

IN THE HIGH COURT OF SINDH, KARACHI

Before Mr. Justice Ahmed Ali M. Shaikh. CJ.
Mr. Justice Muhammad Karim Khan Agha

1. C.P. No. D-956 of 2017, Sajid Ali Khan-Vs- Chairman, NAB through Mr. M. Azam Memon, Advocate
Sajid Ali Khan Yousufzai son of Abdul Azim Khan Yousufzai.
2. C.P. No. D-838 of 2016. Muhammad Riaz-Vs-Chairman, NAB through Mr. Munir Malik and Mr. Haq Nawaz Talpur, Advocates
Muhammad Riaz son of Muhammad Ilyas.
3. C.P. No. D-118 of 2017. Afzal Khan-Vs- Chairman, NAB through Mr. Javed Ahmed Rajput, Advocate
Afzal Khan son of Fazal Khan.
4. C.P. No. D-1401 of 2016. Muhammad Farooq & Others-Vs-Chairman, NAB through Mr. Zia ul Haq Makhdoom, Advocate
Muhammad Farooq son of Yosuf.
Wali Muhammad son of Abdul Lateef.
Muhammad Anees son of Ahmed.
Muhammad Younus s/o Haji Abdul Rehman.
Afaq Khan Ghori son of Abdul Razzak Ghori.
5. C.P. No. D-862 of 2017. Mirza Afzal Baig-Vs- Chairman, NAB through Mr. Usman Tufail Shaikh, Advocate
Mirza Afzal Baig son of Mirza Ahmed Baig.
6. C.P. No. D-874 of 2016. Syed Amir Ali Shah-Vs- Chairman, NAB through Mr. Haq Nawaz Talpur and Syed Jamaluddin Bukhari
Syed Amir Ali Shah son of Syed Akhtar Ali Shah.
7. C.P. No. D-881 of 2017. Muhammad Ibrahim-Vs- Chairman, NAB through Mr. M. Azam Memon, Advocate
Muhammad Ibrahim son of Muhammad Yosuf.

8. C.P. No.D-4128 of 2017. Farooq Shahid-Vs-NAB & others through Mr. Raja Babar Hamid, Advocate.
Farooq Shahid son of Yahya Saddiq.
9. C.P. No. D-738 of 2017. Muhammad Hamid Riaz-Vs-Chairman, NAB through Mr. Javed Ahmed Rajput
Muhammad Hamid Riaz son of Riaz-ul-Hassan.
10. C.P. No. D-334 of 2017. Muhammad Amin-Vs-Chairman NAB through M/s. Javed Ahmed Rajput and Abdul Rehman Thaem, Advocates
Muhammad Amin son of Muhammad Bashir.
11. C.P. No. D-335 of 2017. Mst. Farida -Vs- Chairman NAB through M/s. Javed Ahmed Rajput and Abdul Rehman Thaem, Advocates
Mst. Farida wife of Muhammad Yousuf.
12. C.P. No. D-336 of 2017. Muhammad Iqbal-Vs-Chairman, NAB through M/s. Javed Ahmed Rajput and Abdul Rehman Thaem, Advocates
Muhammad Iqbal son of Muhammad Yousuf.
13. C.P. No. D-222 of 2017. Fahad Ahmed-Vs- Chairman, NAB through M/s. Javed Ahmed Rajput and Abdul Rehman Thaem, Advocates
Fahad Ahmed son of Fayyaz Ahmed.
14. C.P. No. D-223 of 2017. Shahbaz Ahmed-Vs-Chairman. NAB through M/s. Javed Ahmed Rajput and Abdul Rehman Thaem, Advocates
Shahbaz Ahmed son of Fayyaz Ahmed.
15. C.P. No. D-119 of 2017. Muhammad Arif & Ors.-Vs-Chairman, NAB through Mr. Naveed Ahmed, Advocate
Muhammad Arif son of Muhammad Siddiq.
Muhammad Aslam son of Muhammad Saddiq.
16. C.P. No. D-121 of 2017. Faisal Waseem & another-Vs-Chairman, NAB through M/s. Masroor Ahmed Alvi and Fareed Ahmed Dayo, Advocates
Faisal Waseem son of Muhammad Saleemuddin.
Muhammad Jawaid son of Muhammad Zakria.
17. C.P. No. D-896 of 2017. Muhammad Arif-Vs- Chairman, NAB through Abdul Wahab Baloch, Advocate
Muhammad Arif son of Muhammad Bashir.

Advocate for the Respondents in all Const. Petitions

Special Prosecutor NAB Mr. Yasir Siddiqui.

Dated of Hearings: 19.10.2017, 01.11.2017, 02.11.2017,
07.11.2017, 15.11.2017 & 16.11.2017

Date of Order: 23.11.2017

ORDER

Mohammad Karim Khan Agha, J. By this common order, we intend to dispose of all the petitions seeking pre arrest and post arrest bail filed on behalf of the petitioners as mentioned above.

2. Brief facts of the case are that on various complaints against the management of the Pak Punjab Cooperative Housing Society (the society) regarding allegation of fraudulently transferring of society's plots of original allottees to fake and bogus persons and further selling of the society's plots to the builders by fake and illegal management committee an inquiry was authorized and conducted by the NAB which was later converted into an investigation.

3. That, the investigation revealed that in the society 358 plots were allotted to original / genuine members of the society. However, Accused No.1 namely Abrar Ahmed, the then Honorary Secretary of society and Accused No.5 namely Afzal Khan a fake member of the society in connivance with each other illegally issued new share certificates and enrolled fake members, who were employees of Sindh Workers Welfare Board (SWWB). Further a fake and illegal managing committee was elected comprising fake members through elections under the supervision of Mirza Munir Baig (Accused No.6) and Mirza Afzal Baig (Accused No.7).

4. The investigation further revealed that the fake elected Managing Committee General Body illegally and malafidely approved new layout plan in which all categories of residential plots were illegally cancelled and all plots were converted into one category of 120 square yards each in order to sell / transfer the plots through fake allotment process.

5. That, during investigation it was revealed that Accused No.2 Sajid Ali Khan issued an NOC dated 22.11.2006 with regard to the lay out plan and forwarded the same to Accused No.8 Muhammad Akhter Pathan. Further Accused No.2 cancelled the allotment of old and genuine allottees and allotted 541 plots in the names of SWWB employees and others.

6. The investigation also revealed that on 22.07.2008 fake elections were conducted by the Accused No.16 Hamid Riaz Election Officer and Accused No.6 Mirza Munir Baig, the then Inspector Cooperative Department and again fake society members were elected un-opposed in which most of them were employees of SWWB. Accused No.3 Farooq Shahid became purported Secretary of the society.

7. The investigation further revealed that an inquiry was conducted by the Cooperation Department into the affairs of the society whereby the fake management of the society was held responsible for illegal cancellation of allotment of old members, illegal revision of the layout plan and showing enrollments of new and fake members in the year 2004 and 2006. Further, it was held that fake files in the names of employees were prepared and later on transferred in the name of the Accused persons in connivance with the fake elected management of the society.

8. It is also apparent from the investigation that on 08.11.2008 a fake auction of 26 x commercial plots of the society was conducted in connivance with the officers / officials of Cooperative Department.

9. That, the investigation further revealed that Abrar Ahmed (Accused No.1) the then Honorary Secretary of the society, in connivance with the Accused No.5 Afzal Khan issued fake share certificates for showing induction of fake new members in the names of employees of the SWWB and others in violation of the Bye laws of the society. The Accused

No.1 further forwarded new revised layout plan in which he converted all categories of the plots and deprived the rights of the old genuine members of the society. Accused No.1 conducted fake election in connivance with deceased accused Zafar Saleem, Mirza Munir Baig (Accused No.6) and accused Sajid Ali Khan (Accused No.2) and handed over the management of the society to a fake management committee with the intention to dispose of the plots / land of the society to the builders and others.

10. That, the investigation revealed that Sajid Ali Khan (Accused No.2) in connivance with the deceased accused Zafar Saleem and Accused No.1, 6 & 7 became members of the fake management committee as well as purported Honorary Secretary of the society. The Accused No.2 also got approved new revised layout plan in connivance with the Accused No.8 Muhammad Akhtar Pathan depriving the rights of the old genuine members and further cancelled their memberships and allotments illegally. Further Accused No.2 in connivance with the other accused persons made fake allotments in the names of fake members and illegally transferred the fake files of allotments and leased the precious plots of the society to the Accused No.9, 10, 11, 12 and 13 the nominees of the Accused No.4, on the basis of fake sales agreement.

11. That, the investigation further revealed that Farooq Shahid (Accused No.3) in connivance with the Accused No.2, 6 and 16 got himself elected as Secretary of the society through unopposed fake elections. The accused No.3 became illegal Secretary of the society and transferred fake allotments to the Accused No.17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 and leased the plots of the society in their names. The Accused No.3 further conducted/ managed a fake auction of the commercial plots of the society in connivance with the deceased accused Zafar Saleem and Accused No.27 as representative of Cooperative Department and leased the plots of the society in the name of Accused No.28.

12. That, it is also revealed during investigation that Accused No 4 Muhammad Riaz, the owner / partner of M/s. Falaknaz (M/s. Al-Tameer Properties) in connivance with Accused No.1, 2,3,5,14,15 and deceased accused Zafar Saleem **usurped 100 x plots of the society** on the basis of fake files of the allotments in the names of fake members and transferred / leased those plots in the names of Accused No 9, 10, 11, 12 and 13. Later on, **the accused No.4 illegally launched a Commercial project in the name and style of Falaknaz Golden Pebbles and sold the land of the society and earned millions of rupees.**

13. That, during investigation it is also revealed that Afzal Khan (Accused No.5) a fake member of the society, in connivance with the Accused No.1, issued fake share certificates in the names of employees of the SWWB and others showing them as new inducted members in violation of the Bye laws of the society to ensure fake allotments of the precious land / plots of the society. The Accused No.5 further aided in the conduct of fake election with the intention to dispose off the plots / land of the society to the builders and others.

