

of Section 15 of NAO, 1999, however, the benefit in terms of Section 382-B, Cr.P.C. was extended in his favour.

2. Feeling aggrieved by the impugned judgment awarding lesser punishment, the National Accountability Bureau {NAB} preferred Criminal Accountability Appeal No.23 of 2020, seeking enhancement of sentence as provided by law whereas C.P. No.D-761 of 2021 has been filed by appellant seeking post-arrest bail.

3. Short but relevant facts of the case as set-forth in the reference are that an inquiry was initiated on a source report regarding illegal allotment/exchange of 03-38 acres of State land from Deh Okiwari in lieu of Kabuli land from Survey No.63 and others of Deh Shah Mureed, which was upgraded into investigation, wherein it was revealed that Ghulam Abbas Soomro, the then Secretary, Land Utilization Department, Government of Sindh, allowed exchange of kabuli land in lieu of State land in favour of a fake person Muhammad Asghar without verification as to the ownership of said land, payment of its differential amount as well as approval of Revenue Minister, who was the competent authority. It was also found that neither any exchange order was addressed to the concerned Deputy Commission for taking over possession of the said kabuli land nor such land was surrendered by Muhammad Asghar, who during investigation was found to be a fake person, who transferred the same to accused Abdul Rasheed, Ex-Tapedar {now deceased}, who took possession of the said land and sold out the same to private persons namely, Muhammad Noor Baloch and Muhammad Anwar Baloch. He also obtained possession of the State land on behalf of Muhammad Asghar and got it mutated in the record of rights, which was demarcated and carved out in Survey No.264, 265 and 266 of Na-Class 210 Deh Okiwari, measuring 03-38 acres, and subsequent thereto Muhammad Asghar transferred the said land to Wajid Ali Jatoi, appellant herein, through two oral Gift Deeds registered before the then Sub-Registrar T-Division XIII, Karachi, namely, Muhammad Zafar Baloch {now deceased}, who did not bother to take notice of the fact that the gift deeds do not bear any identification of Muhammad Asghar. The investigation further revealed that appellant handed over the possession of State land to

private persons through General Power of Attorney though it was not regularized by the Land Utilization Department as a result of Ordinance No.III of 2000 due to suspension and it still exists in the name of appellant in the record of rights, of which 02-00 acres viz Survey No. 264 and 265 are covered with a boundary wall and a booking office has been built up whereas the remaining 02-38 acres viz Survey No.266 is in possession of private persons, who are residents of Madina Blessing, a project built up on the said plot since 1990's, It is, thus, established that Ghulam Abbas Soomro {now deceased} in connivance with appellant and other accused {now deceased} committed an offence of corruption and corrupt practices as defined under Section 9{a} of NAO, 1999 punishable under Section 10 of the Ordinance and scheduled thereto through illegal allotment/exchange of 03-38 acres of State land from Deh Okiwari in lieu of 03-38 acres of kabuli land from Deh Shah Mureed, and caused a loss of more than Rs.400 million to the national exchequer. This led to filing a reference against appellant and Ghulam Abbas Soomro, the then Secretary, Land Utilization Department, Government of Sindh, who expired during trial and proceedings against him were abated vide order dated 11.04.2019.

4. The learned Accountability Court, on taking cognizance of the matter, charged the appellant for the offence of corruption and corrupt practices as defined under Section 9{a}{i}{vi} of NAO, 1999 read with Schedule attached thereto punishable under Section 10 the Ordinance, who pleaded not guilty and claimed a trial.

