitioner.

4. Learned counsel for petitioner Shaukat Hussain has contended that petitioner was Vice Chairman of the Society and he remained with the management of the Society from 1999 to 2005; that the NAB has falsely implicated the petitioner in the case with malafide intention and ulterior motives; that the petitioner had made an agreement with the Society in respect of shop which was allotted to him in the year 1984 and he has no nexus with any misappropriation; neither he is a beneficiary nor has signed and issued any cheque or document and NAB has failed to bring on record any material against the petitioner to connect him with the commission of offence; that the petitioner tendered his resignation from the post of Vice Chairman on 23.04.2002 and since then he has no connection with the affairs of the Society, hence prayed for bail.

5. Learned counsel appearing on behalf of petitioner Nazar Ali has contended that the petitioner has been falsely implicated in the case with malafide intention and ulterior motives; that the petitioner is in continuous custody for the last more than 90 days despite of that NAB has failed to adduce any evidence against the petitioner to show his involvement in the commission of offence. In support of his submissions, he has placed reliance on the case of *Dr. Allah Nawaz A. Qazi v The State through Chairman NAB* {2008 SCMR 196}, *Javed Khan v Chairman NAB & another* {2014 P.Cr.L.J. 1100} and *Anwar ul Haque v NAB & others* {2008 SCMR 1135}.

6. On the other hand, learned Special Prosecutor NAB has submitted that the inquiry was initiated on the basis of misappropriation of funds of the Society, illegal allotments in favour of favorite persons and illegally hold office of the Society and thereby the accused persons in connivance with each other have caused huge loss to the Society; that petitioner Zulfiqar Hassan Ali had remained as Secretary of the Society from 1991 to 2011 and in connivance with other accused person has misappropriated the accounts of the Society; he was involved in 76 transfer files and illegally held the office of the Society in contravention of byelaws; that during investigation the I.O. has recorded 161, Cr.P.C. statements of witnesses and collected sufficient material to show the involvement of the petitioners in the commission of offence; that the investigation has been completed and the Regional Executive Board of NAB has approved draft reference and sent it to NAB Headquarter for approval and NAB would be in a position to file a reference within two weeks before Accountability Court.

7. From tentative assessment of record and perusal of remand orders dated 14.07.2018, 26.07.2018, 07.08.2018, it is clear that there was sufficient evidence to justify arrest of the petitioners and to establish their connection with the commission of alleged offence. The I.O. has disclosed that on a number of documents, the signatures of the petitioners are available by which they have defrauded the people and various amounts recovered by them during their respective terms from the members of the Society are unaccounted for. Further, it is not disputed that Regional Executive Board has approved draft reference and sent it to NAB Headquarters for approval, which is likely to be filed in near future, most probably within two weeks. We have also taken guidance from the case of *Khalid Humayun v The NAB through D.G. Quetta and others* {PLD 2017 Supreme Court 194} wherein the Hon'ble Supreme Court has rejected the bail petition in a case where no reference was filed by NAB within a period of nine months. Relevant paragraph is reproduced herein below:-

“This petition is in essence a bail application therefore it will not be appropriate to undertake a detailed examination of the facts, particularly when the reference under the NAB Ordinance has still not

been filed. However, there is sufficient prima facie material on record to suggest that the petitioner had exercised his authority to enrich himself and a number of persons have also implicated him as the principal beneficiary of the defalcated amounts, but we do not want to make any further observations in this regard as it may prejudice the case of either party”.

8. In the facts and circumstances, we are not inclined to grant bail to the petitioners at this stage. As regards the case law cited by the learned counsel for petitioner Nazar Ali, in support of his submissions, the facts and circumstances of the same are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the petitioner.

9. Placing reliance on the above case law and taking into accounts the facts and circumstances of the case, we are of the considered view that the petitioners do not deserve concession of bail at this stage. Accordingly, CP No.D – 6185 of 2018, CP No.D- 6075 of 2018 and CP No.D- 5653 of 2018 are dismissed. However, the petitioners shall be free to file fresh petitions for bail before this Court after filing of reference in the matter, if so desired. The other petitions, in which the petitioners are on ad-interim pre-arrest bail, are adjourned to 06.11.2018. It is, however, mentioned that the observations made herein above are of tentative assessment and shall have no bearing on the merits of the case.

JUDGE

JUDGE

Naeem