

IN THE HIGH COURT OF SINDH AT KARACHI

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

Petition number, name of the petitioners and their counsel.

1. C.P. No. D-7806 of 2017
Allah Bachayo Vs Chairman NAB & others
Allah Bachayo s/o. Naseer Khan (petitioner No.1)
Through Barrister Mohsin Shahwani.
2. C.P. No.D- 7807 of 2017
Ali Akbar Hingoro Vs Chairman NAB & others
Ali Akbar Hingoro s/o Muhammad Hashim Hingoro
(petitioner No.2)
Through Barrister Mohsin Shahwani.
3. C.P. No.D- 7808 of 2017
Shoukat Hussain Jokhio Vs Chairman NAB & others
Shoukat Hussain Jokhio s/o. Shamsuddin Jokhio (petitioner
No.3)
Through Barrister Mohsin Shahwani.
4. C.P. No.D- 8182 of 2017
Ali Sher Mirani Vs Chairman NAB & others
Ali Sher Mirani s/o. Muhammad Qasim Mirani (petitioner
No.4)
Through Mr. Munawwar Ali Memon, Advocate.

Counsel for the Respondents

Mr. Yasir Siddiqui, Special Prosecutor, NAB

Date of hearing: 13.12.2017 and 14.12.2017.

Date of order: 19.12.2017.

ORDER

Mohammed Karim Khan Agha, J. By this common order we propose to dispose of the petitions filed by the above mentioned petitioners for post arrest bail whose pre-arrest bail granted to them by this court was recalled vide order of this court dated 13.09.2017. Thereafter the petitioners absconded and approached to the Hon'ble Supreme Court of Pakistan for seeking pre-arrest bail. The Hon'ble Supreme Court dismissed their petitions for pre-arrest bail vide order dated 25.10.2017 where after the petitioners were taken into custody and hence these petitions for post arrest bail.

2. Briefly stated the facts of the case as per NAB reference are that the above-named petitioners were facing inquiries/investigations against them by the National Accountability Bureau (NAB) in relation to acts of corruption falling within the purview of the National Accountability Ordinance 1999 (NAO) which lead to NAB filing Reference **No.55/16 State v Allah Bachayo and others** on 07-10-2016 against the petitioners and others in effect for their involvement in illegally allotting 77 acres of Government land situated at Deh Rehri , Bin Qasim Town Karachi and its sale to private persons which caused a colossal loss to the national exchequer to the tune of RS 385 million.

3. The role of the petitioners in connection with the aforesaid land scam as set out in the Reference as under:-

4. That the accused No.1 & 2 /(petitioner No.1 Allah Bachayo Chandio) and (petitioner No.2 Ali Akbar Hingoro) **were the DO Revenue officials Karachi who without verifying the record** of their office passed **illegal orders** for transfers of 30 year lease holding rights of total 51-00 acres and 23-00 acres land on the basis of **fake entries**. That at that time accused No.3 /(petitioner No.3 Shoukat Hussain Jokhio) was **the Revenue Officer**, Bin Qasim Town, Karachi and **he malafidely forwarded reports of Mukhtiarkars** for transfer of 30 years lease holding rights of total 22-00 acres on the basis of said fake entries. Accused No.5 (Petitioner No.4 Ali Sher Mirani) was the **Mukhtiarkar** Bin Qasim Town, Karachi who forwarded reports with recommendation to transfer lease hold rights of total 10-00 acres of 30 years lease for which the accused has malafidely used a tampered outward No.924-A/2005 for forwarding his recommendation and without having entry in the name of Muhammad Iqbal forwarded report dated 28.12.2005 to the DDOR with recommendation of transfer of lease hold rights of 02-00 acres land in favour of Muhammad Siddique.

5. According to learned counsel for petitioner No.1 and 2 they were completely innocent of any wrong doing; that they did not create any new leasehold rights which they simply transferred based on the Mukhtiarkar's report (who also happens to be a co-accused in this case); that no loss had been caused to the Government of Sindh (GOS) as eventually the land was reverted back to the GOS; that the rates used by NAB to calculate loss are inaccurate and are highly inflated; that they had not benefited from the transaction which was done in good faith; that they were arrested on 25-10-2017 and the trial has not yet started which amounts to unreasonable delay; that the complainant had now backed out of his statement and as such the reference could not be filed by NAB; however he candidly admitted that the petitioners passed the order for the transfer of the land and did not dispute their signatures; and for all the above reasons the petitioners were entitled to post arrest bail.

