

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Ahmed Ali M. Sheikh, CJ
Mr. Justice Mohammad Karim Khan Agha

CONSTITUTION PETITION NO.D-1447 OF 2020.

Petitioner : Muhammad Nazim S/o. Muhammad Hanif,
through Barrister Jawad Ahmed Qureshi.

CONSTITUTION PETITION NO.D-1448 OF 2020.

Petitioner : Muhammad Saleem S/o. Muhammad Hanif,
through Barrister Jawad Ahmed Qureshi.

CONSTITUTION PETITION NO.D-1520 OF 2020.

Petitioners : 1) Syed Imdad Ali Shah Dadahi
S/o. Syed Wadal Shah Dadahi
(2) Muhammad Rafique
S/o. Abdul Rehman through
Bilawal Ali Ghunio.

CONSTITUTION PETITION NO.D-1541 OF 2020.

Petitioner : Dr. Sajan Mal s/o Veru Mal through
Mr. Aghis-U-Salam Tahirzada, Advocate.

CONSTITUTION PETITION NO.D-1546 OF 2020.

Petitioner : Umer Bux s/o. Abdullah through Mr. Abdul
Samad Memon, Advocate.

CONSTITUTION PETITION NO.D-1551 OF 2020.

Petitioner : Syed Khadim Hussain s/o. Syed Akber Ali
Shah through Mr. Zain ul Abdin and Zain
Mustafa Soomro, Advocates.

3

CONSTITUTION PETITION NO.D-1552 OF 2020.

Petitioner : Ghulam Nabi Kalhoro s/o. Muhammad Rajib
through Barrister Amir Nazeer.

CONSTITUTION PETITION NO.D-1584 OF 2020.

Petitioner : Tariq Hussain s/o. Imdad Hussain Magsi
through Mr. Munawar Ali, Advocate

CONSTITUTION PETITION NO.D-1592 OF 2020.

Petitioner : Aijaz Akhtar Memon S/o. Abdul Hadi
Memon, through Mr. Abdul Samad Memon,
Advocate.

CONSTITUTION PETITION NO.D-1629 OF 2020.

Petitioner : Ghulam Nabi s/o. Haji Mahabat Ali Khan
Mahar through Mr. Abdul Samad Memon,
Advocate.

CONSTITUTION PETITION NO.D-2632 OF 2020.

Petitioners : (1) Muhammad Saleem S/o Muhammad
Zakaria
(2) Muhammad Altaf s/o. Muhammad Younus
Dugan through M/s. Mehmood Alam Rizvi
and Obaid ur Rehman, Advocates.

CONSTITUTION PETITION NO.D-2783 OF 2020.

Petitioner : Fazal-e-Qadir s/o. Haji Ainuddin through
Mr. Altamash Arab, Advocate.

CONSTITUTION PETITION NO.D-2847 OF 2020.

Petitioner : Syed Shah Zahid Qadri s/o. Syed Shah Aslam
Qadri through Mr. S. Amjad Ali Shah,
Advocate.

⚡

Respondent/State in all
Petitions (NAB) Through Mr. Sattar Awan, Special Prosecutor
NAB assisted by IO Mr. Sajjad Ahmed and
Case Officer Mr. Muhammad Rizwan Soomro.

Date of hearing: 31.08.2020, 07.09.2020, 14.09.2020, 21.09.2020,
28.09.2020, 05.10.2020 and 06.10.2020.

Date of Order 20.10.2020.

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- The above mentioned petitioners are all on ad interim pre arrest bail granted by this court (except petitioners Fazal e Qadir and Syed Shah Zahid Qadri who have filed petitions for post arrest bail) in National Accountability Bureau (NAB) Reference No.6 of 20 State V Muhammed Adil Siddiqui and are seeking confirmation of their pre arrest bail granted by this court. Since all the petitions arise out of the same reference we shall dispose of all the petitions through this common order.

2. The brief facts of the case are that NAB received complaints from Mr. Akhtar Hussain Unar, Ex-Deputy Director and other employees of Sindh Small Industries Corporation (SSIC), Government of Sindh on 07.10.2015 and 15.10.2015 respectively against officers/officials of SSIC for their involvement in making illegal appointments and misappropriation of the Government funds in the corporation. Upon substantiation of allegation of illegal allotment of plots at inquiry stage, investigation was authorized by the competent authority on 26.02.2018.

