

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

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Fahim Ahmed Siddiqui.

C.P No.D-1684 of 2012

Matloob Ahmed Khan and others ----- Petitioners.
Versus
Chairman NAB and others ----- Respondents.

C.P No.D-944 of 2015

Abdul Sattar ----- Petitioner.
Versus
The Chairman NAB and others ----- Respondents.

C.P No.D-1500 of 2015

Matloob Ahmed ----- Petitioner.
Versus
The State (NAB) and others ----- Respondents.

C.P No.D-3620 of 2016

Muhammad Iqbal Memon ----- Petitioner.
Versus
National Accountability Bureau Sindh ----- Respondents.

C.P No.D-361 of 2017

Shahid Pervaiz Memon ----- Petitioner.
Versus
National Accountability Bureau
and another ----- Respondents.

C.P No.D-543 of 2017

Naveed Zarar Khan ----- Petitioner.
Versus
National Accountability Bureau
and others ----- Respondents.

Date of hearings: 26.03.2019 & .03.04.2019 and 10.04.2019.

Date of short order: 10.04.2019.

Date of reasons of short order: 11.04.2019.

Petitioners: Through:Mr. Ishrat Ali Lohar, Advocate for petitioners in C.P No.D-1684 of 2012 and C.P No.D-944 of 2015.

Mr. Riazat Ali Sahar, Advocate for petitioners in C.P No.D-3620 of 2016 and C.P No.D-361 of 2017.

Mr. Ghulam Nabi Jarwar, Advocate for petitioner in C.P No.D-543 of 2017.

Mr. Shahnawaz Brohi, Advocate for petitioner in C.P No.D-1500 of 2015.

NAB: Through Mr. Jangu Khan, Special Prosecutor NAB along-with Mir Osaf Ahmed Talpur (Investigating Officer).

ORDER

MUHAMMAD IQBAL KALHORU, J:-This order shall dispose of captioned petitions filed by petitioners for pre-arrest arrest bail in Reference No.02/2015 pending against them before learned Accountability Court Hyderabad, Sindh.

2. As per brief facts, NAB initiated an inquiry on complaints moved by Fareedullah Khan and Raees Ahmed Khan Yousuf Zai against accused Matloob Ahmed Khan Ex-Chairman Hyderabad Railway Employees Cooperative Housing Society (HRECHS) and others on the allegations of misuse of authority, fraud and illegal allotment/sale/sub-lease of plots. Allegedly in the year 1998 HDA approved a revised layout plan of HRECHS at the instance of its management. Ex-Chairman Matloob Ahmed tampered with said revised layout plan and inserted 51 plots in Block-D carved out of land admeasuring 04-02 acres which was not part of HRECHS and was owned by Taluka Municipal Administration Hyderabad. He then proceeded to sublease 35 plots of 51 plots on the basis of forged copy of revised layout plan. This inquiry was subsequently converted into investigation and after due investigation the Reference No.02/2015 has been filed against the petitioners. It shows that originally, among others, vide sheet No.4, 6 acres and sheet No.5, 4.051 acres, total 10.051 acres in deh Giddu Bandar were allotted to HRECHS. But subsequently vide entry No.116 which was found fake in the investigation, the area was increased to 19.34 acres and further through revised layout plans Block-D having an area of 4.02 acres belonging to TMA Latifabad Hyderabad and Pakistan Railway was included and sold out in the shape of plots to the people who were not even members of HRECHS. The role of each accused has been described in detail in the investigation report which is reproduced as under:-

“Petitioner Matloob Ahmed Khan. He remained Chairman of HRECHS from 1998 to 2001 and had sub-leased 35 plots to different beneficiaries on the portion of land which was not owned by HRECHS but pertains to TMA, Latifabad and Pakistan Railway. Those plots were shown in a fake/tampered revised Layout Plan of 1998 wherein 51 plots had been inserted by way of tampering the actual Revised Layout Plan No.HDA / P&DC / MP / PHS-021 / 2499 dated 15.02.1998.”

