

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

CONST. PETITION NO.D-6026 OF 2018

Petitioner: Shoukat Hussain Jokhio through Mr. Mohsin Qadir Shahwani, Advocate.
Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-3837 OF 2018

Petitioner: Mohammad Shoaib through Mr. Shahzeb Akhtar, Advocate.
Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-4286 OF 2018

Petitioner: Sabah-ul-Islam Khan and Muhammad Shahzad Khan, through M/s. S. Mehmood Alam Rizvi and Zakir Leghari, Advocates.
Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D- 4414 OF 2018

Petitioner: Saif Abbas through Mr. Shahzeb Akhtar, Advocate.
Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-4732 OF 2018

Petitioner: Muhammad Waseem through Mr. Shoukat Hayat, Advocate.
Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-5056 OF 2018

Petitioner: Roshan Ali Shaikh through Mr. Aamir Raza Naqvi, Advocate.

Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-6107 OF 2018

Petitioner: Fazal-ur-Rehman through Mr. Habib Ahmed, Advocate.

Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-6823 OF 2018

Petitioner: Ahmed Ali through Mr. Muhammad Furqan Qureshi, Advocate.

Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-7160 OF 2018

Petitioner: Farrukh Jamal Siddiqui through Mr. Zeeshan Ali Memon, Advocate.

Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-7287 OF 2018

Petitioner: Nadeem Qadir Khokar through Mr. Mohammad Ahmed Pirzada, Advocate.

Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

CONST. PETITION NO.D-8155 OF 2019

Petitioner: Sohail Yar Khan through Mr. Faiz Mehmood Khan Durrani and Ms. Samia Faiz Durrani, Advocates.

Respondents/State: NAB through Mr. Zahid Hussain Baladi, Special Prosecutor, NAB

Dates of hearing: 10.08.2020, 11.08.2020 and 12.08.2020.

Date of announcement: 24 .08.2020.

ORDER

Zulfiqar Ali Sangi, J.- Petitioners Shoukat Hussaain Jokhio, Mohammad Shoaib and Saif Abbas have applied for post arrest bail. Petitioners Fazal ur Rehman, Roshan Ali Shaikh, Nadeem Qadir Khokar, Mohammad Waseem, Sabah ul Islam, Shazade Khan, Sohail Yar Khan, Ahmed Ali, Mashkoor Khan and Farrukh Jamal have all applied for pre-arrest bail. Since these petitions all arise out of the same reference we shall dispose of the same through this common order.

2. The brief facts of the case are that vide order dated 31.12.1960, the Collector of Karachi transferred an area of 250-20 acres land from N.C. No.46 (246-06), No.76 (02-00) & 00-14 guntas, 02-00 acres from abandoned road/Dhoro, Deh Gangiario in favor of Karachi Municipal Corporation (KMC) for "Shifting of Wool-Washing Tanneries", on payment of Malkano. However, the tenure of the allotment was not mentioned in the order.

3. That KMC planned the scheme of wool washing tanneries over the allotted land and as many as 14 plots were auctioned by KMC and 02 plots were allotted by Government of Sindh. The land was neither utilized for the purpose it was allotted nor it was incorporated in Village Form VII-B in the name of KMC due to non-payment of Malkano. Furthermore, the Board of Revenue, in the year 1986 onwards issued 30 years and 99 years leases on the said land.

4. That as per the Colonization of Government Lands (Amendment) Act, 2009, the said land stood resumed to the Government since the KMC had not used the land for specific purpose of Wool Washing Tanneries. The revenue authorities illegally kept the entry No.5/2010 in Record of Rights in favor KMC regarding the same land in violation of section 24-A of the aforesaid Act.

5. That during the year 2010 to protect the illegal leases executed by KMC officials before year the 2010 and also to continue these illegal leases, in violation of Section 24-A, revenue officials in connivance with each other and KMC officials kept the illegal entry in the record of rights in favor KMC despite the fact that the land stood resumed as per amendment mentioned above i.e S.24 (A). A suit No.245 of 2017 was filed by KMC against the province of Sindh, through the Land Utilization Department and National Accountability Bureau. The Honorable High Court of Sindh vide order dated 1-2-2017 has suspended the operation of letter dated 13-11-2015 (through which the NOC was withdrawn by Secretary LU) but did not restrain National Accountability Bureau (NAB) from investigation or filing a Reference under the National Accountability Ordinance 1999 (NAO).

