

Order Sheet

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

**C.P. No. D – 3001 of 2022**

**C.P. No. D – 3002 of 2022**

Date	Order with Signature of Judge
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**18.07.2022**

Mr. Rehman Ghous, Advocate for the petitioners alongwith  
Mr. Shoaib Ahmed, Advocate.  
Mr. Shahbaz Sahotra, Special Prosecutor NAB.  
Mr. Umair Qureshi, I.O. of the case present.

**ORDER**

**Muhammad Iqbal kalhoro, J:** Petitioners, accused in Reference No.08/2019 with allegations of having launched, in connivance with each other, a housing society : Gulshan-e-Arisha Cooperative Housing Society-- on government land admeasuring ten (10) acres belonging to Karachi Water & Sewerage Board, and, in the course, having cheated the public at large in the shape of selling etc. plots to the tune of Rs.57,385,000/-, have applied for post arrest bail on the ground of hardship and delay in the trial through instant petitions. Petitioner Zafar Nehal, arrested on 19.01.2019, is in custody for more than three years; while petitioner Qaiser Mehmood, arrested on 31.08.2020, is in custody for about two years. This is second bid of petitioner Zafar Nehal to get instant relief, the first having been rejected on merits.

2. In the trial, as is informed, only one witness out of 21 witnesses cited in the reference has been examined, a footprint of lackadaisical approach and agonizingly poor seriousness by the prosecution to perform its fiduciary duty to the State. Learned defense counsel in arguments has, besides, touched upon merits of the case, which, as we perceive, seem to *prima facie* connect petitioners with the offence. And which learned Special Prosecutor NAB and the Investigating Officer have rebutted vociferously. Notwithstanding, we have observed with surprise that except arraigning three private persons in the reference, no effort to dig out the part played by officials working in relevant government departments has been made. For instance,

KW&SB, simply claimed ownership of the land through some alleged show cause notices to the petitioners but conspicuously refrained from pursuing any further action. Sindh Building Control Authority without a Master plan and a layout plan of the site approved maps of individual units over the area of 10 acres, and allowed building of houses over there. The Sub-Registrar office without verifying ownership documents of the petitioners registered individual units over the area of 10 acres, although petitioners are said to be the owner of only 1.2 acres of the land on the site. This apparent fiasco, intentional or otherwise, in investigation targeting only those found ostensibly dealing with the land on the site without realizing and determining actions of relevant officials enabling petitioners to do so has prima facie induced certain questions in the case which need to be replied.

3. But since it is mainly hardship and delay in the trial stressed most by the defense counsel for seeking bail, we have considered but them. In order to counter opposition to this ground from the other side, learned defense counsel has relied upon the case law reported as **2022 SCMR 1**. Record reflects that the accused in the entire period stretching over more than 3 years has sought only 11 adjournments. Be that as it may, and irrespective of a question whether a mathematical calculation shall be desired or not in this case to determine role of accused fueling delay in the trial. In our humble view, when adjournment is sought and is granted by the court unconditionally without any direction to further the trial on the next date, and the prosecution fails to raise any objection effectively over it or make a vigorous effort to check such conduct. It dilutes the role, if any, of the accused in effectuating delay in the trial to a considerable extent. For now not only the accused but the trial court by failing, consciously or unconsciously, to realize the consequences of its charity and the prosecution by being content onlooker have become privy, to a great extent, to the delay in the trial.

4. Both the accused are in jail for a considerable time, detailed above, and looking at the pace of the trial--only one witness examined so far-- it is not difficult to extrapolate the shades of long time the prosecution is likely to take to conclude the case. A composition which is obviously detrimental to the right of petitioners to expeditious trial guaranteed under the Constitution. With a holistic view of all these facts and circumstance, we but have come to think that petitioners are entitled to a relief of bail, a temporary arrangement which is subject to the final outcome of the case, in any case.

Accordingly, these petitions are allowed and the petitioners are granted post arrest bail in the aforesaid reference on the ground as contemplated above subject to furnishing a solvent surety by each of them separately in the sum of Rs.500,000.00 with P.R. bonds of the same amount to the satisfaction of the trial Court. The petitioners are directed to cooperate in the trial and shall not seek any adjournment unless justified. The trial court if, however, finds the petitioners trying to induce delay in the trial may make a reference to this Court for recalling the convenience extended to the petitioners by this order. The above observations are tentative in nature and shall not prejudice either party in the case before the trial court.

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