

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

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.  
Mr. Justice Mohammed Karim Khan Agha, J.

**Petition No. and name of petitioner along with counsel.**

1. C.P.No.D-24 of 2016 Syed Muhammad Aijaz & another V Federation of Pakistan & others.
1. Syed Muhammad Aijaz s/o Syed Imtiaz Hussain (petitioner) 2. Syed Shah Yousuf Imam s/o Syed Shah Zafar Imam (petitioner) through Mr. Faiz H. Shah Advocate
2. C.P.No.D-7923 of 2015 Ghulam Mohiuddin Qadri (petitioner) V National Accountability Bureau & another through Mr. Muhammad Rehman Ghous, Advocate.
3. C.P.No.D-1993 of 2016 Syed Abdul Jalil (petitioner) V Federation of Pakistan & others through Mr. Pir Mazhar ul Haq, Advocate.
4. C.P.No.D-501 of 2016 Muhammad Anwer Farooqui (petitioner) V National Accountability Bureau (NAB) through Chairman & another through Mr. Hassan Sabir, Advocate.
5. C.P.No.D-2314 of 2016 Abdul Wasi Khan (petitioner) V. Chairman National Accountability Bureau through Mr. Dildar Khan Jahangiri, Advocate.
6. C.P.No.D-129 of 2016 M. Aman ul Haq Siddiqi (petitioner) V. Federation of Pakistan & others through Mr. Faiz H. Shah, Advocate.

**Counsel for the Respondents.**

Mr. Muhammad Altaf, Special Prosecutor, NAB.

Dates of Hearing: 21.03.2018, 29-03-2018 and 10.04.2018

Date of Order: 23.04.2018

**ORDER**

**Mohammed Karim Khan Agha, J.** By this common order, we propose to dispose of the above petitions filed by the petitioners for confirmation of the ad interim pre arrest bail which was granted to them by various orders of this court and which all stem from National Accountability Bureau (NAB) **Reference 49/2015 State v. Mumtaz Ul Haq and 20 others** which is pending before an Accountability Court in Karachi.

2. The brief facts of the case as per NAB Ref 49/2015 (State V Mumtaz ul Haq and 20 others) filed by the NAB on 16-12-2015 before the Administrative Judge Accountability Courts at Karachi are that NAB (Sindh) at Karachi upon receipt of interrogation reports from a law enforcement agency **related to land**

**grabbing/china cutting in Karachi** through its Chairman constituted a **Joint Investigation Team consisting of officers from NAB, FIA and Sindh Rangers** to jointly inquire into the case which on 18-11-2015 was converted into an investigation .

3. During the investigation, it was established through the evidence which was collected that 13 plots bearing Nos. B-149/1 to B-149/13, Block-1, Gulistan-e-Juahar, Scheme-36, Karachi, each measuring 293.33 sq. yards were illegally created and constructed upon land reserved for water conduit of KW&SB and High Tension Line of K-Electric, by the officials of KDA in connivance with the officials of Master Plan Department (MPD), KW&SB and SBCA. The files of these plots located in "University Hill Villas" indicated that all these 13 plots were illegally and fraudulently allotted under the garb of exchange/alternate basis, i.e. the allottees of these plots had shown/claimed properties in Korangi Township which could not be allotted to them due to double allotment. Therefore they were compensated through allotment of plots at Gulistan-e-Juahar through fraudulent means.

4. According to the material collected during the investigation, all the fake allottees of Korangi Township had given General Power of Attorney's (GPAs) of their respective properties to other persons who had further sold on these properties for profit. None of the original allottees appeared before the KDA during the allotment process, nor were their whereabouts found out during the course of investigation. A list of allottees and their attorney holders is set out in the table at para 3 of the reference which for the sake of brevity is not set out herein.

5. During the course of investigation, the role of accused/petitioners was established as follows:-

- a. That the accused No.3 (Abdul Qavi Khan) (**not a petitioner in this case** but linked to his brother Abdul Warsi Khan who is a petitioner the allegation against whom is set out below) **purchased 2 plots in the name of his brother Abdul Wasi Khan**. He sold these plots to other persons, and received funds in his accounts as well as his daughter's, as such he is beneficiary of the proceeds of crime.
- b. That the accused No.4 (Abdul Wasi Khan) was attorney holder of 2 of the plots, which he had purchased together with his brother Abdul Qavi Khan.

