

IN THE HIGH COURT OF SINDH AT KARACHI

52

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

C.P. No. 5670 of 2015
Hamood-ur-Rehman

Vs

Chairman NAB & others

C.P. No. 4647 of 2015
Rafique Ahmed Memon

Vs

Federation of Pakistan & others

C.P. No. 4726 of 2015
Rasool Bux

Vs

Federation of Pakistan & others

C.P. No. 5988 of 2015
Malik Shahid Ahmed

Vs

Federation of Pakistan & others

C.P. No. 6620 of 2015
Hafeez-ur-Rehman

Vs

Chairman NAB & others

C.P. No. 6188 of 2015
Uzair Durrani

Vs

NAB & another

Date of hearing:	09-02-2016
Date of Order	12-02-2016
Applicants	Through 1. M/s. Muhammad Ashraf Qazi, 2. Raham Ali Rind, 3. Muhammad Naeem Memon, 4. Abbas Rasheed Rizvi, 4. Abdul Hakeem Jakhro and 5. Ali Azad Saleem Advocates.
Respondent NAB	Through Mr. Noor Muhammad Dayo, ADPG NAB alongwith I.O. Muhammad Bilal Anwar.

27

ORDER

Muhammad Karim Khan Agha, J. By this common order, we propose to dispose of six bail applications which all stem from NAB reference 42/2015 State v. Rafique Memon and 9 others which is pending before Accountability Court in Karachi.

2. Out of the six applications three of the applicants (Rafique Memon, Rasool Bux Soho and Uzair Durrani) had been granted ad-interim pre-arrest bail by this Court by orders dated 23-9-2015, 8-12-2015 and 16-12-2015 respectively whilst the other three applicants (Hamood-ur-Rehman Qazi, Malik Shahid Ahmed Khan and Hafeez-ur-Rehman) are in custody and had applied for post arrest bail. It may be mentioned that out of the four remaining accused three are absconders (Mr. Ashraf Parhani Ex. Tapedar Jungshahi, Essa Khaskheli and Bashir Ahmed both of whom are private persons).

3. The brief facts of the case are that the National Accountability Bureau (NAB) (Sindh) at Karachi received a complaint against Rafiq Memon and others alleging that they had illegally sold government land measuring 1307 acres in Makan Khareesar, Deh Kohistan 7/4, Tapo Jungshahi Taluka and District Thatta by making fake and forged entries in the record of rights and misusing their authority which actions fell within the purview of the National Accountability Ordinance 1999 (NAO). After verification of the complaint NAB authorized an inquiry into the allegations which was later converted into an investigation by D.G. NAB Karachi on 14.01.2015. This ultimately lead to a Reference being filed by NAB against the 10 accused under S.9(a) NAO for corruption on 24th November 2015 before the Administrative Judge Accountability Courts in Karachi

4. Out of the ten accused five were Revenue or Government Officials of District Thatta (two Ex-Mukhtiarkars, one Ex.Sub-Registrar, one Ex. Office Superintendent, Deputy Commissioner's Office and two Ex. Tapedars) who all in connivance had misused their authority to manipulate and prepare false, fabricated, forged and bogus revenue record/documents and had illegally transferred the ownership title of government land measuring 1307 acres in Deh Kohistan 7/4, Taluka and District Thatta valued at billions of Rupees in order to illegally benefit M/s. NBT Wind Power Pak (Pvt) Ltd., for the alleged installation of 50 MW Wind Power Project (who accused No.7 and 8 represented) and two private individuals being accused No.9 and 10 in the reference.

5. The above illegal actions through misuse of authority was aimed at benefiting the accused and resulted in a huge loss to the government exchequer by

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depriving it of the land mentioned above. Thus according to NAB all the accused in the reference through misuse of authority and being beneficiaries thereof had committed the offence of corruption and corrupt practices as defined under section 9 (a) NAO, which offenses were punishable under section 10 of the said Ordinance. Accordingly, the Director General of NAB Sindh filed a reference against the accused before the Administrative Judge of the Accountability Courts Karachi on 24th November 2015.

6. Learned counsel for applicant Hamood-ur-Rehman Qazi (on ad interim pre arrest bail) who was Ex. Mukhtiarkar (Rev) Taluka Thatta at the time of the transactions surrounding the above land scam submitted that the applicant was completely innocent and had not misused his authority. In particular he submitted that the applicant had never made any entry in the register of record of rights.