14. During investigation of the case it was found that Accused No.6 Mirza Munir Baig the then Inspector of the Cooperative Department and observer of the elections of the society aided to conduct fake elections and got elected fake management committee, which subsequently revised new layout plan and disposed off the precious land of the society to the builders and others

15. That, it is was also found that Mirza Afzal Baig (Accused No.7) the then Election Officer aided in conduct of fake elections and got elected fake management committee, which subsequently revised new layout plan of the society and disposed of the precious land of the society to the builders and others. **He also received rupees 50 million by using**

bank account of his nephew and further disbursed to the accused persons.

16. It is also revealed in the investigation that Muhammad Akhtar Pathan (Accused No.8) the then District Officer Cooperative, CDGK in connivance with the accused No.2 forwarded illegally new revised layout plan of the society with the knowledge of the fact that old genuine members of the society were already allotted the plots on the basis of old layout plan which deprived the legal rights of the genuine allottees of the plots of different categories.

17. It is also revealed in the investigation that Ghulam Qadir Pathan (Accused No.9), Muhammad Farooq (Accused No.10), Muhammad Younus (Accused No.11), Muhammad Anees (Accused No.12) and Wali Muhammad (Accused No.13) **being nominees of the Accused No.4 aided to usurp 100 x plots of the society and further added the launch of an illegal commercial project namely Falaknaz Golden Pebbles on the land of the society.**

18. That, investigation further revealed that Afaq Khan Ghorri (Accused No.14) in connivance with the Accused No 2 and Accused No.15 got leased 100 plots of the society on the basis of fake special power of attorneys of the accused persons No 9,10,11,12 and 13 in their names and aided Accused No.4 the builder to usurp the 100 plots of the society.

19. That, it is also revealed in the investigation that Khudadad Khan (Accused No.15) the then Sub Registrar, Gulshan II in connivance with the Accused No.14 and Accused No.2 leased the 100 plots of the society on the basis of fake special power of attorneys of the Accused No.9, 10, 11, 12 and 13 in their names and aided the builder Accused No.4 to usurp the 100 plots of the society

20. It is also disclosed in the investigation that Muhammad Hamid Riaz (Accused No 16) the then Election Officer aided in

conduct of fake elections in the year 2008 through which a fake management committee was elected unopposed which disposed of the precious land of the society to the builders and others

21. The investigation further revealed that Syed Amir Ali Shah (Accused No 17), Muhammad Iqbal (Accused No.18), Muhammad Ibrahim (Accused No.19), Mst. Farida (Accused No.20), Faisal Waseem (Accused No.21), Muhammad Aslam (Accused No.22), Muhammad Jawaid (Accused No.24) Muhammad Arif Siddique (Accused No.23), Muhammad Nadeem Khan (Accused No 26) and Muhammad Arif Bashir (Accused No.25) in connivance with the Accused No.3 got transferred the fake files of allotments and leased the plots of the society in their names. **Later on, they as owners / partners of M/s. Marhaba Builders, launched an illegal commercial project namely Premier Regency Villas on the land / plot of the society and sold the plots to the general public and earned millions of rupees.**

22. That, the investigation further revealed that Muhammad Younus Baloch (Accused No.27) as representative of Cooperative Department aided Accused No.3 and deceased Accused Zafar Saleem to conduct purported meeting of the auction committee to dispose of 26 commercial plots of the society fraudulently.

23. That, during investigation it is also revealed Adnan (Accused No.28) and Muhammad Amin (Accused No.29) in connivance with the deceased accused Zafar Saleem, Accused No.3 and Accused No.27 usurped **13 commercial plots each of the society through fake process of auction.**

24. That the investigation revealed that Muhammad Amin (accused No.29) in connivance with the deceased accused Zafar Saleem, accused No.3 and accused No.27 usurped 13 commercial plots of the society through fake process of auction.

25. The investigation revealed that accused No 30 Umair Tariq is a fake member and purported office bearer of the society, leased plots of the society to the Accused No 31 and 32.

26. That, the investigation revealed that Syed Fahad Ahmed (Accused No.31) Shahbaz Ahmed (Accused No.32) & Anila Ayaz (Accused No.33) **usurped the plots** in connivance with accused No.2 and 30, the illegal office bearer of the society.

27. That, the investigation also revealed that deceased Zafar Saleem as Director SWWB in connivance with the Accused No.1, 2, 3, 5 and others **used the names of employees of the SWWB and others for the fake new membership and allotments and transfer of allotments of the plots of society. He managed fake elections in the year 2006, and got elected fraudulently Accused No.2 Sajid Ali Khan who abetted / aided Accused No.4 Muhammad Riaz owner of M/s. Falaknaz and Accused No.20 to usurp 436 x plots of the society and launch their illegal commercial project on these plots and received cash amount from the amount of the purported sale consideration amount of 100 x plots paid by M/s. Falaknaz to the Accused No.7 through his nephew.** The deceased Accused Zafar Saleem in connivance with the Accused No 3 and Accused No.27 managed the fake auction proceedings of the **26 x commercial plots** of the society to dispose of these plots fraudulently

28. Since some of the petitioners have applied for pre arrest bail and some of the petitioners have applied for post arrest bail we shall take up the cases of pre arrest bail first.

Pre arrest bail cases

29. **Learned Counsel for petitioner Mohammed Riaz**, who was the builder of the project known as Falaknaz Golden Pebbles from the illegally transferred land of the society and sold the land on to non members for a huge profit, contended

that he was completely innocent of any wrong doing and had not usurped as alleged 100 plots of land, that he had paid full market value for the land and as such had not caused any loss; that he had advertised its purchase openly and no one had come forward to claim that he had usurped the land and thus by acting in such an open manner (as opposed to secretive manner) he had no mens rea; that he was a bona fide purchaser; that he had dealt with the society whose management had been recognized by the Registrar of Co-operatives under the Co-operative Societies Act 1925; that he relied on the presumption that official acts could be relied upon under A.129 Qanun-e-Shahadat Order 1984; that he had not connived with anyone; that he had nothing to do with how the affairs of the society were run, its elections, its management committee etc and the the malafide of NAB was shown by including him in the reference in the first place when there was no material whatsoever to connect him to the offense for which he had been charged or the supposed land scam; he also pointed out that 3 co-accused had already been granted post arrest bail by this Court and his case was on a better footing. Namely, accused No 28 Adnan who has allegedly usurped 13 plots, accused No.15 Khudadad Khan who was the then sub Registrar and accused No.5 Mirza Munir Baig who was the then Assistant registrar co-operative Department who had allegedly supervised the bogus elections of the fake management committee of the Society.

30. **Learned counsel for petitioner Afzal Khan** submitted that he was legally a member of the Society; that he left the society on 06.08 2006 and thereafter had nothing further to do with the Society and as such he could not be saddled with any liability for any illegalities which had occurred after he had left the society; that all new members were inducted between 2002 and 2004 before he joined the society and as such he had nothing to do with the cancellation of the allotment of the original members and induction of the new members; that during his period nothing was done with the

plots; that there was no material against him and as such this was a case of further inquiry and he was entitled to pre arrest bail.

31. **Learned counsel for petitioner Mirza Afzal Baig** submitted that the petitioner was an election officer at the time of the election of the Management committee and the other election officer Mirza Munir Baig had already been granted bail vide order of this court dated 24-04-2017 and as his case was on a similar, or even better footing he was entitled to bail based on the rule of consistency. With regard to the allegation that his nephew had received RS50 M on account of him manipulating the managing committee elections he denied that this was the case and that NAB had not been able to provide any material in support of this allegation and thus since there was no material against him this was a case of further inquiry and his was entitled to bail.

32. **Learned counsel for Muhammed Farooq, Wali Mohammed, Muhammed Anees, Mohammed Younis and Afaq Khan Ghorī** adopted the arguments of petitioner Mohammed Riaz.

33. He further submitted that none of the petitioners were connected with the management of the society or the society in any way; that they were the relatives and nominees of petitioner Mohammed Riaz who was a bona fide purchaser of the 100 plots from the society through an agreement dated 29-09-2007 through petitioner Sajid Ali Khan on behalf of the society and the petitioner Mohammed Riaz who was the builder of Falaknaz Golden Pebbles who had allotted to them as his nominees the 100 plots. In effect the petitioner Afaq Khan Ghorī been given special powers of attorney by petitioners **Muhammed Farooq, Wali Mohammed, Muhammed Anees and Mohammed Younis** to register the sub leases and otherwise deal with the plots which were duly registered by accused Khudadad Khan the then sub registrar Gulshan II Karachi who has already been granted bail vide

order of this court dated 17-06-2017 where by in the bail order it had been noted by the court after checking the relevant record that the power of attorneys were not fake and since the only allegation against petitioner Afaq Khan Ghori was that he had filed fake powers of attorney he along with the other petitioners were entitled to bail as this was a case of further inquiry and the rule of consistency also applied as the case of the petitioners was on a better footing than that of Khudadad Khan who had already been granted bail by this court and as such the petitioners should be granted pre arrest bail.

34. **Learned counsel for petitioner Mohammed Hamid Riaz** submitted that the petitioner was an election officer at the time of the election of the Management committee and the other election officer Mirza Munir Baig had already been granted bail vide order of this court dated 24-04-2017 and as his case was on a similar or even better footing he was entitled to bail based on the rule of consistency.

35. **Learned counsel for petitioner Syed Aamir Ali Shah** contended that he was a business man and was the brother in law of Zaffar Saleem (who was DG Works Sindh Workers Welfare Board (SWWB)) who had encouraged him to purchase the plots of members of SWWB as it would be a good business opportunity for him; that as such he had entered into partnership with co-accused Mohammed Iqbal through a joint venture agreement in order to construct a project to be known as Premier Regency Villa's; that he was a bona fide purchaser of the plots which he had purchased from employees of SWWB who were the lawful owner of the plots, that he had bought the plots at the market value of one lac 26,500 each being 120 sq yds; that it was a case of no evidence and under the rule of consistency he was entitled to bail as co-accused Adnan whose case was on the same footing as his had already been granted bail by this court vide order dated 24-04-2017 and as such his pre arrest bail should be confirmed.