6. That from the year 2008 onward the accused officers of KMC knowing the fact that neither the Wool Washing tanneries scheme was established nor plots were allotted through open auctions, started executing the illegal leases of plots. A total of 276 illegal leases were executed by KMC officials during the period from 2008 to 2015 to 103 persons. That most of the lease holders, who joined the investigation, were examined and their statements were recorded. Shoaib Memon a private

person with the help and connivance of the revenue authorities pressurized the occupants of the land to acquire leases from KMC as purportedly the land had been given to KMC and also got cancelled the 30 years said leases from the revenue authority on the grounds that the purpose of lease was not served by the lessee.

7. That apart from the above mentioned illegal leases, KMC officials during the period from 2012 to 2015 issued 121x illegal Challans (so far detected) regarding occupancy value and Lease/Transfer of 121 plots on Wool-Washing Tanneries Area to different people which has been paid. These Challans were issued to facilitate the encroachers to establish their right on the Government land even beyond KMC land before the authorities. Total area of 121 x Plots was 100 Acres (4000 sq. yards each plot).

8. That the evidence collected during the investigation has established that the accused persons No.1 to 16 as arraigned in NAB Reference 27/2018 (which include most of the petitioners) in connivance, collaboration and collusion with each other illegally and fraudulently allotted and leased out State land admeasuring 221.55 acres in the shape of 276 plots and issued illegal challans against 121` Plots (4000 sq. yard each) on 100 acres of Government land (so far detected). The value of the land as per FBR rate is Rs.4000/- per Sq. Yards. Thus the accused persons have caused loss to the National Exchequer amounting to Rs.6.22 Billion (Value of market price of the land 321 acres as per FBR rate 4000 per Sq. Yard). The accused persons have committed the offence of corruption and corrupt practices as envisaged in Section 9(a) (iv), (vi), (IX) & (XII), punishable under section 10 of the National Accountability Ordinance,

1999 and Schedule thereto which lead to the filing of NAB **Reference 17/2018 The State V Ghulam Mustafa Phull and others** which is now proceeding before the accountability courts in Karachi.

Turning firstly to the petitions for post arrest bail.

9. Learned counsel for petitioners Shoukat Hussain Jokhio, Mohammad Shoaib and Saif Abbas have all applied for post arrest bail on hardship grounds. According to their counsel all three of the petitioners have been in jail for over 2 years, that no delay has been caused by either them or the counsel acting on their behalf, that the charge has recently been amended and none of the proposed 56 witnesses have lead any evidence in the case so far and as such there has been an unconscionable delay in completing the trial and as such they are entitled to post arrest bail on the ground of hardship.

10. On the other hand special prosecutor NAB has opposed the grant of bail to any of the petitioners on hardship grounds on the basis that the legal requirements of the same have not been made out by any of the petitioners as per the guidelines laid down in the case of **Tallat Ishaq v. National Accountability Bureau** (PLD 2019 Supreme Court 112) although he has not denied the contentions made by learned counsel for the petitioners.

11. We have heard the petitioners, considered the record and the relevant case law including that cited at the bar.

12. We agree that the case of **Tallat Ishaq** (Supra) has raised the bar on granting bail on the grounds of hardship in NAB cases however it has not

completely excluded it especially as the grant of bail under the constitutional jurisdiction is a discretionary relief and each case must be considered on its own particular facts and circumstances.

13. In this case all the petitioners have been in jail for over 2 years; no witness has been lead in this case so far; that there are 56 witnesses on the calendar of witnesses and 15 accused each with separate counsel. This would mean that each of the 56 PW's would be subject to 15 separate cross examinations which would take a considerable amount of time and as such the trial is unlikely to conclude in the near future. Based on the particular facts and circumstances of this case we are of the view that the petitioners Shoukat Hussain Jokhio, Mohammad Shoaib and Saif Abbas have made out a case of bail on hardship grounds and as such each of the aforesaid petitioners namely Shoukat Hussain Jokhio, Mohammad Shoaib and Saif Abbas are granted post arrest bail subject to them **each** furnishing solvent surety in the amount of RS 20 lacs (2,000,000) and PR bond in the like amount to the satisfaction of the Nazir of this court. **All** the petitioners namely Shoukat Hussain Jokhio, Mohammad Shoaib and Saif Abbas shall be placed on the ECL by the Ministry of Interior. A copy of this order shall be sent to the Secretary Ministry of Interior Government of Pakistan for compliance.

