

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammad Karim Khan Agha, J.

Petition number, name of the petitioner and his counsel.

CP No.D-1494 of 2018 Gada Hussain V. Director General
NAB & another
Gada Hussain S/o Nawab Khan (petitioner)
Through Mr. Sarfaraz Ali Metlo, Advocate.

Counsel for the Respondents

Mr. Yassir Siddiqui, Special Prosecutor, NAB.

Date of hearing: 09.03.2018.

Date of order: 16.03.2018

ORDER

Mohammad Karim Khan Agha, J: By this order we propose to dispose of the above mentioned petition which has been filed by the petitioner (Gada Hussain).for post arrest bail.

2. By order dated 10-10-2017 the petitioner's petition for pre arrest bail was dismissed by this court. This order was upheld by the Hon'ble Supreme Court vide order dated 14-02-2018 largely on account of the petitioner not being able to show any malafides on the part of either the complainant or the investigating agency i.e the National Accountability Bureau (NAB). As such the petitioner has approached this court for post arrest bail.

3. The case concerns the illegal transfer of 192 acres of Government land to private individuals which caused a massive loss to the government exchequer. The facts of the case as per **Reference No.01 of 2017 State V Karamuddin Panhyar and others** is that fake entry No.44 dated

06.04.2015 was illegally and malaſidely incorporated by accused No.3 Nisar Ahmed Wagan, Supervising Tapedar in Deh Form VII-B, purporting that Ghulam Rasool S/o Jumma, Ghulam Haider, Abdul Qadir, Kaſeem Bux, Muhammad Ishaque and Ali Bux have sold out their land measuring 192 acres to accused No.4 Ghulam Rasool for a sum of Rs. 975,000/- vide registered deed No.201 of 15-04-1997. **The entry was verified by accused No.2/the petitioner Gada Hussain Abro, Mukhtiarkar Revenue** and accused No.1 Karamuddin Panhyar Assistant Commissioner. Further, surprisingly a **cancellation note dated 07.04.2015** has been kept by accused No.1, **2** (the petitioner) and 3 stating that the entry may be treated as cancelled due to the non-production of original documents though they did not have the power to cancel the said entry. However **at the same time they issued NOC for sale and further transferred the land through a fake entry No.46 dated 19.06.2015.**

4. It is further stated in the Reference that the investigation revealed that fake entry No.46 dated 19.06.2015 was incorporated by accused No. 3 (Nisar Ahmed Wagan) in Deh Form VII-B purporting that accused No.4 Ghulam Rasool had sold out, his total share in the subject land i.e. 192 acres, for a sum of Rs.48,00,000/- vide registered deed No.339 of 28.04.2015 to Irfan Hilal Ahmed. **The entry was verified by accused No.2/the petitioner Gada Hussain Abro, Mukhtiarkar Revenue** and accused No.1 Karamuddin Panhyar Assistant Commissioner. Further, a cancellation note by accused No.3 (Nisar Ahmed Wagan) dated 26.06.2015

was kept stating that the entry was treated as cancelled. The accused No.1 (Karamuddin Panhyar) has stated in the note that the entry kept at 44 may also be treated as cancelled. Interestingly a letter dated 28.12.2015 was written by the **accused No.2/the petitioner (Gada Hussain)** to accused No.1 (Karamuddin Panhyar) through his office letter dated 31.12.2015, and forwarded to ADC-I, Thatta recommending therein that entries No.44 and 46 may be cancelled as said land was purely Government land.

5. According to the said reference, the allegations leveled against the petitioner named above are as under:

Petitioner No.1 Gada Hussain

"Investigation revealed that accused No.2 Gada Hussain Abro, the then Mukhtiarkar Taluka Mirpur Sakro District Thatta, **attested a fake entry No.44 dated 06.04.2016 which was placed on the basis of fake documents** purported to have been registered in the office of Sub Registrar Thatta vide RD No.201 dated 15.04.1997. **The accused No.1 further counter signed the sale for NOC dated 15.04.2015 on the basis of cancelled entry No.44. On the basis of fake entry No.44 and illegal NOC for sale, Govt. land measuring 192-00 acres have been illegally mutated by him vide entry No.46 dated 19.06.2015**".

6. In view of the above allegations, according to the reference petitioner Gada Hussain and other official co accused have caused loss of Rs.60 million by misusing/failing to exercise their authority and fraud and also cheated Irfan Hilal by selling Government land to him for an amount of Rs.4.8 million and co-accused Ghulam Rasool and Jahangir Khan being beneficiaries of this misusing/failing to exercise authority and fraud by petitioner No.1 Gada Hussain and

other official co accused and thus they have committed the offense of corruption and corrupt practices as defined u/s 9(a) of the National Accountability Ordinance 1999 (NAO).

