

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Muhammad Iqbal Kalhoro, J.

Mr. Justice Mohammad Karim Khan Agha, J.

Petition number, name of the petitioner and their counsel.

1. C.P. No.D-265 of 2015 Abdul Qadir Memon (petitioner) V/s. Chairman NAB through Mr. Anwar Tariq and Mr. Muhammad Rehman Ghous, Advocates.
2. C.P. No.D-2122 of 2018 Ghulam Abbas Soomro (petitioner) V/s. Chairman NAB through Mr. Muhammad Jameel, Advocate
3. C.P. No.D-2453 of 2018 Ali Hassan Brohi (petitioner) V/s. Chairman NAB through Mr. Ovais Ali Shah, Advocate
4. C.P. No.D-2528 of 2018 Abdul Jabbar Laghari (petitioner) V/s. Chairman NAB through Mr. Haider Waheed, Advocate
5. C.P. No.D-2529 of 2018 Ali Nawaz (petitioner) V/s. Chairman NAB through Mr. Haider Waheed, Advocate
6. C.P. No.D-2530 of 2018 Ali Asghar Mandro (petitioner) V/s. Chairman NAB through Mr. Haider Waheed, Advocate
7. C.P. No.D-315 of 2015 Dr. Ghulam Mustafa Suhag (petitioner) V/s. Chairman NAB & others through Mr. Raj Ali Wahid Kunwar, Advocate.
8. C.P. No.D-2286 of 2018 Ejaz Hussain (petitioner) V/s. Chairman NAB & others through Mr. Muhammad Zeeshan Abdullah, Advocate
9. C.P. No.D-2582 of 2018 Abdul Latif Khoso (petitioner) V/s. Chairman NAB & others through Mr. Rafique Ahmed Kalwar, Advocate.
10. C.P. No.D-5143 of 2015 Muhammad Siddique Memon (petitioner) V/s. Chairman NAB & others through Hafiz Ali Ashfaq, Advocate

Counsel for the Respondents

Mr. Yassir Siddiqi, Special Prosecutor, NAB.

Date of hearing: 17.04.2018, 15.05.2018 and 23.05.2018

Date of order: 01.06.2018

ORDER

Mohammed Karim Khan Agha, J: By this common order, we propose to dispose of the above petitions filed on behalf of petitioners Muhammad Siddique Memon, Ghulam Abbass Soomro,

Abdul Qadir Memon, Ghulam Mustafa Shuhug, Ali Hassan Brohi, Ali Asghar Mandro, Abdul Jabbar Leghari, Ejaz Hussain and Ali Nawaz for confirmation of their pre-arrest bail which was granted to them by various orders of this court and petitioner Abdul Latif Khoso's petition for post arrest bail in respect of NAB **Reference 08 of 2018 (State Vs. Muhammad Siddique Memon & others)**.

2. All the petitioners have been accused of corruption and corrupt practices by the National Accountability Bureau (NAB) under S.9 of the National Accountability Ordinance 1999 (NAO) by in effect misusing/failing to exercise their authority which led to the illegal regularization of 6 acres of Government land valued at Rs.551,760,000/- to beneficiaries in connivance with each other through fake and forged documents which caused a loss of RS Rs.551,760,000/- to the government exchequer.

3. Learned counsel for the petitioner Muhammad Siddique Memon who was Secretary of the Land Utilization Department(LUD) submitted that he presented the case before the Sindh Government Lands Committee (Lands Committee) for regularization held on 30-04-2008 of the concerned 6 acres of land based on the material which had been provided to him by other petitioners /co-accused Ghulam Abbass Soomro Ex member LUD and Abdul Qadir Memon the then Addl. Sec LUD who were responsible for providing any misleading material which he relied on in good faith; that he only became the Secretary on 15-04-2008 two weeks before the presentation and as such he had very little involvement in the regularization process; that it was a collective decision of the Lands Committee and it was a case of pick and choose as none of the members of the Lands Committee who had approved the regularization had been made accused in the reference; that with regards to malafide Ramesh Kumar who was the NAB's land consultant at the time was fully involved in the regularization process and that his expertise had been used to save his own skin and implicate others and as such for all the above reasons he was entitled to the confirmation of his pre arrest bail. In support of his contentions he placed reliance on **Chief Ehtesab Commissioner V Aftab Ahmed Sherpao** (PLD 2005 SC 408) and **Abid Mahmood V Government of KPK** (2017 SCMR 728)