3. During investigation it came to surface that Sindh Small Industries Corporation (SSIC) was constituted under the Act (XXXVI-1972) for the promotion and development of Small and Cottage Industries in the Province of Sindh. Industrial plots were to be allotted on a 'first come first served' basis while commercial plots were to be allotted through auction process in Sindh Small Industries Corporation. It is mentioned in the procedure for allotment of the plots of the corporation that the plot shall **not** be used for any purpose other than running specific industry for which it is allotted, **unless** permission in writing of the Corporation is

obtained. The Land Utilization Department, Government of Sindh had duly notified statement of conditions for grant of land dated 12th May, 1975 and later amended it multiple times. Section 19 of the general conditions for grant of the land reads **"The plot shall be used for the sole purpose for which it has been leased out"**.

4. That the investigation revealed that contrary to SSIC Act and procedure for allotment of the plots, industrial units a number of the accused being senior officials of SSIC at Karachi, Hyderabad, Sukkur, Larkana and Mirpurkhas have illegally converted/allotted such plots into commercial ones by deliberately and illegally misusing their authority/failing to exercise their authority in collusion and connivance of other beneficiary accused in order to benefit the other beneficiary accused financially as commercial plots generate more revenue than those of industrial plots. By converting industrial units into commercial units, SSIC Officers/Officials have benefitted the individual allottees and caused them to **earn illegal gains of RS 203,039,070 whilst causing loss to SSIC RS 203,039,070** hence the NAB filed the aforesaid reference under the S.9 of the National Accountability Ordinance 1999 (NAO) for acts of corruption and corrupt practices against the petitioners/accused.

5. In essence the reference divides into two classes of accused (a) Government officials who allegedly misused their authority by allotting plots and changing their status/usage throughout Sindh from industrial to commercial at throw away prices and (b) the beneficiaries throughout Sindh who were the allottees of those plots which were converted from industrial to commercial which enabled them to make huge profits.

6. Learned counsel for the petitioner Government officials who had been granted ad interim pre arrest bail by this court in essence submitted that they had acted strictly in accordance with the law in terms of the allotment of the plots and their subsequent conversion from industrial use to commercial use and the amount paid by the allottees for conversion of their plot from industrial to commercial was at the market value and as such they had not misused their authority or committed any offence under the NAO and as such all their interim pre arrest bails should be confirmed.

7. Learned counsel for petitioner beneficiaries who had been granted ad interim pre arrest bail by this court in essence submitted that even if there had been any wrong doing by the Government officials of SSIC under the relevant laws they were unaware of the same; that they were bona fide purchasers of the plots; that they had paid the amount requested from them in order to commercialize the plot which was in accordance with the prevailing market value; that the allegations against most of them were vague; that all the evidence against them was documentary and could not be interfered with; that there was no chance of them interfering with any of the other witnesses; that similarly placed co-accused in the reference Liaquat Ali Shaikh had already been granted pre arrest bail by this court and thus based on all of the above reason all their pre arrest bail should be confirmed. In support of their contentions they placed reliance on **Nazir Ahmed Shaikh V NAB** (2020 SCMR 297)

8. Learned counsel for petitioner Fazal e Qadir who was seeking post arrest bail contended that he was completely innocent of any wrong doing; that he had purchased two plots one of which had already been designated for commercial use as a CNG station whilst the other plot was for industrial use; that since the plots were side by side he made two separate applications for amalgamation of the plots and the conversion of the second plot from industrial use to commercial use which was allowed by the SSIC regional committee working under delegated authority for which he had paid the relevant fees and as such he had committed no illegality and was entitled to post arrest bail. Learned counsel for petitioner Syed Shah Zahid Qadri who was also seeking post arrest bail also contended that he was a bona fide purchaser of the plot who had no idea about any illegalities and had paid all necessary conversion charges, that his case was on a similar footing as the other beneficiary petitioners in that it was a case of further inquiry and he was entitled to post arrest bail.

9. On the other hand learned special prosecutor NAB contended that the petitioner Government officials based throughout Sindh had misused their authority by illegally converting industrial land into commercial land against the relevant laws and rules and in addition they had not only illegally converted the land from industrial to commercial use but they had done so at throwaway process in order to favour the petitioner

beneficiaries who they were in collusion and connivance with. In this respect he pointed to various Board meetings and meetings of the so called committee established in order to deal with the conversion of plots from industrial to commercial to show that these Board meetings and the committees formed there under especially at regional level had been managed and manipulated by the Government officials in order to favour the beneficiary petitioners. In support of his contentions he placed reliance on **Rana Abdul Khaliq V State** (2019 SCMR 1129)

10. We have heard the arguments of the learned counsel for the parties, scanned the record and considered the relevant law including that cited at the bar.

