

## IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh. CJ.  
Mr. Justice Mohammed Karim Khan Agha, J.

### **Petition No. and name of petitioners along with counsel.**

1. CP No.D-6841/2016 Zameer Ahmed V Chairman NAB  
Zameer Ahmed S/o Shaikh Sultan Ahmed (petitioner No.1)  
through Mr. Muhammad Akbar Khan, advocate.
  
2. CP No.D-6013/2016 Younis Baloch V Chairman NAB  
Younis Baloch S/o Muhammad Usman Baloch (petitioner  
No.2) through Mr. Mukesh Kumar Khatri, advocate
  
3. CP No.D-6175/2016 Haji Muhammad Ismail V Chairman  
NAB  
Haji Muhammad Ismail S/o Haji Gul Hassan (petitioner No.3)  
through Nasrullah Malik, advocate.

### **Counsel for the Respondents.**

Mr. Muhammad Altaf, Special Prosecutor, NAB along with Mir  
Ali Raza Talpur IO.

Date of hearing: 20.09.2017

Date of Order: 19-10-2017

### **ORDER**

**Mohammed Karim Khan Agha, J.** By this common order, we propose to dispose of the above petitions filed on behalf of the petitioners for grant of pre arrest bail in National Accountability Bureau (NAB) Reference No. 57/2016 **State v. Waqar Hussain & others** which is pending before Administrative Judge Accountability Courts in Karachi wherein the petitioners have all been charged with the offense of corruption under the National Accountability Ordinance 1999 (NAO).

2. Brief facts of the case as set out in Reference No.57/2016 are that during inquiry against Management Committee of Pakistan Post Office Employees Cooperation



Housing Society Ltd (PPOECHS) and others an additional complaint was received **against Management of Pakistan Post Office Workers Society Ltd.** (PPOWCHS). Consequently, a separate inquiry was authorized against Shabir Khan, Ex-Honorary Secretary, PPOWCHS and other members of the managing committee. Thereafter, the inquiry was upgraded into investigation.

3. The investigation revealed that the PPOECHS was allotted a piece of land measuring 25 acres in Sector 36-A, KDA Scheme No.33, Gulzar-e-Hijri, Karachi by the Government of Sindh Land Utilization Department vide order No. Lu-11/3-12-79-G (k) 1/1 dated 13.01.1973 for the benefit of the society. The Employees and Workers of the Post Office on knowing about the allotment of 25 acres to PPOECHS Ltd. Karachi contacted the management of the society to be enrolled as members however their requests were declined. The matter came before the then Deputy Registrar, Cooperative Societies Karachi who was of the opinion that another Cooperative Society be registered and the employees and workers of the Pakistan Post Office be enrolled as members. Also, the management of PPOECHS Ltd. Karachi through its Honorary Secretary, Mr. Yousaf Saeed Hashmi gave an undertaking on 03.04.1979 to surrender the 25 acres land to the proposed Pakistan Post Office Workers Cooperative Housing Society Ltd. Karachi. Consequently, Pakistan Post Office Workers Cooperative Housing Society Ltd. (PPOWCHS) Karachi was registered with Cooperation Department, Govt. of Sindh on 9.4.1979 and subsequently an agreement dated 06.4.1980 was executed between the PPOECHS Ltd, Karachi and Pakistan Post Office Workers Cooperative Housing Society Ltd, Karachi.

4. The investigation further revealed that the then Honorary Secretary **deceased** Shabbir Khan in connivance with the **deceased** Nafees Nabi Ahmed in the year 2008 cancelled allotments of 243 x plots of original allottees without informing the Cooperative Department, Government



of Sindh. It appears that this whole exercise was made with malafide intention to deprive the original allottees and bring down the market value of the plots so that allotment files of the plots could be purchased from market at cheaper rates. The management of the society closed the registered office situated in the room No.4, Akber Motel, 1<sup>st</sup> Floor, PECHS Block-6, Nursery, Karachi and shifted the entire record to unknown place without informing the Cooperative Department, Government of Sindh.