“Petitioner Naveed Zarar Khan Ex-MD Sindh Cooperative Housing Authority. He issued permission to Asif Nawaz Khan Ex-Administrator of HRECHS to submit revised Layout plan of 2010 for approval from concerned authority and then allowed permission to Asif Nawab Khan to execute powers and issue sub-leases to members of the Society to allot plots and issue sub-leases to the beneficiaries of fraudulent revised layout plan of HRECHS.”

“Petitioner Abdul Sattar Laghari.The High Court of Sindh passed an order dated 08.09.2010 in C.P No.D-952/2010 filed by the members of HRECHS removing Asif Nawab Khan from Administrator-ship of HRECHS and appointing Abdul Sattar Laghari as a new Administrator. He remained administrator from 08.09.2010 to April 2012. The court directed him to prepare report and cancel allotment of plots unlawfully made by previous management of HRECHS. He accordingly submitted such report on 14.2.2012 regarding misappropriation of petitioner

Matloob Ahmed Khan, Ex-Chairman. He was appointed without any authorization of allotments / transfer/mutation of plots of the society but during his tenure he executed 6 sub-leases in violation of above order of the High Court.”

“**Petitioner Muhammad Iqbal Memon, Director, HDA.** He wrote a note on tampered Revised Layout Plan on 15.12.1998, which was tampered by petitioner Matloob Ahmed Khan, and he proved that the said layout plan is forged and fictitious. In this connection HDA authorities also issued a letter dated 14.09.2009 that revised layout plan is forged and fictitious vide letter No. HDA/P&DC/MP/PHS-204/2291 dated 26.09.2014, once again confirmed that he had cancelled the tampered layout plan but surprisingly he not only approved the revised layout plan of 2010 which included excess land as in the tampered layout plan of 1998 but he also restored the layout plan of 2010 just after 8 days of its suspension by the Additional Director vide No.HDA/P&DC/MP/PHS/2231/2011 dated 04.10.2011. He being Director P&DC HDA also followed the role of co-accused Ghulam Muhammad KaimKhani.”

“**Petitioner Shahid Pervaiz Memon, Deputy Director, Master Plan P&DC, HDA.** He initiated a note sheet on the basis of application of Asif Nawab Administrator HRECHS for approval of revised layout plan. This included the excess land known as “D” Sheet and consisted of 56 plots. The initiator of note sheet is supposed to check the site, boundaries, area and ownership of the land of the layout plan but he failed to shoulder his responsibilities and approved revised layout plan of the society without verifying the title of ownership of land claimed by the society in the 2nd revised layout plan of 2010 approved by his seniors vide No.HDA/P&DC/MP/PHS-1281/2010 dated 26.07.2010.

3. Learned Counsel for the petitioners have mainly argued that the petitioners are innocent and have been falsely implicated; that no specific role has been attributed to any one of them; that NAB has failed to point out any monetary gain acquired by the petitioners from the alleged offence; that co-accused Ghulam Muhammad Qaimkhani, who has been assigned role of approving the alleged revised layout plan has been granted bail by this court in C.P No.D-3758/2015 vide order dated 04.08.2015; that the case of the petitioners is on better footings as they are alleged to only contribute their respective notes without granting any approval. In regard to petitioner Abdul Sattar Laghari, who was appointed Administrator of the society by this court vide order dated 08.09.2010 passed in C.P No.D-952/2010, it was submitted that he had executed six leases in compliance of judgment and decree passed by the civil court in civil suits, and as such, he has not committed any illegality; that at the most his case would come within ambit of provisions relating to contempt of court if it is established that he violated order of this court appointing him Administrator for a particular task. Further it was contended that the beneficiaries of the plots have already entered into plea bargain and have paid the entire amount to NAB, and therefore no loss has occurred to the national exchequer in the case; that although the allegations are that alleged 51 or 56 plots were carved out of the area belonging to TMA Hyderabad and Pakistan Railway but both have never come forward to make a claim over the said land. Learned defense counsel relied upon the case law reported in 1986 SCMR 1380 in support of their arguments as well as order passed in C.P No.D-3758 of 2015.

4. On the other hand, learned Special Prosecutor NAB assisted by I.O. of the case has opposed grant of bail to the petitioners. He has referred to various documents available in the investigation report to highlight role of each accused.