4. Learned counsel for the petitioner Abdul Qadir Memon submitted that he was only Addl. Secretary BOR for 10 months;

that he did not give any misleading information; that it was a case of pick and choose and that no loss had been caused to the exchequer as the land had been reverted to the Government vide Ordinance III 2001 and as such he was entitled to the confirmation of his pre arrest bail. In support of his contentions he placed reliance on **Fecto Belarus Tractor Ltd V Government of Pakistan** (PLD 2005 SC 605)

5. Learned counsel for the petitioner Ghulam Abbas Soomro adopted the arguments of petitioner Abdul Qadir Memon. He further submitted that he had committed no illegality and that there was no material against him; he took us through various documents to show that he acted in accordance with the law in dealing with the allotment of land to co-accused Muhammed Ayub; that this land had been granted as per approval of the then chief Minister by relaxing the rules which was within his competence under the Colonization and Disposal of Government Land (Sindh) Act 1912; that he like a post box simply sent the case for further processing by the DC; that the Lands Committee had regularized the land which he was not a part of; that it was a case of pick and choose as neither the then Chief Minister nor any members of the Lands Committee who had regularized the land had been made an accused; that the land had now been surrendered to the Government of Sindh (GOS) and as such no loss had been caused to the exchequer; that the petitioner was an old man of 83 years of age and was suffering from ill health and as such for all the above reasons his pre arrest bail should be confirmed. In support of his contentions he placed reliance on the case of **Ramesh U.Udeshi V The State** (SBLR 2005 SC 37), **Shoaib Mehmood Butt v. Iftikhar ul Haq and 3 others** (1996 SCMR 1845), **Sardar Amin Farooqui v. The Chairman, NAB** (2014 P Cr.L.J 186),

6. Learned counsel for the petitioner Ghulam Mustafa Suhag submitted that he was a lowly section officer in the Land Utilization Department; that he did not prepare any false allotment file; that the treasury department verified the challans in question; that the written statement of the GOS in connection with accused Muhammad Ayub's civil suit whereby the GOS had alleged that the land ownership of Muhammad Ayub was based on forged and fabricated documents had been brought to the attention of the Lands Committee which went ahead and regularized the land; that

nothing had been concealed from the Lands Committee; that the position taken by Ramesh Kumar in the incident who was now NAB's land expert was contradictory and for all the above reasons his pre arrest bail should be confirmed. In support of his contentions he placed reliance on the cases of **Syed Ali Raza v. Federation of Pakistan** (PLD 2018 Sindh 174), **Waqar Ahmed and another v. Chairman NAB and another** (PLD 2015 Sindh 295), **Masood Ahmed and another v. State through D.G. NAB** (2017 P Cr. L J 770), **Pervez Zaki v. The State** (2017 P Cr. L J 747).

7. Learned counsel for the petitioner Ghulam Abdul Latif Khoso who has applied for post arrest bail who at the time of the incident was Assistant Treasury Officer submitted that accused Mohammed Ayub (who has since absconded) applied for land in 1992 which was approved by the Chief Minister and he was allotted 6 acres; that the amount in dispute was deposited by Mohammed Ayub through challan amounting to RS 986,000 and that the challan had not been fabricated; that he referred to the challan in question which specifically stated that the RS 986,000 had been paid as part payment by way of installment No.1 by Muhammad Ayub and a copy of a document which showed that the challan and payment had been received by the bank; that the allotment of land was later canceled vide the Sindh Urban State Land (cancellation) of allotments, conversion and Exchanges Ordinance 2000 (Ordinance III 2001) whereby cases were subsequently dealt with by the Lands Committee of which he was not a member which verified the payment of the RS 986,000 which had been paid; that the petitioner was suffering from cancer and had other medical problems and as such for all the above reasons the petitioner should be granted post arrest bail.

8. Learned counsel for the petitioner Ali Hassan Brohi submitted that the allegations against him were unfounded; that there was no material on record to connect him with any wrong doing let alone to show that he was the mastermind behind the alleged illegalities in the reference; essentially the original purchaser of the land was accused Mohammed Ayub who was not a fabricated person but was living and was active in pursuit of the land which had been allotted to him which was shown through the civil suit which he had filed; that the process of allotment of land to accused Muhammad Ayub was all in accordance with law and