36. **Learned counsel for petitioners Mohammed Iqbal, Mohammed Ibrahim and Mst Fareeda Yousaf** submitted that the petitioners were completely innocent; that they had nothing to do with the management or affairs of the society; that Mohammed Iqbal had entered into a Joint Venture Agreement with co-accused Syed Amir Ali Shah who owned 336 plots of the society and that he became a joint owner of these plots by virtue of the joint venture agreement for which he had paid co-accused Syed Amir Ali Shah around 3 crores and 97 lacs; that he was a professional builder and that his role in the joint venture was to build a residential project on the plots known as Premier Regency Villa's; that some of the plots were in the name of co-accused Mohammed Ibrahim (who was his brother) and Mst Fareeda Yousaf (who was his mother) as in essence he ran a family business; that he was a bona fide purchaser and had purchased the plots at full market value; in addition in respect of co-accused Mst Fareeda he submitted that she had severe medical issues as she had had her knee caps replaced and was now wheel chair bound; that there was no material against him and since this was a case of further inquiry all the petitioners were entitled to confirmation of their pre arrest bail.

37. **Learned counsel for petitioners Faisal Waseem and Mohammed Javaid** submitted that they were innocent of any wrongdoing; that they were humble employees of the **Premier Group** which was headed by Mohammed Arif accused No 13; that they were bona fide purchasers who had jointly bought the plots with co-accused Syed Amir Ali Shah and in effect were benamidars of Mohammed Arif; that no specific role had been given to them in the reference and as such their pre arrest bail should be confirmed. In support of his contentions he placed reliance on **Anjum Aqeel Khan V National Police Foundation** (2015 SCMR 1348) and **Rafiq Haji Usman V Chairman NAB** (2015 SCMR 1575)

38. **Learned counsel for petitioner Mohammed Amin** submitted that he had not usurped any plots as had been

alleged; that he never participated in any auction; that he had purchased the plots from Mohammed Raffique who had purchased them at auction and thus he was a bona fide purchaser; that the real accused in respect of the auction was Mohammed Raffique who had not even been included as an accused in the reference; that his case was similar to that of co-accused Adnan who had already been granted bail by this court vide Order dated 24-04-2017 and thus based on the rule of consistency he was also entitled to bail. In support of his contentions he placed reliance on **Anjum Aqeel Khan V National Police Foundation** (2015 SCMR 1348) and **Faquir Dad Khan Khoso, Gorahullah and others V NAB** (Supreme Court order dated 29-03-2017 (Unreported) in Civil Petitions No.258,260,268 and 457 all of 2017.

39. **Learned counsel for petitioners Mohammed Aslam and Mohammed Arif** s/o Mohammed Siddiq submitted that they were completely innocent; that they were contractors who had entered into an agreement with co-accused Syed Amir Ali Shah who was a builder to construct a project known as Premier Regency Villa's and in order to safeguard their interests got the plots of Syed Amir Ali Shah transferred in their own name and thereafter got the site plan sanctioned from SBICA; that there was no material of any wrong doing against them and that this was a case of further inquiry and as such they should be granted bail before arrest.

40. **Learned counsel for petitioners Fahad Ahmed and Shahbaz Ahmed** submitted that the petitioners were bona fide purchasers of the plots. In support of his submission he referred to the record which showed that the original allottees had sold the plots to another person who had then sold the plots to the petitioners that the vendors were alive and that there were no special power of attorney's involved. He further submitted if the original allottees and their subsequent purchasers were alive then if any wrong doing had been done they also should have been arrayed as accused in the

reference which they had not been. He also placed reliance on an order of this court dated 24-04-2017 where co-accused Adnan had been granted post arrest bail whose case was on a similar footing as that of the petitioners and as such the petitioners were also entitled to bail, based on the rule of consistency.

Post arrest bail.

41. **Learned counsel for the petitioner Sajid Ali Khan** submitted that he was completely innocent of any wrong doing. He contended that he was a legal member of the society following an amendment made in the society's bye laws on 27-10-2002 which enabled any one from Karachi to join the society; that he was not a fake member of the Managing Committee as he had been duly elected vide managing committees decision as reflected in its minutes dated 27-04-2005; that he had been legally elected as Secretary of the society as shown by the society's minutes dated 14-08-2006 and the person who held those elections accused No.6 Mirza Munir Baig had been granted post arrest bail by this court vide order dated 24-04-2017 on account of their being prima facie no material on record to show that there had been any connivance to show that the elections were fake and thus under the rule of consistency he was also entitled to bail; that he did not approve the lay out plan; that he did not benefit from the sale of the land; that he did not illegally cancel the allotment to the original allottees and that he had legally entered into the agreement to sell the society's land with petitioner Mohammed Riaz through Sale agreement dated 29-09-2007 which specifically allowed the land to be put in the name of the nominees of Mohammed Riaz and as such there was insufficient material to link him to the commission of the offense for which he had been charged and as such this was a case of further inquiry and he should be granted post arrest bail.

42. **Learned counsel for petitioner Farooq Shahid** submitted that he was completely innocent of any wrong doing; that he was a legally elected member of the society and legally elected secretary of the society who took over from petitioner Sajid Ali Khan as Secretary, that the sale agreement to Mohammed Riaz had been signed by petitioner Sajid Ali Khan before he assumed charge as secretary and he was only a humble employee of Zafar Saleem. In support of his contentions he placed reliance on **Muhammed Wasem V Chairman NAB** (2017 YLR 1528) Thus he submitted that for all the above reasons this was a case of further inquiry and he should be granted post arrest bail.

43. **Learned counsel for Petitioner Mohammed Arif** who was accused No.25 in the reference and was allegedly a beneficiary/allottee/lessee of an illegally sold plot submitted that he was completely innocent of any wrong doing; that he was simply an employee of the builder who was Syed Amir Ali Shah that he had no knowledge of any land scam; that 25 plots were in his joint name and as such he was not a beneficiary; that his CNIC had been illegally used without his knowledge and that he had been in jail since 10-02-2017 and since there was no material to link him to the commission of the offense he was entitled to be released on post arrest bail.

44. On the other hand learned senior prosecutor for the NAB submitted that there was more than sufficient material on record to link all the petitioners with the offense for which they have been charged in the reference and took us through various relevant documents in this respect and as such the pre arrest bail granted by this court earlier to all the petitioners should be recalled and likewise all the petitioners who had applied for post arrest bail should also have their petitions dismissed on the same count. That with regard to the petitioners who had applied for pre arrest bail there had been absolutely no malafide on the part of NAB

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

General Observations

46. 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 shall have no bearing on the trial which shall be decided on merits based on the evidence placed before the trial court.

47. At the outset, as we have done before in other similar NAB cases, we observe that cases of white collar crime are generally of an intricate and complex nature and the whole transaction and each component part of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offense. However, notwithstanding this observation it is settled law that in cases of bail each of the accused needs in some way to be connected with the alleged offense through a specific role and in the case of non bailable offenses such as this there are reasonable grounds for believing that the accused is connected with the commission of the offense for which he is charged.

48. 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 through the land scam as in this case**) in the following terms at P.1154 para 7;

“Under the principle of law and justice, each bail petition is to be decided on its own merits and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a threatening danger to the State economy, striking on its roots. The public money, allocated for social sector and economic well being of the poor people, is consistently embezzled / misappropriated at a large scale and why the majority of the population is deprived of essential daily utilities, like pure drinking water, health care and education facilities, etc. **It has become the foremost obligation of each and every institution, including the Judicator, to arrest this monster at this stage, before it goes out of proportion, posing threat to the very survival of the State and State economy, therefore, the Courts shall apply the Anti-Corruption laws somewhat rigidly, once in fact the case is made out, at bail stage, against the accused person.** Distinction, however, is to be drawn between the ordinary criminal cases and of corruption on the above analysis and grounds, while dealing with bail matter to an accused person, charged for such like crimes and also at the time of conviction, once the case is proved against him then, Courts are not supposed to show any mercy by taking a lenient view in the matter of sentence.”

49. Indeed, as in **Rai Mohammed Khan's case** (Supra) it is extremely tragic that out of the 40% of the society's land which was originally allocated for amenity purposes such as schools, parks, community centres etc which aimed to benefit the local community such allocation was wiped out by the greed of the management committee of the society in order to accommodate the building mafia which has plagued and continues to plague Karachi through its illegal activities in order to make money at the overall expense of the infrastructure of the city and well being of the inhabitants of the city. This heinous crime of usurping amenity plots and constructing residential properties through houses, apartments and skyscrapers has placed an extra burden on the infrastructure of the city in terms of electricity, water, sewage etc which the city is bursting at the seam to meet and in many areas such vital utilities and services are either

rationed or not readily available to the people of the city who are left to suffer in silent but disgruntled misery with no one to turn to who can adequately, timely and efficiently address their legitimate grievances. Such land change from amenity to residential or commercial purposes also in the long term gives rise to other areas of organized crime such as the tanker mafia which is currently doing booming business in Karachi. Such illegal acts ultimately all lead to detrimental side effects for the inhabitants of the city which adds to their misery. No wonder the Supreme Court in its wisdom has in a recent order blocked the further construction of high rises in the city so that further damage to the infrastructure of the city can be minimized.

50. During the course of hearing these bail petitions accused No.1 Abrar Ahmed who had applied for pre arrest bail vide CP.D No.1352/2016 and was one of the main accused absconded and his pre arrest bail was recalled by this court

51. It appears that this land scam whereby the society's precious land was illegally sold out, to the detriment of its original members whose allotments were illegally cancelled, by subsequent fake management committees of the society in collusion with Zaffar Saleem (deceased) and co-other accused at an undervalue or even free of cost (**which caused a loss to the Society and its genuine members of over RS 1 Billion**), to builders and their nominees/beneficiaries concerns numerous different groups of accused who each played distinct roles in different parts of the land scam which can in essence be divided into the following groups/roles/parts

(a) the illegal sale by the management of the society to the beneficiary builder of Falaknaz Golden pebbles (Mohammed Riaz) who was illegally sold/allotted 100 plots of society land upon which he built Falaknaz Golden Pebbles aided and abetted by Afaq Ghori and Mohammed Riaz's nominees, Mohammed Farooq, Mohammed Younis, Mohammed Anees and Wali Mohammed

who entered into an illegal agreement with the society dated 29-09-2017.

