

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.  
Mr. Justice Abdul Mobeen Lakho, J.

C.P. No.D-7340 of 2021

Hameedullah Khan ----- Petitioner

Versus

The State & another ----- Respondents

Mr. Ghulam Shabir Shah, advocate for petitioner .  
Mr. Shahbaz Sahotra, Special Prosecutor NAB

Date of hearing: **11.01.2022 & 18.01.2022**

Date of order: **18.01.2022.**

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** This is a petition for post arrest bail filed by the petitioner Hameedullah Khan in reference No.03/2019. Earlier to this petition, petitioner had filed a C.P.No.D-2836/2017 for pre arrest bail which was dismissed vide order dated 17.09.2020 and he was taken into custody.

2. The allegations against the petitioner are that he is a Director of M/s Shah Mirani Associates which entered into an agreement with co-accused Mst. Kausar Jabeen, an absconder and purported owner of 10-00 acres of land situated in S.No.74,75,76, 82 and 83 to the extent of 2-00 acres from each survey number in Deh & Tapo Digh Taluka Shah Faisal District Korangi for developing and marketing a housing project with name and style "Bait-ul-Noor". It is stated that the petitioner and other accused malafidely sold out the plots to the general public without getting an approved plan. Afterwards, they got a revised lay out plan from Master Plan Department of SBCA and started executing sub leases in favour of third party, however, without seeking NOC in terms of section 5 of Sindh Building Control Ordinance (SBCO, 1979), a mandatory requirement for launching a housing project/scheme and selling the plots. It is also alleged that a large number of people invested in the project and paid Rs.123.025 million to the builder/developer i.e. M/s Shah Mirani Associates which includes the petitioner as well but they did not provide them any kind of ownership documents and have cheated the public at

large. Thus, NAB took up the investigation on receipt of complaint against M/s Shah Mirani Associates and came to know that through said project, the petitioner and other accused have cheated the public at large which is an offence under NAO, 1999.

3. Learned counsel has argued that petitioner is innocent and has been falsely implicated; there is no confidence inspiring evidence against the petitioner; the bail application of the petitioner has been rejected by the trial Court simply on the ground that earlier his pre arrest bail application was dismissed by this Court without looking into the merits of the case; that in fact the petitioner has given possession of plots to a number of allottees out of them 58 have filed their affidavits in this petition giving no objection to grant of bail to the petitioner; the project was launched accordingly but the PTCL filed a civil suit over the land against owner/co-accused of the land in which stay order was granted by this Court and because of the stay order, further transactions/ownership documents in favour of the allottees could not take place and therefore, allottees got aggrieved and filed a complaint; that petitioner is not well and his left leg is at the verge of amputation and, therefore, he is in dire need of proper treatment which is not available in jail hospital. He has relied upon 2001 SCMR 1040, 2015 SCMR 1575.

4. Learned Special Prosecutor NAB has opposed he bail on the ground that there is *prima facie* evidence available against the petitioner. I.O. of the case has submitted that the petitioner in the capacity of Director of M/s Shah Mirani Associates has cheated the public at large. However, he has not been able to deny that because of stay order granted in the civil suit, the petitioner has not been able to execute leases in favour of the allottees. He has further informed that the petitioner had entered into a sale agreement with the owner of the land/co-accused in the year 2012 for launching a housing project and undertook to give her/owner Rs.40 million within a year but then he got the period for payment extended for five years. Thereafter the owner demanded higher amount than agreed for selling the land to him which led the parties to file civil litigation causing stalemate over further transactions. He has also informed that petitioner has handed over the plots to the allottees and atleast 40/42 houses have been constructed over the land and the allottees/affectees are residing there. According to him, this selling and handing over of the plots is illegal as NOC from SBICA was not obtained before launching the said project.

5. We have heard the parties and perused the material available on record. The petitioner is in jail since 17.09.2020. In the case, it is informed that more than 100 witnesses have been cited and so far only two witnesses have been examined. There is nothing on record to show that delay in conclusion of trial is being caused by any act or omission on the part of the petitioner. Further it is not disputed that alleged affectees in fact have been handed over the plots and 40/42 of whom have constructed their houses over there. Prima facie inability of the petitioner to execute leases/ownership documents in their favour does not appear to be fueled by any act or omission of the petitioner malafide but has sprung from the civil litigation entered into by the co-accused/owner of the land and petitioner's company and the civil suit between the owner of the land and PTCL over title of the land. In such circumstances, the element of *mens rea* on the part of the petitioner to cheat the public is yet to be established in the trial. Till such determination, case of the petitioner requires further inquiry into his guilt. The element of NOC from SBCA in absence of any action by SBCA over the housing project or against the petitioner also prima facie makes the case against the petitioner requiring further enquiry. Accordingly, this petition is allowed. Petitioner is granted bail subject to furnishing two solvent sureties in the sum of Rs.5 Million each and P.R. bond in the same amount to the satisfaction of Nazir of this Court.

6. Petitioner is directed to cooperate in the proceedings of the trial and the trial court, if finds the petitioner causing any delay in the trial, may file a reference before this court for recalling the concession granted to him by means of this order. Needless to say findings above are tentative in nature and shall not affect merits of the case.

JUDGE

JUDGE

A.K