5. During investigation bank accounts were scrutinized wherein the bank statement of the society maintained in the UBL Vault Branch shows Rs.92,463,186/- were withdrawn during the period from 2004 till 2009. Likewise, the bank statement of Askari Commercial Bank Ltd, shows that about Rs.12, 961,341/- were deposited and withdrawn during the period from 2009 till 2013. **An amount of Rs.53,310,900/- and Rs.11,495,000/- were misappropriated through cash withdrawals from the bank accounts of the society maintained at UBL and Askari Bank Limited, which is violation of bye law No.73 of the society.** The deposits through pay orders were made into the bank accounts of the society by the **deceased** Nafees Nabi Ahmed in common denomination of Rs. 10,000/-, Rs.25,000/-, Rs.50,000/-, Rs.100,000/- and Rs.200,000/- each, to pretend these credits had been made by the purported allottees/members of the society.

6. **The investigation revealed that the audit report shows that society had carried out internal development work in the society to the tune of Rs.109,472,060/-.** But when the internal development works of the society were physically verified along with the experts of Pakistan Public Works Department (PWD), **there were no visible marks of internal development works except two sides compound wall without plaster having two gates. As per measurement taken at the site the cost of compound wall including gates was calculated as Rs.1, 143,000/-.**



7. The investigation revealed that the agreement of purchase of 27 acres of agricultural land in Deh Dozen, Tappo Songal, KDA Scheme No.33, Karachi was made with **accused No.3 Haji Muhammad Ismail**, who in fact was not owner of the above land at all. Resultantly, an amount of **Rs.23,825,000/-** was misappropriated through **24 x cheques from UBL, Vault Branch against the above fake deal**. The **deceased** Shabir Khan in connivance with the **deceased** Nafees Nabi Ahmed had **auctioned 13 S.B. Plots contrary to the approved** Layout Plan to the family and associates of the deceased Nafees Nabi Ahmed. The then (DOG), **accused No.5 Younus Baloch** confirmed the auction proceedings of 13 x commercial plots. The **deceased** Nafees Nabi Ahmed got allotted F.L. Site measuring 4120 sq. yds. in the name of sister in law without auction.

8. The investigation revealed that to cover up their wrong doing the accused persons tried to hide all the withdrawals made from the bank accounts of the society by showing that they have carried out the internal development work in the society. The accused persons also endorsed this fraud by getting it approved in the audit report conducted by the Cooperation Department, Government of Sindh.

9. The accused No.1 Waqar Hussain being treasurer of society misappropriated the society funds under the garb of development work by signing 40 x cheques amounting to Rs.11, 495,000/- along with the **deceased** Shabbir Khan and withdrew the same in the form of cash from the account No.01560101000996 maintained in the Askari Bank Limited, Gulshan Chowrangi Branch.

10. **The accused No.2 Zameer Ahmed** being treasurer of society misappropriated the society funds under the garb of development work by signing the cheques amounting to Rs.53,310,900/- in connivance with **deceased** Shabbir Khan and withdrew the same in the form of cash from the bank



account No.000147082 of the society maintained at United Bank Limited, Vault Branch, Karachi.

11. The **deceased** Nafees Nabi Ahmed was the Master mind who usurped the land of the society by getting allotted SB plots in the name of his relatives and associates. He deposited Rs.11,675,000 into the bank accounts of the society in common denomination of Rs.10,000/-, Rs.25,000/-, Rs.50,000/-, Rs.100,000/-, Rs.200,000/- each to show these credits made by the purported allottees / members of the society. **He with malafide intentions, managed all the affairs of the society by nominating, late Shabbir Khan (the then Honorary Secretary), accused No.2 namely Zamceer Ahmed (the then Treasurer) and accused No.1 namely Waqar Hussain (the then Treasurer/Chairman) all being front men and dummy management of the society.**

