

462

IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No.D-6618 of 2015
Israr Ahmed

Vs.

National Accountability Bureau.

Date of hearing:	12.04.2016
Date of Order	27.04.2016
Petitioner:	Through Mr. Moiz Ahmed Advocate.
Respondents:	Through Mr. Noor Muhammad Dayo, Special Prosecutor, NAB.

ORDER

Mohammed Karim Khan Agha, J. By this order, we intend to dispose of the above petition filed on behalf of the petitioner for grant of post arrest bail in National Accountability Bureau (NAB) Reference No.41/2015 which was filed before the Administrative Judge Accountability Courts at Karachi on 23-11-2015.

2. As per reference it is alleged that M/s. Nadeem Housing Enterprises had announced a project in the name and style of Gulshan-e-Tauheed Housing Project situated at Deh Halkani, Manghopir Karachi by its owners including the petitioner and that they have committed the offense of cheating the public at large by collecting money from them for the aforesaid project and not allotting them plots in the same. It is further alleged that more than 300 allottees/affectees have already approached the NAB authorities against the petitioner and others till date and submitted their claims of Rs.26.245 million against the petitioner and others. However, a large number of allottees of Gulshan-e-Tauheed Housing Project are still approaching the NAB along with their files/claims against the petitioner and owners of M/s. Nadeem Housing Enterprises Ltd. By cheating the public at large the petitioner has committed the offense of corruption coming within the ambit of S.9 (a) National Accountability Ordinance 1999 (NAO) and thus NAB filed the reference against the Petitioner on 23-11-2015.

12/

3. Learned counsel for the petitioner contended that the petitioner is absolutely innocent and has been falsely implicated in this case with ulterior motives and mala fide intentions as the petitioner has nothing to do with the affairs of company mentioned above as he was only an employee and left its service in 2010. He further contended that no role as being ascribed to him in the reference, that there is not an iota of evidence against him and that the agreement dated 4-03-2004 which the NAB is relying on to connect him to the offense is false and as such this is a case of further inquiry and he is entitled to be enlarged on bail.

4. On the other hand learned ADPGA on behalf of NAB has contended that the petitioner has been given a specific role in the reference and there is more than sufficient evidence on record to prove beyond a reasonable doubt that the petitioner has committed the offense.

5. We have considered the submissions of the learned counsel for the parties and perused the record.

6. As per settled law on the grant of bail we have only made a tentative assessment of the material placed before us and that this order shall not prejudice the case of any party at trial whose case shall be decided on merits based on the evidence produced before the trial court.

7. A specific role has been attributed to the petitioner as per Para 4 of the reference which reads as under:

"That the investigation further reveals that Israr Khan (accused No.1/the petitioner) took over the ownership of the housing project from Mst. Imtiaz Begum (deceased) through a sale agreement dated 04.03.2004. The accused has been managing the affairs of the project since 1992 as Manager. The accused collected the payments from the allottees but did not give the physical possession and lease deeds to them. This act resulted into a fraud."

8. A review of the sale deed dated 4-3-2004 shows that it has been made with Ms Imtiaz Begum and the petitioner whereby the petitioner has purchased the project of Nadeem Housing Enterprises (Pvt) Limited (Gulshan-e-Tauheed) and taken on the responsibility for all liabilities and shall not restore any

464

cancellation and shall also be responsible to provide all facilities i.e. electricity, gas roads, water etc for the project of Nadeem Housing Enterprises (Pvt) Limited (Gulshan-e-Tauheed) **and all other deeds to the allottees/purchasers.** (bold added)

9. The record further reveals that more than 2500 plots were booked in the project but only 563 sub leases have been executed to date. A large number of allottees have given their section S.161 statements (with accompanying documents) to the effect that they made full payment for their plot but it has not been allotted to them and that their money has been embezzled by the petitioner and other directors/owners of Nadeem Housing Enterprises. Furthermore the petitioner has admitted in his own bail application that he served on a number of occasions as Director of the company and as such he was not always just a simple employee of the company throughout his long association with it and as such had direct liability for the acts and omissions of the company. It is also significant that a number of allotments were made and paid for prior to 2010 which the petitioner claims was his cut off date with the company. The total amount embezzled of the innocent allottees comes to a huge amount which cannot be ignored likewise this increasing trend of cheating the public at large through so called housing schemes.

10. It may be that certain aspects of the scam are of a civil nature but in our view the scam equally falls under the NAO and can be prosecuted by the NAB under the NAO.

11. In our considered opinion, as discussed above, there is sufficient evidence to connect the petitioner to the commission of the offense and as such his petition for post arrest bail is dismissed.

Dated: 27-04-2016