(b) the illegal sale by the management of the society to the beneficiary builder of Premier Regency Villa's on 336 illegally sold/allotted plots of society land through initially Syed Amir Ali Shah who later **allegedly** entered into a Joint venture agreement dated 07-04-2009 with Mohammed Iqbal and his nominees Mohammed Ibrahim, Mst Farida, Faisal Waseem, Mohammed Aslam, Mohammed Arif, Mohammed Jawaid and Mohammed Arif for construction purposes.

(c) the illegal sale by the management of the society through an illegal auction of 25 commercial plots belonging to the society being Mohammed Younis, Adnan (on Bail) and Mohammed Amin and

(d) The illegal sale by Umair Tariq (absconder) a member of the society who illegally sold/allotted plots to Fahad Ahmed and Shabaz Ahmed.

52. Before moving further we shall firstly deal with the case law cited by the petitioners and its applicability based on the facts and circumstances of the present case. **Rafiq Haji Usman's case** was of the view that that particular case was mainly of civil nature as opposed to a criminal nature and therefore would not fall within the purview of the NAO. The case in hand is undoubtedly a case which is almost entirely of a criminal nature in which the NAO is applicable and as such **Rafiq Haji's case** (Supra) is distinguishable. In the case of **Anjum Aqeel Khan** (Supra) **this is more supportive of the current prosecution case than the defense case.** In that case so-called bonafide purchasers were given a chance to surrender their illegally allotted plots which opportunity none of the accused despite being offered have availed in this case. Furthermore, none of the builders (Mohammed Riaz, Amir Ali Shah and Mohammed Iqbal and their nominees/partners) are in our view bona fide purchasers, and as such would not qualify for such relief, as they were all part of the land scam in connivance with the management of the society in order to

illegally deprive the society of precious land and simultaneously to benefit themselves through illegal constructions which were sold to the general public (not to the original members of the Society which caused a **massive loss of approx RS I Billion** to the Society) and as such this case is also distinguishable from the current case. The case of **Muhammed Wasem** (supra) a Peshawar case is distinguishable on its own facts.

Turning to the cases of Pre arrest bail in terms of malafide

53. 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 Muhammad Rafique** (PLD 2009 SC 427) which was more recently reiterated by the Supreme Court in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064)

54 Only the builder Mohammed Riaz of Falaknaz and his nominees **Muhammed Farooq, Wali Mohammed, Muhammed Anees and Mohammed Younis and his aider and abettor Afaq Khan Ghor**i have claimed malafide on the basis that the material on record showed that Mohammed Riaz was a bona fide purchaser and as such NAB had included him and his nominees in the reference on account of malafides. We do not accept such contention as in our view it is apparent from the record that the society by selling the land to him acted completely in violation of its by laws and had he and his nominees (partners) carried out their due diligence properly they would have been aware of this. **This is more so since builder Mohammed Riaz was not a novice in the building industry.** He had constructed many commercial projects allegedly in some cases illegally on government land and as such would have known that he had to examine the society's by laws and consider what the actual

purpose of the society was and what its land could be used for. Namely, to provide affordable housing to the members of the society and not to sell the society's lands to private builders who would develop the same for the benefit of non members and sell it to the general public for a huge profit. As such in our view there has been no malafide on the part of NAB in including these petitioners in the reference.

55. Thus, on this ground alone both he and all the other petitioners who had been granted interim pre arrest bail by various orders of this court deserve to have their pre arrest bail recalled.

56. Since there has been no malafide on the part of NAB we can now consider the case of each petitioner (both pre arrest and post arrest) based on the material placed before us to see if there is sufficient material to connect each of the petitioners to the offense for which they have been charged as the distinction between pre arrest bail and post arrest bail has now fallen away on account of there being no malafides in respect of the pre arrest bail cases

Modus operandi.

57. We first need to consider what was the **modus operandi** of the Management of the Society in its illegal activities and the beneficiaries (the builders) of this land scam. Namely, illegally selling off the society's land to beneficiary builders at an under value or free of cost to the detriment of the original members so that the builders could make colossal profits by illegally selling the Society's plots at market value to the general public.

58. It appears that prior to the scam being carried out from 2004 onwards the society's land had lay vacant for a long period and in parts it was even being encroached upon. Thus, it appears that the management of the society hatched a plan in connivance with the land mafia to dispose of the society's land to the land mafia who were the ultimate beneficiaries

who could develop the same and sell it on to the general public (non members of the society) for massive profits by illegally ousting the original members of the society and then illegally appointing new members of the society and thereby defeating the objectives of the co-operative society. That there were approx. 358 original members of the society who had each been allotted plots and made payments in connection with the same as per approved lay out plan. In order to sell the society's precious land to the building mafia the management of the society illegally cancelled the allotment of the original allottees and through Zafar Saleem deceased who held the position of DG Works Sindh Workers Welfare Board (SWWB) replaced them with lower level employees of SWWB without either their knowledge or permission; having illegally ousted the original members and original allottees the illegal management got approved a new lay out plan (getting rid of the amenity plot) whereby the land was converted mainly into residential and some commercial plots so that it could easily be sold on to the builders as had been agreed in advance with the specific builders (Falaknaz -Muhammed Riaz and M/S Axis construction company-Syed Amir Ali Shah and Mahaba Builders—Muhammed Iqbal); the management through the new fake allottees (employees of the SWWB) then without their knowledge sold the plots to the builders it appears without payment being made to the society whereby the builders got the benefit of the free land and the management pocketed the money provided by the purchasers of the plots without paying a single rupee to any member of the society who the land was meant for building their houses on and had been originally allotted to them and on which they had made payments.

59. In an attempt to make the land scam more understandable we will deal with it in the separate parts as mentioned above.

A. **The illegal sale by the fake/illegal management and members of the society to the beneficiary builder of**

Falaknaz Golden Pebbles (Mohammed Riaz) who was illegally sold/allotted 100 plots of society land upon which he built Falaknaz Golden Pebbles aided and abetted by Afaq Ghorri and Mohammed Riaz's nominees, Mohammed Farooq, Mohammed Younis, Mohammed Anees and Wali Mohammed who entered into an illegal agreement with the society dated 29-09-2017.

60. Petitioner Sajid Ali Khan (**post arrest**) has been given a specific role in the reference at Para 3, 4, 9 and 26 which read as under;

3. The investigation further revealed that the fake elected Managing Committee General Body illegally and malafidely **approved new layout plan in which all categories of residential plots were illegally cancelled** and all plots were converted into one category of 120 square yards each in order to sell / transfer the plots through fake allotment process.

4. That, during investigation it was revealed that Accused No.2 **Sajid Ali Khan issued an NOC dated 22.11.2006 with regard to the lay out plan** and forwarded the same to Accused No.8 Muhammad Akhter Pathan. Further Accused No.2 cancelled the allotment of old and genuine allottees and allotted 541 plots in the names of SWWB employees and others.

9. That, the investigation revealed that **Sajid Ali Khan (Accused No.2) in connivance with the deceased accused Zafar Saleem and Accused No.1, 6 & 7 became members of the fake management committee as well as purported Honorary Secretary of the society.** The Accused No.2 also got approved new revised layout plan in connivance with the Accused No.8 Muhammad Akhtar Pathan depriving the rights of the old genuine members and further cancelled their memberships and allotments illegally. Further Accused No.2 in connivance with the other accused persons made fake allotments in the names of fake members and illegally transferred the fake files of allotments and leased the precious plots of the society to the Accused No.9, 10, 11, 12 and 13 the nominees of the Accused No.4, on the basis of fake sales agreement.

26. That, the investigation also revealed that deceased Zafar Saleem as Director SWWB in connivance with the Accused No.1, 2, 3, 5 and others **used the names of employees of the SWWB and others for the fake new membership and allotments and transfer of allotments of the plots of society.** He managed fake

elections in the year 2006, and got elected fraudulently **Accused No.2 Sajid Ali Khan who abetted / aided Accused No.4 Muhammad Riaz owner of M/s. Falaknaz and Accused No.20 to usurp 436 x plots of the society and launch their illegal commercial project on these plots and received cash amount from the amount of the purported sale consideration amount of 100 x plots paid by M/s. Falaknaz to the Accused No.7 through his nephew.** The deceased Accused Zafar Saleem in connivance with the Accused No.3 and Accused No.27 managed the fake auction proceedings of the **26 x commercial plots** of the society to dispose of these plots fraudulently.

61. The material on record reveals that petitioner Sajid Ali Khan was elected to the Management committee of the society on 06-08-2016. At this time there existed an approved layout plan catering for the existing members who had been allotted plots and made certain payments in respect of the same.

62. The material placed before us shows that the petitioner illegally got revised the lay out plan in connivance with other co-accused who have absconded. We have been shown a copy of the revised layout plan which bears his signature which is not disputed. The object of revising the lay out plan was clearly to reduce the amenity plot area and maximize the residential areas to suit the requirements of the beneficiary builders namely Falaknaz and later Axis construction company and M/s Marharba Builders who he was in connivance with.

63. Furthermore, when he joined the management committee there was a minimum 561 existing members if not 971 members of the society (who are all absent from the society's role and members start from serial No. 972 who are the newly illegally inducted members who illegally replaced the original members) who had been lawfully allotted plots in the society and who had paid monies towards the development of the society's land so that they could build upon the plots which had been allotted to them in accordance with the purpose of the society.

