

IN THE HIGH COURT OF SINDH, KARACHI

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

Petition No. and name of petitioner along with counsel.

1. CP No.D-3877/2017 Muhammad Idress V. NAB & others
Muhammad Idress S/o Abdus Salam
Through Mr. Khaleeq Ahmed, Advocate.
2. CP No.D-4862/2017 Jahanzaib V. Federation of Pakistan
& others
Jahanzaib S/o Jahangir
Through Mr. Sardar Anjum Shiraz, Advocate.
3. CP No.D-4984/2017 Irfan Ahmed V. NAB
Irfan Ahmed S/o Muhammad Mian
Through Mr. Ali Gohar Mashroof, Advocate.
4. CP No.D-3854/2017 Syed Nasir Kazmi V. Chairman NAB &
others
Syed Nasir Kazmi S/o Syed Ghafoor Hussain Kazmi.
Through Mr. Muhammed Ilyas Khan and Muhammed
Farooq, Advocates.
5. CP No.D-3670/2017 Mushtaq Iqbal Khan V. Chairman
NAB & others
Mushtaq Iqbal Khan S/o Muhammad Iqbal Khan.
Through Fayaz Ahmed, Advocate.
6. CP No.D-4233/2016 Syed Atif Hussain Naqvi V. Chairman
NAB & others
Syed Atif Hussain Naqvi S/o Syed Abid Hussain Naqvi
Through Mr. Abdul Wahab Baloch, Advocate
7. CP No.D-5864/2016 Irfan Khan Yousuf Zai V. Chairman
NAB & others
Irfan Khan Yousuf Zai S/o Dilawar Khan Yousuf Zai
Through Mr. Mahmood A Quershi, Advocate
8. CP No.D-6052/2016 Syed Rizwan Ahmed & others V.
Chairman NAB & others.
1. Syed Rizwan Ahmed S/o Syed Nabi Ahmed Azad. 2.
Muhammad Kamran Warsi S/o Yaseen Warsi , 3. Akhtar
Rasheed S/o Muhammad Abdul Rasheed , 4. Sarfaraz Ahmed
S/o Bashir Ahmed , 5. Muhammad Jumman S/o Lal Bukhsh
and 6. Jahanzaib Iqbal S/o Muhammad Iqbal .
Through Mr Abdul Wahab Baloch, Advocate.
9. CP No.D-3305/2017 Syed Gul Hassan Zaidi V The State &
others
Syed Gul Hassan Zaidi S/o Syed Sardar Hussain Zaidi .
Through M/s. Aamir Mansoor Qureshi & M. Rehman Ghous,
Advocates.

10. ✓ CP No.D-3320/2017 Muhammad Kamran Warsi & others
V. Chairman NAB & others.

1. Muhammad Kamran Warsi S/o Yaseen Warsi, 2. Syed Rizwan Ahmed S/o Syed Nabi Ahmed Azad, 3. Sagheer Ahmed S/o Salamat Ali, 4. Akhtar Rasheed S/o Muhammad Abdul Rasheed, 5. Sarfaraz Ahmed S/o Bashir Ahmed, 6. Muhammad Jumman S/o Lal Bukhsh and Jahanzaib Iqbal S/o Muhammad Iqbal.
Through Mr Abdul Wahab Baloch Advocate.

11. ✓ CP No.D-3321/2017 Rashid Ali V. Chairman NAB & others

Rashid Ali S/o Syed Safdar Mian
Through Mr Abdul Wahab Baloch Advocate

12. ✓ CP No.D-3338/2017 Muhammad Feroz V. Chairman NAB
Muhammad Feroz S/o Haji Shoukat Islam.

Through Mr. Mushtaq Ahmed Khan, Advocate

13. ✓ CP No.D-3418/2017 Shaikh Farid V. Chairman NAB & others

1. Shaikh Farid S/o Shaikh Yousuf and 2. Khuda Bux S/o Gul Muhammad Soomro
Through Mr. Muhammed Nizar Tanoli Advocate

14. ✓ CP No.D-3468/2017 Muhammad Hanif Khan V.
Chairman NAB & others

Muhammad Hanif Khan S/o Asghar Ali Khan.
Through Mr. Naheed Afzal Khan, Advocate.

15. ✓ CP No.D-3508/2017 Akhtar Rashid & others V. Chairman
NAB & others.

1. Akhtar Rashid S/o Mehmood Abdul Rashid, 2. Juman S/o Lal Bux and 3. Syed Nasir Kazmi S/o Syed Ghafoor Hussain Kazmi,
Through Mr. Abdul Wahab Baloch Advocate.

Counsel for the Respondents.

Mr. Yassir Siddiqui, Special Prosecutor, NAB.