the Lands Committee had regularized the same; that he had nothing to do with the Lands Committee and was not in the picture until after the land had been regularized as he wanted to purchase the land from accused Mohammed Ayub. In essence NAB was making him a scape goat as they could not get hold of accused Mohammed Ayub and the petitioner simply happened to be the last person who was in possession of the land; that even otherwise the land had been surrendered and there had been no loss caused to the GOS and thus for all the above reasons he was entitled to the confirmation of his pre arrest bail. In support of his contentions he placed reliance on **Qurban Ali Jatoi V Chairman NAB** (2002 MLD 472) **The State & others v. M. Idress Ghauri** (2008 SCMR 1118), **Darayus Cyrus Minwala v. National Accountability Bureau & others** (2010 MLD 1931) **Muhammad Amin Qureshi v. The State** (2007 P.Cr.LJ 105) **Ahmad Riaz Sheikh v. The State** (PLD 2009 SC 202) **Tariq Saeed v. Chairman, National Accountability Bureau & 2 others** (2005 YLR 445) **Mansur-ul-Haque v. Government of Pakistan** (PLD 2008 SC 166) **Ramesh U Din V State** (2005 YLR 1305) and the order dated 27.03.2018 in C.P. No.D-630 of 2016 **Aftab Ahmed Memon V. The Chairman NAB & others** (unreported)

9. Learned counsel for the petitioner Ali Nawaz submitted that he had nothing to do with the allegations against him in the reference; that he had simply acted as witness to the execution of the sale deed and that no false finger prints had been made; that he was a private person; that he became a witness to a document **after** the land had been regularized so he could have had no role in any forged documents; with regard to Ali Asghar Mandro he submitted that he was a private person who had nothing to do with the allegations made against him in the reference and that there was no material against him; that with regard to Abdul Jabbar Laghari he was simply a tapedar who after regularization of the land by the Lands Committee handed over possession of the land to accused Mohammed Ayub as was his responsibility on account of his position and on the orders of the then Mukhtikhar and as such with respect to all three petitioners mentioned above it was at the very least a case of further inquiry and as such all the three petitioners were entitled to the confirmation of their pre arrest bail. In support of his contentions he placed reliance on **Bahader Khan V State** (P.Cr.LJ 2012 P.24)

10. Learned counsel for the petitioner Eijaz Hussain who was DO Revenue at the time of the offense submitted that the documents which were placed before the Lands Committee were all fakes but as he was not a member of the Lands Committee who later regularized the land he could not be held responsible for any fraudulent regularization; he executed the lease only on the directions of the Lands Committee as it was his responsibility to do so after the Lands Committee had regularized it; that if some thumb prints of accused Muhammad Ayub were false it was not his responsibility to verify the same which was the duty of the sub registrar; that it was a case of pick and choose as the sub registrar had not been included in the reference which showed NAB's malafides and as such his pre arrest bail should be confirmed.

11. Learned Special Prosecutor NAB has opposed the petitions for both pre arrest bail and post arrest bail. He submitted that there had been no malafides by NAB. He took the court through various documents which according to him showed that there was sufficient material on record to connect all the petitioners to the offense for which they had been charged in the reference and as such the pre arrest bail granted to the petitioners should be recalled and the post arrest bail petition of Abdul Latif Khoso should be dismissed

12. We have considered the submissions of learned counsel for the parties, perused the material available on record and the case law cited at the bar.

13. As is usual in the case of bail we have only made a tentative assessment of the material on record and not gone into a deeper appreciation of the same. This order will have no effect on the proceedings before the trial court which shall be decided on merits by the trial court based on the evidence before it.

14. It is now well settled law that pre arrest bail is an extraordinary relief and is only available in cases where there has been malafide on the part of the complainant or the police. In this regard reference may be made to the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) and the more recent Supreme Court case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066). It is difficult for the accused to expressly prove malafide as was recognized in the

recent Supreme Court case of **Khalil Ahmed Soomro and others V State** (unreported dated 28-07-2017) where it was held as under in terms of proving malafides at the pre arrest bail stage (although this was not a NAB case we consider the finding relevant) at Para 5;

“Para 5. Although for grant of pre-arrest bail one of the pre-conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials **and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide.** In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years imprisonment. All those aspects if are combindly taken, may constitute element of mala fide” (bold added).

15. Thus, malafides can be deduced/inferred from the particular facts and circumstances of each case.

16. **With regard to malafides in our view when three issues are taken together we find that based on the surrounding circumstances of the case there were slight elements/hints of malafide on the part of NAB.** These factors are as follows: (a) None of the Members of the Lands Committee who unanimously approved the regularization of the 6 acres of Land despite being fully aware of the potential illegalities has been cited as an accused and a number of them including the Chairman's S.161 Cr.PC statements were not even recorded (b) that the Ordinance III of 2001 in effect gave a form of amnesty to those who had been involved in the illegal allotment of land however NAB has, it seems, only chosen to focus on this case and (c) Mr.Ramesh Kumar who was a part of the regularization process and who could have been made an accused has been relied upon as NAB's land expert who may have had reasons for shifting the blame on to others in order to shield himself from liability.