With regard to the petitioners seeking pre arrest bail.

14. Their case is on a separate footing as they have not spent a single day in jail and as such the ground of bail on hardship grounds is not available to them. There is also a legal distinction between post arrest bail and pre arrest bail. In particular that the ground of malafide must have

been made out against the NAB by each and every petitioner in cases of pre-arrest bail. The petitioners seeking pre arrest bail have argued their respective petitions on merits.

Turning to the case of each petitioner seeking pre-arrest bail.

15. In C.P No.D-4286 of 2018 the role against the petitioners Sabah-ul-Islam and Muhammad Shahzad Khan is mentioned in Para No.16 and 19 of the reference which reads as under:

“16. That the accused No.8 Sabah-ul-Islam Khan was posted as Deputy District Officer KMC Office and as Deputy Director Land KMC. He misused his Authority by executing illegal lease deeds of 110 x plots admeasuring approx. 390,375 Sq. Yds (80.65 acres) out of Wool-Washing Tanneries land to private persons for industrial purposes without due process as required by laws and rules under the garb of auctions held in the year 1971 to 1975. He in connivance with other accused persons has caused loss to national exchequer amounting to Rs.1.5 Billion (value of market price of the land 390, 375 Sq .Yds as FBR rate Rs 4000 per Sq. Yard).

“19. That the accused No.11 Muhammad Shahzad Khan being Assistant District Officer KMC was authorized to execute leases for Cattle colony only. But he executed the lease deeds on behalf of KMC for the area of Wool Washing. He in connivances with other accused persons executed lease deeds of 14 x plots admeasuring 52,220 SqYds (10.789 acres) out of Wool-Washing Tanneries land to private accused persons for industrial purposes without allotment order purporting that they were lessee by virtue of auction held in the year 1971 to 1975. He has caused loss to national exchequer amounting to Rs.208 Million (Value of market price of the land 52,220 Sq Yds as FBR rate Rs.4000 per Sq Yard).”

16. Learned counsel for the petitioners contended that the petitioners are not beneficiaries of the scam and the beneficiaries were not made accused in the reference; that only one PW is cited against the petitioner Sabah-ul-Islam who himself authorized the petitioner for the execution of the leases; that the allotments were made before 1993 and the said documents were not collected by the investigation officer with malafide intentions; that there is a civil dispute in between the Board of Revenue Government of Sindh and the KMC; that there is no allegation against the petitioner Muhammad Shahzad Khan for taking gain for himself or others and he had not misused his authority; lastly he prays for confirmation of

bail of the petitioners.

17. Learned Special prosecutor NAB contended that both the petitioners were posted as Deputy Directors in KMC and they appeared before the Sub-registrar for the execution of the leases in favour of different peoples and issued fake challans by showing fake authorization letters which during the investigation were denied by its signatory authority and in this respect investigation officer examined Tarique Naseer and recorded his statement under section 161 Cr.P.C, hence they are connected with the commission of the offence, they illegally gave benefit to the beneficiaries. They did not point out any malafide on the part of NAB hence they are not entitled to the concession of pre-arrest bail.

18. In C.P No.D-4732 of 2018 the role against the petitioner Muhammad Waseem is mentioned in Para No.15 of the reference which reads as under:

"15. That the accused No.7 Muhammad Waseem remained posted as Director Land KMC. During his tenure as Director Land KMC misused his Authority by issuing illegal authorization letter dated 05.11.2013 and 17.04.2014 to accused No.10 Mashkoor Khan and accused No.12 Sohail Yar Khan respectively for execution of illegal lease deeds in the area of Wool-Washing Tanneries and allowed the concerned Deputy Director to appear before Sub Registrar on behalf of KMC for execution of illegal lease on the said land on the basis of purported auction in year 1971 to 1975. 64 x illegal leases were executed by the concerned Deputy Directors based on said letter issued by the accused."