5. The gist of evidence adduced by the prosecution in support of its case is as under:-

6. **Allah Rakha** {Mukhtiarkar Gulshan-e-Iqbal} appeared as **witness No.1** at Ex.5. He handed over relevant record of Deh Okiwari to investigating officer, who took custody of the same under a seizure memo prepared in his presence. **Hussain Ali Hakro**, who is Mukhtiarkar of Mureed Memon, appeared as **witness No.2** at Ex.6 and handed over relevant record in respect of Deh Shah Mureed to investigating officer, who seized the same under a memo prepared in his presence. **Yar Muhammad** is the

Section Officer, Land Utilization Department, who appeared as **witness No.3** at Ex.7. He handed over record relating to allotment of land, measuring 3-38 acres, situated at Deh Okiwari, Gulshan-e-Iqbal, Karachi, in the name of Muhammad Asghar to investigating officer, who seized the same under a memo prepared in his presence. **Sohail Ahmed Khan** is the Superintendent of Stamps, Stamp Office, who appeared as **witness No.4** at Ex.9. He handed over the record of two stamp papers worth Rs.50/- each for the year 1992 and 1993, issued by Syed Arshad Javed Hussain, holding License No.140 under Seat No.48, to investigating officer, who seized the same under a memo prepared in his presence. **Abdul Jabbar** is Sub-Registrar, Hyderabad, who appeared as **witness No.5** Ex.10. He handed over relevant record, duly attested by him, in respect of oral gifts relating to property situated at Deh Okiwari, Tapo Drigh Road, Karachi, to investigating officer, who took custody of the same under a seizure memo prepared in his presence. **Rasool Bux Leghari** is a Clerk of Microfilming Unit, Urgent Board Revenue, Karachi, authorized by his department, appeared as **witness No.6** Ex.11. He handed over record pertaining to three power of attorney to investigating officer, who seized the same under a memo prepared in his presence and also exhibited the same in his evidence. **Saleem** is the Manager of Habib Metropolitan Bank, HBZ Plaza Branch, I.I. Chundrigar Road, Karachi, who appeared as **witness No.7** Ex.12. He handed over the relevant record relating to pay orders issued by Abdul Karim Taj in favour of appellant, who took custody of the same under a seizure memo prepared in his presence and also exhibited the same in his evidence. **Syed Sohail Ahmed Rizvi** is Operation Manager, ABL, Taj Complex, Karachi, who appeared as **witness No.8** Ex.13. He has given the details of two pay orders, issued by Habib Bank A.G. Zurich, in favour of appellant and deposed that from 1993 till 2007 the record was maintained manually and stored in warehouse of bank, which was destroyed due to fire takes place in the warehouse. **Muhammad Younus Dahri** is Survey Superintendent, Board of Revenue, Karachi, who appeared as **witness No.9** Ex.14. He handed over relevant record, duly attested by him, of Deh Shah Mureed and Deh Okiwari to investigating officer, who seized the same under a memo prepared in his presence and deposed that

original record was destroyed due to fire takes place in the office in 2008. **Lakhjee Rajput** is the Inspector of Survey Superintendent Office, Board of Revenue, Karachi, who appeared as **witness No.10** Ex.15. He affirmed Ghat Whad Form No.18 {Ex.14/5} and Surat Hall for demarcation of Survey No.264 to 266 {Ex.14/6} as same. **Shahzaib Durrani** appeared as **witness No.11** Ex.16. He is the Assistant Director NAB and conducted investigation. He verified whole investigation being completed by him and on completion thereof filed a reference in Court on the recommendation of the competent authority. All of them have exhibited number of documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.17.

7. The appellant was examined under Section 342, Cr.P.C. at Ex.18, wherein he has denied the allegations imputed upon him by the prosecution, professed his innocence and stated his false implication by the prosecution witnesses being government officials just to save their own inefficiency and malafide in manipulating the relevant record. He opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in his defence.

8. The trial culminated in conviction and sentence of the appellant as stated in para-1 {supra}, hence necessitated the filing of listed appeals and petition, which are being disposed of together through this single judgment.

9. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case with malafide intention and ulterior motives as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is also submitted that the prosecution has failed to produce any iota of evidence against appellant to substantiate his involvement in the commission of offence. The prosecution has also failed to discharge its legal obligation of proving the guilt of the appellant as mandatory requirement of Section 14 of the NAO, 1999, and the appellant was not liable to prove his innocence. The investigating officer has conducted dishonest investigation and involved the

appellant in a case with which he has no nexus while freeing the actual beneficiaries, hence it is a case of clear discrimination. The prosecution has failed to bring home the charge against the appellant through cogent and reliable evidence. The witnesses examined by the prosecution are government officials and they have falsely deposed against the appellant being interested witnesses and inimical to the appellant as such their evidence is neither trustworthy nor confidence inspiring and the same has wrongly been relied by the learned trial Court. The witness did not ascribe any direct or indirect role to the appellant with regard to his involvement in the commission of alleged offence. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant. The learned trial Court did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant merely on assumptions and presumptions. The learned trial Court totally ignored the plea taken by the appellant in his defence that he was alien to the whole transaction and did not derive any benefit. He being an illiterate person accepted the oral gifts under the advice of Muhammad Asghar and paid amount to him, which was sufficient to prove his innocence. Per learned counsel, the appellant has not done any illegal act and in his Section 342, Cr.P.C. statement too he has denied the entire allegations leveled against him by the prosecution. The prosecution has failed to place on record any strong evidence against the appellant which could justify his conviction for the offence under Section 9(a)(iv) of the Ordinance. Thus, the conviction and sentence awarded to the appellant is illegal and liable to be set-aside. Finally, the learned counsel submitted that the appellant did not derive any financial gain for personal benefit from the acts for which he was charged, tried and convicted, thus the conclusion drawn merits reversal.

10. Strongly opposing the contentions of the learned counsel for the appellant, the Special Prosecutor NAB has contended that the appellant was lawfully proceeded against under the enabling provisions of the Ordinance, which were strictly in accordance with the settled principles of the criminal justice system of providing the

appellant with complete opportunity of defending him. The appellant in collaboration of accused Abdul Rasheed {now deceased} and revenue officials maneuvered the whole scam for personal gain and caused a colossal loss to the national exchequer. It is also submitted that the prosecution in support of its case produced oral as well as documentary evidence, which was rightly relied upon by learned trial Court. Per him, the witnesses were subjected to lengthy and taxing cross-examination but nothing favourable to the appellant could come out from their mouth to show his false implication. The plea taken by the appellant in his defence has no nexus with the scam hence it does not carry weight vis-à-vis providing help to the defence. While summing up his submissions, the learned Special Prosecutor NAB has submitted that the findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. He, however, submitted that the learned trial Court while convicting the appellant has taken lenient view and awarded lesser punishment in a case of corruption and corrupt practices involving State land. He, therefore, prayed for enhancement of sentence awarded to the appellant in view of the particular facts and circumstances of the present case and dismissal of his appeal as being devoid of any merit.

11. We have given our anxious consideration to the submissions of learned counsel for the appellant and the learned Special Prosecutor NAB and have scanned the entire record carefully including the written submissions filed by both sides.

12. What we understand from the record is that one Muhammad Asghar applied for allotment of 03-38 acres of State land, situated in Deh Okiwari, Gulshan-e-Iqbal, Karachi, in exchange of kabuli land, measuring 03-38 acres, situated in Deh Shah Mureed, addressing to the Minister Revenue, Government of Sindh, Karachi, in the year 1992, which was forwarded to accused Ghulam Abbas Soomro {now deceased}, the then Secretary, Land Utilization Department {hereinafter referred to as "Secretary"}, who prepared a summary, without seeking a report from the concerned Deputy Commissioner as to the status of both lands and confirmation from