- c. That the accused No.13 to 17 (Ghulam Mohiuddin Qadri, Mohammed Anwar Farooqui, Syed Abdul Jaleel, Syed Mohammed Ajaz and Syed Shah Yousaf Inam) are the Officers of KDA and KW&SB who conducted and signed the illegal joint physical survey which manipulated the on ground facts to show inaccurate picture of the area. Accused No.13 & 14 also issued site plans of the area despite the fact that these allotments were cancelled.
- d. That the accused No.19 (Muhammed Aman ul Haq) illegally issued Transfer Orders of the plots in 2008, despite the fact those allotments had already been cancelled in the year 2001.

6. During the course of investigation, the evidence collected in terms of statements of witnesses under S.161 Cr.PC and documents have revealed that the accused mentioned above, along with other co-accused, are responsible for causing loss to the government exchequer to the tune of Rs.500,000,000/- by creating plots on government land and selling them to general public and have therefore committed the offence of corruption & corrupt practices as defined under section 9(a) of National Accountability Ordinance 1999 (NAO) and hence the aforesaid reference was filed against them.

7. Learned counsel for petitioners Ghulam Mohiuddin Qadri, Mohammed Anwar Farooqui, Syed Abdul Jaleel, Syed Mohammed Aijaz and Syed Shah Yousaf Inam all submitted that there was no material against them; that they carried out a site inspection/survey as they were ordered and they had nothing to do with any illegal allotments; that as per the rule of consistency they were entitled to bail on hardship grounds as some of the other co-accused had already been granted bail on hardship grounds and as such they were entitled to the confirmation of their pre arrest bail.

8. Learned counsel for petitioner Abdul Wasī Khan submitted that he had nothing to do with the scam. He was made a general power of attorney holder at the age of 13 which he had no idea about from a fake person; that he had not received any benefit of the proceeds of any crime which had gone to his brother and thus for all the above reasons he was entitled to the confirmation of his pre arrest bail

9. Learned counsel for petitioner Muhammed Aman Ul Haq submitted that there was no material against him; that although

he did issue transfer orders as alleged he had no knowledge that such allotments had been cancelled which showed the malafide of NAB by including him in the reference in the first place.

10. Learned special prosecutor NAB opposed the confirmation of pre arrest bail to each of the petitioners who had applied for the same which he submitted should be recalled and as there had been no malafide on the part of NAB and that there was sufficient material on record to connect each of the petitioners to the offense for which they had been charged under the reference. In support of his contentions he took the court through various documents on record.

11. We have heard the parties and have carefully gone through the record with their able assistance.

12. We firstly observe that this reference was filed on 16-12-2015 over two years ago and whilst a number of the co-accused had their pre arrest and post arrest bail dismissed by order of this court dated 24-02-2016 the petitioners managed to keep their pre arrest bail pending for one reason or another. All the petitioners have been on pre arrest bail for over two years whilst a number of their co-accused have been released on bail on hardship grounds on account of spending so long in jail.

13. We would also like to make it clear that the findings in this order are only based on a tentative assessment of the material available on record and as per settled law not on a deep appreciation and shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

14. With regard to the Government officials we have also taken into consideration that they are paid and employed to serve the State/Province out of tax payers money and have a special fiduciary duty to protect and safeguard government property and to ensure that the same is not misappropriated through acts of corruption which causes a loss to the national exchequer.

15. 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** even if, as in that case referred to above, the amount involved was on the lesser side being only approx RS 12M (**as opposed to Billions of Rupees in this case**) and as such we have adopted the said approach.