6. According to learned counsel for petitioner No.3 (Shoukat Hussain Jokhio) he was completely innocent of any wrong doing and his case was on a better footing than petitioners 1 and 2 as he despite being a revenue officer had passed no order and had simply passed on the orders which he had received. He was in effect a post box and as such he was entitled to post arrest bail.

7. Learned counsel for petitioner No.4 (Ali Sher Mirani) contended that he was simply a Mukhtiarkar who had forwarded the report of the tapedar to the District Revenue officer and had acted strictly in accordance with the law; that it was a case of pick and choose by NAB and that none of the 194 PW's had implicated him in the case and even otherwise the land is vacant and no loss had been caused to the exchequer.

8. Learned special prosecutor NAB vehemently opposed the grant of post arrest bail to all the petitioners and contended that there was more than sufficient material to

connect each of the petitioners to the offense for which they had been charged and briefly took the court through the same and as such the post arrest bail of each of the petitioners should be dismissed.

9. We have heard the counsel for the parties, re considered the material on record and the relevant case law.

10. At the outset we would make it clear that this order shall have no bearing on the outcome of the trial which shall be decided on merits by the trial court based on the evidence before it.

11. We would also observe that when we dealt with the case of the petitioners at the pre arrest bail stage we also dealt with each of their cases on merits. We note that no new grounds have been raised by the petitioners which were not raised at the pre arrest bail stage, or were not available to the petitioners at the pre arrest bail stage, except that the petitioners have been in detention since 25-10-2017 i.e less than 6 weeks which we deem to be irrelevant; the question of the complainant withdrawing from his complaint in our view is also not of much assistance to the petitioners since under the NAO the reference is filed by the NAB after inquiry and investigation and not by the complainant and there are also many other PW's to support the NAB case who incriminate the petitioners. The fact that some delay may have been caused in the petitioners case can at this stage be attributed to them absconding from this court and not appearing before the trial court when their pre arrest bail was recalled by this court.

12. We do not intend to re invent the wheel and thus set out below our findings on merit in respect of each of the petitioners as per para's 21 to 27 of our order dated 13-09-2017 **which we have again re assessed in the light of the arguments made by the petitioners:** Petitioners 1,2 and 3 named in this order (i.e Allah Bachayo Chandio, Ali Akbar

Hingoro and Shoukat Hussain Jokhio) are also the same as petitioners 1,2 and 3 referred to in the extracts below from our aforesaid order whilst petitioner No.4 (Ali Sher Mirani) is referred as petitioner No.5:

"21. At this point we would like to emphasize that land grabbing/ usurping land in Sindh and in particular Karachi by builders/ developers and the land mafia in connivance with government officials has in recent times become a common phenomena and has deprived the government of valuable land and caused a great loss to the exchequer what to speak of damaging the infrastructure and planning of the city and as such government officials from the BOR have to be extra vigilant and cautious to avoid such illegal actions. This is because without the connivance of the BOR officials such as tapedars, mukhtiarkars, and other revenue officials such activities would not be possible as such officials are the custodians and guardians of the land records who being government servants have a particular fiduciary duty of trust in protecting government land.

22. In this case out of the 9 petitioners before us 8 are government officials who were serving in the BOR at the time when the crime was alleged to have been committed. Two of them were District Revenue officers, one was a Deputy District Revenue officer, one was an Assistant Mukhtiarkar, two were Mukhtiarkars and two were tapedars whilst the other was a beneficiary. We have observed that all of these officers had vast experience in the BOR and ought to have been well aware of the relevant law, rules and procedures in connection with the management of land records and in particular the creation of leases and transfer of land.

23. All the petitioners have been given a specific role in the reference as set out in the earlier parts of this order which need not be repeated here in order to avoid repetition.