17. In our view NAB should not use experts/consultants in inquiries/investigations in which they had been personally involved prior to joining NAB as this could lead to the perception that their expertise had not been given impartially and that they

had a conflict of interest and thus their credibility and reliability may to a certain extent be compromised. In such cases NAB can always turn to relevant experts who had nothing to do with the inquiry/investigation which they were undertaking.

18. Turning to the case on merits we find the meetings of the Lands Committee 09-01-2008, 27-02-2008, 31-03-2008 and 16-04-2008 to be extremely relevant with regard to the regularization of the 6 acres of land in question. It should be noted that in the meeting held on 09-01-2008 it had been recommended that the land in question be regularized however this was prevented by the then Secretary LDU Mr. Shoaib Siddiqui through his note which indicated that the matter needed deeper consideration owing to some discrepancies. In this regard it should be noted that no issues which were later uncovered were brought to the notice of the Lands Committee by either petitioner Ghulam Abbass Soomro or Abdul Qadir Memon who should have done so. In the 2nd meeting on 27-02-2008 it seems that the decision was deferred as the written statement of the GOS in Muhammad Ayub's suit had come to light whereby the GOS had taken the stand that Muhammed Ayub's claim to the land was based on false and fabricated documents and as such the matter required further consideration. The same appears to be the case with regard to the 3rd meeting on 31.03.2008 after which petitioner Siddique Memon was to look into the matter as new Secretary LDU.

19. **In our view the 4th Meeting of the Lands Committee held on 16-04-2001 is of crucial significance.** Even if some of the petitioners who had prepared the working papers had tried in the past to conceal certain aspects of the subject land's regularization by the time of the 4th meeting the Lands Committee were in full knowledge of the issues effecting the regularization of this piece of land including the position of the GOS taken in the High Court that the concerned documents were all fake and forged. The decision regarding issue 20 which concerns the regularization of land however reads as under:

“ISSUE # 20. (Case # 01-471-02/SO-I(i)
Issue relating to the request of **Mr. Muhammad Ayub** s/o. **Sher Khan** for regularization of **06-00 acres** in Section 52-A Deh Bitti Amri, Secheme-33, Karachi.

DECISION. Mr. Ali Hassan Brohi and Mr. Irfan purchasers from Muhammad Ayub appeared before the Committee.

They were heard. The Secretary L.U. came up with a clear version that there is no doubt about the moving of the summary and approval of C.M. Sindh. According to him the challan for first installment has been verified. **He was of the view that due to lack of verification about the report of D.C East, Karachi, the entire proceedings cannot be termed as void ab-initio. The Suit filed in the Court has already been disposed of as withdrawn without touching merits of the case** and the enquiry in respect of contents of affidavit has already been concluded by the Department. **The Members were of the view that the Ordinance condones even the violation of law and ban in the matter of allotment. The committee took unanimous view that the irregularity if any arising out of lack of report of Deputy Commissioner may be condoned. Decision regarding regularization has already been taken by the Committee. It was decided that the matter may be regularized in continuation of earlier decision of the Committee fixing the market value at Rs.08, 00, 000/- per acre.** (Bold added)

20. The S.161 statement of Mohammed Hanif Solangi who was the solicitor at the meeting and was also a District and Sessions judge also supports the position of the Lands Committee to regularize the land after careful consideration and so far as the Lands Committee was concerned there was no longer any hindrance in so doing at the meeting on 30-04-2008. An extract from his statement is set out as under:

"The meetings of Committee were being chaired by its Chairman who at the relevant time was Mr. Justice (Retired) Wahid Bux Brohi. I also attended meetings held in respect of land in question. **The Decisions were taken in the meetings after open discussion by all the members including Honourable Chairman of Committee.**

In this regard it may be mentioned that matter of allotment in favour of Muhammad Ayoob was discussed in meeting held on 09.01.2008. This matter was taken as issue No.9 and decision was made as follows:

"Mr. Irfan Baig appeared before Committee as special attorney the matter was discussed in light of record. The case may be processed for regularization the rate already fixed for Sector 52 A of same Deh for residential / commercial purpose was approved.