19. Learned counsel for the petitioner contended that the NAB at the first instance filed reference against 118 accused persons which was returned by the Accountability court and direction were issued to the NAB for re-investigation vide order dated 15-02-2017 and on the basis of re-investigation reference was filed only against 16 accused persons including the petitioner which according to learned counsel shows the malafides of NAB against the petitioners; that petitioner was posted from 15-08-2013 to 16-07-2015 whereas the alleged allotments were made before

1993; that the petitioner acted in accordance with law and the land belongs to the KMC and in respect thereof a resolution No. 14 was passed on 22-01-1976; that the persons who passed the resolution were not made as accused nor they were examined during the investigation; that the petitioner did not make any allotment nor auctioned any plot; that the land was regularized by the Secretary Land Utilization Government of Sindh and the same was never resumed by the Government of Sindh; that there is no active role of the petitioner in the allotments; lastly he prayed for confirmation of the bail. He relied upon on the cases of Aamir Bashir and another V. The state and others (2017 SCMR 2060), Rana Muhammad Arshad V. Muhammad Rafique and another (PLD 2009 S.C 427), Khalil Ahmed Soomro V. The State (PLD 2017 S.C 730), Lal Muhammad Kalhoro and others V. The State (2007 SCMR 843), Zafar Iqbal V. Muhammad Anwar and others (2009 SCMR 1488), Haider Ali Raujani V. The State (SBLR 2017 Sindh 1005), Shahid Imran V. The State and others (2011 SCMR 1614), The State and others V. M. Idrees Ghauri and others (2008 SCMR 1118), The State V. Anwar saifullah Khan (PLD 2016 S.C 276), Shafique Ahmed V. The State and others (SBLR 2017 Sindh 340), Muneer Ahmed Shaikh and another V. Director General NAB Karachi and others (2019 SCMR 1738), Muhammad Saeed Mehdi V. The State and 2 others (2002 SCMR 282), Zaigham Ashraf V. The State and others (2016 SCMR 18), Anwar Saifullah Khan V. The State and 3 others (2001 SCMR 1040) and Saeed Ahmed V. The State (1996 SCMR 1132).

20. Learned special prosecutor NAB on the other hand opposed the confirmation of bail on the grounds that the petitioner knowing that the land had already been resumed by the Government of Sindh in the year 1993 despite that he issued two authorization letters in favour of accused

Mashkoor Khan and Sohail Yar Khan dated 05-11-2013 and 17-04-2014 for the execution of illegal lease deeds; that there is a violation of section 24-A of the Colonization of Government Lands (Amended) Act, 2009; that land was not used for the purposes for which it was granted to KMC therefore in view of section 24-A of the Colonization of Government Lands (Amended) Act, 2009 the same was automatically resumed to the Government of Sindh; lastly, he prayed that the bail petition of the petitioner may be dismissed.

21. In C.P No.D-5056 of 2018 role against the petitioner Roshan Ali Shaikh in Para No.11 of the reference is as under:

"11. That the accused No.3 Roshan Ali Shaikh remained posted as Executive District Officer (EDO) City District Government Karachi from 25.02.2010 to 14.02.2011, DCO CDGK from 30.09.2011 to 09.11.2011 and Commissioner Karachi Division 09.11.2011 to 08.10.2012. He misused his Authority in violation of section 24-A, Colonization of Government Lands (Amendment) Act, 2009, by misreporting to Secretary LU by not fully clarifying the title of land which carried already issued leases for 30 and 99 years and encroachment on the said area. In addition to violation of purpose of the leases in connivance with the land mafia. Furthermore, vide letter dated 02.07.2012 the accused No.3 submitted his report and has malafidely recommended to Secretary LU that mutation entry is as per law and there appear no lapse. All the above mentioned facts already reported to him by AEDO Mustafa Jamal Qazi vide letter dated 01.11.2010 and same was ignored by the accused. Based on letter dated 02.07.2012 of accused, the Secretary LU floated summary to the CM Sindh for seeking post facto approval of the letter dated 29.09.2011 (in which No Objection was issued by Secretary LU to DCO for deposit of balance amount and keeping entry in Record of Rights)."