64. **S.161 statement of PW Shah Mohammed** Assistant Registrar Co-operative Society and the relevant byelaws of the society reveal the procedure of members enrollment and procedure of membership cancellation which is as under:

1. PROCEDURE OF MEMBERS ENROLMENT:

As per Bylaw No.7 (at page No.2) of the Pak Punjab Co-operative Housing Society, member shall be elected by the Committee provided that all members shall belong to the former province of Punjab and resident of Karachi (later amended to allow persons from Karachi only to join the society). When any society is registered the management enrolled members as per provision of above mentioned Bylaw and maintained a seniority list. As the record of the Pak Punjab Co-operative Housing Society was not available in the Register Office as reported that the record of the membership / allotment was in the possession of the management and not handed over/submitted in the Registrar office to ascertain the factual position of the members/allotments whether the management of the society enrolled the members and allotted plots were made according to law or not.

2. PROCEDURE OF MEMBERSHIP CANCELLATION:

As per bylaw No.13 of the society a member may be expelled from the society by the vote of not less than two third of the members present and voting at a General Meeting of the society on a motion. As per provision of Co-operative Societies Act 1925 mentioned in 17-B, a society may recommend to the Registrar to expel from its membership a member who is a persistent defaulter of the society or who commits any act prejudicial to the interest of the society. Provided that the management committee of the society shall after affording the member an opportunity of hearing place the matter before the General Body meeting and approval thereof shall be communicated to the Registrar of the Society.

The Registrar may expel such a member from the society after affording him an opportunity of hearing.

The Registrar shall, before the expulsion order, determine the amount payable if any by the society to the member and may direct that the expulsion order would take the effect from the date of payment of the amount to such member or its deposit on the account of Registrar.

The member shall be ceased to be member of the society from the date which the expulsion order of the Registrar takes effect, provided that the provision of the section shall not apply to a member of Housing Society who has

made full payment towards cost of the land and the requisite Development Charges.

The record of cancellation of membership is not available in the record and there is no provision cancellation of membership. The members may be expelled as the reasons as mentioned in the Act and bylaws of the society."

65. The material before us reveals that the membership of the original members of the society and their allotments were illegally cancelled by the petitioner in connivance with other co-accused members and so called new members were illegally admitted to the society by the petitioner acting in connivance with some other co-accused.

66. The record reveals that the new members were all lowly paid employees working in the SWWB and their CNIC cards were obtained under fake pretences by the then DG Works SWWB Zafar Saleem (now deceased) who unbeknown to the employees of the SWWB made them members of the society and allotted plots to them based on the new lay out plan so that the management of the society could manipulate the sale of the plots to the builders.

67. The S.161 Statement of PW Abid Hussain a hardware supervisor at SWWB is sufficient to illustrate this which is set out below for ease of reference:

"Statement U/s 161 Cr.PC of Abid Hussain Ansari S/o Hamid Hussain Ansari, Hardware Supervisor (Since 2005), Sindh Workers Welfare Board Karachi, CNIC No.42101-6509966-5, R/o House No.A-3, Block-N, North Nazimabad, Karachi, Mobile No. 0300-2643014.

It is stated that he appeared on 25th Nov, 2015 before me at Sindh Workers Welfare Board Office, Main Shakra-e-Faisal, Karachi in connection with the Investigation against Younus Butt, Secretary Pak Punjab Co-Operative Housing Society Karachi and others regarding non provision of possession of plots to the allottees / members of the society and selling the land of society to the different builders. **He stated that he has never been member (membership No.1020) or any type of concern/interest in Pak Punjab Co-**

operative Housing Society. Any type of transaction of Plot No.104 in his name is not in his knowledge. Once, Zafar Saleem (Deceased), DG (Works), Sindh Workers Welfare Board required him to submit the CNIC for official works and he submitted the copy of his CNIC to the Zafar Saleem. Any file prepared on his name of the Pak Punjab Co-operative Housing is fake and fictitious. (bold added)

68. Thus, as part of the modus operandi in order to illegally sell off the society's land at a vast profit the petitioner played an active role in illegally changing the original layout plan so it would meet the requirements of the builders; illegally canceling the original members of the society and their allotments and putting in place "dummy" members of the society (unknowing lowly paid and often illiterate employees of the SWWB) who were allotted society plots at no cost so that these plots could be sold on at vast profit by the management to the building mafia without their knowledge.

69. Another petitioner who was also a member of the society who played a role in this land scam mainly through making illegal new members of the society without their knowledge so that the land scam could easily be given effect to is **petitioner Afzal Khan** who has been given a specific role in the reference at Para 2 which reads as under:

"That, the investigation revealed that in Pak Punjab Cooperative Housing Society 358 plots were allotted to original / genuine members of the society. However, Accused No.1 namely Abrar Ahmed, the then Honorary Secretary of Pak Punjab Cooperative Housing Society and **Accused No.5 namely Afzal Khan** a fake member of the society in connivance with each other illegally issued new share certificates and enrolled fake members, who were employees of Sindh Workers Welfare Board (SWWB). Further a fake and illegal managing committee was elected comprising fake members through elections under the supervision of Mirza Munir Baig (Accused No.6) and Mirza Afzal Baig (Accused No.7).

70. The record reveals that petitioner Afzal Khan who was an employee of SWWB enrolled himself as a member of the

society on 03-09-2004 by acting as chairman/ member with the connivance of the Honorary secretary and then he by back dating admitted at least two new members (Mr.Shahzade Mashī and Mr.Shaukat Mashī (both employees of SWWB) to the society on 31-08-2004 with his signatures which have not been disputed when he himself was **not** even a member. The S.161 Statement of PW Shoukat Mashī set out below is sufficient to illustrate this point;

“Statement U/S 161 Cr.PC of Shahzad Masih S/o Yaqoob Masih, Sweeper of Sindh Workers Welfare Board Karachi, CNIC No.42201-6097321 R/o House No.332, Gali No.6, KTC Depot, Kristin Town Korangi Karachi Mobile No.0310-1151649.

It is stated that he appeared on 25th Nov, 2015 before me at Sindh Workers Welfare Board Office, Main Shahra-e-Faisal, Karachi in connection with the Investigation against Younus Butt, Secretary Pak Punjab Co-Operative Housing Society, Karachi and others regarding non provision of possession of plots to the allottees / members of the society and selling the land of society to the different builders. He stated that once Zafar Saleem Ex-Director General (Works) SWWB Board required his CNIC for allotment of plots of any society for Board employees, but after many years no any response was received. He neither listen the name of Pak Punjab Co-operative Housing Society nor became part of any transaction of Plot No.R-2 in his name as well as he has no concern regarding membership No.918 of the society. He added that he has no concern with the plots of the society and his name is used for the fake and fictitious transaction”

71. Turning to the case of petitioner Muhammed Riaz (Falaknaz Builder), Muhammed Farooq, Wali Mohammed, Muhammed Anees and Mohammed Younis who are the builder and his nominees who the 100 plots allegedly owned by SWWB employees were sold by the society through Sajid Khan vide agreement dated 29-09-2007 and petitioner Afaq Khan Ghorī who the nominees all gave their special power of attorney to in respect of the registration of the 100 plots.

72. In line with the plan the sale agreement between petitioner Mohammed Riaz and and petitioner Sajid Ali Khan makes it clear in the recitals that Sajid Ali Khan was

authorized by the members of the society to make the sale. Since as we have already noted the new members were in effect dummy members from the lowly employed of SWWB who had no idea that they were members of the society and had been illegally made members of the society the sale agreement is completely illegal as petitioner Sajid Khan had absolutely no lawful authority whatsoever to sell the society's land. Besides no authority letter by the so called members of the society is available on record or traceable.

73. Petitioner Muhammed Riaz the purchaser would have known this by simply doing some basic due diligence by studying the by laws of the society and the concept of the society itself that the society was created to establish affordable housing for its members. Petitioner Mohammed Riaz had no intention whatsoever to develop the land for the members of the society but instead to develop it and sell it on at the best price possible to benefit himself. We find his claim of making advertisements in little known newspapers simply an attempt to camouflage his illegal actions. This is especially so as if he would have done his proper due diligence he would have known that the members of the society and allottees were all dummy members who were lowly paid employees of the SWWB who did not even know they were members and as such could not have responded to the advert as so far as they were concerned it did not concern them. Likewise under its by laws the society had no authority to sell the society's land to a builder for commercial purposes which would exclude the members of the Society. As per the agreement petitioner Muhammed Riaz was entitled to give the plots in the name of his nominees. This begs the question why? The obvious answer is that he wanted to remain behind the scenes because as a notorious developer (as per inquiry notification and inquiry report as mentioned below) he did not want to be seen to be involved directly in the illegal project. Even the nominee petitioners gave a special power of attorney to petitioner Afaq Khan Ghori in order to further distance

petitioner Mohammed Riaz from the transaction. In effect he was trying to hide behind the equivalent of a so called corporate veil which we have now lifted.

74. The illegalities and criminality between Sajid Khan and the petitioner is further shown by the agreement whereby an initial amount RS 61,000,000.00 was to be paid to the society by petitioners Mohammed Riaz for the 100 plots. The receipts show the name of Mirza Asif Baig who is not a member of the society let alone a member of the managing committee. The receipts are signed by Mirza Asif Baig and are witnessed by petitioner Afzal Khan whose case we have already discussed. The cheques are made piecemeal in the name of Mirza Asif Baig and are not pay orders and there is no evidence that these cheques were ever paid into any bank account or were encashed. **These payments have also not been shown in any accounts of the society and certainly no dummy member of the society received any amount for their plot.** It is inconceivable that petitioner Mohammed Riaz could have paid such cheques to Mirza Asif Baig, who was not a member of the management committee and had no authority to give a receipt or receive the cheques on behalf of the society, from accounts not connected with Mohammed Riaz. This in our view shows that the transaction was a complete sham and was designed to benefit both Mohammed Riaz and his nominees and members of the society such as Sajid Ali Khan and Afzal Khan. The record clearly shows that the nominees received between them the 100 plots who then registered them through Afaq Khan Ghorri who was their attorney and was part and parcel of the scam which he was fully involved in through the builder Mohammed Riaz.

75. Significantly, after such illegal sale an inquiry was established to look into the matter by the Government of Sindh (GOS) Co-operation Department vide notification dated 24-03-2014 which reads as under:

“GOVERNMENT OF SINDH COOPERATION
DEPARTMENT

Karachi, dated the 24th March, 2014.

