

**IN THE HIGH COURT OF SINDH, SUKKUR
BENCH AT SUKKUR**

Present

Mr. Justice Nazar Akbar

Mr. Justice Muhammad Faisal Kamal Alam

C.P NO.D-509 OF 2020

Petitioner : Shoaib Ahmed Shaikh
Through Mr. Ali Raza Balouch,
advocate for the Petitioner

The State, respondent : Mr. Muhammad Zubair Malik,
Special Prosecutor NAB

C.P No.D-618 of 2020

Petitioner : Wali Muhammad
Through Mr. Nisar A. Bhanbharo,
advocate for the Petitioner

The State, respondent : Mr. Muhammad Zubair Malik,
Special Prosecutor NAB

C.P No.D-619 of 2020

Petitioner : Siraj Ahmed
Through M/s Ali Raza Balouch and
Nisar A. Bhanbharo, advocates for
the Petitioner

The State, respondent : Mr. Muhammad Zubair Malik,
Special Prosecutor NAB

Date of hearing : **09.03.2021**

Date of order : **09.03.2021.**

ORDER

Muhammad Faisal Kamal Alam, J: By this common order, the titled petitions seeking pre-arrest bail, is decided. Already all the petitioners /accused are on anticipatory bail before arrest.

2. All the three accused are mentioned in Reference No.11 of 2020, sub judice before Accountability Court, Sukkur, filed by Respondent-NAB, crux of which is that Accused No.1-Wali /Muhammad Sheikh (Petitioner in C.P. No.D-618/2020) has purportedly misused his official position and authority have not only accumulated assets not commensurate with his legal source of income, but also extended huge benefits to his both sons, namely, Shoaib Ahmed Shaikh and Siraj Ahmed-Accused No.2 and 3 (Petitioners in C.P. No.D-509 and 619 of 2020).

3. Learned Counsel for the Petitioners have argued that the above Reference is based on mala fide, for the simple reason that main Accused No.1-Wali Muhammad was not in a position to award government contracts to other persons including his son Siraj Ahmed Shaikh (Accused No.2). It is stated that Accused No.3 Shoaib Ahmed Shaikh is a banker and has no nexus with official work of his father (Accused No.1). Whereas stance of Petitioner No.2 is also the same that he is a private contractor but due to illegal interference by the Respondent-NAB the company was closed in the year, 2013. It is averred on behalf of Accused No.1 that he worked with Highway Department for 38 years and has a clean service record. Learned Counsel states that allegations of accumulating illegal assets/ wealth and unexplained bank transactions purportedly disproportionate to income of Accused persons, require a proper trial and thus it is a fit case for grant of bail.

4. Learned Special Prosecutor has opposed the grant of bail and has referred to the record to substantiate his arguments.

5. Arguments heard and record perused.

6. In compliance of directions of this Court, learned counsel for the Petitioners with his Statement dated 09.03.2021 has filed documents relating to the tax returns of Accused No.2 and 3, sons of Accused No.1.

7. Para-26 of the Investigation Report (Report) has mentioned the details of those contracts/ works which was awarded to M/s. Siraj Enterprises, which is a proprietorship concern of Accused No.2. It is further mentioned in the Report that Bank account of Accused No.2 was used for getting kickbacks from other government contractors to whom different contracts were awarded during the posting period of Accused No.1-Wali Muhammad Shaikh, as Tender Clerk. Account details of Accused No.2 is mentioned in the Investigating Report to show that even call deposit receipts which is a pre-requisite formality to participate in a public procurement was issued from the Bank Accounts of said Accused No.2 in favour of different contractors. The above

Reference as well as Investigation Report have specifically highlighted the assets of the immovable properties which were purchased during the year, 2010 to 2016. The Investigation Report has also taken into the account the fact that the Accused No.1 inherited an agricultural land measuring 31.05 ghunta in Deh Beechanji Taluka Lakhi District Shikarpur, but the remaining properties have been purchased from the purported ill gotten gains. The table containing these properties shows specific details about the location, mode of purchase and price. The estimated value of these immovable assets comes to Rs.30 Million at the time of purchase.