22. Learned counsel for the petitioner contended that the petitioner is innocent and was involved by the NAB with malafide intentions; that the petitioner issued letter dated: 02-07-2012 in the response of letter dated: 20-06-2012; that in the Note Sheet at Sr. No: 9 though the designation of the petitioner is available the signature of Mustafa Jamal Kazi is available who was not made an accused; that the petitioner is not a beneficiary nor he acted actively in the allotments; that the relevant letter was issued in the response of the query made by the NAB itself; that there is a dispute between KMC and the Government of Sindh and the FC Suit No: 245 of 2017 was filed by the KMC and is still pending adjudication; Lastly he

prayed for confirmation of bail of the petitioner. He relied upon the cases of Shoaib Warsi and another V. Federation of Pakistan and others (PLD 2017 Sindh 243) and Waris Mean V. The State and another (PLD 1957 S.C 157).

23. Learned Special Prosecutor NAB contended that petitioner has committed an offence of misuse of authority by deliberately issuing misleading reports to Secretary LU regarding the status of land allotted to KMC in the year 1960; that petitioner being Commissioner forwarded a misleading report dated 20-04-2012 prepared by accused Shoukat Jokhio vide letter dated 31-05-2012 in the response to letter dated 14-02-2012 of accused Ghulam Mustafa Phull; that due to the illegal act of the petitioner balance amount of Rs. 36,07,200/= with interest and penal interest was recovered from KMC and entry No. 05 dated 20-12-2011 was made in the record of rights; that petitioner also wrote a letter dated: 02-07-2012 about the mutation entry in favour of KMC and concealed the fact that the land was already occupied by the allottees and 30 and 99 years leases were already executed by DC office and BOR on the subject land and also encroached despite the same facts already being reported to him by AEDO Mustafa Jamal Qazi vide letter dated: 01-11-2010; that though he was in knowledge about the amendment in the Colonization of Government lands (amendment) Act, 2009, that the land had been resumed to the Government inspite of that he violated the same; lastly he contended that sufficient evidence in the shape of documentary evidence is available with the prosecution against the petitioner and he not entitled for pre-arrest bail.

24. In C.P No.D-6107 of 2018 role against the petitioner Fazal ur Rehman in Para No.10 of the reference is as under:

"10. That the accused No.2 Fazal ur Rehman remained posted as District Coordination Officer, City District Government Karachi (CDGK) from 26.02.2010 to 31.12.2010 and as Administrator CDGK from 31.12.2010 to 18.06.2011. He being a DCO CDGK/Administrator misused his Authority as he without considering the status of land allotted to KMC for wool washing tanneries in 1960, made a report dated 04.11.2010 that the land was resumed in the year 1993 by LU department without issuing notice to them and further assuming the allotment of land for 30 years requested for its renewal. Further, he being an Administrator in the absence of Council on 20.10.2010 passed the Council Resolution No.14 allowing the KMC officials to regularize the land based on the illegal possession."

25. Learned counsel for the petitioner contended that the petitioner wrote a letter dated: 04-11-2010 in compliance of letter dated: 01-11-2010 issued by Mustafa Jamal Kazi; that he has committed no illegality while issuing the letter; that no allegation of personal gain is leveled against the petitioner; that Investigation officer with malafide intention mentioned the name of petitioner in the reference; that there is no allegation of corruption against the petitioner; lastly he prayed for confirmation of bail.

26. Learned Special Prosecutor NAB contended that petitioner while misusing his authority being posted as DCO CDGK/ Administrator prepared a report dated: 04-11-2010 without considering the status of the land allotted to KMC for wool washing tanneries in 1960 and having knowledge that the same land was resumed in the year 1993 by LU department without notice to KMC and further assuming the allotment of land for 30 years requested for its renewal; that in absence of council he being Administrator passed Resolution No:14 on 20-10-2010 in respect of the said land allowing the KMC officials to regularize the land based on the illegal possession, therefore, he is not entitled to the concession of pre-arrest bail.

27. In C.P No.D-6823 of 2018 (Ahmed Ali), C.P. No. D-7160 of 2018 (Farrukh Jamal Siddiqui), role against both the petitioners in Para No.21 of the reference is as under:

"21. That the accused No.13 to 15, being Accounts Officer and respective tenures misused their Authority in connivance with other accused persons by signing on the Challans regarding occupancy value and Lease / Transfer of plots of Wool-Washing Tanneries Area to different people, to facilitate the encroachers in establishing their right on the Govt land before Court of Law and other authorities. These Challans were issued without due process and without the approval of Directors."

28. Learned counsel for the petitioner in C.P.No.D-6823 of 2018 submits that petitioner endorsed the challan and verified the same in accordance with law; that no other evidence is against the petitioner; that he is not beneficiary of the scam, therefore, he is entitled to confirmation of the bail.