the relevant departments as to know the ground realities, and forwarded the same to the concerned office, which was approved on 24.06.1992 and in consequence whereof allotment order was issued on the same day dictating the Deputy Commissioner, Karachi {East} to handover possession of equal State land from Survey No.156, Deh Okiwari to Muhammad Asghar in lieu of kabuli land, situated in Deh Shah Mureed, which was to be surrendered by Muhammad Asghar in favour of Government, but Secretary willfully and deliberately omitted the same and resultantly the kabuli land was never surrendered by Muhammad Asghar, causing a colossal loss to the national exchequer. It is further the case of the prosecution that the then Tapedar, Gulshan-e-Iqbal, Karachi, though submitted a report with regard to non-availability of government land in Survey No.156, Deh Okiwari, despite of that the Secretary sanctioned equal government land in Survey No.187, Deh Okiwari, in favour of Muhammad Asghar vide order dated 15.12.1992, without approval of the competent authority and based on such order the State land was handed over to Muhammad Asghar on 31.03.1993 through entry No.18 inserted in the record of rights. It is also the case of the prosecution that possession of land was handed over by the then Tapedar Revenue to accused Abdul Rasheed {now deceased}, the then Tapedar, District Malir, on behalf of Muhammad Asghar, who did not surrender private land in favour of the Government. Record also reflects that accused Abdul Rasheed, Ex-Tapedar {now deceased} was found to be a mastermind of the whole scam, who acted as a witness in the oral gifts executed by Muhammad Asghar in favour of appellant, which shows his active interest and involvement in the scam. It is also important to note that accused Abdul Rasheed and appellant are Jatoli by caste and belong to same District of Larkana. Thus, it can safely be said that appellant acted as a front man of accused Abdul Rasheed {now deceased}.

13. To substantiate its case, the prosecution has produced ocular evidence duly supported by the documentary evidence, which is part of the record of this case. As to the contention that the prosecution has not been able to discharge its duty of proving the guilt of the appellant and shifting onus on the appellant as mandatory

requirement of Section 14 of NAO, 1999, we are conscious of the fact that the prosecution examined as many as eleven witnesses, who were subjected to lengthy cross-examination by the defence, but nothing favourable to the appellant could come out from their mouth. They were consistent on each and every aspect of the matter and did not contradict each other on material points. Nothing has been brought on record on behalf of the appellant that the prosecution witnesses had some grudge against him for his false implication in the commission of offence. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellant has failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. All the witnesses have supported the case of the prosecution and exhibited relevant documents establishing involvement of the appellant in the commission of offence charged with. Here we deem it conducive to highlight, in brief, evidence of the prosecution witnesses and documents exhibited by them in their respective depositions.

14. Allah Rakha, Mukhtiarkar, Gulshan-e-Iqbal, Karachi, appeared as PW.1 Ex.5. He produced entry No.25 and entry No.26 dated 22.06.1993 of Deh Okiwari, Tapo Drigh Road, Karachi {East}, which reflects that the land in question was transferred in favour of appellant through two gift deeds executed by Muhammad Asghar in his favour. It is surprising rather astonishing that these two entries were kept in the record of rights on the same day of execution of gift deeds and within two days of the earlier entries recorded in favour of Muhammad Asghar. This fact alone is sufficient to prove Muhammad Asghar to be a fake and fictitious person. This aspect of the matter has further been supported by Shahzaib Durrani, who is investigating officer, and appeared as PW.11 Ex.16. He deposed that despite hectic efforts he could not trace out Muhammad Asghar and according to the report of NADRA dated 15.09.2017 the portfolios of two different Muhammad Asghar did not match with the description of Muhammad Asghar discussed herein. Ex.7/2 is the application of Muhammad Asghar for allotment of State land in lieu of private land, produced by Yar Muhammad, Section Officer, Land Utilization Department, who appeared as PW.3 Ex.7. A bare perusal of the said application reveals that neither it contained number of NIC of

Muhammad Asghar nor annexed a copy of his NIC as a proof of his identity. As to the genuineness of gift deeds is concerned, the prosecution has examined Sohail Ahmed Khan, Superintendent of Stamps, Stamp Office, who appeared as PW.4 Ex.9. He deposed that the two stamp papers alleged to be issued by Syed Arshad Javed Hussain, License No.140 under Seat No.48, but according to their record the said vendor did not exist. During arguments we made a specific query from the learned counsel for the appellant as to what was the relationship of appellant {Donee} with Muhammad Asghar {Donor}, but he failed to give a plausible reply and took a plea that appellant being an illiterate person purchased the land in question from Muhammad Asghar under his advice against consideration just to save the taxes, which amounted to introducing an altogether new plea that was contradictory to the original pleas taken by appellant at trial as well as while recording his Section 342, Cr.P.C. statement. This aspect of the matter has also strengthened the case of the prosecution and falsified the pleas taken by the appellant herein.