7. In his pre arrest bail petition before this court which was rejected by this court vide order dated 10-10-2017 the petitioner made the same submissions as he has made today and no new ground has been furnished to lead to the grant of post arrest bail.

8. For ease of reference his submissions in his pre arrest bail application are set out below being para 6 of our above referred order:

"6. Learned counsel for petitioner No1 Gada Hussain who was Mukhtiarkar Revenue at the time contended that he was completely innocent of any wrong doing.....(concerns malafides which is not applicable at the post arrest bail stage) According to him the accused No.1 Karamuddin Panhyar the then Assistant Commissioner and accused No.3 Nassar Ahmed Wagan the then supervising Tapedar in the reference were responsible for the fake entry No.44; that he had maintained his same stance from the day he was first interviewed by NAB and had not deviated from the same; that he had sent letters on 28-12-2015 and 31-12-2015 to the concerned authorities alerting them to the fake entries (44 and 46) and requesting action under S.164 of the Sindh Land Revenue Act 1967 and thus for all the above reasons his pre arrest bail should be confirmed".

9. Learned special prosecutor for the NAB has again rebutted the arguments of the petitioner along the same lines as our findings in our above mentioned order dismissing the petitioner's pre arrest bail and again submitted that since there is sufficient material on record to connect the petitioner

to the offense his petition for post arrest bail should be dismissed.

10. We have considered the arguments of the parties and gone through the relevant record with their able assistance.

11. It goes without saying that our findings in this order are only of a tentative nature and will have no bearing on the outcome of the trial which will be decided on merits by the trial court based upon the material placed before it.

12. For offenses of corruption charged under the NAO (white collar crimes) the Hon'ble Supreme Court in the recent case of **Rai Mohammed Khan V NAB** (2017 SCMR P.1152) has emphasized that the **grant of bail in such cases must be construed strictly and rigidly** and we have accordingly applied this approach in this case.

13. In our aforesaid order rejecting the petitioner's pre arrest bail (**where the petitioner is referred to as petitioner No.1**) we found as under on merits at para's 12 and 17 to 21 which are reproduced as under for ease of reference.

"Para 12. The first point to note is that the two accused who petitioner No.1 (Gada Hussain) is trying to blame; namely accused No.1 (Karamuddin Panhyar) is already in jail in another NAB case and accused No.3 Nisar Ahmed Wagan is an absconder in this case.

17. Turning to the case of petitioner No.1 Gada Hussain who at the time of the offense was Mukthiakar Revenue Mirpur Skaro. He has been given a specific role in the reference as reproduced at Para 4 of this order.

18. Through the S.161 statements of Sub Registrar Yassir Hussain who denies his signature on the verification letter and claims it to be a fake which is corroborated by S.161 Statement of Liaquat Hussain

who confirms that the verification letter is a fake which is further supported by the outward register which makes no reference to such a letter it appears that the letter is a fake and persons responsible for this fake letter as a part of the overall scam are all the accused in the reference including petitioner No.1 who misused his authority by making this fake letter in order to favour petitioners 2 and 3 who were the beneficiaries.

19. The illegal entry 44 which relates to the aforesaid letter was made on 06-04-2015 whilst the cancellation note dated 07-04-2015 and signed by petitioner No.1 was made a day later hence at first instance it appears that the petitioner No.1 is trying to protect the precious Government land. However on a closer examination this is totally belied by the NOC for the sale of the land which petitioner No.1 gave to petitioner No.2 on 21-04-2015 which was **after** he had cancelled the entry. Thus being fully aware of the cancellation of the entry he then gave his NOC for the illegal sale of the land and has completely misused his authority in order to favour/benefit petitioner No.2 and later petitioner No.3. (S.161 statements of Mahngomal and Mohammed Juman)

20. As for the so called letters of alert sent by petitioner No.1 none of these were ever received by the competent authority as is revealed by the incoming correspondence logs of the competent authority. In our view these letters, like the verification letter, was made up after the event in an attempt to camouflage the earlier illegalities committed by the petitioner and the other official co-accused in the reference. (relevant registers and S.161 statements of Taufique Ahmed and Iqbal Ahmed)

21. Thus, in our view based on the material before us there is prima facie sufficient material to connect the petitioner to the offense for which he has been charged and as such his pre arrest bail stands recalled with immediate effect"

14. In our view the petitioner has not been able to place any new material before us which would persuade us to change/interfere with our above finding on merits during his pre arrest bail petition and accordingly his petition for post arrest bail is dismissed.