12. **The accused No.3 Haji Muhammad Ismail** has signed a fake agreement of sale/purchase of 27 acres and bearing survey No.21 (11.00 acres), No.34 (9.00 acres) and No.1 (7.00 acres) in Deh Dozen, Tappo Songal, KDA Scheme No.33, Karachi. The revenue record shows that accused **No.3 Haji Ismail did not own any land in the above mentioned survey numbers.** He in connivance with deceased Shabbir Khan and deceased Nafees Nabi Ahmed embezzled a sum of Rs.23,825,000/- through 24 x cheques from the bank account of the society maintained at UBL, Vault Branch, Karachi. This amount was directly deposited through cross cheques in **his bank account** No.20311-714-111393 maintained at Habib Metro Bank, Gulshan Chowrangi Branch.

13. **The accused No.4 Akhtar Pathan** the then Deputy Registrar of Cooperative Societies has malafidely conducted the departmental audit of the society without verifying and scrutinizing the basic record including society bank accounts and expenditures. In the audit report **he illegally verified the expenses of the society in respect of internal**



**development works.** As per standard procedure audit is assigned to Assistant Registrar who along with the inspector are competent to conduct the audit. But in this case accused Akhtar Pathan conducted the audit himself alone just to cover the illegal action and embezzlement made by the accused person.

14. The accused **No.5 Younus Baloch confirmed the auction** proceeding of 13 x S.B. plots, despite knowing that the society only had 6 x S.B. plots as per approved layout plan.

15. As such it has been established from the investigation that the **accused persons have misappropriated/embezzled Rs.108,329,060/- from society's funds in the name of internal development work including Rs.23,825,000/- under the garb of payment against fake purchase of land, illegally auctioned 13 x S.B. plots and allotted F.L. Site without auction.** Hence, the aforesaid reference was filed against the petitioners under the NAO.

16. Learned counsel for petitioner No.1 (Zameer Ahmed) contended that he was completely innocent; that he was not treasurer; that he carried out no acts as treasurer which was an elected post; that he was not even a member of the society; that the society's bank account was not in his name; that he had no authority to operate any bank account of the society and that he did not sign any cheques relating to the society's account and as such he had nothing to do with the embezzlement/misappropriation of the society's funds and therefore his pre arrest bail granted earlier to him by this court should be confirmed.

17. Learned counsel for petitioner No.2 (Younis Baloch) contended that he was completely innocent of any wrong doing; that he did not confirm the auction of 13 SB plots and even otherwise he had no knowledge that the Society only had 6X's SB plots; that the auction was genuine and as such was

completely innocent of any wrong doing and therefore the pre arrest bail granted earlier to him by this court should be confirmed.

18. Learned counsel for petitioner No 3 (Haji Muhammad Ismail) contended that he was completely innocent of any wrong doing; that he was a chronic cancer patient and pointed to various documents in support of his contention; that he was not a beneficiary of any funds and that his account may have been misused; that he did not sell any land to the society and receive any payment for such sale from the society; that the agreement for sale with his signature on it as relied upon by the prosecution is a complete fabrication and as such the pre arrest bail granted earlier to him by this court should be confirmed.

19. On the other hand learned senior prosecutor for the NAB contended that all 3 petitioners were involved in the embezzlement/misappropriation from the society and the prosecution had more than sufficient evidence to prove beyond a reasonable doubt that all 3 petitioners were connected with the commission of the offense for which they had been charged

20. We have considered the arguments of the parties and reviewed the record.

21. As per settled law we have only made a tentative assessment of the material placed before us and this order shall have no bearing on the trial of the petitioners which shall be decided on merits by the concerned trial court based on the evidence which comes before it.

22. At the outset it is to be observed that accused No.1 Waqar Hussain has already entered into voluntary return and accepted his guilt in respect of this matter whilst learned counsel for accused No.4 Akhtar Pathan withdrew his pre arrest bail application in this case as this court had recently



rejected his pre arrest bail in another reference which had been filed against him and hence it had become infructuous.