Dates of Hearing: 19-10-2017, 02-11-2017, 19-12-2017
and 21-12-2017

Date of Order: 23-12-2017

ORDER

Mohammed Karim Khan Agha, J. Through these petitions,
some of the above named petitioners were granted ad interim

pre arrest bail by this court vide various orders in connection with inquiries/investigations being conducted against them by the National Accountability Bureau (NAB) in relation to acts of corruption and corrupt practices falling within the purview of the National Accountability Ordinance 1999 (NAO) regarding a china cutting/housing scam by workers of the KDA in connivance with other persons (beneficiaries) some of whom have also been arrested and have applied for post arrest bail, which lead to NAB filing Reference 14/2017 **The State v Muhammed Nasir and others** under S.9 NAO for the petitioners involvement in acts of corruption and corrupt practices.

2. The brief facts of the case as per reference are that the Karachi Development Authority (KDA) is tasked with development within Karachi City. For that purpose KDA had reserved a number of plots in KDA Scheme 36, for **amenity purposes** which could not be allotted/exchanged / transferred for residential/commercial purposes in any manner. The officers / officials of KDA named in the reference however illegally / unlawfully misused/failed to exercise their authority in **allotting / transferring 23 amenity plots in Gulistan-e-Jauhar, KDA Scheme 36, Karachi by unauthorized / illegally creating 296 residential plots (China Cutting)** for pecuniary benefits / illegal gains for the co-accused beneficiaries named in the reference who in connivance with the KDA officials received these plots through fake allotments, challons etc and thereafter sold on

the same to bona fide purchasers who were completely unaware of the scam thereby making huge profits for themselves and causing a huge loss to the Government exchequer. The details of these residential plots are set out in the reference in table form at para 2 and in order to avoid repetition are not set out again in this order.

3. That NAB's investigation revealed that the initial allottees of these plots were either fake or denied to have applied for any allotment / transfer / shifting of subject plots in KDA. As such these allotments are fake and fraudulent. These fake allotments and illegal transfer of files of above-referred plots **by way of shifting was managed by shifting department of KDA** (some of the official accused named in the reference) in connivance with private persons / beneficiaries / co-accused named in the reference. **In this regard, fake and illegal transfer challans were fraudulently prepared by officials of recovery department of KDA named in the reference.** These carved out plots were later on clandestinely sold to the general public by private persons named in the reference (mainly brokers and estate agents) in connivance with KDA officials hence the KDA officials named in the reference along with the beneficiaries named in the reference have committed acts of corruption through their misuse of authority/failure to exercise their authority in order to benefit the beneficiaries which caused a massive loss to the Government exchequer amounting to **RS 1,439,901,714** and lead to the filing of the aforesaid

reference by NAB under the NAO on 28-04-2017 which is now proceeding before an Accountability Court in Karachi.

General Observations

4. We would 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.

5. 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.

6. 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.”

7. Indeed, as in **Rai Mohammed Khan's case** (Supra) it is extremely tragic that in this case that land which was originally allocated for amenity purposes such as schools, parks, playgrounds, community centers etc which aimed to benefit the local community was wiped out by the greed of the KDA officials in order to accommodate their blue eyed boys

and land mafia through estate agents/brokers and other beneficiaries which is a phenomena which has plagued and continues to plague Karachi through such 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 seams 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.**

8. Such illegal land changes from amenity to residential or commercial purposes (which is absolutely prohibited under the law under any circumstances) **also 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. A part from the lack of water and sewage etc by

eating up these amenity plots with housing this begs the question where will the children play with no play grounds or parks? How will local people be medically treated when the land allocated for hospitals has been given over to the building mafia? Likewise how will children receive an education when the land allocated for the construction of schools has been given over to the building mafia? How can our environment sustain such a concrete jungle?

9. In this respect the Hon'ble Supreme Court vide order dated 27-11-2017 (unreported) in Crl.OP.No.7 K/2017 in Crl.O.P.11 K/16 in the case of **Ms Sabiha Parveen V Syed Nasir Abbass DG KDA** held as under at Para 2.

"It is also noted that the amenity lands of Karachi including present one either allotted to large number of peoples or have been allowed to be encroached including the lands situated on University Road, North Nazimabad Road, Kashmir Road etc. **These are the lands meant for recreation of peoples of the area and for benefit/enjoyment of citizens of Karachi. Whatever allotments and illegal encroachments on these amenity plots, the same will be cancelled and resumed by the KDA and all boundary walls shall be demolished** and report in this respect be made available before the Court on the next date of hearing" (bold added).