16. With regard to the cases of Ghulam Mohiuddin Qadri (KDA), Mohammed Anwar Farooqui (KDA), Syed Abdul Jaleel(KDA), Syed Mohammed Aijaz (KWSB)and Syed Shah Yousaf Inam(KWSB) we have kept in mind that primarily this is a case of illegal allotment of land and that for such illegal allotment to take place each and every accused had to play a role from the members of the land exchange committee, to the surveyors, to those who prepared the part plan to those who made the illegal allotments to the beneficiaries.

17. All of the above petitioners have been given a specific role as set out in para 5 © of this order. The above petitioners were all a part of a survey team who were tasked to carry out a physical survey to see whether land was available for allotment. The petitioners were employees of KDA and KWSB respectively and when they surveyed the land in question they knew that it was set aside for other uses i.e water conduit and KE line nevertheless they manipulated their survey to show that it could be used to allot land for residential purposes. They have all signed the joint survey which specifically stated as under;

“the area was jointly surveyed along with staff of executive engineer Sch-36 and it is found that the land pointed by the KDA for planning is extremely away from the water reserved area at site the water reserved—is still intact 200 feet at site”

18. This survey finding was completely incorrect and incomprehensible if an honest and accurate survey had been carried out by the petitioners. Even an ordinary person would have been able to see that from the plans that the site was not available for allotment let alone a team of professionally qualified persons in this field such as the petitioners. The petitioners deliberately and malafidely manipulated their survey report findings which laid the foundation for co -accused 10 to 12 issuing the illegal and manipulated part plan (as the part plan specifically states that it was prepared on the basis of the above survey report) which ultimately lead to the illegal allotment of land. In this respect further reliance is placed on the S.161 Cr.PC statement of Mr

Tabash Raza Hasnain who corroborates that the survey findings were completely incorrect. It is in our view apparent that the petitioners were hand in glove with all the other co-accused in the chain of events which lead to illegally allotting the land and that their deliberately manipulated survey was one of the foundations on which the scam was based

19. Their reliance on the rule of consistency based on hardship grounds we find to be completely bizarre and of no substance since this ground is available to those who have spent a considerable period of time confined in jail where as none of the petitioners have spent a single day in jail and have managed to remain on pre arrest bail for over two years which is meant to be an extraordinary relief for a limited period. If the petitioners have been resourceful in avoiding pleading their case then equally the court has been to a certain extent lax in not dealing with the situation.

20. Since none of the above petitioners have pled malafides and there is prima facie sufficient material on record to connect them to the offense for which they have been charged the pre arrest bail of all the petitioners is recalled with immediate effect **except** for Ghulam Mohiuddin Qadri who is of advanced age, is wheel chair bound since 2008 with apparent permanent disability to his legs, appears on appearance to be unwell and has medical reports supporting his ill health who is granted pre arrest bail on humanitarian grounds on the same terms and conditions.

21. With regard to the case of petitioner Abdul Wasi Khan he has been given a specific role at para 5 (b) of this order which is inter linked with his brother's role at 5(a) who was declined bail and has since died. It appears from the material on record that his involvement in the scam was manipulated by his brother (who received all the proceeds of sale into his account and that of his daughter) and he may not have been fully aware of the scam especially as he does not appear to have financially benefited from it and as such we find his case to be one of further inquiry and since there are also appears to be tinges of malafide on the part of NAB including him in the reference his pre arrest bail is hereby confirmed on the same terms and conditions.

22. With regard to the case of petitioner Muhammed Aman Ul Haq he has been given a specific role at Para 5 (d) of this order. When confronted the NAB IO very fairly admitted that he had found no cancellation orders in the petitioners file and as such we are of the view that the petitioner may not have been aware that the allotment of the land had been cancelled prior to his issuance of allotment orders. We therefore find his case to be one of further inquiry and there to be tinges of malafides on the part of NAB for including him in the reference and as such he is granted pre arrest bail on the same terms and conditions.

**In summary.**

23. Pre arrest bail is recalled with immediate effect in respect of:

1. Mohammed Anwar Farooqui.
2. Syed Abdul Jaleel.
3. Syed Mohammed Aijaz.
4. Syed Shah Yousaf Inam

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

1. Ghulam Mohiuddin Qadri
2. Abdul Wasi Khan
3. Muhammed Aman Ul Haq

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