5. We have considered submissions of the parties and perused the material available on record and taken guidance from the case law cited at bar. Before proceeding to consider entitlement of the petitioners for pre arrest bail, we may mention C.P No.D-1684 of 2012 filed by petitioner Matloob Ahmed Khan seeking a relief against the inquiry/investigation, which preceded filing of the subject reference against him and others, and further directions for NAB not to take any adverse action against him on the basis of such inquiry/investigation. The inquiry/investigation has already ended at filing of subject reference and for this obvious reason this petition has become infructuous and is accordingly disposed of.

6. Returning to remaining petitions filed by the petitioners for pre arrest bail, we may observe that during the course of arguments, learned special prosecutor NAB has referred to relevant material available in the investigation report which seems sufficient to *prima facie* connect petitioners with the alleged offence. Against petitioner Matloob Ahmed Khan documentary evidence is available which shows that during his tenure as Chairman HRECHS, original revised layout plan of HRECHS dated 15.12.1998 was tampered with and 51 plots were inserted by including an area which belonged to TMA, Latifabad and Pakistan Railway. And then in order to achieve real object behind such tampering, he sold out 35 plots of 51 to different peoples by executing sub-leases. Copies of such agreements with his signature are available in the investigation report, which *prima facie* show his complicity in the alleged offence.

7. The investigation further shows that (late) Asif Nawaz Khan, when he was administrator HRECHS, got revised layout plan of 1998 verified. It was reported to be fake by HDA through a letter dated 14.09.2009 and disowned by M/s Rehman Architects vide a letter dated 11.09.2009. He therefore lodged an FIR against responsible. Yet he wrote a letter to MD Sindh Cooperative Housing Authority seeking a permission of allotment in Block-D, which was not part of the society. Said official conceded and further directed him to submit yet another revised layout plan, whereby 56 plots were carved out in Block-D for approval, which was ultimately approved by HDA. He then on the basis of such approval proceeded to execute 32 sub-leases under the nose of relevant officials including those of HDA without any murmur by them in favour of peoples who had no concern with Pakistan Railway. Role of petitioner Naveed Zarar Khan, who was MD Sindh Cooperative Housing Authority at that time, is relevant to such accusations. Although revised layout plan of 1998 had already been declared fake and Block-D not part of the society, yet he granted permission to Asif Nawaz Khan (Administrator of HRECHS) to get another revised layout plan with said area approved vide a letter dated 05.07.2010 and after such approval further vide a letter dated 30.08.2010 to the Inspector General of Registration Sindh, Hyderabad sought his

direction to Sub Registrar concerned to register subleases of the allottees. Resultantly subleases in respect of the area which did not belong to the society were executed by (late) Asif Nawaz Khan infavour of different people. On both the occasions, as is reflected from a letter dated 2.04.2015 by the department, he did not seek any approval or conveyed such information to Secretary/Chairman, Sindh Cooperative Department Government of Sindh, who is competent authority to grant such permissions. Therefore, his connivance in the alleged offense cannot be ruled out either.

8. As to the case of petitioner Abdul Sattar Laghari, record reflects that he was appointed by this Court vide order dated 08.09.2010 passed in C.P No.D-952/2010 filed by members of HRECHS for removal of Asif Nawab khan from Administrator-ship of the society.He was given a mandate to hold an inquiry and cancel allotment of plots unlawfully granted by previous management and was specifically barred from making a new allotment, and or allow any transfer/mutation of the plots unless society's affairs are handed over to a new elected body. He remained on that position from 08.09.2010 to April 2012. But he acted contrary to his mandate and executed 6 sub-leases in clear violation of order of the High Court. His counsel tried to justify his action on the ground that in respect of those 6 plots civil suits filed by the respective parties against the society were decreed and he acted in compliance of such decrees. However, he could not deny that he had acted so just on the basis of judgments and decrees without any execution applications filed and directions issued in this connection. Further he was not able to offer any explanation either as to why he did not approach this court and inform relevant facts to seek permission before executing such sub-leases and or why he despite being administrator of society and aware of all relevant facts pertaining to fake allotments of the plots in the area not part of the society did not order for filingof appeals against such judgments and decrees. Therefore, his collusion in the whole affair cannot be ruled out.