7. Learned counsel placed reliance on an inquiry which was conducted by the Deputy Commissioner Thatta and other officials into this alleged land scam whereby the applicant was confronted by the inquiry officer with the illegal Extract of Entry No.1 dated 21.3.2011, V.F. VII-B, Makan Khareesar, Deh Kohistan Tapo Jungshahi which he had allegedly signed and lead to the illegal transfer of the land which was a part of the scam. The applicant had denied signing the said entry before the Inquiry Officer at the time which was a position he also took when he appeared before the NAB inquiry officer when confronted with the same issue during the NAB inquiry.

8. According to learned counsel for the applicant the signature had not been made by the applicant and that it was fake and bogus and the NAB inquiry officer when the applicant had requested that the entry in question be sent to a hand writing expert , whose report would have proved his innocence, had failed to do so. With regard to the failure by NAB to appoint a hand writing expert in connection with a disputed signature entitling him to bail learned counsel placed reliance on the case of **Mohammad Rashid Umar v The State through Chairman NAB (SBLR 2012 SC 78)(Relevant page 81).**

9. Learned counsel for the applicant also drew the court's attention to a civil suit being F.C.Suit No.141 of 2015 which had been filed before the Senior Civil Judge, Thatta, in which he was one of the plaintiffs. The suit was for Declaration, Cancellation of Registered Sale Deed, Mandatory & Permanent Injunction against the defendants being cited as accused No.7, 8, 9 and 10 of this reference which had stopped the transfer of the land. He claimed that the land was still in possession of the government of Sindh and therefore no losses had been caused to the government of Sindh which further entitled to him to the grant of bail.

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officer had failed to get their signatures verified. They both denied the validity of the sale certificate and in the case of applicant Memon contended that he had been transferred at the relevant time so he had not verified any of the documents. The applicants further submitted that all the documents which NAB relied on were photo copies and were of no evidential value. They both submitted that they were not connected with the offence and were entitled to have their pre arrest bail confirmed.

16. Learned counsel for applicant Hafeez-ur-Rehman (seeking post arrest bail) who was an Ex Tapedar at the time of the land scam submitted that the applicant was entirely innocent and that he was only a very junior officer who had acted on the instructions of his seniors and therefore he was entitled to be enlarged on bail.

17. Learned counsel for Uzair Durrani (on ad interim pre arrest bail) who was Ex Sub Registrar at the relevant time submitted that the applicant was completely innocent and had not signed or attested any sale deed or transfer and had rather noted that everything was subject to getting the required NOC's

18. On the other hand Learned ADPGA for the NAB has opposed the confirmation of the three applications for interim pre-arrest bail and the three applications for post arrest bail. He submitted that NAB has sufficient evidence to connect the accused to the offence as charged and that such evidence establishes the guilt of the accused beyond a reasonable doubt.

19. We have perused the record and considered the arguments of learned counsel for the applicants and ADPGA NAB and the authorities cited by them at the bar.

20. At the outset 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.

21. The applicants in this case all claim that they are entirely innocent and not connected to the offence in any way. Without going into a deep appreciation of the material on record it would appear that through the investigation report and evidence collected by NAB that all of the accused to a lesser or greater extent are

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10. Learned Counsel further submitted that the applicant had even himself by letter dated 09.04.2011 informed the then Deputy District Officer (Revenue) Thatta concerning the doubtfulness of the entry in the record and sale certificate which tended to show his innocence and at least made the matter a case of further inquiry which entitled the applicant to be enlarged on bail. In this regard he placed reliance on the cases of **Abdul Aziz Niazi vs. NAB** (2003 PLD SC 668), **Khalil Ahmed Sarhandi and others vs. Chairman NAB** (2008 P.Cr.L.J. 967) and **Chandi Ram vs. Chairman NAB** (2008 P.Cr.L.J. 1172).

11. Learned counsel further submitted that the original record had been destroyed in a fire and that the prosecution was only relying on photo copies which being secondary evidence would not be of much evidentiary value, if any, at the trial. In support of this proposition he placed reliance on **AIR 2007 Supreme Court 1721**.

12. In summary apart from the above reasons entitling him to be enlarged on bail learned counsel submitted that there was insufficient evidence to connect the accused to the offence and that no specific role had been attributed to him.

13. Learned counsel for applicant Malik Shahid Ahmed Khan (seeking post arrest bail) who was the Ex Chief Executive/Operations officer of NBT Wind Power Pakistan (Pvt) Limited which had purchased the land submitted that the applicant was absolutely innocent. He submitted that the company had purchased the land and not the applicant who was a simple employee of the company who had no real power and was simply acting on its behalf.

14. The applicant denied any involvement in any scam and submitted that the matter was being resolved through civil suit No. 141/2015 before the Senior Civil Judge, Thatta as mentioned above in which he was one of the defendants and was defending his position. There was no criminality on his part and this matter was of a civil nature and not a criminal nature and therefore NAB had no jurisdiction. In any event he deserved to be enlarged on bail as the matter concerned the company and not himself. Furthermore, the land had not yet been transferred so there was no loss to the State.