10. In continuation of the aforesaid order on 29-11-2017 the Hon'ble Supreme Court also held as under:

"We observe that no substantial compliance of this Court's order has been made in that there are thousands of encroachments in Karachi so also the illegal allotments. **It is pointed out by the Senior Director Master Plan that there exist 35000 plots allocated at 112 sites in KDA schemes and townships duly noted by the Master Plan Department which were amenity plots or meant to**

be left open as per master plan but these plots have either been encroached upon or have been illegally allotted or occupied pursuant to forged and fictitious allotments/leases. The Director General KDA states that he is going to seriously look into the matter and shall devise means by which all these 35000 plots at 112 sites of KDA scheme/townships will be got vacated and recovered and put to use for which they were originally meant in the master plan i.e. for amenity and as open space. In this respect, we expect that Government of Sindh including all the departments of local administration shall provide full assistance to the KDA for implementing the plan of vacation and recovery of all these 35000 plots at 112 sites of KDA schemes/townships." (bold added)

11. The above mentioned orders concerned the restoration of the illegally allotted/encroached upon amenity plots which has in effect virtually turned Karachi into a concrete jungle whilst the current NAB reference against the petitioners, for which they seek bail in this order, concerns the prosecution of some of those allegedly responsible for engaging in this illegal activity of allotting amenity plots for other purposes through the practice commonly known as china cutting.

12. The seriousness of this crime of china cutting was recently emphasized by the Hon'ble Supreme Court in the case of **Mumtaz Ul Haq V NAB** in Civil petition No. 609K of 2017 through its order dated 19-12-2017(unreported) whereby in dismissing the petitioner's leave for appeal petition against the rejection of his 265 (K) Cr.PC application by this court in a NAB reference concerning china cutting the Supreme Court observed as under at para 4 of its order:

"4. The allegation against the petitioner in the Reference is that he in capacity as Additional Director (R-I), KDA has issued illegal allotment

orders of plots of Scheme No.36, despite the fact that original allottees did not appear before him and attorney holders held only notarized GPAs which were not duly registered. The fact that the petitioner has issued illegal allotment orders and that too not to the original allottees but to the persons purporting to hold unregistered GPAs itself needs proof by way of evidence. **The allegation against the petitioner apparently is of substantial nature in that the alleged plots were created on land reserved for water conduit of KW&SB and High Tension Link of K-Electric. The allotment as alleged in the Reference has been made that of amenity plots, which obviously is a serious allegation and needs proper adjudication by the Court.** The High Court in the impugned order has dealt with the matter and assigned good reason for not accepting the plea of acquittal of the petitioner under Section 265-K Cr.P.C. The petition is, therefore, dismissed and leave refused."(bold and italics added)

13. **The modus operandi of this scam is a classic example of the practice otherwise known as china cutting.** In this case there were a number of amenity plots which should have been used for the welfare of the people such as for parks, schools, hospitals etc as designated amenity plots can never be used for any other purpose. However in order to make money the shifting department of the KDA in connivance with the recovery department of the KDA and beneficiaries most of whom were brokers/estate agents used the following modus operandi. **The shifting department illegally converted the amenity plots into plots for residential use.** Thereafter in the garb of relocating fictitious people who the Government of Sindh (GOS) had allegedly purchased land from they created fictitious purchasers who paid nothing for the plots which were carved out of the amenity plots who either did not exist, were dead, had their CNIC misused and whose name was used without

their consent and knowledge. **Thereafter the role of the KDA recovery department kicked in** as they deliberately failed to verify the existence of such non existing purchasers and transferred the plots into the name of the beneficiaries without payment who were mostly brokers/estate agents who then sold on the same for lacs of rupees per plot which they split with the KDA official accused.

14. The result was that the KDA officials and beneficiaries made vast amounts of money, loss was caused to the public exchequer, and the people of the area have been deprived of parks and other recreational facilities where their children could play, "the so called lungs of the city", or a hospital, or a school etc which would have benefited the local community.

15. As the above modus operandi indicates all the accused in the reference connived together to give effect to their plan of illegal enrichment by misusing their authority /failing to exercise their authority and benefiting themselves and others. In effect it is a case of a joint criminal enterprise where each of the accused plays his role in achieving a common criminal objective which could not have been achieved without the active involvement and connivance of each of the other accused who each played his role in the criminal act the question being only whether his role in the criminal act was to a lesser or greater extent.