NOTIFICATION

No.SO(C-1)1(12)/2006 (Pt-I): In exercise of powers conferred Under Section-6(1) of Sindh Cooperative Housing Society Authority Ordinance 1982. I, Ali Ahmed Lund, Secretary to Government of Sindh, Cooperation Department/Chairman Sindh Cooperative Housing Authority do hereby appointed **Mr. Muhammad Azeem, Assistant Registrar Cooperative Societies-IV, Karachi, as Enquiry Officer to conduct Enquiry into the affairs of M/s Pak Punjab Cooperative Housing Society Ltd.** Karachi. Under Section 6(1) of Sindh Cooperative Housing Authority Ordinance 1982, including following allegation:

- 1) **They sold the society land to Muhammad Riaz Memon owner of M/s Falak Naz Builder. They are selling illegally the plots of society in shape of bungalows. The builder is not supposed to sell society plots as project. M/s Falak Naz Builder is a land mafia type builder and his 90% projects are constructed on Railway Department land, government land and factitious title and society land of innocent society allottees.** (bold added)

He shall submit the Enquiry report within 07 days from the issuance of this Notification.

ALI AHMED LUND

SECRETARY TO GOVERNMENT OF SINDH

No.SO(C-1)I(12)/2006(Pt-I)/186. Karachi dated 24th March, 2014

76. The inquiry officer in his report in his conclusions and recommendations found as under:

CONCLUSION

The society had been allotted 24 Acres Land in Sector No.24-A, in KDA Scheme No.33 at Super High Way, Gulzar-e-Hijri, Karachi by Deputy Commissioner (East) Karachi on behalf, the sale agreement between Govt and the society was executed on 21.09.1977.

The management of society in its meeting held on 25.8.2007 accorded approval to M/s. Falaknaz Properties to launch Construction Scheme of houses at their own leased plots.

As discussed in forgoing para M/s Falak Naz Builder was authorized by the management of

the society to launch their Housing Project on the society's Land in contravention of the Bylaws of the society. Such instance of the management of the society puts the society and its members in deep trouble. It is duty of the management of the society to restrict such elements like Falak Naz builders and others for their activities in the larger interest of the society and its members.(bold added)

It is worthwhile to point out that last General body meeting of the society was held on 18.12.2011, thereafter no General body meeting of the society has so far been held in contravention of section 12 of the Cooperative Societies Act 1925 as well as Byelaw 37 of the Bylaws of the society. **It reveals that the business of the society including Election of the office bearers is managed without approval and justification.**

A huge amount of Rs.23,165,031/- has been spent under the head of internal development but its detail such as publication in news papers, prequalification, Quotations / Tenders, measurement book, work orders, agreement with contractors and completion certificates has neither been provided to the Govt. Auditors nor to the under signed for verification.

The position stated needs justification for incurring the said massive amount under the head of development.

It also has been observed that as per Govt. Audit report for the year ending 30.6.2013, society has 547 members/share holders, hence it should have received Rs.27,350/- against 547 shares of Rs.50/- each. But the balance sheet of the society shows quite deferent amount Rs.1,82,000/- under this head needs justification.(bold added)

RECOMMENDATION

In view of the above findings it is proved that Falak Naz Builder was authorized by the management of the society to launch their Housing Project on the society's land in contravention of the Bylaws of the society. Such instance of the management of the society puts the society and its members in deep trouble. It is duty of the management of the society to restrict such elements like Falak Naz Builders and others for their activities in the larger interest of the society and its members. Further the General body meeting of the society has not been held since 2011, the entire business of the society has managed without approval and justification. It is there fore

recommended that the society may be super ceded as required under section 6(2) Sindh Cooperative Housing Societies ordinance, 1982.(bold added)

(Muhammad Azeem)

Assistant Registrar, Cooperative Societies-IV/Inquiry Officer,
Pak Punjab Cooperative Housing Society Ltd., Karachi

77. **PW Muhammed Azem** has also given a **S.161 statement** to the same effect along with his report which also high lights these illegal activities of the management committee in connivance with FalakNaz Builder (Mohammed Riaz and his nominees). Such illegalities which were committed by all the accused in the reference is further supported by the **S.161 Statements of PW's Shah Muhammed Ujjan** the registrar of Co-operative society III Karachi and **Mazhar Hussain** Sub Inspector co-operative Society III Karachi

78. We are of the view that the case of the co-accused Khudad Khan who was granted bail by this course vide order dated 08-05-2017 is distinguishable from the case of the petitioners and does not stand on the same footing since he only appears to have been the sub registrar who registered the sub leases pursuant to the special powers of attorney given by petitioners. Whereas the above mentioned petitioners were along with Mohammed Riaz an intricate and essential part of the land scam, which they would have been fully aware of, as is seen by their becoming his nominees under the agreement in an attempt to conceal the true ownership of the land. Thus the rule of consistency is not applicable to their case.

79. There is no question of there being any pick and choose in respect of members of the management committee who have not been included in the reference as either they were "dummy members" as indicated earlier or played no active role whatsoever in any of the illegalities. Petitioner Sajid Khan as per the record also signed many new illegal allotment orders and as such his involvement and finger prints in the

commission of the crime, are well made out by the material on record.

80. Thus based on the above discussion there has been no malafide on the part of NAB and in our view prima facie there is sufficient material on record to link the petitioners to the offense for which they have been charged and as such the petition for post arrest bail of Sajid Ali Khan is dismissed and the pre arrest bail granted to petitioners Afzal Khan, Mohammed Riaz, Muhammed Farooq, Wali Mohammed, Muhammed Anees, Mohammed Younis and Afaq Khan Ghorri is recalled with immediate effect.

Election Officers.

81. **Petitioners Mirza Afzal Baig and Mohammed Hamid Riaz** and Mirza Munir Baig were all alleged to have been involved in holding fake elections to the Managing committee of the society at various times. Mirza Munir Baig who was an election officer has already been granted bail vide order dated 24-04-2017 by this court so the question arises whether the role of the other election officers is on the same footing as Mirza Munir Baig and as such the rule of consistency will apply to them.

82. We find that the role of petitioner Mirza Afzal Baig is not on the same footing as Mirza Munir Baig and as such the rule of consistency does not apply to him. This is because there is material to show that he received unexplained money via his next of kin which was unexplainably paid into his next of kin's bank account and the next of kin was also illegally allotted a plot of the society without any evidence of payment. As such it appears that Mirza Afzal Baig received payments for holding fake management committee elections. In this respect the **S.161 statement of PW Syed Ali Imran** the manager of standard chartered bank is relied on. As such we find there is sufficient material on record to prima facie connect the petitioner to the commission of the offense for which he has

been charged and as such his pre arrest bail is hereby recalled with immediate effect.

83. We find that the role of petitioner Muhammed Hamid Riaz is also not on the same footing as Mirza Munir Baig and as such the rule of consistency does not apply to him. This is because with respect to Mohammed Hamid Riaz as we will come to below when dealing with the case of petitioner Farooq Shahid it is clear that he played a role in the so called election of the fake managing committee in 2008 of which Farooq Shahid was a member. The fakeness of this committee is shown from the S.161 statements of PW Aurangzaib (who was purportedly the President of the Management Committee), Muhammed Ali and Muhammed Adnan two other members of the fake management committee who have all stated that they were SWWB employees and had nothing to do with the society let alone its management committee. As such petitioner Muhammed Hamid Riaz was fully involved in arranging the fake election of the management committee in 2008 which then illegally sold over 336 plots of the society to Syed Amir Ali Shah which material was probably not brought to the attention of the learned court when it granted bail to Mirza Munir Baig, another election officer involved in the 2006 election, when it granted him bail vide its order dated 24.04.2017 as such we find sufficient material on record to connect the petitioner Mohammed Hamid Riaz to the offense for which he has been charged and as such his pre arrest bail is recalled with immediate effect.

B. Turning to the illegal sale by the management of the society to the beneficiary builder of Premier Regency Villa's of 336 illegally sold/allotted plots of society land through initially Syed Aamir Ali Shah who allegedly later entered into a Joint venture agreement with Mohammed Iqbal and his nominees Mohammed Ibrahim, Mst Farida, Fasal Waseem, Mohammed Aslam, Mohammed Arif, Mohammed Jawaid and Mohammed Arif.

84. The concerned member of the management committee of the society who acted illegally in this illegal allotment of society land to the building mafia is petitioner **Farooq Shahid** (post arrest) who has been given a specific role in the reference at Para 10 which reads as under:

“That, the investigation further revealed that **Farooq Shahid** (Accused No.3) in connivance with the Accused No.2, 6 and 16 got himself elected as Secretary of the Society through unopposed fake elections. The accused No.3 became illegal Secretary of the Society and transferred fake allotments to the Accused No.17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 and leased the plots of the society in their names. The Accused No.3 further conducted managed and fake auction of the commercial plots of the society in connivance with the deceased accused Zafar Saleem and Accused No.27 as representative of Cooperative Department and leased the plots of the society in the name of Accused No.28.

85. It is true that Farooq Shahid only became a member of the Managing committee of the society on 22-07-2008 and as such there is no material on record to show that he played a part in changing the approved lay out plan; ousting the old members of the society; introducing the “dummy” SWWB members in to the society. However he would have known that the other members of the Managing committee were “dummy members” and in effect he was the “placeman” of Sajid Ali Khan on the illegal managing committee whose role was to continue with the illegal sale of the society’s plots to the building mafia in this case being **petitioner Syed Aamir Ali Shah who he illegally allotted 336 plots of the society to and who (Syed Amir Ali Shah then allegedly entered into a joint venture agreement with** Mohammed Iqbal (Owner partner of M/S Marhaba Builders and his nominees/partners petitioner Muhammad Ibrahim, petitioner Mst. Farida), petitioner Faisal Waseem, petitioner Muhammad Aslam, petitioner Muhammad Jawaid, petitioner Muhammad Arif Siddique, petitioner Muhammad Nadeem Khan and petitioner Muhammad Arif Bashir.