24. Starting from the bottom upwards in our view it was the tapedars (petitioners 7 and 8), who had the primary responsibility to ensure that all

entries were correct. It is apparent from the record that both the tapedars failed to check the existing entries in respect of this case which were fake and may have even been added by the tapedars. The Assistant as well as the Mukhtiarkars (Petitioners 4, 5 and 6) also had an obligation to check the entries rather than blindly relying on the tapedars as they are also field officers but all 5 of them failed in their duties. With regard to the leases these were all granted on the illegal orders of the District officer Revenue and Deputy District officer revenue (petitioners 1, 2 and 3) who again made no effort to ensure that the entries were correct. The contention that following an illegal order is a defense is completely rejected. In this respect reference may be made to Muhammed Asghar Khan's case (2013 PLD SC 1) and the case of Syed Mahmood Akhtar Rizvi vs. Federation of Pakistan (PLD 2013 SC 195). The illegal actions and connivance of petitioners 1 to 8 is further shown by the fact that hardly any of the lessees existed and as such have not been traceable, that in breach of various Government of Sindh Land Utilization Department Notifications the land was transferred by lease with no payment or only part payment in a few cases; that no open kutchery was held and that the land was not used for poultry farming. Instead it appears to have been transferred to land grabbers for other purposes. With regard to petitioners 6 (Nazeer Maqbool Amin Memon) and 8 (Abdul Rehman) contention that their signatures on the relevant documents had been forged this seems to be an after thought and a concoction as neither of these petitioners have made any application before the trial court to have a handwriting expert appointed in order to verify the disputed signatures. Both petitioners 4 (Sabir Hussain Shah) and 5 (Ali Sher Mirani) have also violated the village manual which they would have both been fully aware of by attesting more than one entry at a time. Thus in connivance and collusion with each other petitioners 1 to 8 caused a colossal loss to the national exchequer through the creation of fake leases. It appears that rather than being the guardians of precious government land the petitioners 1 to 8 were instrumental through their connivance and misuse of authority/failing to exercise authority in dishing out such precious Government land in an illegal manner to unknown, unverified lessees in most cases which caused a colossal loss to the national exchequer.

25. In support of the above illegalities the following S.161 Cr.PC statements and documents are relied upon **in respect of lease No.1**, statement dated 28.03.2017 u/s. 161 of Muhammad Yousuf, Assistant Commissioner, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016. Statements u/s 161 Cr.PC **regarding lease No.2** Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 28.03.2016. Statements recorded u/s 161 Cr.PC **regarding lease No.3** Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016. **With regard to lease No.4** statements u/s. 161 Cr.P.C. of Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016 were recorded. **In connection with Leases No.5 & 6** statements u/s.161 Cr.P.C. of Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016 were recorded. **With regard to Lease No.7** statements u/s. 161 Cr.P.C of Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016 **and in Lease No.8** statements of Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016. Statement of Qurban Ali, Ex-Assistant Mukhtiarkar under Section 161 Cr.P.C. was recorded on 14.03.2016. **In respect of the violation of various laws, rules and regulations** certain Notifications of Land Utilization Department, Government of Sindh which includes the requirement to hold Kutcheries, the land solely being used for poultry and farming purposes, failing to grant leases only to persons who have interest and experience in poultry and farming alongwith proof, failure to pay lease money in full etc. Certificates, dated 17.11.2015 from the office of Deputy Commissioner, Karachi stating that there is no record of open Kutchery and letter from the office of Mukhitarakr Bin Qasim dated 10.11.2015 stating that no register for open Kutchery was received in his office since creation of Bin Qasim

Town, 2001. **With regard to fraudulent allotments** statements under Section 161 Cr.P.C. of Aqeel Ahmed, Assistant posted at the office of Assistant Commissioner, Bin Qasim and Farooque Ali, Junior Clerk posted in the office of Mukhtiarkar Taluka, Bin Qasim, District Malir, Karachi were recorded on 31.05.2016. **With regard to attesting more than one transaction at a time** the village manual in respect of Form VII and mutation and copies of fake entries

26.

27. As such based on the material placed on record we are also of the view that prima facie there is sufficient material to connect all the petitioners to the commission of the offense for which they have been charged apart from the lack of malafide on the part of NAB as discussed earlier".(bold added)

13. Thus, we remain of the considered view, after reevaluating/reassessing the material placed before us that there is sufficient material to connect each of the petitioners to the offense for which he has been charged in the reference and considering the heinous nature of land grabbing in which the petitioners played an active role and which would not have been possible without their active connivance we hereby dismiss the post arrest bail petitions of all the petitioners namely petitioner No.1 Allah Bachayo Chandio, petitioner No.2 Ali Akbar Hingoro, petitioner No.3 Shoukat Hussain Jokhio and petitioner No.4 Ali Sher Mirani.

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