15. Learned counsel for applicants Rafique Ahmed Memon (on ad interim Pre arrest bail) Ex Mukhtiarker (Rev) and Rasool Bux Soho (on ad interim pre arrest bail) Ex office superintendent of the Deputy Commissioner's office at the time of the scam submitted that the allegations had been leveled against them by way of political victimization. They submitted that they were completely innocent and that their signatures on the documents were not genuine and that the inquiry

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26. Further, the mere possibility of further inquiry exists in nearly all bail related cases. Reliance is placed on **Parveen Akhtar v. State** 2002 SCMR 1886 relevant at 1888 as follows:---

“We have heard learned counsel for the parties and have also gone through the record, which has been made available for our inspection by learned Assistant Advocate-General. It may be noted that as per the statement of P.W. Amir who received injuries during the incident, it was Shehzad who had fired upon Asghar Hayat Constable. Besides, in the F.I.R. Shehzad was named as an accused and responsible for commission of the offence. *Undoubtedly, in such-like cases, it is said that accused has made out a case of further inquiry. In view of the law laid down by this Court in the case of Asmatullah Khan v. Bazi Khan and another PLD 1988 SC 621 merely for such reason accused would not be entitled for grant of bail because mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under section 497 (2), Cr.P.C.* After having gone through the statement of P.W. Amir and taking into consideration the material on record, we are of the opinion that respondent No.2 was not entitled for grant of bail on the ground of further inquiry because there is overwhelming evidence against him to prima facie connect him with the commission of crime. Therefore, learned High Court while granting bail to respondent No.2 had not exercised its jurisdiction properly keeping in view the principle laid down by this Court in the case of Asatullah Khan (ibid).” (italics added).

27. Again on the point of further inquiry the relevant portion from the case of **Hazurdad v. Sajid Khan** 1998 PCr.LJ 633 is significant which reads as under:---

“(7) It is now well-settled that a case would only fall, within the scope of further inquiry, under section 497, Cr.P.C., if the Court reaches a conclusion that *on the material before it there are no reasonable grounds for believing that the accused is guilty of a non-bailable offence punishable with death, imprisonment for life or 10 years.* In other words, in the absence of a finding to this effect there would be no occasion to hold that the case is that of further inquiry.”(italics added)

28. Further reliance is placed on the case of **Abdullah Shah v. State** 2002 PCr.L.J. 1387 the relevant portion of which reads as under:

“I may observe here that every hypothetical question which may creep into the mind and which could be resolved only after recording the evidence and during the trial would not make the case that of further inquiry. *The case of further inquiry would only be made out when the data collected by the prosecution is not sufficient to provide reasonable grounds for believing that a prima facie case existed against the petitioner.*”(italics added)

29. In our view, as discussed in more detail later, the NAB on a tentative analysis of the material collected as indicated through the investigation report and Reference has been able to collect sufficient material to provide reasonable

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connected to the commission of the alleged offence. It is more a question of degree.

22. The applicant Hamood-ur-Rehman Qazi who was the Ex. Mukhtiarkar Revenue Taluka Thatta mainly relies on the fact that the entry in the record of rights was forged and was not of his signature and that since NAB did not engage a hand writing expert to ascertain this point, it was a case of further inquiry which contention was bolstered by his letter dated 09.04.2011 in which he had alerted the authorities to the doubtful entry.

23. In our view it was not incumbent upon NAB at this stage to seek the opinion of a hand writing expert when all the evidence in the case is considered in totality. This point can be raised and resolved during the trial. In this regard the case of **Muhammad Rashid Umar** (supra is) of little assistance to the applicant as in this case the lack of a hand writing expert was only one of the many factors which the court took into account when granting bail. It would seem that bail in that particular case was mainly granted on account of the rule of consistency.

24. As to the letter dated 09.4.2011 NAB was aware of this letter and would have taken it into consideration before filing the reference. The existence of the letter does not make this automatically a case of further inquiry when all the evidence as a whole is considered.

25. As regards further inquiry, there is no hard and fast rule on this matter and each case will turn on its own particular facts and circumstances and a tentative analysis of the evidence available. Reliance is placed on **Ghulam Abbas v. State** 2005 PCr.LJ 244 relevant at 247 as follows:---

“Section 497(2), Cr.P.C. provides that if it appears to the Court at any stage that there are no reasonable grounds for believing that accused committed a non-bailable offence, but there are sufficient grounds for further inquiry into his guilt, such accused shall be released on bail. *Now what will constitute as sufficient grounds for further inquiry, would depend upon peculiar facts of each case and no hard and fast rule can be laid down for that purpose. Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial Court subsequently, after evaluation of evidence.* The condition laid down in clause (2) of section 497, Cr.P.C. is that there are sufficient grounds for further inquiry into his guilt which means that the question should be such which has nexus with the result of the case and may show or tend to show that accused is not guilty of the offence with which he is charged.” (italics added)

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grounds for believing that a prima facie case existed against all the applicants and as such we are of the view that this is not a case of further inquiry.