16. In NAB cases where land has been given away illegally to beneficiaries and the building mafia at throwaway prices it

is often believed that only the big fish at the top are responsible whereas the so called small fry such as tapedars and lower level KDA clerks as in this case bear little if any responsibility and should be excused. In our view where land is illegally given away, in such circumstances this is not always the case and is largely a misconceived belief. **This is because it is the so called small fry who could have prevented the whole land scam (which often turns out to be colossal in terms of loss to the government exchequer) by simply refusing illegal orders or not conniving with each other and more senior officials and the land mafia.** In land scam cases **no scam could be committed without the active connivance with those who are allegedly at the bottom of the chain of criminality.** This is because very often it is they who have custody of the land records, change those records, or allow such records to be tampered with or illegal challans to be made or allow dummy purchasers or transferees to be inserted in documents. **Thus, they are in our view equally as liable as those at the top of the chain of criminality in land scams as no land scam could be perpetuated without the active connivance of those at the lower end of the chain who have custody of the land record and move the same through their various approvals up the chain of criminality to the ultimate land mafia/ beneficiary who sells the land on for vast profit to an unsuspecting bona fide purchaser.** In our view such plea of lack of seniority in land Scam cases or blindly, unquestioningly following illegal orders of superiors in breach

of the various rules, regulations and laws is no defense/excuse to enable an accused to escape liability.

17. In this case the chain of criminality started from the KDA shifting officers, then proceeded to the KDA recovery officers and finally to the beneficiaries/brokers/estate agents who illegally sold on the plots which had been illegally made through china cutting. The KDA shifting department, the KDA recovery department and the estate agents/brokers all connived with each other in order to achieve this unlawful objective

18. In considering these petitions for pre arrest bail and post arrest bail with respect to the KDA accused we have also taken into consideration that these officials owed a particular duty of care to the citizens of Karachi to protect its precious amenity plots from china cutting, land grabbing and the land mafia so that the citizens could enjoy all the benefits of a well organized and structured city which would include parks, play grounds , schools, hospitals etc **and** the fact that all the KDA officials were not novices in working in the KDA but were senior, seasoned, experienced officers who were well aware of all the relevant rules and regulations with regard to "shifting" and "recovery" and the fact that they would have known that the status of amenity plots could never be changed by themselves under any circumstances.

Post and pre arrest bail

Pre arrest bail and malafides

19. Some petitioners have applied for post arrest bail whilst others have applied for the confirmation of their ad interim pre arrest bail.

20. 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 investigating authority. 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).

21. None of the petitioners during oral arguments have submitted that there has been any malafide on the part of the NAB in filing the reference against them and on examining the record we have found no material to suggest such malafide and as such prima facie none of the petitioners are entitled to pre arrest bail. As such the petitions for pre arrest bail and post arrest bail can be examined together on merits based on the material before us to see whether or not there is sufficient material on record to connect the petitioner to the offense for which he has been charged in the reference.

Arguments and findings on Pre arrest and Post arrest bail petitions on merits.

22. In all petitions learned special prosecutor NAB vehemently opposed the grant of post arrest bail and the

confirmation of pre arrest bail as the case may be. He took the court through various documents and submitted that through these documents there was more than sufficient material on record to show that the petitioners were all connected to the offense for which they had been charged in the reference and as such all petitions for post arrest bail should be dismissed and all orders granting ad interim pre arrest bail should be recalled as the case may be.

23. We have considered the arguments of the parties, examined the record and considered the relevant case law

KDA Shifting Department petitioners.

24. **Reference to the S.161 statements of Mohammed Jameel and Mohamed Saleem** fully show the illegal shifting through china cutting and the petitioners in that department who were involved in this illegal activity

25. **Learned counsel for the petitioner's Syed Atif Hussain Naqvi and Rashid Ali who were DDO's shifting for KDA** contended that they were completely innocent; that they were never posted in the area where the land scam took place; that they had not signed anything and that they had nothing to do with the plots and as such their pre arrest bail should be confirmed.

26. **Learned counsel for petitioner Irfan Khan Yousuf Zai** who was also DDO shifting submitted that his case was on a better footing to the above mentioned DDO's Shifting. This

was because according to him he was never posted in the shifting branch as he was in the encroachment branch and that the investigation against him was unfair and he was completely innocent and as such his pre arrest bail should be confirmed. In support of his contentions he placed reliance on **Tariq Bashir V State** (PLD 1995 SC 34) and **Abdul Aziz Khan V The State** (PLD 2003 SC 668)

27 The petitioners have been given a specific role at Para 6 of the reference which reads as under:

6. "That the investigation revealed that the accused No. 3, 4, 5 & 6 namely Muhammad Arif Khan, **Syed Atif Hussain Naqvi, Rasheed Ali Khan and Irfan Khan Yousuf Zai all in the capacity of DDO (Shifting) KDA** also signed note sheets for illegal transfer of these residential plots on amenity areas, despite the fact that initial allotment was based upon fake and managed documents and none of the original allottees had appeared before any of them. In the same capacity, the accused No. 3, 4, 5 and 6 also signed transfer letters of these plots".