86. The fact that Farooq Shahid was heading a fake and "dummy" Management committee is shown by the S.161 statements of PW Aurangzaib (who was purportedly the President of the managing committee), Muhammed Ali and Muhammed Adnan two other members of the fake management committee who have all stated that they were SWWB employees and had nothing to do with the society let alone its management committee. The S.161 statement of the so called President Aurangzaib is set out below to illustrate the point

"Statement U/s 161 Of Cr.PC of Aurangzeb s/o Muhammad Alam, Naib Qasid (Since 1995), Sindh Workers Welfare Board Karachi, CNIC No.42501-8908560-9, R/o Manzoor Kiryana Store, Bilal Colony Landhi No.22 Karachi, Mobile No.0341-2248021.

It is stated that he appeared on 16th Nov, 2015 before me at 197/5, PRCS Building Cantonment Karachi in connection with the Investigation against Younus Butt, Secretary Pak Punjab Co-Operative Housing Society Karachi and others regarding non provision of possession of plots to the allottees / members of the society and selling the land of society to the different builders. **He stated that he has never been member or any type of concern / interest in Pak Punjab Co-Operative Housing Society. Any type of transactions on my name is not in my knowledge. Once Zafar Saleem, DG (Works), Sindh Workers Welfare Board required to submit the CNIC to him for a registration of a society for Board's employees and he gave the copy of his CNIC to him. On the directions of Zafar Saleem, he and other staff members participated in an event of a society in a Hall opposite to the Radio Pakistan Karachi. He stated that he has never been member or any type of concern / interest in Pak Punjab Co-Operative Housing Society. Any type of transactions on his name is not in his knowledge. He added that he is an *illiterate* person cannot recognize and give his version on any documents of the society. Any file prepared on his name of the Pak Punjab Co-Operative Housing is fake and fictitious.** (bold, italics and underlining added)

Sarwer Ahmed Khan
Assistant Director/IO NAB Karachi."

87. As Honorary Secretary of the society and a member of the managing committee the petitioner Farooq Shahid would

have been fully aware of the bye laws of the society and would have known full well the objects and purposes of the society. Namely to provide affordable housing to the members of the society. As such with this knowledge it was not possible for him to sell/allot any plots to any building company without the building company constructing houses for the members of the society. He could not legally have sold the society's land in order to construct projects for the general public yet hand in glove with the builders he did so. It also beggars belief that someone holding his position of seniority and responsibility in the society did not know that all the new allottees were fake members from the SWWB and the original members had been illegally ousted.

88. The relevant Bye laws and laws which the petitioner would have been fully aware of are set out below which we will consider by considering basic concepts such as for example what is a co-operative Housing society? And what is its purpose?

89. As per The Co-operative Societies Act 1925 under S.3 (4) which is the definition section of the aforesaid Act "a Housing society means a society formed with the object of providing its **members with dwelling houses** on conditions to be determined by its **by laws**"

90. Some of the relevant by laws of the society in this case read as under:

As per by-laws No.2 of the Pak Punjab Cooperative Housing Society, the objective of the society was explained as to carry on the trade of building and of buying, selling, hiring, letting and developing land in accordance with cooperative principles and all objects specified in its bylaws.

As per Bye-law No.7 of the Society, member shall be elected by the Committee provided that all members shall belong to the former province of Punjab and (now amended to residing in Karachi only) residing in Karachi.

As per Bye-law No.13 and provision of cooperative societies Act 1925 mention in 17-B, society may recommend to Registrar to expel a member from his membership on the basis of if he is persistent defaulter of the society or who commits any act prejudicial to the interest of the society, provided that the management committee of the society shall after affording the member an opportunity of hearing, place the matter before the General Body Meeting and approval thereof shall be communicated to the registrar of the society.

In every year, President and 1/3rd Committee shall retire and according to the Bye-law No.47(B) retiring President and Committeemen shall be eligible for re-election. The office bearers of the society shall be elected every year after the General Body Meeting.

As per Bye-law No.12 of the Pak Punjab Cooperative Housing Society Limited Karachi, no members of the society shall exercise the right of member unless and until hold six fully paid shares in the society and makes allotments of the plots to its members on the basis of seniority list maintained by the society.

The Chairman preside managing committee meeting and secretary records the proceedings of the meeting. Secretary shall prepare and send return require to be made to the Registrar. Secretary shall have charge of documents and other papers of the society and shall keep the accounts in such manners as committee direct as per bylaws No.61 (page No.14) of Pak Punjab Cooperative Housing Society Limited Karachi. Secretary shall in all things act in the discharge under the direction and control of the committee as per the Bylaws No.62 and all the documents and receipt received on behalf of the society shall be signed by the Secretary and one member of the managing committee. (bold added)

91. Thus, it is obvious that the purpose of the Punjab Housing Society was to provide affordable housing (on a co-operative basis) for its original members and not to oust those original members and induct dummy members and sell off the society's land through those dummy members to the building mafia to construct properties for the general public

(as opposed to society members) to be sold at market rate whilst depriving the original members of affordable housing especially as those original members had made payments in respect of their allotments.

92. Notwithstanding the knowledge of the fake Management committee of which he was a part and the knowledge that the society was meant to build affordable property for its original members Farooq Shahid illegally made 336 allotments to non members who were builders who were going to construct property on the society's land and sell it in the open market to non members for a massive profit. His acts (and plan along with the other members of the Management committee and co-accused builders) were completely illegal. For example, there are on record various transfer orders from fake allottees to Syed Aamir Ali Shah and Mohammed Ibrahim (nominee of Mohammed Iqbal) both of whom are builders under the signature of Farooq Shahid **importantly and significantly (as we shall see later)** dated 27-11-2008, and to Syed Aamir Ali Shah and petitioner Mohammed Arif s/o M.Bashir dated 27-11-2008. Since the allottee did not exist, the transfer was being made to builders (also co-accused in this land scam) and no payment was received from the allotment and as such Farooq Shahid was simply **continuing with** the illegal practices of the former management committee member Sajid Khan whose bail we have already dismissed earlier in this order. There is no material on record to show that any money was actually received for these allotments or paid to the society. Examples of such fake allottees who supposedly transferred their allotments to Syed Amir Ali Shah are shown through the S.161 statements of Sarfraz Ahmed and Zahid Hussain. Sarfraz Ahmed's S.161 statement is reproduced below for ease of reference;

“Statement U/s 161 of Cr.P.C. of Sarfaraz Ahmed Khan s/o. Sultan Ahmed Khan, Sub-Engineer of Sindh Workers Welfare Board Karachi CNIC No.42401-7572285-3 of Sindh Workers Welfare Board Karachi Address: 68 Sector D-3, Saeedabad,

**Baldia Colony, Baldia Town, Karachi Mobile
No.0333-2188404.**

It is stated that he appeared on 16.12.2016 before me at 197/5, PRCS Building Cantonment Karachi in connection with the Investigation against Younus Butt, Secretary Pak Punjab Co-Operative Housing Society Karachi and others regarding non provision of possession of plots to the allottees/members of the society and selling the land of society to the different builders.

He stated that he is employee of the Sindh Workers Welfare Board, Karachi and appointed in 2004. His name as member/allottee of the Pak Punjab Co-Operative Housing Society Karachi is misused he and has never been part of the society. He disowned about any transaction of the society plot made done on his name.

93. Such illegalities which were committed by all the accused in the reference is supported by the S.161 Statement of Shah Muhammed Ujjan the registrar of Co-operative society III Karachi and Mazhar Hussain Sub Inspector co-operative Society III Karachi and inquiry officer Muhammed Azeem.

94. In addition petitioner Farooq Shahid in his capacity as Honorary Secretary of the society signed a receipt of a huge amount of money from builder Mohammed Riaz none of which funds have been accounted for in the society's accounts nor any proof of payment to the any of the allottees is available either with him or on record. Such doubtful receipt further shows the illegal actions of the part of Farooq Shahid as he would have known full well under the by laws that the society had no power to sell the land to Mohammed Riaz who was the builder which he deliberately ignored as he was hand in glove with him throughout the illegal enterprise having replaced Sajid Khan on the management committee as his place man so that the illegalities could continue unabated and unobstructed.

95. Thus, we are of the view for all the reasons discussed above that prima facie there is sufficient material to connect petitioner Farooq Shahid to the commission of the offense for

which he has been charged and as such the post arrest bail of Farooq Shahid is hereby dismissed.

96. **Petitioner Syed Aamir Ali Shah** as admitted by his counsel was a business man and owner of Axis Construction Company and **was the brother in law of Zafar Saleem (who was DG Works Sindh Workers Welfare Board (SWWB))**. The same Zafar Saleem who had been instrumental in ousting the original members of the society and replacing them with lowly paid and often illiterate members of SWWB without their knowledge or consent which in effect as with Mohammed Riaz's case (Falaknaz) as mentioned above was paving the way for the sale of the society's land to builders. According to learned counsel for the petitioner it was even his father in law Zafar Saleem who had encouraged him to invest in the society's land for construction purposes as it would be a good business opportunity for him.

97. The petitioner Syed Aamir Ali Shah **along with co-accused Mohammed Iqbal (Owner partner of M/S Marhaba Builders and his nominees/partners** petitioner Muhammad Ibrahim, petitioner Mst. Farida, petitioner Faisal Waseem, petitioner Muhammad Aslam, petitioner Muhammad Jawaid, petitioner Muhammad Arif Siddique, petitioner Muhammad Nadeem Khan and petitioner Muhammad Arif Bashir have been given a specific role in the reference at Para 20 which reads as under:

"The investigation further revealed that **Syed Amir Ali Shah** (Accused No.17), **Muhammad Iqbal** (Accused No.18), **Muhammad Ibrahim** (Accused No.19), **Mst. Farida** (Accused No.20), **Faisal Waseem** (Accused No.21), **Muhammad Aslam** (Accused No.22), **Muhammad Jawaid** (Accused No.24) **Muhammad Arif Siddique** (Accused No.23), **Muhammad Nadeem Khan** (Accused No.26) **and Muhammad Arif Bashir** (Accused No.25) in connivance with the Accused No.3 got transferred the fake files of allotments and leased the plots of the society in their names. **Later on, they as owners / partners of M/s. Marhaba Builders, launched an illegal commercial project namely**

Premier Regency Villas on the land / plot of the society and sold the plots to the general public and earned millions of rupees”.