30. We do not consider the existence of the civil suit to be of much relevance in connection with deciding these bail applications. The civil suit is a separate matter distinct from the criminal offence which the accused have been charged with. Even otherwise the NAO is a special law and S.3 gives it overriding effect over general laws.

31. Even otherwise, there are two matters of potential significance in the civil suite which in our view tend to go against the applicants.

32. Firstly, that the civil suite seems to have arisen out of an inquiry carried out by the Assistant Deputy Commissioner Thatta on 13-12-2011 whereby the Revenue officials were inquired into. Interestingly the initial inquiry carried out by the Assistant Commissioner Thatta during November 2011, which called for the further inquiry, concluded as under:

“From the perusal of the above facts, it is clearly shows that some land grabbers with the collusion of Revenue Staff were trying to transfer the Government land in their favour. It is therefore, requested that enquiry may be initiated against Revenue Officers/Officials involved in the above fraud and case may also be registered against the private persons who have sold out the Government land by way of forged documents in the interest of Government Property.(bold added)

It is further requested that Mukhtiarkar (Revenue) Thatta may be directed to file the suit in the learned court for cancellation of the Registries made in favour of Malik Shahid Ahmed Khan by way of forged papers, shown as Annexure “E”.

33. As such it would seem that the Government of Sindh acknowledged the scam and was initially of the view that Revenue officials (some of whom are a part of this Reference) colluded in the same and hence filed the civil suit.

34. Secondly, that the civil suit is against applicant 7 and accused 9 and 10 in the Reference which seeks amongst other things in its prayer at Para (b)

“This Honourable Court may be pleased to take cognizable action by registering the criminal case against the Defendant No.1 to 5 who have managed the above fake and forged registered sale deed of Government State Land and caused losses to the Government exchequer to the worth of Rs. 13,07,00,000/-.”

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61

40. With regard to applicant Malik Shahid Ahmed Khan it cannot be said that he was "a nobody or simply an employee" he was Chief Executive Officer/Chief Operating Officer of the company and would have played a significant role in managing its affairs. In fact he has been sued in the civil case referred to above and it would prima facie seem that he was fully aware and a part of the fraudulent transaction which would have caused a loss in billions of rupees to the exchequer through sale of the land.

41. Para 8 of the Reference and clause (f) of the investigation report which are reproduced below tend to show his role in the offence and his connection to it.

"8. That the Investigation Report reveals that Accused No.7 as Chief Operating Officer of M/s NBT Wind Power Pak (Pvt) Ltd through Accused No.8, bribed accused No.1 and accused No.4 for preparing false, forged and fabricated documents for the ownership of land in question. Hence, 1307 acres of precious government land in Deh Kohistan 7/4 District Thatta was illegally transferred in the name of M/s NBT Wind Power Pak (Pvt) Ltd. His liability amounts to the illegal title created for 1307 acres of government land in the name of M/s NBT Wind Power Pak (Pvt) Ltd. Accused No.7 fraudulently managed and purchased the fake ownership title of the said land from three fake owners as already submitted before, who were all personally known to him. In addition, the forensic report of mobile data establishes the link between accused No.7 and accused No.6 for incorporating entry into reconstructed record of rights, which was done by the latter as already submitted before. Additionally, the mode of payment to the aforesaid three sellers establishes the fact that no segregation of payments were done for the three sellers and that accused No.7 connived with accused Nos. 8,9 and 10 for preparing fake ownership papers."

“(f) **Malik Shahid Ahmed Khan (C.P. No.5988/2015):**

He was the Chief Operating Officer of NBT Wind Power Pakistan Ltd. He through Essa Khaskehli, gave bribe to Rafique Memon (Mukhtiarkar) and Rasool Bux Soho (Office Superintendent) which were used by aforementioned Revenue officials of District Thatta for preparing fake papers of Government land in the name of M/s NBT Wind Power Pak (Pvt) Ltd. He knowingly and with mala fide intention purchased the fake ownership papers of questionable 1307 acres land in Makan Khareesar Deh Kohistan 7/4 Tapo Jungshahi Taluka & District Thatta, for M/s NBT Wind Power Pakistan as Chief Operating Officer from three fake owners namely Akber Minhas, Essa Khaskheli and Bashir Ahmed, who were personally known to him. The investigation has revealed that Akber Minhas was working as an Admin Manager at M/s NBT Wind Power Pak (Pvt) Ltd. and Essa Khaskheli was working as a peon. In addition, the forensic report on the mobile data received from AIG Forensic Office Karachi establishes the fact that Malik Shahid was continuously trying to incorporate entry into reconstructed record of rights for the fake transaction and was paying amounts to Tapedar and other Revenue officials. Additionally, the mode of payment for the purchase of land establishes the fact that Malik Shahid Ahmed connived with the aforesaid three sellers for preparing fake ownership papers as no

