

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-864 of 2020

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

Matloob Ahmed Khan ----- Petitioner

VERSUS

Federation of Pakistan through Ministry
of Interior & others ----- Respondents

Date of hearing & decision: 10.09.2020

Mr. Mohammad Yousuf Laghari, Advocate for Petitioner
Mr. Muhammad Humayoon Khan, Deputy Attorney General
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh
Mr. Jangu Khan, Special Prosecutor, NAB

ORDER

ADNAN-UL-KARIM MEMON, J: - This Court vide order dated 14.07.2015 passed in C.P No.D-1500 of 2015 admitted the Petitioner to ad-interim pre-arrest bail in NAB Reference No. 02 of 2015. However, the said ad-interim pre-arrest bail was not confirmed on merits by this Court vide common order dated 10.04.2019 with the following observation:-

“We have observed that petitioner Matloob Ahmed Khan has not been appearing in the Court for quite some time on the excuse of his illness and remains present in the car available in the parking area of this Court and on his behalf his son namely Saud Ahmed Khan appears. We have kept this fact in mind while deciding these petitions but are unable to consider his case for bail on this ground, for neither any material has been produced in Court suggesting nature of his disease and the fact that his treatment is not possible save in the given circumstances, nor did his counsel cite his ailment as one of the grounds in arguments for seeking confirmation of his bail on.”

2. The petitioner being aggrieved by and dissatisfied with the above order approached Hon’ble Supreme Court by filing Civil Petition No.2152 of 2019 which was dismissed vide order dated 10.07.2019 with the following observation:-

“We have been told that Matloob Ahmed petitioner has failed to appear and he is not in attendance which is a pre-condition for prosecuting this petition seeking pre-arrest bail. In view of absence of the petitioner this petition is dismissed and leave to appeal is refused.”

It appears from the record that after dismissal of his pre-arrest bail before Hon'ble Supreme Court, the petitioner did not surrender and again approached this Court by filing another petition bearing C.P. No.D-826 of 2020 which was heard at some length and was finally dismissed as not pressed vide order dated 11.08.2020. That, after dismissal of the aforesaid Petition, the Petitioner was arrested in the aforesaid NAB reference.

3. Brief facts of the case are that NAB Authorities have filed NAB Reference No. 02 of 2015, before the Accountability Court at Hyderabad. Investigation Report reveals that the petitioner while being Chairman, Hyderabad Railways Employees Cooperative Housing Society from 1998 to 2001 subleased 35 plots to different beneficiaries. Whereas, according to Town Municipal Administration, Latifabad and Pakistan Railways the above said plots were shown in a fake / tampered revised layout plan of 1998 wherein, 51 plots had been inserted wrongly / illegally in the actual revised layout plan bearing No. HDA/P&DC/NP/PHS-021/2499 dated 15.02.1998.

4. Upon notice to the respondents, para-wise comments were filed on behalf of Respondent-NAB.

5. Mr. Mohammad Yousuf Laghari, learned counsel for the petitioner has mainly contended that the petitioner is paralyzed, confined to bed and is unable to walk and perform ordinary pursuits of life; that due to serious illness learned trial Court has exempted his personal appearance; that learned trial Court has examined the main witnesses but none has deposed against the petitioner; that the very allegation pertaining to the land of Town Municipal Administration (TMA) has no legal substance nor any documentary evidence is available on record which could distinguish between the properties of railway as well as TMA. Mere showing any property in the name of some entity does not mean anything unless substantiated by certain record which is entirely lacking in this case; that learned trial court and this Court while taking cognizance of the offence have ignored the factum that in the earlier round of litigation, civil suit filed by Railway Society for declaration over the above said plot was dismissed by learned 2nd Senior Civil Judge, Hyderabad and also the Appeal filed by TMA was dismissed by the Appellate Court; that there is difference between civil and criminal courts' jurisdiction but, the same have been ignored while declining bail to the petitioner; that the question regarding ownership of property is not the jurisdiction of criminal

court and in cases of property this Court has observed that criminal court has no jurisdiction to determine the title which is sole domain of civil court. Likewise the NAB Authorities have not collected any material from the land record office regarding right of way of the Railway land, it would be difficult to infer as to whether the land pointed out is actually owned by TMA or Railway Department; The case of claim over land by government (Provincial or Federal) or private entity is under the jurisdiction of civil court; that the question being between two governments that is, TMA under Sindh Government and the Railways under Federation Government is a constitutional point of jurisdiction which could be first raised before Honorable Supreme Court of Pakistan: then in view thereof further steps could be taken while following due process of law. Under the peculiar circumstances, predetermination by NAB is contrary to norms of justice, wisdom, constitutional guarantees as well as the ordinary prudence; that the health condition of Petitioner can be ascertained from the diaries of this court; the case diary dated 26.3.2019 passed in CP No. D- 1500 of 2015 and others shows that on the direction of this court the 'Farash' of this Court went to the car parking, saw the Petitioner, and reported his ailing condition to the Court, which on due verification by the prosecutor was confirmed in orders dated 26.03.2019 and 28.03.2019 respectively; that likewise Special Judge, Anti-Corruption has exempted the appearance of petitioner which duly supports the plea raised about serious ailment as well as documentary evidence attached hereto; that the request of National Accountability Bureau for transfer of the case from Special Judge, Anti-Corruption, Hyderabad to NAB Court was declined by Special Judge, Anti-Corruption duly endorsed by this Court vide Order dated 1.3.2018; that NAB Reference based on the same facts against the Petitioner, is liable to be quashed being barred under sections 13 & 14 of C.P.C. In addition to above, learned Counsel for the petitioner has contended that the proceedings before Accountability Court against the petitioner were violative of Article 13 of the Constitution, which restrains the State from punishing and / or prosecuting a person twice for the same offence which has been grossly ignored including NAB Authorities who have submitted reference after failure to get the matter transferred from Special Court to NAB Court; that in identical cases, some petitioners have been granted bail; therefore, under the rule of consistency petitioner is also entitled to the concession of bail; that there is no iota of evidence against the Petitioner to show his involvement in the commission of alleged crime; that witnesses examined in the trial court have not supported the case of Prosecution; that no direct evidence is available against the Petitioner; that the prosecution has failed to point out any mensrea against the Petitioner; that the investigation has already been completed and reference has been