98. The case of the petitioner Syed Amir Ali Shah is that he bought the land and then entered into a joint venture agreement with Muhammed Iqbal and his nominees (co-accused) who would carry out the construction of the land and in order to secure their position petitioner Muhammed Iqbal and his nominees (mainly family members) had the plots put into their joint names along with Syed Amir Ali Shah in order to secure their interest and this is bourn out through a joint venture agreement entered into between them dated 07-04-2009

99. In our view this stance is completely belied by the material on record. Syed Amir Ali Shah was the illegal transferee of the 336 plots and became their owner in his name and that of his nominees. There is no record that the society or any member of the society received any payment in respect of the plots which were sold by fake allottees through Farooq Shahid as indicated above when the case of Farooq Shahid was dealt with.

100. **Importantly and significantly** as noted above in the case of Farooq Shahid who was acting in connivance with Syed Amir Ali Shah and Mohammed Iqbal and their nominees/partners a number of fake allotments had been transferred to them on 27-11-2008. Thus there reliance on a joint venture agreement dated 07-04-2009 is shattered. This is because the plots were already being transferred into their joint names **before** the joint venture agreement was entered into. Thus, the deal had already been done between Farooq Shahid, Syed Amir Ali Shah, Mohammed Iqbal and their nominees well in advance and the joint venture agreement was only entered into later as an attempt to camouflage their illegal activities and even otherwise was NOT a sale agreement between Syed Aamir Ali Shah and the society but an

agreement regulating the construction arrangements between Syed Aamir Ali Shah and Muhammed Iqbal and his nominees. Likewise the alleged payments that were made are no where to be found on the records of the society and obviously could not have been passed on to fake allottees.

101. Furthermore, Syed Amir Ali Shah and Mohammed Iqbal were experienced builders and had been in the profession for many years. Like Mohammed Riaz of Falaknaz they were not novices. They knew full well that they could not put up a commercial development on the Society's land without providing the accommodation to the members of the society. As it was they paid nothing for the land and intended to sell on their construction to the general public for a massive profit. All the partners/ nominees of the petitioner builders (Syed Aamir Ali Shah and Mohammed Iqbal) have been given the option to surrender the plots which were illegally acquired in their names without payment however none have chosen to do so.

102. For the reasons discussed above we are of the view that there is prima facie sufficient material on record to connect the petitioner Syed Aamir Ali Shah along with co-accused Mohammed Iqbal (Owner partner of M/S Marhaba Builders and his nominees/partners petitioner Muhaminad Ibrahim, petitioner Mst Farida, petitioner Faisal Waseem, petitioner Muhammad Aslam, petitioner Muhammad Jawaid, petitioner Muhaminad Arif Siddique, petitioner Muhammad Nadeem Khan, and petitioner Muhammad Arif (post arrest) s/o Muhammad Bashir to the commission of the offense for which they have been charged through their connivance with Farooq Shahid the so called illegal honorary secretary of the society. As such the pre arrest bails of all the aforesaid petitioners are hereby recalled and the post arrest bail petition of Muhammad Arif son of Muhammed Bashir is dismissed **except** in the case of Mst Farida w/o Muhammed Yousuf

accused No.20 who is an elderly lady who is wheel chair bound who seems to have been unfairly roped into this matter by her family without her knowledge who as an exceptional case largely on humanitarian grounds pre arrest bail is confirmed on the same terms and conditions.

C. Turning to the illegal sale by the management of the society through an illegal auction of 25 commercial plots belonging to the society being Mohammed Younis, Adnan (on Bail) and Mohammed Amin.

103. **Petitioners Mohamed Younis and Mohammed Amin** have been given a specific role in the reference at Paras 21 to 23 which reads as under;

“21. That, the investigation further revealed that Muhammad Younus Baloch (Accused No.27) as representative of Cooperative Department aided Accused No.3 and deceased Accused Zafar Saleem to conduct purported meeting of the auction committee to dispose of 26 commercial plots of the society fraudulently.

22. That, during investigation it is also revealed Adnan (Accused No.28) and Muhammad Amin (Accused No.29) in connivance with the deceased accused Zafar Saleem, Accused No.3 and Accused No.27 **usurped 13 commercial plots by each of the society through fake process of auction.**

23. That the investigation revealed that Muhammad Amin (accused No.29) in connivance with the deceased accused Zafar Saleem, accused No.3 and accused No.27 usurped 13 commercial plots of the society through fake process of auction.”

104. Based on the record of the auction produced by the NAB we are in no doubt that the auction was fake. Three of the six alleged attendees of the so called auction dated 05-11-2009 as per bidders attendance sheet have stated that the auction process was in effect a charade and they did not attend any such auction. Namely, Farhat Rasheed, Mehmood Daud Vohra and Amjad Ali. The S.161 statement of Farhat Rasheed is set out below for ease of reference

"It is stated that he appeared on 24th Nov, 2015 before me at 197/5, PRCS Building Cantonment Karachi in connection with the Investigation against Younus Butt, Secretary Pak Punjab Co-Operative Housing Society Karachi and others regarding non provision of possession of plots to the allottees / members of the society and selling the land of society to the different builders.

He stated that Zafar Saleem (Deceased) was his friend and he advised to participate in balloting of plots of the Pak Punjab Co-Operative Housing. As per advise of Zafar Saleem for participation in balloting, he issued pay order of Rs.6,00,000/- in favour of Pak Punjab Co-Operative Housing Society from his bank Standard Chartered, Khayaban-e-Tanzeem, Defence, Karachi and the pay order was handed over to Zafar Saleem, but after some days he returned the same and no sale / purchase transaction was made on his name. He is neither member nor has any plot in the Pak Punjab Co-Operative Housing Society. As the documents pertain to the auctions process of the 26 x commercial plots of the society shown to him, he completely denied participation in the bidding process and mentioned that his signatures on these bidding documents are forged. (bold added)

Sarwer Ahmed Khan
Assistant Director/IO

Officer in Charge, NAB Karachi
National Accountability Bureau
Karachi

105. The Chairman of the auction committee also was Farooq Shahid whose petition for post arrest bail we have already turned down earlier in this order and in addition also deserves to be turned down for his role in conducting a fake auction in order to dispose of 25 commercial plots of the society's land to favorites at an under value for which no reserve price was even set which itself alone shows the connivance and malafides behind the whole sham auction process.

106. Interesting Muhammed Rafique who was successful at the auction has not been arrayed as an accused. According to the IO this is because he has been unable to trace him out despite his best efforts. The Mohammed Adnan who has also signed on the attendance sheet in his capacity as member is NOT the same Adnan who has already been granted post

arrest bail by this court. Apparently like so many others he appears to be an illiterate employee of the SWWB who simply signed the attendance sheet without knowing of its significance. Co-accused Mr. Younis Baloch the Government representative who signed the fake sheet to justify the fake auction has already had his pre arrest bail recalled by this court and he has absconded.

107. However notwithstanding the above since the co-accused No.28 Adnan as referred to in para 106 above whose role in connection with the auction is similar to that of Muhammad Amin has already been granted bail by this court vide its order dated 24-04-2017 which NAB has not appealed and as such based on the rule of consistency the pre arrest bail granted to Muhammed Amin is hereby confirmed on the same terms and conditions.

D. Turning to the illegal sale by accused No.30 Umair Tariq (absconder) a member of the society who illegally allotted plots to petitioners Fahad Ahmed and Shabaz Ahmed.

108. Both the petitioners Fahad Ahmed and Shahbaz Ahmed along with Umair Tariq (absconder) have been given a specific role in the reference at Para's 24 and 25 which read as under.

24. Accused No.30 Umair Tariq is a fake member and purported office bearer of the society, leased plots of the society to the Accused No.31 and 32.

25. That, the investigation revealed that Syed Fahad Ahmed (Accused No.31) Shahbaz Ahmed (Accused No.32) & Anila Aijaz (Accused No.33) **usurped the plots** in connivance with Accused No 2 and 30, the illegal office bearer of the society.

109. The record shows that the plots in question were illegally allotted by petitioner **Sajid Khan** to Fahad Ahmed and Shahbaz Ahmed whose post arrest bail we have already dismissed earlier in this order.

110. The plots in question were amenity plots and under no circumstances whatsoever could they have been allotted for

residential or commercial purposes which both the petitioners would have been well aware of. There is no material on record to show that they made any payment for the plots or that the society received any money for the sale of neither plots nor have the petitioners been able to produce such proof of payment. The petitioners have refused to surrender the plots. In our view they are quite clearly beneficiaries of the land scam usurping valuable and precious land of the society in connivance with petitioner Sajid Khan and absconder Umair Tariq.

111. Thus in our view there is sufficient material on record to connect them to the offense for which they have been charged and as such their pre arrest bail is recalled with immediate effect.

In summary.

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

1. Muhammed Riaz
2. Afzal Khan
3. Mirza Afzal Baig
4. Muhammed Farooq
5. Muhammed Younus
6. Muhammed Anees
7. Wali Muhammed
8. Afaq Khan Ghorl
9. Muhammed Hamid Riaz
10. Syed Amir Ali Shah
11. Muhammed Iqbal
12. Muhammed Ibrahim
13. Faisal Waseem
14. Muhammed Aslam
15. Muhammed Arif s/o Muhammed Siddiq
16. Muhammed Jawaid
17. Fahad Ahmed
18. Shahbaz Ahmed

Pre arrest bail is confirmed in respect of:

1. Mst Farida w/o Muhammed Yousuf
2. Muhammad Amin

Post Arrest Bail is dismissed in respect of:

1. Sajid Ali Khan
2. Farooq Shahid
3. Muhammed Arif son of Muhammed Bashir.