9. In regard to case of petitioner Muhammad Iqbal Memon, Director, HDA, record reveals that PW Muhammad Bashir Addl. Director P & DC HDA made a note sheet dated 24.09.211 suspecting revised layout plan to be fake and fraudulent and on an excess area made a recommendation for its suspension till its verification, but petitioner Muhammad Iqbal Memon dissented it. However when it was placed before co-accused Ghulam Muhammad Qaim Khanin, the then DG HDA, he showed his surpriseand contributed his note stating that **“How did it happened? It should be 19 acres & 38 Guntas only”**. ThereafterPW Muhammad Bashir vide a letter dated 26.09.2011 suspended the layout plan till its verification by Executive District Officer (Revenue) Hyderabad. But petitioner Muhammad Iqbal Memon, who already knew relevant facts through a note sheet of PW Muhammad Bashirdated 24.09.211 highlighting all such facts,restored the revised layout plan vide a letter dated 04.10.2011, which led to disposing of precious government land illegally by the then Chairman of the society. NAB in support of its case against this petitioner besides filing relevant record has

recorded 161 Cr.P.C statements of PWs namely Muhammad Bashir Awan, Massod Ahmed Jumani and others who have supported allegations against him. His collusion therefore in the alleged offense cannot be ruled out.

10. As for case of Petitioner Shahid Pervaiz Memon, who was Deputy Director, Master Plan P&DC, HDA is, record reveals that he prepared a detailed note sheet dated 23.07.2010 for approval of revised layout plan with "D" Sheet having 56 plots, which purportedly he did by citing a decision made by the Governing Body, HDA in a meeting held on 20.2.2010 in this regard. And it is essentially his said note that paved the way for approval of revised layout plan and disposal of the precious government land fraudulently. Neither the minutes of such meeting could be found nor could he produce the same in the investigation. He being the initiator of said note was required to verify site, boundaries, area and ownership of the land shown in the layout plan but he failed to do so. Therefore, his complicity in the alleged offense cannot be ruled out.

11. 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.

12. As far as applicability of rule of consistency on the ground that co-accused Ghulam Muhammad Kaim khani, Director P&DC HDA has been granted post arrest bail by this court is concerned, we may observe that his case appears to be different from the petitioners in that when recommendation of Addl. Director P & DC HDA for sending layout plan for verification suspecting it to be fake and fraudulent and dissenting note of petitioner Muhammad Iqbal Memon, Director, HDA was placed before him, he contributed a note of his own to the effect that **"How did it happened? It should be 19 acres & 38 Guntas only"**. In consideration thereof which *prima facie* did not posit his complicity with remaining accused, his case was found to be of further enquiry and he was granted bail, whereas the role of petitioners as discussed above is different. But more than that the said co-accused was granted post arrest bail which is governed by different principles than the ones regulating pre arrest bail. There is nothing on record to show petitioners have been implicated in this case out of mala fide on the part of NAB so as to bring their case within defined lines on which pre arrest bail is granted. The Honorable Supreme Court vide order dated 07.01.2019 while dismissing a **Civil Petition No.1471-K of 2018** filed for pre-arrest bail by one Rauf Akhtar Farooqui against whom alike accusations were leveled has made following observations in paragraph 4 and 5, which we cite in favour of our above view.

“4. Before us, learned counsel for the petitioner sought to argue that the petitioner was entitled to pre-arrest bail because his role had been deliberately miscast by the prosecution. It was submitted that the petitioner, while in the chain of the officers through whom the relevant files and orders moved, was not a decision maker and thus could not be held liable of having committed an offence in terms as claimed in the Reference. At most, it was contended, the petitioner was merely an administrative conduit to and through whom the official communication moved in the normal and ordinary course. His role was therefore not of such a nature as to constitute any offence in the facts and circumstances as disclosed by the prosecution. In the circumstances, it was submitted, the petitioner had made out a case for pre-arrest bail and that, therefore, the learned High Court had erred materially in not confirming the same and dismissing the petitioner’s petition.