28. All the petitioners were DDO's in the shifting department of KDA. The contentions of the petitioners are completely belied by the S.161 Statements of PW's Mohammed Jameel and Mohammed Saleem who implicate them in the scam and most importantly the NAB has shown us numerous transfer orders which bear their signatures. They did not verify any documents and did not meet any of the original allottees who it has come on record were fictitious persons. Although they belatedly tried to deny such signatures these signatures match those on their valaknamas and they have not raised this issue before the trial court. In

our view this appears to be a complete afterthought in order to escape liability. In our view there is sufficient material on record in the shape of S.161 Cr.PC statements of PW's and plot transfer orders duly signed by them to prima facie connect the petitioners to the offense for which they have been charged and thus their ad interim pre arrest bail is recalled with immediate effect.

29. With regard to the case of petitioner **Irfan Khan Yousuf Zai** we do not find his case to be on a better footing than the other DDO Shifting petitioners mentioned above and the cases he has relied upon to be of little, if any, assistance to him. The same considerations apply to him as to the other DDO shifting officials whose case was dealt with above. He has been given a specific role, the S.161 statements of Mohammed Jameel and Mohammed Saleem fully implicate him in the same and NAB have shown us specific transfer orders which bear his signature **under the designation of DDO shifting** which completely belie his claim that he was not in the shifting department and in the anti encroachment department, his signatures match those on his valakanama and his counsel frankly conceded that he has not disputed the genuineness of his signatures on the plot transfer orders before the trial court nor has he ever claimed that the investigation against him was unfair. Both these assertions appear to be mere after thoughts. Thus in our view there is sufficient material on record to prima facie connect the petitioner to the offense for which he has been charged and as

such his ad interim pre arrest bail is recalled with immediate effect.

KDA Recovery Department petitioners.

30. **Reference to the S.161 statement of Syed Ahmed Noman** fully shows the illegal acts of those petitioners in the KDA recovery department who were involved in the illegal act of china cutting once the initial illegal work had been done by the KDA officials in the shifting Department as mentioned earlier in this order.

31. **Learned counsel for the petitioner's Syed Rizwan Ahmed, Muhammad Kamran Warsi who were DDO's Recovery for KDA** contended that they were completely innocent; that they were never posted in the area where the land scam took place; that they had not signed anything and that they had nothing to do with the plots and as such their pre arrest bail should be confirmed.

32. The petitioners have been given a specific role in para 7 of the reference which reads as under:

"That the investigation revealed that the accused No. 7, 8, 9 and 10 namely **Syed Rizwan Ahmed**, Nisar Hussain, **Muhammad Kamran Warsi**, and Wasif Jalil all in capacity of DDO (Recovery) KDA knowingly approved transfer challans of these residential plots which were carved upon amenity plots despite the fact that initial challans were fake and the amenity plots cannot be allotted for residential purpose".

33. Once again their position is completely belied by the documents on record which clearly show that both of the

petitioners signed the challans which they received from the recovery clerks and made absolutely no effort to verify them or call any person and thus in our view they were hand in glove with the recovery clerks and played an instrumental part in allowing this land scam to come to fruition. Had they carried out their functions properly the scam could have been avoided instead they were all on board with a view to illegally benefiting themselves and others. As experienced KDA offices they would also have known that the land in question were amenity plots and in no circumstances could it be given to either residential, commercial or any other use but instead they played an active part in the illegal act of chiselling and as such there is prima facie sufficient material to connect them to the offense for which they have been charged and thus the ad interim pre arrest bail of the petitioners is recalled with immediate effect.

34. **Learned counsel for the petitioner's Akhter Rasheed, Kuda Bux and Sarfaraz Ahmed who were superintendents (recovery) for KDA** contended that they were completely innocent; that they were never posted in the area where the land scam took place; that they had not signed anything and that they had nothing to do with the plots and as such their pre arrest bail should be confirmed.

35. **Learned counsel for petitioner Muhammed Hanif Khan who was also a superintendent (recovery) for KDA** submitted that he was completely innocent; that he had nothing to do with making the challans; that he was a junior

officer without any responsibility and he did not sign anything and if he did it was done on the orders of the politically high ups and as such his pre arrest bail should be confirmed.

36. The petitioners have been given a specific role at para 8 of the reference which reads as under:

"That the investigation revealed that the accused No. 11, 12, 13 and 14 namely **Akhter Rasheed, Khuda Bux Soomro, Sarfaraz Ahmed** and **Muhammad Hanif Ali Khan** were Superintendent (Recovery) KDA and signed transfer challans knowingly that the initial challans were fake and the amenity plots cannot be allotted for residential purpose".