filed in Court; that the trial court has already examined the material witnesses but, the case is still in progress; that the case entirely depends upon documentary evidence which is in possession of NAB and reference has already been submitted. He lastly submitted that the officials who made the purported allotment were never made accused in the reference. In support of contentions, learned counsel has relied upon the cases of Darayus Cyrus Minwala versus NAB and others (2010 MLD 1931), Muhammad Tahir versus The State (2010 YLR 224 [Karachi]), The State versus Adam Khan Jokhio (2010 MLD 1718), Saeed Ahmed versus The State (1996 SCMR 1132) and Wahid Bux Baloch versus The State (2014 SCMR 985).

6. Mr. Jangu Khan, learned Special Prosecutor, NAB has opposed the bail application and supported the earlier order passed by this Court and Hon'ble Supreme Court in the aforesaid proceedings; that the Prosecution has collected sufficient incriminating material against the Petitioner. He next contended that there is no malafide on the part of NAB to falsely implicate the Petitioner in the present scam; Learned Prosecutor relied upon the Investigation Report and memo of Reference filed under Section 18-G r/w Section 26 of the National Accountability Ordinance, 1999. Therefore, the Petitioner is not entitled to the concession of post arrest bail.

7. Mr. Muhammad Humayoon Khan, Deputy Attorney General has adopted the arguments of learned Special Prosecutor NAB.

8. We have heard learned counsel for the Petitioner and learned Special Prosecutor, NAB as well as perused the entire material brought on record and the case law cited at bar.

9. Investigation Report reveals that during the tenure of service of the petitioner as chairman of the society, original revised layout plan of the society dated 15.12.1998 was tampered with and 51 plots were inserted by including an area of land which belonged to TMA, Latifabad and Pakistan Railway. Then, in order to achieve the main object behind said tampering, the Petitioner sold 35 plots to different people by executing sub leases. Copies of such agreements with Petitioner's signature are available in the Investigation Report. Therefore, prima facie Petitioner's involvement in the alleged offence is apparent in the record. Investigation Report further reveals that Petitioner in connivance with other accused / officers of TMA and Hyderabad Development Authority misused his authority and caused loss of Rs. 1.48 Billion (assessed as per current Market Value i.e. Rs.1.480,800,000/- of 56 Plots) by illegally misappropriating 2-38 acres land

of Taluka Municipal Administration, Latifabad land and 1-04 Acres of Pakistan Railways Land. It appears from the record that Petitioner's earlier Constitutional Petition i.e. CP No.D-1500 of 2015 was dismissed on merits vide Order dated 10.04.2019. In the said Order, we have observed that all aspects of the case were considered by this Court. The Petitioner approached the Honorable Supreme Court but, no relief was granted. The allegations leveled against the Petitioner as discussed supra are very serious in nature with adversely effects the public at large. These allegations are supported by documentary evidence which prima facie connect the Petitioner with the commission of alleged offence and there is nothing on record which could suggest or indicate his false implication in the present case.

10. From tentative assessment of material available on record sufficient incriminating material and reasonable grounds exist to believe that the Petitioner is connected with the charges leveled against him in NAB Reference. Hence, the Petitioner does not deserve concession of post-arrest bail at this stage.

11. Since the trial Court has not concluded the trial after framing of charge, we are of the considered view, that the trial Court be given one month's more time to examine the remaining witnesses so that the petitioner be able to move fresh bail application on fresh ground if any available to him under the law.

12. As regards the case law cited by learned counsel for the Petitioner, in support of his submissions, the facts and circumstances of the said case are different from the case in hand.

13. At this stage learned counsel for the Petitioner has asked for bail on medical ground and argued that the Petitioner's health condition is alarmingly at risk at the age of 72 years, physically unfit to move / paralysis; that as a sick and infirm person he is entitled to the concession of medical treatment which the law provides to all and sundry; that Petitioner has remained behind the bars for some period; his continuous incarceration coupled with weak health conditions requires immediate attention of this court. In support of his contention, learned counsel relied upon the statement filed today that, Medical Board has already been constituted vide letter dated 24.-08-2020 by the order of competent authority. Learned counsel prayed for calling such report from Medical Superintendent of Liaquat University Hospital, Hyderabad / Jamshoro.

14. Let the report be called from Medical Superintendent, Liaquat University Hospital, Hyderabad / Jamshoro, who is directed to determine as

to whether the life of petitioner is in danger, if he is confined in jail or otherwise? Such report be filed within one week from the date of receipt of this order. Meanwhile, the Petitioner shall be provided all possible Medical treatment.

15. With the above observations, this petition is dismissed on merits. However, the Petitioner may file fresh Bail Application on medical grounds, if any, available to him.

16. The above findings are tentative in nature which shall not prejudice the case of either party at trial.

JUDGE

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