S#	Deh & Tapo	Taluka & District	Name of Transferor	Name of Transferee	Registered Sale Deed No. & Date and Survey No.	Area	Purchase Value as per Sale Deed	Market Value at the time of purchase	Present /current Market Value
1	Beechangi Tapo Bhirken	Lakhi District Shikarpur	Muhammad Yaqoob and 14 other persons	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD. No.248 Dated 30.09.2013 Survey No. 521, 490, 506, 507, 763, 506, 763, 488, 492	07-26 Acres	Rs. 100,000/-	Rs. 3,060,000/-	Rs. 3,825,000/-
2.	Beechangi Tapo Bhirken	Lakhi District Shikarpur	Nabi Khan s/o Munshi Khan Abbasi	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD No.77 Dated 28.08.1991 Survey No. 521	02-09 Acres	Rs. 20,000/-	Rs. 178,000/-	Rs. 1,112,500/-
3.	Beechangi Tapo Bhirken	Lakhi District Shikarpur	Deen Muhammad s/o Faqir Muhammad Abbasi	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD No.36 Dated 09.01.1997 Survey No.522	02-00 Acres	Rs. 60,000/-	Rs. 200,000/-	Rs. 1,000,000/-
4.	Beechangi Tapo Bhirken	Lakhi District Shikarpur	1. Bashir S/o Juma Abbasi 2. Mstt. Santar W/o Bashir Abbasi	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD No.329 Dated 23.12.2005 Survey No.519	04-17 Acres	Rs. 90,000/-	Rs. 1,106,250/-	Rs. 2,212,500/-
5.	Beechangi Tapo Bhirken	Lakhi District Shikarpur	Wali Muhammad Shaikh s/o Shaikh (Inherited property Sold)	Muhammad Nooral s/o Edian Mahar	Oral Statement (Biyani jo khat) Survey No.448	0-31.05 Acres	Rs.5,000/-	Rs. 39,375/-	Rs. 157,500/-
Grand Total						17-03 ½ Acres	Rs. 275,000/-	Rs. 4,583,625 /-	Rs. 8,307,500/-

S#	Deh & Tapo	Taluka & District	Name of Transferor	Name of Transferee	Registered Sale Deed No. & Date and Survey No.	Area	Purchase Value as per Sale Deed	Market Value at the time of purchase	Present /current Market Value
1	Old Sukkur Sindh Cooperative Housing Society Tapo Rahuja	New Sukkur District Sukkur	Mrs. Sara Zohaib w/o Zohaib Farooqui	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD. No.38 Dated 06.01.2010 Survey/ Plot No. B-73	266.6 Sq. Yards	Rs. 310,000/-	Rs. 35,00,000/-	Rs. 70,00,000/-
2.	Old Sukkur Hamdard Cooperative Housing Society Tapo Rahuja	New Sukkur District Sukkur	Mukhtiar Hussain s/o Shah Nawaz Sahito	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD. No.2393 Dated 19.11.2011 Survey/ Plot No. B-57	300 Sq. Yards	Rs. 300,000/-	Rs. 50,00,000/-	Rs. 80,00,000/-
3.	Dubai City Housing Scheme Hyderabad	Hyderabad	Dubai City Housing Scheme Hyderabad	Siraj Ahmed s/o Wali Muhammad Shaikh	Plot No.366 Dated 12.11.2012	200 Sq. Yards		Rs. 962,500/-	
4.	Dubai City Housing Scheme,	Hyderabad	Dubai City Housing Scheme	Shoaib Ahmed Shaikh s/o	Plot No.367 Dated 12.11.2012	200 Sq. Yards Acres		Rs. 962,500/-	

	Hyderabad		Hyderabad	Wali Muhammad Shaikh						
5.	Old Sukkur Friends Cooperative Housing Society Tapo Rahja	New Sukkur District Sukkur	Muhammad Akram Khan s/o Muhammad Umar Jan	1.Siraj Ahmed 2.Shoaib Ahmed (Both sons of Wali Muhammad Shaikh)	RSD. No.1423 Dated 28.05.2014 Survey/ Plot No. B-136	300 Sq. Yards	Rs. 300,000/-	Rs. 70,00,000/-	Rs. 95,00,000/-	
6.	Old Sukkur Sindhi Cooperative Housing Society Tapo Rahja	New Sukkur District Sukkur	Dilawar s/o Muhammad Bux	Siraj Ahmed s/o Wali Muhammad Shaikh	RSD. No.2692 Dated 08.12.2015 Survey/ Plot No. D-62	150 Sq. Yards	Rs. 250,000/-	Rs. 45,00,000/-	Rs. 50,00,000/-	
7.	Abad (Allah Wali Market, Bus Terminal Rohri) Tapo Rohri	Rohri District Sukkur	Abdul Majid Shah s/o Hakim Ali Shah	Shoaib Ahmed Shaikh s/o Wali Muhammad Shaikh	RSD. No.1031 Dated 29.11.2016 Survey/ Plot No. 02 Block-A	600 Sq ft	Rs. 300,000/-	Rs. 18,00,000/-	Rs. 22,00,000/-	
8.	Abad (Allah Wali Market, Bus Terminal Rohri) Tapo Rohri	Rohri District Sukkur	Abdul Majid Shah s/o Hakim Ali Shah	Siraj Ahmed s/o Wali Muhammad Shaikh	RSD. No.1032 Dated 29.11.2016 Survey/ Plot No.03 Block-A1	450 Sq ft	Rs. 300,000/-	Rs. 16,00,000/-	Rs. 18,00,000/-	
Grand Total									Rs. 25,325,000/-	Rs. 33,500,000/-

The details of Bank Accounts of three Petitioners/Accused show that an amount of Rs.34,75,77,000/- is in excess; that is, in terms of income the above amount in the bank accounts of these Accused persons were unexplained. The total worth of accumulated assets which is purportedly disproportionate to the known source of income of Accused/Petitioners is calculated as Rs.36,58,91,741/- (Rupees Thirty Six Crore Fifty Eight Lac Ninety One Thousand Seven Hundred Forty One).