29. Learned Special Prosecutor, NAB contends that the petitioner was posted as Accounts Officer in the office of Director (Land) KMC and by misusing his authority he signed the challan regarding occupancy value and lease/transfer of plots to different people which they have paid; that he issued challans without due process only to facilitate the encroachers in establishing their rights on the Government Land, therefore, he is not entitled to grant of bail.

30. Learned counsel for the petitioner in C.P No.D- 7160 of 2018 submits that petitioner endorsed the challans and verified the same in accordance with law; that no other evidence is against the petitioner; that he is not beneficiary of the scam, therefore, he is entitled to confirmation of the bail.

31. Learned Special Prosecutor, NAB contends that the petitioner was posted as Accounts Officer in the office of Director (Land) KMC and by misusing his authority signed the challans regarding occupancy value and

lease/transfer of plots to different people which they paid; that he issued challans without due process only to facilitate the encroachers in establishing their rights on the Government Land, therefore, he is not entitled to the grant of bail.

32. In C.P No.D-7287 of 2018 role against the petitioner Nadeem Qadir Khokhar in Para No.13 of the reference is as under:

“10. That the accused No.5 Nadeem Qadir Khokhar remained posted as Mukhtiarkar in Bin Qasim, from 25.06.2011 to 20.12.2011, during his tenure has malafidely submitted the report dated 09.09.2011 to accused No.4 in violation of Section 24-A Colonization of Government Lands (Amendment) Act, 2009, wherein he has reported that the said land pertains to KMC and there is no hindrance if the entry in respect of the 265 acres of land be kept in Record of Rights in favour of KMC after recovery of balance amount of Malkano. Based on that report the accused No.1 Secretary LU issued NO Object Certificate in favour of KMC to keep entry in Record of Rights and also that to recover the outstanding amount along with penalty. He being the custodian of the Record and area knew that the land was already occupied by 30 years / 99 years leases holders. He through letter dated 18.10.2011 issued the Challan after calculating the amount to the tune of Rs.36,07,200/- by issuing such report showed his malafide intentions and to provide the legal cover to the illegal leases issued by the KMC officials and based on such process of keeping an entry further illegal leases were issued by the KMC officials.”

33. Learned counsel for the petitioner contended that the petitioner was Mukhtiarkar and he prepared a report dated 09.09.2011 under directions of the Commissioner and being a sub-ordinate he was bound to oblige the orders of his superior; that the section 24-A was inserted on 09.06.2009 and the land was allotted to KMC in the year 1960, therefore, section 24-A is not applicable and only section 24 was applicable at that time; that no allegations of personal gain are alleged against the petitioners lastly subordinate petitioner committed no offence and prayed for confirmation of bail. He has relied upon the case reported in PLD 2012 Supreme Court 217.

34. Learned Special Prosecutor, NAB contended that he prepared a report dated 09.09.2011 to D.O (Revenue) wherein he has reported that said land pertains to KMC and there is no hindrance if the entry in respect

of the 265 acres of land is kept in the record of rights in favour of KMC after the recovery of the balance amount of Malkano; that on basis of his report Secretary LU issued a no-objection certificate in favour of KMC for keeping entry in the record of rights; that through a letter dated 18.10.2011 he issued a challan after calculating the amount to the tune of Rs.36,07,200/- wherein being the custodian of record aware of the facts that the land was already occupied by 30 years and 99 years leaseholders and ignored section 24-A of the Colonization of the Government Lands (Amendment Act, 2009), hence he is not entitled to grant of bail.

35. In C.P No.D-8155 of 2019 role against the petitioner Sohail Yar Khan in Para No.20 of the reference is as under:

"20. That the accused No.12 Sohail Yar Khan being Deputy Director Land KMC misused his Authority by executing lease deeds of 7 x plots admeasuring 28,244 Sq Yds 75.86 acres) out of Wool-Washing Tanneries land to private persons for industrial purposes without allotment order purporting that they were lessee by virtue of auction held in the year 1971 to 1975. He also issued 37x illegal challans (so far detected) regarding occupancy value and Lease / Transfer of 37 plots on Wool-Washing Tanneries Area to different people to facilitate the encroachers in establishing their right on the Govt land. Total area of 37 x Plots becomes 30.5 Acres (4000 sq Yards each Plot). As such accused No.12 in connivance with other accused persons has caused loss to national exchequer amounting to Rs.702 million (Value of market price of the land 36.3 acres as FBR rate Rs.4000 per Sq Yard)."