37. The petitioners were superintendents of recovery and being experienced KDA officials would have known that it was illegal to use amenity plots for residential or commercial purposes yet they deliberately with malafide intentions played their part in allowing this illegality to be done by signing the transfer challans copies of which have been shown to us by NAB. Thus, they also played their part in this illegal act of china cutting and as such in our view there is sufficient material on record to prima facie connect them to the offense for which they have been charged and as such their ad interim pre arrest bail is recalled with immediate effect.

38. With particular regard to the case of Muhammed Hanif Ali Khan the petitioner was a recovery officer in the KDA and once the challan was received by him it was his duty to verify it which he failed to do; the challan appears to be fake; there is no collection receipt; no occupancy value is

mentioned. Reliance is placed on the S.161 statement of PW Humayum Aziz. The petitioner's assertion that he did not sign any challan is completely belied by the documents which the NAB has shown us which bear his signature/initials. The fact that he may have been pressurized by a political party or a high up is no defense to his illegal actions. The petitioner's role in signing the challans was one of the factors which enabled this scam to take place and as such he was a part of it. In our view there is sufficient material on record to prima facie connect the petitioner to the offense for which he has been charged and as such his ad interim pre arrest bail is recalled with immediate effect.

39. **Learned counsel for petitioner Syed Nasir Hussain Kazmi** who was a recovery clerk in KDA at the time when the offense was committed contended that he was completely innocent; that he was only a lowly clerk; he did not verify any challans as it was not his job to do so; the challans were then forwarded to the DDO; he was only concerned with 8-10 of the plots; that he was only temporarily filling in for another clerk and there was no evidence against him and as such he should be granted **post arrest bail**. **Learned counsel for petitioners Muhammed Jumman, Jahanzaib Iqbal, Sagheer Ahmed and Shaikh Fareed** (who are on interim pre arrest bail) made similar arguments as petitioner Syed Nasir Hussain Kazmi

40. The petitioners have been given a specific role at para 9 of the reference which reads as under:

“9. That the accused No.15, 16, 17, 18 and 19 namely **Mohammed Jumman, Sagheer Ahmed, Jahanzaib Iqbal, Sheikh Fareed** and **Syed Nasir Hussain Kazmi**, knowingly initiated transfer challans of these residential plots carved out from KDA amenity plots in capacity of Clerk (Recovery). The accused were in league with each other”.

41. The material on record reveals that it was the job of the petitioners to verify the challans and that they have been signed by the petitioners (Reliance is placed on S.161 Statement of Syed Ahmed Noman and other documents on record). Some of the challans on record have been initiated by the petitioners and are signed by the petitioners. Before forwarding it to the DDO the petitioners should have checked the earlier owner's documents, challans and called him in their presence. The petitioners however did none of these things and instead allowed plots which had been allotted to a fake person be allotted to a beneficiary. Had the petitioners carried out their responsibilities and function of checking the earlier challans they would have found that earlier allottees did not exist and thus could have prevented the scam. Thus we find that the petitioners both misused their authority and failed to exercise their authority which unduly favored the beneficiaries and caused a loss to the Government exchequer. As such we are of the view that there is sufficient material on record to prima facie connect the petitioners to the offense for which they have been charged and as such the **post arrest** bail petition of petitioner Syed Nasir Hussain Kazmi is

dismissed and the ad interim pre arrest bail granted to petitioners Mohammed Jumman, Jahanzaib Iqbal, Sagheer Ahmed and Shaikh Fareed is recalled with immediate effect.

Beneficiaries

42. **Learned counsel for petitioner Mushtaq Iqbal** who was a beneficiary of 2 of the fake plots which had been illegally carved out of an amenity plot and had sold on the same at a profit contended that he was completely innocent; that he had only sold on the plots for a small amount being less than 2 crores; that he was a bona fide purchaser; that there was no evidence against him and as such he should be granted **post arrest bail**

43. Petitioner Mushtaq Iqbal has been given a specific role in the reference at para 24 which reads as under;

“That the investigation also revealed that the accused No.24 namely **Mushtaq Iqbal** (private person / beneficiary) **in connivance of with KDA officials** managed 2 fake plots(numbering R-1/7, R-1/32 located at ST-22 Block 15, Scheme 36 Karachi) and further sold those plots and caused loss to the national exchequer to the tune of Rs. 10,876,491/=”.

