

IN THE HIGH COURT OF SINDH, KARACHI.

Before:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi

Constitutional Petition No.D-1290 of 2020

Nazir Amin Maqbool

Vs.

The Chairman, National Accountability Bureau & others

Constitutional Petition No.D-2092 of 2020

Irshadullah Khaskheli

Vs.

The Federation of Pakistan & others

Constitutional Petition No.D-2431 of 2020

Kaleemullah Khaskheli

Vs.

Federation of Pakistan & others

Date of Hearings : 16.11.2020

Date of order : 16.11.2020

Mr. Amer Raza Naqvi, Advocate for the petitioners in C.Ps Nos. D-2431 & D-2092 of 2020 along with M/s Syed Shujja Abbas & Farooq Khan Advocates.

Syed Amjad Ali Shah, Advocate for the petitioner in C.P No. D-2431/2020.

Mr. Shahbaz Sahoootra, Special Prosecutor NAB along with I.O Sarwar Ahmed.

ORDER

Muhammad Iqbal Kalhoro, J:- By means of listed petitions, petitioners are seeking relief of post-arrest bail in Reference No.01/2019, pending against them before relevant Accountability Court at Karachi.

2. Briefly stated the accused in connivance with each other arranged a fake and fraudulent Entry No.11 in respect of government land admeasuring 29 acres in Deh Songal, Tappo Gujro in favour of Raufullah Lodhi. Later on, after his death the land was mutated in favour of his legal heirs and on the said land a housing scheme with the name & style as "Al-Raheem Villas" was launched, whereby, allegedly 275 people were cheated into paying the accused an amount of Rs.179 million. When the scam surfaced, name of housing society was changed as Al-Raheem Raza City and was claimed to be an extension of Abdullah Shah Ghazi Goth, Block F-II. Then the accused in connivance with each other went on

a spree of selling out the said land in shape of plots to different people and earned an amount of Rs.578 million. In the process, the official accused misused official authority, issued Sanads illegally and unlawfully, prepared Dasti Soorat-e-Haal/Revenue Sketch, by which location of land from NA Class 1 & 65 shown in Entry No.11 was changed to exist in Sector 31 and 32, Scheme-3, Karachi causing a loss Rs.2.5 billion to national exchequer.

3. Precise accusation against petitioner Nazir Amin Maqbool is set out in para No.5 of the reference, which reflects that he in the capacity of Mukhtiarkar concerned kept the subject fake entry and changed location of the land from NC-1 and NC-65 to Sector 31 & 32 of Scheme-33, Karachi, and thus aided and abated co-accused to usurp the government land.

4. Allegations against petitioners Irshadullah Khaskheli and Kaleemullah Khaskheli are set out in para No.7 of the reference that they in connivance with accused Nos.2 to 10 sold the said government land in the name of housing scheme under the garb of a fake village Abdullah Shah Gazi Goth and unlawfully earned millions of rupees, which is evident from their bank accounts turnover of Rs.578 million.

5. Learned defence counsel have stated that the petitioners had earlier filed petitions for bail along with other co-accused Javed Iqbal shown as main accused in the reference, which were dismissed on 21.10.2019. However, meanwhile petitioner Javed Iqbal filed a habeas corpus C.P. No.8520/2019 before this court for his release in the subject reference on the ground that no warrants of arrest were issued against him by the Chairman, NAB in the investigation and he was confined in jail illegally; that NAB filed a reply to it confirming such fact, hence the petition was allowed vide order dated 23.01.2020 and consequently he was released on furnishing a P.R. bond before the trial court. Learned defence counsel have urged that case of the petitioners is on same footings in that no warrants of arrest were issued against them before their arrest and even otherwise on merits the rule of consistency is applicable to their case as co-accused Javed Iqbal against whom the main allegations have been leveled has been released on bail.

6. Learned Special Prosecutor, NAB and I.O. have defended their case by opposing relief to the petitioners.

7. Heard and perused. In earlier round, the attempt of the petitioners to seek bail was frustrated vide order dated 21.10.2019 whereby plea of

co-accused Javed Iqbal for bail was also declined. He is cited as accused No.1 in the reference and is alleged to be source behind arranging the fake and fabricated entries in respect of the subject land in favour of deceased accused Rafiullah Lodhi, and starting an illegal housing project and cheating 275 persons and receiving an amount of Rs.179 million. However, in terms of order dated 23.01.2020 on his petition, he has been released and that order plus his release on furnishing a bond has not been questioned by NAB before the Honourable Supreme Court or before any other relevant forum to persuade us to take a different view than of his case while deciding the case of the petitioners. He is alleged to be main beneficiary and the master mind behind the alleged fraud and is enjoying fruit of liberty without any response from NAB against the order granting him such concession. Petitioner Nazir Amin Maqbool is stated to be 74 years old and was committed to jail on 26.10.2017 in Reference No.55/2016 and Reference No.19/2017. In the former, he has been granted bail vide an order dated 31.05.2018 and in the latter he has been acquitted by this court vide a judgment dated 15.01.2020. In the present case he was shown arrested on filing of the reference on 26.01.2019.

8. Role of two brothers Irshadullah Khaskheli and Kaleemullah Khaskheli comes at a later stage when complainant Amir Ali Lalani transposed later on as an accused entered into an agreement of partnership dated 03.05.2012 with them for, among others, development and sale of the land and are not concerned in any way to the main allegation of manipulating entries in respect of the land or launching the first housing society thereon. The turnover of Rs.578 million in their accounts seems to follow in execution of said partnership agreement, which has not been disputed. Therefore, the allegations against them of being in collusion with the main accused require further enquiry. Besides, the rule of consistency on account of release of co-accused Javed Iqbal is attracted to the case of the petitioners. Further, 50 witnesses are cited in the reference and so far not a single witness has been examined. Keeping in view such extrapolation, it is not hard to calculate the time, the trial is likely to take to conclude. Needless to say that it is not scheme of law to keep an accused in jail for an indefinite period, for besides other factors, the prosecution is not likely to gain anything from such an approach.

9. In the circumstances, we allow these petitions and grant bail to the petitioners subject to their furnishing two solvent sureties in the sum of Rs.1 million (Rupees one million only) each and P.R bond in the like amount to the satisfaction of Nazir of this court. In addition, their names

shall be placed on Exit Control List (ECL) till pendency of the reference against them and they shall also deposit their original passports, if issued. Further, they are directed to cooperate in the proceedings of trial and the trial court, if finds the petitioners causing any delay in the trial or attempting to tamper with the prosecution evidence, shall file a reference before this court for recalling the concession granted to them by means of this order.

10. Petitions stand disposed of in the above terms. The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE

Rafiq/P.A.