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35. This suit therefore recognizes the scam and at least the criminality of applicant Malik Shahid Ahmed and others named in the Reference. As such there appears to be little doubt that a scam of sorts took place and the main issue to be resolved at trial is who were involved in it

36. With regard to the land even if the land in question has not been transferred the facts and circumstances as narrated by NAB in its investigation report and reference would at least indicate that an attempt had been made to transfer the land which also amounts to an offence u/s 9 (a) of the NAO.

37. The admissibility and evidentially value of the photo copies would be for the trial court to rule upon during the trial and the absence of the originals would not automatically lead to the grant of bail so in this regard AIR 2007 S.C. 1721 is of little assistance to the applicants.

38. A definitive role has been attributed to all the accused in both the investigation report and the reference which links them to the commission of the offense.

39. In respect of applicant Hamood-Ur-Rehman Qazi's role and connection with the commission of the offense Para 3 of the reference and clause (b) the Investigation Report are reproduced as under:

"3. That the Investigation Report further reveals that Hamood-ur-Rehman Qazi (accused No.2), while posted as Mukhtiarkar (Revenue) Taluka Thatta by misuse of authority, unlawfully signed a bogus entry No.1 dated 21.3.2011 in the Village Form VII-B at the residence of accused No.4 after taking bribe and gave the attested copy of the same entry to accused No.9."

"(b) Hamood-ur-Rehman Qazi, Ex-Mukhtiarkar Revenue Thatta. (C.P. No.5670/2015):

He was Mukhtiarkar Revenue Thatta from 30th November 2010. He in capacity as Mukhtiarkar (Rev) Thatta:

- (i) Unlawfully signed an entry on Village Form VII-B at the residence of Rasool Bux Soho after taking a bribe of Rs. 500,000/- and gave attested copy of the same entry to Essa Khaskheli.
- (ii) Mr. Masood Ghumro, the then DDO (Rev) / Assistant Commissioner Thatta after conducting an inquiry had reported that a copy of entry No.1 of V.F. VII-B dated 21.03.2011 was issued to Malik Shahid Ahmed Khan S/o Atta Muhammad, with the signature of Hamood-ur-Rehman Qazi.
- (iii) Therefore, Hamood-ur-Rehman Qazi is guilty of misusing his authority and one of the accomplices of this fraud."

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segregation of payments were done for the three sellers who purportedly were separate owners of land. Foregoing in view, Malik Shahid is also an accused in this fraud.”

42. His submission regarding the civil suit and the photo copies of the documents have already been dealt with above.

43. With regard to applicants Rafique Ahmed Memon and Rasool Bux Soho the same consideration apply as mentioned earlier for accused Hamood-ur-Rehman Qazi in respect of signatures and photo copies.

44. Para 2 of the reference and clause (a) of the investigation report which are set out below tend to show Rafique Memon's role in the offence and his connection to it.

“2. That the Investigation Report reveals that Rafique Memon (accused No.1), while posted as Mukhtiarkar (Revenue) Taluka Thatta alongwith Rasool Bux Soho (accused No.4), Office Superintendent DC Office Thatta, after taking bribe from Malik Shahid Ahmed (accused No.7) through Essa Khaskheli (accused No.9), firstly managed fake/bogus entries in Village Form VII-B and fake Sale Certificates with forged signatures of deceased Mukhtiarkar, falsely for the year 2006. Thereafter the accused No.1 by misuse of authority, revalidated three bogus Sale Certificates on 15.11.2010, illegally confirming that khatedars namely Akber Minhas (541-20 acres), Essa Khaskheli (426-00 acres) & Bashir Ahmed (339-20 acres) were owners of land measuring 1307 acres in Deh Kohistan 7/4 District Thatta and that they were entitled to sell the same. Resultantly, Sale Deed No.296 was registered on 30.12.10 by deceased accused Zafar Baloch, the then Sub Registrar Thatta between the purchaser M/s NBT Wind Power Pakistan (Pvt) Ltd through Malik Shahid Ahmed Khan (accused No.7) and sellers namely Akbar Minhas (accused No.8), Essa Khaskheli (accused No.9) and Bashir Ahmed (accused No.10).”