15. Lakhjee Rajput, Inspector, Survey Superintendent Office, Board of Revenue, Karachi, appeared as PW.10 Ex.15. He in association with Chandar Kumar, City Surveyor and Khuda Bux, Revenue Tapedar surveyed the land in question and prepared Ghat Wadh Form and Surat Haal for demarcation, which shows that Na-Class 187 was renamed as Na-Class 210 after exclusion of railway line area and demarcated into three Surveys numbered as 264, 265 and 266, measuring 01-00 acres, 01-00 acres and 01-38 acres respectively and in this connection two entries numbered as 20 and 21 were made in the record of VF-II, Deh Okiwari.

16. To substantiate that appellant was the beneficiary of the State land granted to Muhammad Asghar, the prosecution has examined Abdul Jabbar, Sub-Registrar, Hyderabad, who appeared as PW.5 Ex.10. He produced the record of two oral gift deeds bearing No.2833 dated 12.06.1993 and 2834 dated 21.06.1993, executed by Muhammad Asghar in favour of appellant, pertaining to 1-38 acres in Survey No.266 Deh Okiwari and 02-00 acres in Survey No.264 and 265 respectively, which were accepted by the appellant in presence of two witnesses namely, Abdul Rasheed {Tapedar} and one Abdul

Qayyum, duly registered on 22.06.1993. It has also come on record that appellant having acquired the land in question sold out the same against consideration of Rs.25,00,000/-. In support the prosecution has examined Rasool Bux Leghari, Clerk, Microfilming Unit, Board of Revenue, Karachi, who appeared as PW.6 Ex.11. He produced three power of attorneys as Ex.11/1 to Ex.11/3. The payments against sale of land in question were received by appellant in shape of two pay orders both dated 14.11.1993, drawn on Habib Bank AG Zurich, Hirani Centre, I.I. Chundrigar Road, Karachi, amounting to Rs.22,50,000/- and Rs.2,50,000/- respectively, which are available at page 613 {Ex.12/1} and 621 {Ex.12/5}, produced by Saleem, Branch Manager, Habib Metropolitan Branch HBZ Plaza Branch, I.I. Chundrigar Road, Karachi, who appeared as PW.7 Ex.12. He deposed that both pay orders were issued by Habib Bank AG Zurich in favour of appellant and received for clearance on 18.11.1993 through Allied Bank Limited, Civic Centre Branch, Karachi, from the account of appellant and both were cleared. The prosecution has also examined Syed Sohail Ahmed Rizvi, Operation Manager, ABL, Taj Complex, Karachi, who appeared as PW.8 Ex.13 and confirmed clearing stamps on the pay orders. It is, thus, made clear that the appellant was one of the beneficiaries of the scam.

17. The learned counsel for the appellant has also claimed that the action of NAB against the appellant was discriminatory as it had only singled out the appellant as accused in the reference releasing the actual beneficiaries. This contention, on the face of it, seems to be legally incorrect. It is a well settled principle of criminal jurisprudence that challenging prosecution on the ground of discrimination cannot be a complete valid defence to absolve an accused from criminal liability arising from his actions or inactions. Any person charged for an offence is answerable for his own acts or omissions and has to defend himself in a trial for the offence with which he has been charged. In the case in hand, the appellant has failed to prove his innocence through cogent and reliable evidence, which is lacking. Even otherwise, he has not appeared on Oath under Section 340{2}, Cr.P.C. and failed to speak a single word as to why the witnesses have deposed against him, which will give rise to a presumption that the plea taken by him in his

defence was not a gospel truth, therefore, he avoided to appear and depose on Oath under Section 340{2}, Cr.P.C. We are also conscious of the fact that law requires that if accused had a defence plea the same should be put to the witnesses in cross-examination and then put forward the same while recording statement under Section 342, Cr.P.C. which is lacking in the instant case. In the circumstances, since the specific defence plea had not been taken by the appellant either at trial or while recording his Section 342, Cr.P.C. the learned trial Court has rightly discarded the same to be of untrustworthy. If both the versions, one put forward by the appellant and the other put forward by the prosecution, are considered in a juxtaposition, then the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellant seems to be doubtful more particularly when on one hand he totally denied to be involved in the scam as well as execution of Gift Deeds and General Power of Attorneys and showed himself alien to the whole transaction with regard to the subject land, but on the other hand he filed Suit No.336 of 2012 before this Court, seeking declaration, possession, cancellation, recovery of damages, injunction and mesne profit, claiming the land in question and also admitted all the facts, which he denied herein. This aspect of the matter too shows guilty conscience of the appellant. We, however, are reluctant to make any observation in a suit pending before a Court of competent jurisdiction as it amounts to interference in the said proceedings.