The department however felt confusion because of comments filed by OSD Litigation in the court, who due to mistake/misunderstanding filed comments which were inconsistent to the available record. Subsequently in the light of factual position and available record he advised department for filing the revised written statement. In this connection the content of letter of OSD dated 15.03.2008 are reproduced by the department in working paper. As per said working paper the OSD was shown file/record available who clarified the position stating that undersigned has perused that the grant file of Muhammad Ayoob and also M/s Al

Khoor Property the sketch duly signed by the Mukhtiar lying in grant of file of Mr. Muhammad Ayoob NC 5 Sector 52 A Scheme 33 whereas grant order M/s Al Khoor reflect grant of 5 acres from NC 97 Sector 52 A Scheme 33. **From the above factual position as well as available record the ambiguity was clarified. The department therefore came up with clear version that summary was approved by CM. the payment through challan was verified. Accordingly members keeping in view all aspects of the case decided that matter may be regularized. The minute of meeting headed under the Chairmanship of Mr. Justice @ Wahid Bux Brohi (in which above decision was made) were signed by me as a member along with other members.**" (bold added)

21. In our view it appears from this meeting that there was nothing on record to put any of the members of the meeting on notice that there had been any illegalities in the grant of the 6 acres of land to Muhammad Ayub **which could not be legally overcome**. It is significant that two of the members had strong legal backgrounds. The Chairman was a former Judge of this court whilst another member who is noted as a solicitor in the minutes (and was a District and Sessions Judge) raised no objections over the regularization of the land following a detailed discussion of the matter; as mentioned earlier this meeting was in **continuation** of previous meetings on this issue (it was the fourth such meeting as mentioned earlier in this order) and as such the Lands Committee would have been well conversant of the issue in hand (probably more so than the petitioner secretary LDU who it appears had only joined his post 2 weeks earlier). In addition none of the members of the Lands Committee who made the unanimous collective decision to regularize the land has been made either an accused for which NAB has not been able to provide an explanation and as such this prima facie looks like a case of pick and choose; that the land has reverted back to the GOS and as such no loss has been caused to the exchequer; that the allotment was made in 1992 yet the inquiry which culminated in a reference on 02-03-2018 had been pending since 2008 which means that the sword of Damocles had been hanging over the heads of the petitioners for about 10 years; that most of the petitioners are retired persons and of old age some of whom have health issues. Yes, there may have been attempts to mislead the Lands Committee; yes there may be illegality in this matter as evidenced by the fact that accused Muhammad Ayub who was a poor laborer and has absconded and that the land was surrendered by Muhammad Ayub for no apparent reason acting

through his attorney after a complaint had been received by NAB which activated an inquiry; yes Ali Hassan Brohi may have been behind the whole scam; yes Ali Asghar Mandro, Ali Nawaz through their apparent false fingerprints of Muhammad Ayub may have been involved in the scam; yes Ejaz Hussain and Abdul Jabbar Lakho may have been involved in illegally transferring the land to Muhammad Ayub. However, largely on account of the Lands Committee allowing the regularization of the land and as mentioned above, its legally minded composition and the fact that none of them have been made accused in the reference (though we do not discount the possibility that they were deliberately misled which can be decided at trial after the recording of evidence) we consider at this stage that on **balance** this is a case of further inquiry with respect to the petitioners who were accused in effect of misleading the Lands Committee which consisted of at least two persons well versed in law who were aware of the legal issues which confronted them. Likewise we also find it to be a case of further inquiry in respect of the other petitioners who were allegedly involved in illegalities **after** the decision of the Lands Committee such as the Mukhtiarkar and the tapedar who may have carried out their actions based on the decision of the Lands Committee to regularize the land in question and prior to its regularization do not appear to be linked to the alleged scam. Likewise the case of the petitioners who allegedly falsely witnessed through fabricated signatures certain documents **after** the decision of the Lands Committee especially since prima facie it seems difficult at this stage based on the material before us to link all the petitioners to an unbroken chain of criminality especially after the Lands Committee (none of whom are accused) gave a clean chit to the regularization of the subject land.

22. Thus, since we have already found slight elements/hints of malafide in this case and **we consider it to be a case of further inquiry** for the reasons discussed earlier in this order, the pre arrest bail granted to all the petitioners who had applied for it is confirmed on the same terms and conditions and the petition for post arrest bail of Abdul Latif Khoso is allowed subject to him furnishing solvent surety in the amount of RS 1M (one million) and PR Bond in the like amount to the satisfaction of the Nazir of this court.

In summary.

23. Pre arrest bail is confirmed on the same terms and conditions to petitioners:

1. Muhammad Siddique Memon
2. Abdul Qadir Memon
3. Ghulam Abbas Soomro
4. Ali Hassan Brohi
5. Abdul Jabbar Laghari
6. Ali Nawaz
7. Ali Asghar Mandro
8. Dr. Ghulam Mustafa Suhag
9. Ejaz Hussain

24. Post arrest bail is granted to Abdul Latif Khoso subject to him furnishing solvent surety in the amount of RS 1M (one million) and PR Bond in the like amount to the satisfaction of the Nazir of this court.

25. The above petitions stand disposed of in the above terms.