“(a) **Rafique Memon, Ex-Mukhtiarkar Thatta (C. P No.4647/2015):**

He was Mukhtiarkar Taluka Thatta from 18.04.2008 to 14.10.2009 and again from 26.05.2010 to 29.11.2010. He alongwith Rasool Bux Soho, Office Superintendent DC Office Thatta, after taking bribe, firstly managed fake/bogus entries of V.F. VII-B and fake Sale Certificates with forged signature of deceased Mukhtiarkar, falsely for the year 2006. Thereafter, he revalidated the Sale Certificates on 15.11.2010 confirming that khatedars namely Akber Minhas, Essa Khaskheli & Bashir Ahmed were owners of land measuring 1307 acres in Deh Kohistan 7/4 and they were entitled to sell the same. Forensic expert opinion on the said signature has not been obtained because office copy has not been kept on record. *There is an eye witness named Ghulam Hussain Soho in whose presence accused Rafiq Memon had signed the Sale Certificates for its revalidation.* The aforementioned bribe was taken by him from Malik Shahid Ahmed through Essa Khaskheli for preparing fake and forged papers of ownership of the land in question. Therefore, Rafique Memon has misused his authority as Mukhtiarkar (Rev) Thatta by preparing fake /forged entries of private parties for the government land measuring 1307 acres in Taluka & District Thatta. He is one of the main accused.”(italics added)

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45. With regard to Rasool Bux Soho para 2 and 5 of the Reference and clause (d) of the investigation report tend to show Rasool Bux Soho's role in the offence and his connection to it.

"2. That the Investigation Report reveals that Rafique Memon (accused No.1), while posted as Mukhtiarkar (Revenue) Taluka Thatta alongwith Rasool Bux Soho (accused No.4), Office Superintendent DC Office Thatta, after taking bribe from Malik Shahid Ahmed (accused No.7) through Essa Khaskheli (accused No.9), firstly managed fake/bogus entries in Village Form VII-B and fake Sale Certificates with forged signatures of deceased Mukhtiarkar, falsely for the year 2006. Thereafter the accused No.1 by misuse of authority, revalidated three bogus Sale Certificates on 15.11.2010, illegally confirming that khatedars namely Akber Minhas (541-20 acres), Essa Khaskheli (426-00 acres) & Bashir Ahmed (339-20 acres) were owners of land measuring 1307 acres in Deh Kohistan 7/4 District Thatta and that they were entitled to sell the same. Resultantly, Sale Deed No.296 was registered on 30.12.10 by deceased accused Zafar Baloch, the then Sub Registrar Thatta between the purchaser M/s NBT Wind Power Pakistan (Pvt) Ltd through Malik Shahid Ahmed Khan (accused No.7) and sellers namely Akbar Minhas (accused No.8), Essa Khaskheli (accused No.9) and Bashir Ahmed (accused No.10).

5. That the Investigation Report reveals that accused No.4, in connivance with accused No.1, after taking bribe firstly managed fake/bogus entries in Village Form VII-B and fake Sale Certificates with forged signatures of deceased Mukhtiarkar, falsely for the year 2006. Thereafter, accused No.4 arranged V.F. VII-B entry and called accused No.5 for incorporating entry of Sale registry dated 30.12.2010.

(d) Rasool Bux Soho, Office Superintendent, DC Office Thatta (C.P No.4726/2015)

He was Office Superintendent of Deputy Commissioner Office Thatta. He alongwith Rafique Memon after taking bribe, prepared fake/bogus entries for the government land measuring 1307 acres in Deh Kohistan 7/4 Taluka & District Thatta, on the basis of which the land was transferred through registered deed in favor of M/s NBT Wind Power Pak (Pvt) Ltd. He alongwith Rafique Memon prepared fake ownership documents of entries of V.F. VII-B and Sale Certificates with forged signature of deceased Mukhtiarkar, falsely for the year 2006. Thereafter, he arranged V.F. VII-B entry and called Tapedar Jungshahi for incorporating entry of Sale transaction in said V.F. VII-B. He on behalf of Malik Shahid made payment of bribe of Rs.500,000/- to Hamood-ur-Rehman Qazi, Mukhtiarkar Taluka Thatta and Rs.2000 to Hafeez-ur-Rehman Palijo, Tapedar Jungshahi. Foregoing in view, Rasool Bux Soho is one of the principal accused in the said fraud."

46. With regard to applicant Hafeez-ur-Rehman's submission that he is a very junior officer and acted on instructions of his seniors this in our view is not a ground for the grant of bail. As mentioned earlier for the scam to have been carried out the active involvement and connivance of all the accused was

necessary. Had the applicant disassociated himself from the scam then the scam could not have taken place.