18. The learned trial Court after scrutinizing the material available on record convicted the appellant on the ground that the State land was obtained in lieu of private land, which was never surrendered in favour of Government causing a colossal loss to the national exchequer. The learned Special Prosecutor NAB has also pointed out instead of surrendering private land in favour of Government, the same was sold to Muhammad Noor Baloch and Muhammad Anwar Baloch whereas the State land that was obtained in lieu of private land and acquired by appellant through two oral gifts was sold by him against valuable consideration through three General Power of Attorneys in favour of Yousuf Haroon and Muhammad Asif. Thus, Government has suffered a colossal loss from both sides. There is no denial to the fact that the learned trial Court had taken into account

all the aspects of the matter as well as the submissions raised by the learned counsel for the appellant minutely and found that accusation against the appellant stands proved.

19. We while sitting in appeal are under heavy obligation to assess all aspects of the matter and cannot shut our eyes to such corruption and corrupt practices as herein, failing which the results will be drastic and impacts will be far from repair. No doubt, the Courts in the past have extended lenient treatment to the accused involved in like cases but now when corruption is cutting the very root of the economy of the country at a large scale in a very organized manner and it has become free for all then it has become the primary and foremost obligation of the Court to arrest this evil monster which would ultimately be a threat not to latter alone but to the very survival of the State. Due to massive corruption the poor among poorer are not getting the basic facilities to live a peaceful and Hon'ble life as envisaged by the provisions of the Constitution. Majority of the children could not go to school as their parents cannot afford the education expenses, same is the problem in the health care sector for the poor and other departments. This homeland was not gifted to us but millions of lives were sacrificed in achieving independence for a better and Hon'ble life style and to become a welfare state where every citizen whether belongs to majority or minority would be entitled to equal rights as laid down in Part 1 of Chapter 1 of the Constitution of Pakistan, 1973. However the nation is still dreaming this dream which is yet to be given practical shape. If massive corruption is allowed to go unchecked, we would, remain unable to drop from our hands the begging bowls. In view of the globalization of the world, the independence of a country/State is mainly dependent on sound economy, therefore, in the larger interest of the State and the Nation, the Courts have to apply strict standards and to show zero tolerance for corruption and people involved in such type of crimes whose guilt is well established should get the maximum and no mercy to be shown to them. Even otherwise, the apex Court imposed special duty upon the Courts to perform their duties actively, diligently to eliminate such kind of corruption and corrupt practices. It is high time that standards are set and system put in place to develop a culture of accountability at

all level in order to cleanse over system and institutions from the evil of corruption, loot and plunder of national resources by a few irrespective of their status in the system.

20. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, we are of the considered view that the prosecution has successfully proved its case against the appellant beyond shadow of reasonably doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence and documents brought on record, hence calls for no interference by this Court. In view thereof, the conviction and sentence awarded to the appellant through impugned judgment dated 10.11.2020 warrants no interference. Consequently, the Criminal Accountability Appeal No.22 of 2020, filed by appellant, is dismissed as being devoid of any merit. As to the appeal, filed by State seeking enhancement of sentence of appellant, is concerned, suffice to observe that the conviction and sentence recorded by the learned trial Court against appellant through impugned judgment is just and proper and no case for enhancement of sentence is made out. In view thereof, the Criminal Accountability Appeal No.23 of 2020 fails and is dismissed accordingly.

21. In sequel to above, the C.P. No.D-761 of 2021, seeking post arrest bail, is dismissed as having become infructuous.

JUDGE

JUDGE