36. Learned counsel for the petitioner submitted that the mutation of the land had already been made in favour of KMC and has not been canceled till yet; that the petitioner did not issue challan or sign any of the challans; that the leases executed by petitioner was a result of authorization issued by Muhammad Waseem in his favour; that petitioner has acted in accordance with the law and did not commit any offence, therefore, he is entitled to confirmation of the bail.

37. Learned Special Prosecutor, NAB contended that the petitioner was posted as Deputy Director (Land), KMC and by misusing his authority has executed Lease Deed of seven (07) plots and also issued thirty-seven (37) illegal challans which were issued of facilitating the encroachers in establishing their right on the Government Land, therefore, he in connivance with other accused caused loss to the national exchequer hence not entitled for grant of pre-arrest bail.

38. We have heard the counsel for the parties, considered the record as well as the relevant law including that cited at the bar.

39. The record reflects that the land was allotted to the KMC vide letter dated: 31-12-1960 and in the letter two conditions were mentioned for its utilization i-e (a) shifting of wool washing tanneries from the Layari quarters Karachi and (b) on the payment of Malkhano. The land was not properly leased out nor the Malkhano was paid and the said land was resumed by the Government of Sindh in 1993 therefore the KMC was not entitled to lease out the same. We have carefully examined the letter dated: 04-11-2010 issued by accused Fazlur Rahman which speaks about the resumption of the land in paragraph 2 of the letter which reads as under:

“To our surprise, we found out that the same land has been resumed in the year 1993 by the Land Utilization Department Government of Sindh without notice or any correspondence to this effect. This is against the principles of natural justice and especially in case of public departments which are undertaking public welfare projects.”

40. We also carefully examined section 24-A of the Colonization of Government Lands (Amended), Act, 2009, and are of the view that the same is fully attracted in the present case since the amount of Malkhana has not been paid by the KMC and the land was not utilized according to the condition mentioned in the allotment letter dated: 31-12-1960, therefore, the land was automatically resumed in view of section 24-A of the Colonization of Government Lands (Amended) Act, 2009. The act of the petitioners seeking their pre-arrest bail by taking efforts for de-facto approval of the land was a misuse of their authority and was based on malafides resulted in huge loss to the National exchequer.

41. The above petitioners are seeking pre-arrest bail, therefore, before

considering the cases of the petitioners for such a relief, we may observe that the conditions for grant of pre-arrest and post-arrest bail are quite different as set out in the case of Rana Mohammed Arshad v. Muhammad Rafique (PLD 2009 SC 427). The said conditions are as under:

- a. grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- b. pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- c. bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified in subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- d. not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;
- e. such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- f. in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.

At para 15 of the aforesaid judgment it was also held as under:

"It had also been repeatedly held by the Superior Courts (reference be made to Zia-ul-Hassan's case supra) that no Court would have any power to grant pre-arrest bail unless all the conditions specified for allowing bail before arrest especially the condition regarding Mala fides were proved.

42. We found no *mala fide* on the part of NAB officials. It is settled by now that pre-arrest bail is extraordinary relief and is only available in cases where there has been mala fide on the part of the complainant or the investigating agency.

43. The cases of white-collar crime are complicated and the whole transaction and each component of the scam needs to be viewed completely and not separately because in most cases, the offence could not be committed without the active involvement of others in the chain of events which lead to the commission of the offence.

44. Lastly, we may observe that while deciding bail petitions an elaborate sifting of evidence cannot be made but the only tentative assessment is required, and a cursory glance of the record show that all the petitioners seeking pre-arrest bail in connivance with each other have caused huge loss to the Government exchequer, therefore, the pre-arrest bail of petitioners Sabah-ul-Islam, Muhammad Waseem, Roshan Ali Shaikh, Fazal-ur-Rehman, Ahmed Ali, Farrukh Jamal Siddiqui, Nadeem Qadir Khokhar and Sohail Yar Khan is recalled with imidiate effect, their petitions are dismissed.

45. The observations made hereinabove are tentative in nature and shall not prejudice the right of either party at trial.

JUDGE

JUDGE