64

47. Para 6 of the reference and clause (e) of the investigation Report as reproduced hereunder tend to show Hafez-Ur-Rehmans role in the offence and his connection to it.

6. That the Investigation Report reveals that accused No.5 while posted as Tapedar Jungshahi unlawfully and by misuse of his authority, mutated entry during the period when the Record of Rights of District Thatta was being reconstructed. The said entry was mutated in favour of Malik Shahid Ahmed, Chief Operating Officer, M/s NBT Wind Power Pak (Pvt) Ltd, on the basis of registered Sale Deed No.296 dated 30.12.2010 based on fake and forged entries, at the residence of accused No.4 unlawfully. Further the accused signed three forged/bogus Sale Certificates on the directions of accused No.1 and accused No.4, illegally.

“(e) Hafeez-ul-Rehman Paliyo, Ex-Tapedar Jungshahi (C.P.6620/2015):

He was Tapedar Jungshahi in 2010-11. He as Tapedar Jungshahi.

- (i) Unlawfully mutated an entry in favor of Malik Shahid Ahmed as Chief Operating Officer, M/s NBT Wind Power Pakistan on the basis of registered Sale Deed, at the residence of Rasool Bux Soho who gave him an amount of Rs.2000.
- (ii) Ghulam Hussain Soho has stated that Hafeez Paliyo signed Sale Certificates in favor of three fake owners namely Akber Minhas, Essa Khaskheli and Bashir Ahmed for a land measuring 1307 acres on the directions of Rafique Memon Mukhtiarkar Thatta and Rasool Bux Soho.”

48. With regard to Uzair Durrani's submission of being innocent and making the sale deed subject to NOC this argument is belied by him signing it in the first place. As with Hafeez Ur Rehman if he had any doubts about the transaction he should not have signed the sale deed. Had the applicant disassociated himself from the scam then the scam could not have taken place.

49. Para 4 of the reference and clause (c) of the investigation report tend to show Uzair Durrani's role in the offence and his connection to it.

“4. That the Investigation Report also reveals that Uzair Durrani (accused No.3), while posted as Sub-Registrar Thatta by misuse of authority unlawfully registered the Sale Deed No.830 dated 13.12.2012 without any NOC for Sale from the Office of Mukhtiarkar Revenue Thatta and only on the basis of color copy of Village Form VII-B at entry No.1

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dated 21.03.2011 incorporated by Hafeez-ur-Rehman Palijo (accused No.5) and verified by accused No.2 unlawfully.

(c) **Uzair Durrani, Ex-Sub-Registrar Thatta (C.P. 6188/2015):**

He was acting Sub-Registrar Thatta in the year 2012. He in his capacity as Sub-Registrar.

- (i) Unlawfully registered the Sale Deed at No.830 dated 14.12.2012 without any NOC for Sale issued from the Mukhtiarkar Office and only on color copy of Village Form VII-B at entry No.1 dated 21.03.2011.
- (ii) He, unlawfully, registered the Sale Deed at No.830 dated 14.12.2012, of the subject land with deficit stamps of Rs. 200,000.
- (iii) He has misused his authority and is an accused in the said fraud.”

50. As can be seen from the above discussion all the accused are connected to the offence and played their respective role in order for the scam to be carried out. All of them therefore prima-facie as indicated by the evidence bear responsibility to a greater or lesser extent for the Commission of the offense the extent of which can be determined by the trial Court at the time of sentencing if any of the applicants are convicted .

51. Furthermore, all the applicants have failed to consider the impact of the section 164 Cr.P.C. statement of Ghulam Hussain Soho, who was stamp vendor Thatta and familiar with the scam, who in addition to narrating how the scam was carried out implicates nearly all of the accused in the offence and in some cases is an eye witness to the illegalities carried out on their part and their misuse of authority. An extract of his statement is setout below for ease of reference:

“In December 2010 I was present in my office that a person of D.C. office said me that **Mukhtiarkar Thatta Rafique Memon** is sitting in the waiting room of D.C. office and are calling you. When I arrived there and found 03 sale certificate (FD) and Form VII in his hand and Rafique Memon was putting signature upon them, after affixed his stamp he made phone call to one who was Zafar Baloch the Sub-Registrar Thatta and he said him that I have signed all three certificates and has called Ghulam Hussain and is handing over to him, who will make registry or make, kindly register it. Thereafter, he handed over all three sale certificates and Form VII to me and stated that **purchaser named Essa Khaskheli** will pay duty fee and you would make registry of sale deed. When I saw sale certificates that there nobody's signature was in the column of Tapedar that I told this matter to Rafique Memon then he said me go to **Rasool Bux Soho** who is Assistant in DC Office. I told this matter to Rasool Bux Soho that he made phone call, after short while Tapedar **Hafiz-ur-Rehman** came, then Rasool Bux stated him to put signature in Tapedar column, then said Tapedar signed on all three certificates in front of me. Thereafter, having prepared stamp duty challan deposited the same in the Treasury Office by getting signature and at that time Essa Khaskheli gave me CNIC copies of seller, purchaser and two witnesses and thereafter I made draft of Sale Deed. I and Essa Khaskheli went in the office of Sub-Registrar and presented him sale deed and on the