5. After having heard learned counsel we were, with respect unable to agree. During the course of the submissions, we had drawn learned counsel’s attention to the well-established principles that govern the grant of pre-arrest bail, and how they differ from the principles that are applied when an accused seeks post arrest bail. With respect, learned counsel was unable to satisfy us as to how the petitioner’s case came within the scope of the former. The learned High Court has carried out a careful examination of the record and found nothing with respect to the petitioner as would bring into play the principles on which pre-arrest is to be granted. We are in agreement with both the approach taken by the High Court and the conclusion arrived at by it. The learned High Court concluded that no case for pre-arrest bail was made out, and we concur. Accordingly, by means of a short order announced in Court, leave to appeal was refused and the petition stood dismissed.”

13. Further in the case of **Talat Ishaq Vs. National Accountability Bureau through its Chairman (Civil Petition No.632 of 2018)** decided vide judgment dated 01.10.2018, the Honorable Supreme Court has observed that jurisdiction of the High Court under Article 199 of the Constitution to grant bail in NAB cases is an extra ordinary jurisdiction which is meant to be exercised only in exceptional cases and not in the ordinary cases, the relevant clause of paragraph 23 of the judgment is reproduced hereunder for ready reference.

“(d) In an appropriate case through exercise of its jurisdiction under Article 199 of the Constitution a High Court may grant bail to an accused person arrested in connection with an offence under the National Accountably Ordinance, 1999 and section 9(b) of the said Ordinance does not affect the jurisdiction of a High Court conferred upon it by the Constitution. The constitutional jurisdiction of a High Court is, however, an extraordinary jurisdiction meant to be exercised in extraordinary circumstances and not in run of the mill cases or as a matter of course.”

(Emphasis supplied)

14. For what has been discussed in preceding paragraphs qua role each petitioner has played to contribute to the whole transaction whereby fraudulently the original area of 10.051 acres in deh Giddu Bandar allotted to HRECHS was increased to 19.34 acres through a fake entry No.116 and further through revised layout plans Block-D having an area of 4.02 acres belonging to TMA Latifabad Hyderabad and Pakistan Railway was included and sold out in the shape of plots, and a reference to above cited case law,

we are of a humble view that the petitioners are not entitled to extraordinary concession of pre-arrest bail. Accordingly these petitions are dismissed and the ad interim pre-arrest bail granted to them earlier is hereby recalled. The above are the reasons of our short order dated 10.04.2019 whereby we dismissed the captioned petitions. Before parting with this order, we must observe that observations herein above are tentative in nature and shall not prejudice case of either party on merits before the trial court.

JUDGE

JUDGE

14. As regards C.P No.D-1684 of 2012 filed by petitioner Matloob Ahmed Khan for quashment of subject reference on the ground of double jeopardy for facing prosecution before learned Special Judge, Anti-Corruption Court (Provincial) Hyderabad on similar allegations, we may state that petitioner Muhammad Iqbal Memon through C.P.No.D-2047 of 2015 sought same relief on the same ground, which was dismissed by this court vide order dated 27.02.2019 with following observations:-

“The ratio of aforesaid judgments would clearly show that Article 13(a) of the Constitution or Section 403(1) Cr.P.C would come into service when previous prosecution has either ended in acquittal or conviction of the accused and only in that event a fresh trial for the same offence on the same facts against the same accused would be prohibited. The term prosecution mentioned in afore said Article connotes commencing, conducting and carrying a suit to a conclusion in a Court of justice. The scheme thereunder is meant to provide a protection against double punishment, which would tend to show that it is only where the prosecution has finally concluded and ended either in acquittal or conviction that a fresh prosecution for the same offence would be barred. In the present case learned defense counsel has not disputed that the prosecution pending before the learned Special Judge, Anti-Corruption Court (Provincial) Hyderabad has not ended either in acquittal or conviction of the petitioner. We, therefore, are minded that scheme of Article 13(a) of the Constitution, or the one contained section 403(1) Cr.P.C is not attracted in the present case and the proceedings in Reference No.02/2015 are not violative of any right of the petitioner under Article 10-A of the Constitution either.”

For the reasons as above, we do not find any merit in this petition either and dismiss it accordingly.

JUDGE

JUDGE

The Honourable Supreme Court passed an order dated 01.10.2018 in Civil Petition No.1471-K of 2018
(Rauf Akhtar Farooqui Vs. Chairman, NAB)