44. We find that there is no material on record to show that petitioner Mushtaq Iqbal ever purchased the plots which he sold. Reliance is placed on the S.161 statements of PW's Anwer Mehmood and Mr.Haroon. That he in connivance with the KDA officials was one of the links with the KDA official accused who being a **broker/estate agent** was easily able to sell plots in the open market to unsuspecting purchasers and

as such he was illegally allotted the plots by the KDA officials so that he could sell them off at a profit and split the same between himself and the KDA officials. S.161 Statements of the purchaser from him of Anwar Mehmood and Fahad Haroon show that he received the purchase money for both plots which were illegally given to him at no cost and thus he is a beneficiary of this scam. Hence we find that there is prima facie sufficient material to connect him to the offense which he is charged with and his **post arrest bail petition is hereby dismissed.**

45. **Learned counsel for Mohammed Idress** submitted that he was a private person and that he was a bona fide purchaser of 2 plots as opposed to 3 plots NAB had alleged he purchased; that he was completely innocent and when he sold on the plots in question he complied with all codal formalities such as advertising his sale etc. and as such he was entitled to **post arrest bail.**

46. He has been given a specific role in the reference at para 17 which reads as under:

"17. That the investigation also revealed that the accused No.27 namely **Muhammad Idress** managed fake files of 3 plots (numbering R-9, R-31, R-44 located at ST-1, Block 15, Scheme 36, Karachi) and sold those plots and caused loss to the national exchequer to the tune of Rs.14,988,200/=."

47. With regard to the concerned plots the record shows that the original allottees were all untraceable and in effect were bogus. In this respect reliance is placed on the S.161

statements of Shabbir Hasan and Ambreen Arshad. The plots were all amenity plots and the petitioner was an **estate agent** by profession and he would have known of this as estate agents keep the original plans in their offices and thus he would have known that there was an absolute prohibition on their sale for residential or commercial purposes. He also tried to conceal his illegality by advertising the property in a little known newspaper of very limited circulation instead of widely advertising the same. All this material in our view prima facie fully connects the petitioner to the commission of the offense for which he has been charged and as such his petition for **post arrest bail is dismissed.**

48. **Learned counsel for petitioner Muhammed Feroze** submitted that he was completely innocent; that there was no material against him; that he was a bona fide purchaser who had sold on 14 plots and as such his pre arrest bail should be confirmed.

49. The petitioner has been given a specific role at para 10 which reads as under;

“That the investigation revealed that the accused No.20 namely **Feroze alias Feroze Bangali** (Private person / beneficiary) **in connivance of with KDA officials** got illegal transferred 14 plots (numbering R-3, R-4, R-5, R-6, R-7, R-8, R-9, R-10, R-11, R-12, R-13, R-14, R-15, R-16 located at ST-13, Block16, Scheme 36, Karachi) in his name and further sold them to general public and caused loss to the national exchequer to the tune of Rs. 75,700,674/=”.

50. The S.161 statement of Jameel Ahmed Baloch and Mohammed Saleem reveals the complete modus operandi of

the scam and fully implicate the petitioner. Likewise the S.161 statement of Zarrar Saleem. The petitioner was an **estate agent** by profession and was hand in glove with the accused KDA officials in this land scam. In two instances sale agreements show that the land was sold to him by bogus persons and in both the agreements his signature is present which he has not denied and which matches with his signature on his vakalatnama; that he has not been able to produce any receipt for the funds which he allegedly paid for the plots; being a broker he would know that they were amenity plots which could not be sold on for residential or commercial purposes but he never the less did so to purchasers. As such in our view there is sufficient material on record to prima facie connect the petitioner with the offense for which he has been charged and as such his ad interim pre arrest bail is recalled with immediate effect.

51. **Learned counsel for petitioner Irfan Ahmed** like petitioner Mushtaq Ahmed was a beneficiary and claimed that only 2 plots had been allotted to him which he sold on. Essentially he was a bona fide purchaser and was sailing in the same boat as petitioner Mushtaq Ahmed and as such his pre arrest bail should be confirmed.

52. He has also been given a specific role in the reference at Para 13 of the reference which reads as under:

"13. That the investigation also revealed that the accused No.23 namely **Irfan Ahmed**(private person / beneficiary) **in connivance of with KDA officials managed 9 plots**(numbering L-1; L-3, L-

9, L-10, L-11, L-12, located at ST-16, Block 15 & L-1, L-50, L-51, located at ST-41, Block 15, Scheme 36, Karachi) and further sold those plots and caused loss to the national exchequer to the tune of Rs.38,186,375/=.

53. According to him he was a bona fide purchaser of the plots and had paid 45 lacs for each plot. However when confronted he could show no receipt, no sale agreement or any document of his purchase. Reliance is also placed on the S.161 statements of Asif Ali Memon, Zain Ul Abideen and Muhammad Farooq to show Irfan Ahmed's involvement in this scam. As such it is clear that he was given the plots by KDA as part of the scam to sell them off to bona fide purchasers at a profit to be split between himself and other official co-accused. NAB has shown us sufficient documents to prima facie connect him to the offense for which he has been charged and as such his ad interim pre arrest bail is recalled with immediate effect.