(66)

fixed time, Sub-Registrar, me, Rasool Bux and Essa Khaskheli went to purchaser at his office Clifton, Karachi, where all three sellers, out of them, one Essa Khaskheli is also there and purchaser **Shahid Ahmed** was there too and so also witnesses were available where Sub-Registrar got signatures and thumb impression of all. When we became free that **Rasool Bux** gave me Rs. 400,000/- out of them Rs. 3,50,000/- was given to Sub-Registrar and I myself kept Rs. 50000/-. After freeing we went to their houses. On next day on the saying of Sub-Registrar I got rupees two lacs from Rasool Bux went at the office of Sub-Registrar in order to depositing Registration Fee. Sub-Registrar received amount from me and got deposited. After few days, Sub-Registrar asked to give Rs. 3,50,000/- to me, then I told such matter to Rasool Bux who gave me Rs. 400,000/- out of them I gave Rs. 3,50,000/- to Sub-Registrar and Rs.50000/- kept by myself. After few days, Sub-Registrar asked me to give money to Senior Clerk for urgent Micro Film then I told such matter to Rasool Bux who gave me Rs.60000/-, out of them I gave 40000/- to Sr. Clerk and kept Rs.20000/- by myself. Thereafter, I handed over Sale Deed to Rasool Bux and then Rasool Bux handed over the same to purchaser. In March 2011 Rasool Bux called me at his home by phoning where Hafeez-ur-Rehman gave blank Form VII and blank Register of VII to Tapedar in front of me and stated him to make entry of registry and make copies of VII from separately. Tapedar put his signature on entry and Form VII in front of me. In the evening time of same day, Rasool Bux called at that time Mukhtiarkar Hamood-ur-Rehman at his home on phone and he said to Qazi Sahib that Tapedar has made entry and he has put his signature and you may also put his signature. Rasool Bux gave me a packet of notes containing Rs.5000/- total five lacs to which was handed over to Hamood-ur-Rehman Quzi. Then, Quzi Sahib put his signature on Register as well as Form VII in front of me, but despite insists of Rasool Bux, Qazi Sahib also affixed stamp. Qazi Sahib said to take Form VII from house, on the next day I went at the house of Qazi Sahib but he did not met. I was not given Form VII till many days; after few days Zafar Baloch called me at his office and asked me let's go to office of Qazi Sahib. When we went to office of Qazi Sahib where Qazi Sahib gave Form VII to Essa Khaskheli upon which stamps were affixed and asked to bring me its copy and then I brought copy and gave him. Later on, it came to know that Rasool Bux and Rafique Memon in connivance with each other made 17 Katha holders of land, having concerned with Katha holders and made 17 Katha holders which entire works were forged. In the year 2012, I got done Registry of my land again which is pending."

52. His statement when read with the totality of the evidence would prima facie show the role of nearly all the applicants and their connections with the offence.

53. Another important consideration is that if released on bail any of the applicants may interfere with this witness and thereby damage the prosecution's case. It is also relevant to note that one Ex.Tapedar who is accused in this reference has already absconded alongwith two other private persons. Further absconsion of any of the accused if enlarged on bail therefore cannot be discounted.

54. Therefore as mentioned earlier without going into a deep appreciation of the material on record and on a tentative analysis of the material against each

applicant and taking into account the possibility of interfering with witnesses and absconsion and the large value of the land involved and the gravity of the offence and their active involvement and connection with the offence ad-interim pre-arrest bail was recalled in respect of Rafique Ahmed Memon, Rasool Bux Soho and Uzair Durrani and post arrest bail was declined to Hamood-ur-Rehman Qazi, Malik Shahid Ahmed Khan and Hafeez-ur-Rehman.

67

55. Before parting with this Order we deem it proper to direct the learned Judge of the Accountability Court which is hearing this Reference to decide the Reference on merits without delay and submit a progress report fortnightly to this Court through MIT II. The observations made in this order are only tentative in nature and shall not prejudice the case of any party at trial

56. These are the reasons for our short order dated 09.02.2016.

Dated: 12-2-16