11. At the outset we would like to make it clear that this order is based only on a tentative assessment of the evidence on record and shall have no bearing on the trial which shall be decided by the trial court based on merit whilst considering the evidence before it.

12. **With regard to malafides** we infer the same based on the apparent failure of the NAB to fully consider in detail all the relevant applicable laws in terms of allowing conversions from industrial use to commercial use before filing the reference.

13. **With regard to merits** the case essentially divides into two categories of accused/petitioners. The first category is that of the official accused/petitioners who were working with SSIC at a senior management level who authorized the conversion of the plots from industrial to commercial whilst the second category of accused/petitioners are the beneficiary of such allotment which use was changed from industrial to commercial by the official accused/petitioners who were working with SSIC at a senior management level.

Turning to the senior officials of SSIC.

14. After scanning the relevant law, rules etc it appears that conversion of the usage of the land is permissible with the approval of the board of directors.

15. The stating point therefore is the Agenda and Working Papers for 43rd Meeting of the SSIC Board held on 18-11-2003 which contained 12 specific agenda items. None of these items mentioned the conversion of any plot belonging to SSIC from Industrial to commercial. Although the usual caveat of, "any item with approval of the chair," was added.

16. The minutes of the meeting held on 18.11.2003 pursuant to the Agenda reveals that all the 12 agenda items were discussed. However, at the tail end of the meeting we find that the amongst others the following decision was taken by the Board, "Conversion of Industrial Plots into Commercial."

*As informed by the Regional Director Karachi that some allottees of Industrial Park Karachi **demand**ed to convert their Industrial plots into commercial plots, the matter was discussed in detail and Board of Directors **agreed with the above demand of allottees as it is in the interest of the Corporation.** Therefore, the above demand was approved by the Board of Directors and allowed the interested allottees to convert their plots from Industrial category to commercial for establishment of their units viz. Petrol Pump, CNG Station etc. with prior approval for the change of trade as per procedure in vogue. They will also make the payment like conversion fee etc. as per practice in vogue in SITE Ltd."*

17. In our view it seems very unlikely for a Board of Directors to come to such a far ranging decision of as an "any other item with the approval of the Chair" issue.

18. It is also interesting to note that this conversion was made on the demand of the allottees i.e. beneficiaries, but no good reason has been given for allowing such demand except to find that such a demand to be in the interests of the Corporation.

19. A close review of the minutes also shows that the font and text in which the initial 12 agenda items were discussed and the tail piece decisions appear to be of a different font and text. **Most significantly,** these minutes have not been signed by a single participant.

20. Thus, in our view the authenticity of these minutes is in doubt which can only be determined after recording evidence at trial which makes this aspect of the case one of further inquiry.

21. Likewise for industrial zones out side of Karachi such conversions of plots from industrial to commercial were made on the recommendations of a committee established for that purpose. Once again the authenticity of these committee meetings and the decisions made therein are in doubt which can only be determined after recording evidence at trial which makes this aspect of the case one of further inquiry.

22. At this stage it should also be pointed out that NAB has not been able to provide any material to suggest that any of the Government officials received any benefit, financial or otherwise, in making these conversions.

23. As such based on the above discussion the pre arrest bail of all the petitioner Government officials is confirmed on the same terms and conditions.

With regard to the petitioner beneficiaries.

24. Most of the beneficiaries were bona fide allottees/purchasers and NAB has not been able to refute this position. There is no material on record to suggest that they connived with any of the Government officials to have the plot converted from industrial to commercial or that they paid any bribes or gave any other benefit, financial or otherwise, to the concerned Government officials.

25. It is alleged that they paid a conversion fee which was at a throwaway rate however it is unclear what the actual rate should have been. On file there is the rate fixed by the Mukthikhar, a different market rate fixed by the FBR **prior** to the filing of the reference but there is no FBR market rate fixed at the time of conversion which once again in our view makes this aspect of the case concerning whether or not the petitioner beneficiaries paid the correct price for the conversion one of further inquiry.

26. Furthermore, a similarly placed co-accused Liaquat Ali Shaikh has already been granted pre arrest bail in the same reference and as such based on this case being one of further inquiry all the beneficiary petitioner's pre arrest bail is confirmed on the same terms and conditions.

27. With regard to the petitioners Fazal e Qadir and Syed Shah Zahid Qadri who are both seeking **post arrest bail** we also find their cases to be one of further inquiry based on the discussion mentioned above and as such both the aforesaid petitioners are granted post arrest bail subject to furnishing solvent security in the amount of RS one million (ten lacs) ^{each} and PR bond in the like amount to the satisfaction of the Nazir of this court.

28. These petitions stand disposed of in the above terms.