54. **Learned counsel for petitioner Jahanzeb** again was a beneficiary and contended that he was a bona fide purchaser of 11 plots which he had paid 45 lacs for each and had then sold them on. That there was no evidence against him and that as such his pre arrest bail should be confirmed.

55. He has been given a specific role at Para 12 of the reference which reads as under;

"12. That the investigation also revealed that the accused No.22 namely **Jahanzaib** (private person / beneficiary) **in connivance of with KDA officials managed fake files of 11 plots** (numbering R-7, R-13, R-28, R-34, R-43, R-44, ST-11, Block 15 L-7, L-8, L-18, located at ST-41, Block 15, R-1, R-6, ST-3, Block 14,

Scheme 36, Karachi) and further sold those plots and caused loss to the national exchequer to the tune of Rs. 52,032,510/=.

56. In our view he is sailing in the same boat as petitioner Irfan Ahmed and the same considerations apply to him. S.161 statements of Muhammed Iqbal Hussain and Muhammed Nadeem Qazi show that they were the bona fide purchasers who paid Jahanzaib for the free plots which he was illegally given in connivance with officials of the KDA. NAB has shown us sufficient documents to prima facie connect him to the offense for which he has been charged and as such his ad interim pre arrest bail is recalled with immediate effect.

57. **Learned counsel for petitioner Gul Hassan Zaidi** submitted that he is completely innocent; that the only material against him is a S.161 statement by another Muhammad Saleem whereby he alleges that Mr. Zaidi transferred 7 plots into his children's name and thus his pre arrest bail should be confirmed as it is a case of further inquiry.

58. The petitioner has been given a specific role at para 11 of the reference which reads as under:

"That the investigation also revealed that the accused No. 21 namely **Syed Gul Hassan Zaidi** managed (private person/ beneficiary) **in connivance with KDA officials managed fake files of 7 plots** (numbering L-39, L-40, L-41, L-43, L-44, L-45, ST-41, located at Block 15, Scheme 36, Karachi), and further sold those plots and caused loss to the national exchequer to the tune of Rs. 25,956,000/-"

59. We are of the view that the S.161 statement of Mr. Muhammad Saleem is not very convincing and does not appeal to reason and that it has not been corroborated by any other piece of evidence. It is also in our view relevant that the petitioner is a doctor by profession and is not an estate agent or a broker so we find it difficult to see how he could have managed the sale/transfer of as many as 7 plots in the manner mentioned in the aforesaid S.161 statement. Thus, in our view this is a case of further inquiry and the ad interim pre arrest bail granted to the petitioner Gul Hassan Zaidi is confirmed on the same terms and conditions.

60. **Summary.**

Post arrest bail is dismissed with respect to:

1. Syed Nasir Hussain Kazmi
2. Mushtaq Iqbal
3. Mohammed Idress

Ad Interim Pre arrest bail is confirmed on the same terms and conditions to:

- 1 Gul Hassan Zaidi

Ad interim Pre arrest bail is recalled with immediate effect in respect of:

1. Syed Atif Hussain Naqvi,
2. Rasheed Ali Khan,
3. Irfan Khan Yousuf Zai
4. Syed Rizwan Ahmed,
5. Muhammed Kamran Warsi,
6. Akhter Rasheed
7. Khuda Bux
8. Sarfaraz Ahmed
- 9 Muhammad Hanif Ali Khan
- 10 Muhammed Jumman
11. Jahanzaib Iqbal
12. Sagheer Ahmed
13. Shaikh Fareed
14. Muhammed Feroze
15. Irfan Ahmed,
16. Jahanzeb s/o Jahangir.

61. These are the reasons for our short order dated 21-12-2017 which reads as under:

“All the learned counsel for the respective parties and learned Special Prosecutor, NAB, assisted by IO have concluded their arguments. For reasons to be recorded separately, Const. Petitions Nos.D-3877/2017, D-4233/2016, 5864/2016, 6052/2016, 3320/2017, 3321/2017, 3338/2017, 3418/2017, 3468/2017, 3508/2017, 3670/2017, 3854/2017, 4862/2017, 4984/2017 are dismissed and ad-interim pre-arrest bail granting orders, passed in Const. Petitions Nos.D-4233/2016, 5864/2016, 6052/2016, 3320/2017, 3321/2017, 3338/2017, 3418/2017, 3468/2017, 3508/2017, 4862/2017, 4984/2017 are hereby recalled whereas Const. Petition No D-3305/2017 stands allowed and the order dated 18.5.2017, whereby Syed Gul Hassan Zaidi son of Syed Sardar Hussain Zaidi, petitioner in Const. Petition _____ D-3305/2017 was granted ad-interim pre-arrest bail is confirmed on same terms and conditions.”