8. Learned Counsel for the Petitioners could not justify his stance from the documents filed by him under his Statement (as mentioned above).

9. At this juncture, it would be relevant to reproduce a paragraph from the decision handed down by the Hon'ble Supreme Court in the case of **Olas Khan and others vs. Chairman NAB**, reported in **PLD 2018 SC 40**.

“7. National Accountability Ordinance, 1999 is a special statute, hybrid in nature, it is fusion of criminal liability and civil obligations, enacted with an aim to take effective measures for detection, investigation, prosecution and speedy trial of cases involving corruption, corrupt practices, misuse or abuse of power, and misappropriation of property and recovery of the same from the beneficiary or those found to have misappropriated such property and restoration of the same to the rightful owner thereof. It creates special genre of offences and wrongs”.

10. The above list of properties in the names of the Petitioners/accused, obtaining contracts of government

departments and banking transactions (inclusive of unexplained transactions), all are based on the documentary evidence; although, it has to pass the test of evidence and appraisal of the evidence at trial, but, at the same time, the above also indicates that prima facie it appears that Petitioner Accused No.2 is not only beneficiary of illegal gotten gains but is also actively participated/colluded with his father, Wali Muhammad Shaikh-Accused No.1/Petitioner, in such offence. Even at this stage, there is prima facie evidence about the allegations that an offence of corruption and corrupt practice by accumulation of assets beyond their known source of income and misuse of authority. In the cases of **Haji Ghulam Ali (2003 SCMR 597-Haji Ghulam Ali vs. The State)** and **Olas Khan** (ibid), both cases relating to the offence committed under the National Accountability Ordinance (XVIII of 1999), concession of bail was declined.

Similarly, learned Division bench of this Court in the case of **Muhammad Irfan vs. The State**, reported in **2019 YLR 1606**, the bail was declined primarily on the ground that there was sufficient material on record to connect the petitioner with the offence. In another case of **Dr. Syed Mehboob Ali Shah vs. National Accountability Bureau**, reported in 2017 YLR Note 437, learned Division Bench of this Court declined the concession of bail to the petitioner (of the reported case), because that there were unexplained bank transactions which were disproportionate to the petitioner's sources of income. A Relevant paragraph of the said judgment is reproduced herein under for the reference:-

8. *We have failed to comprehend as the how mala fides can be attributed to NAB where the incomes have been brought forward, **once the incomes are present on record it is a matter of consideration to be made by the learned trial court in conclusion, findings of which are yet to come, the petitions have failed to show that any violation of their fundamental rights having been caused or even attempted as alleged.** At this stage we are required to make only a tentative assessment of the material placed on record. The petitioners to our humble understanding have failed to make out a case of quashing of the proceedings as such the petitions stand dismissed. **In our view there is prima facie sufficient material to connect the petitioners to the office charged and there is no mala fide on the part of NAB as such their interim pre-arrest bail is recalled.**"*

11. Consequently, C.P. No.D-619 of 2020 and 619 of 2020 preferred by the Petitioner/Accused No.1 and 2 are dismissed and the pre-arrest anticipatory bail granted earlier is hereby recalled.

12. The case of Accused No.3/Petitioner Shoaib Ahmed Shaikh is somewhat on a different footing. Initially, he was mentioned as an employee of JS Bank and later he started his own business of auto spare parts. For the time being, unlike his brother Siraj Ahmed Shaikh, (petitioner/accused No.2) he was not involved (allegedly) in obtaining government contracts.

13. Culpability of this Accused No.3/Petitioner is yet to be examined and determined at the conclusion of trial. Merely on the basis of properties held to be *Benami* in his name, will not bring the case of this accused No.3/Petitioner at par with that of Accused No.1 and 2 (Petitioners). In this regard, the unreported Order dated 04.07.2017 passed by the Hon'ble Supreme Court in number of Civil Petitions No.148-K, 150-K, 814 to 818 and 211-K of 2017, is applicable. The Apex Court was pleased to grant bail to the wife of an accused/petitioner (of the above referred Civil Petitions) on the ground that case of further inquiry has been made out. Similarly, the present Accused No.3/Petitioner Shoaib Ahmed Shaikh, who is on pre-arrest bail, which is in view of above discussion, is confirmed but with the modification of terms, that the said accused/petitioner Shoaib Ahmed Sheikh will furnish two sureties of 20 Million (Rupees Four Crore) each and PR Bond of the like amount to the satisfaction of learned Trial Court within ten (10) days from today, failing which the concession of bail will be recalled and the Respondents will effect his arrest.

JUDGE

JUDGE

Faisal Mumtaz/PS