23. We are clear in our mind that pre arrest bail is an extraordinary relief and before it can be granted some malafides must be shown on the part of the police or the complainant. In this regard reliance is placed on the cases of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) and more recently **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064).

24. None of the petitioners have contended that the reference has been filed against them by the NAB on account of malafides or ulterior motive. Besides we have not seen any malafides on the part of NAB from the record and thus on this ground alone the pre arrest bail applications of all 3 petitioner's deserve to be dismissed.

25. With regard to petitioner No.1 he has been given a specific role in the reference as set out in para 10 of this order; NAB has produced before us documents which show that he was the treasurer of the Society; that he had the power to operate the Society's bank Account; that he had issued up to 197 cheques under his signature many of which were in cash from the Society's bank account amounting to crores of rupees which have not been used in running the affairs of the Society; that the counsel for the petitioner No.1 although belatedly denying his signature on the cheques has not made any application to the trial court to appoint a hand writing expert to clarify this position and from a comparison of the signature on the cheques with petitioner No.1's signature on his lawyers vakalatnama they appear to us to be the same. Thus, in our view there is sufficient material to connect petitioner No.1 to the offense for which he has been charged and the pre arrest bail granted earlier to him by this court is hereby recalled with immediate effect.



26. With regard to petitioner No.2 he has been given a specific role in the reference as set out at Para 14 of this order; that he was deputy registrar of the Cooperation Department at the time when the offense was committed and as such would have been well aware of the layout plan which designated only 6 plots never the less he misused/failed to exercise his authority by approving the auction of 13 plots as per fake lay out plan (reliance is placed on S.161 statement of Mohammed Ismail Khan) and confirmed a dummy auction of such plots which were doled out to non existent/dummy persons and as such played an active role in the embezzlement of the Society's funds. In this respect reliance is placed on the original lay out plan, letter dated 02-06-2008 signed by himself to the Office of District Officer Co-operative CDGK confirming the fake auction and the S.161 statements of Syed Ahsan Hashmi, Abdullah Ilyas and Mahmood Ragoonwalla who were all fake purchasers used by petitioner No.2 who had no idea about any auction in which they had apparently purchased plots. As such in our view there is sufficient material on record to connect petitioner No.2 to the offense for which he is charged and the pre arrest bail granted to him earlier by this court is hereby recalled with immediate effect.

27. With regard to petitioner No.3 he has been given a specific role in the reference as set out in para 12 of this order. It is true that he is a kidney patient however it seems that he was discharged from the hospital some time ago and is undergoing follow up treatment and his condition is under control and as such we do not based on the medical evidence placed before us consider this a compelling reason to confirm petitioner No.3's pre arrest bail especially as he is before us and seems to be at this point in time in relatively good health. He is the beneficiary of approx 2 crore and 38 lacs which was paid into his bank account from the society's funds as a result of him entering into a sale agreement to sell land to the society which he did not possess; that the sale agreement bears his signature which he has so far not disputed at the



trial court, but which he now claims to be fake, however on a comparison with his signature on his lawyer's vakalatnama it appears to us to be the same so in our view this contention appears to be of little, if any, substance. The S.161 Statement of PW Christopher David Brian Kartha also shows that the Society's funds were paid directly into his bank account. As such in our view there is sufficient material on record to connect petitioner No.3 to the offense for which he is charged and the pre arrest bail granted to him earlier by this court is hereby recalled with immediate effect.

28. Thus, for the reasons mentioned above the pre arrest bail granted earlier by this Court to petitioner No.1 Zameer Ahmed, petitioner No.2 Younis Baloch and petitioner No.3 Haji Muhammad Ismail all stand recalled with immediate effect. However the concerned trial court is directed to complete the trial of the petitioners within 4 months of the date of this order. The office shall ensure that a copy of this order is immediately transmitted to the concerned trial court for compliance.

29. These petitions stand disposed of in the above terms