

**IN THE HIGH COURT OF SINDH, KARACHI**

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammad Karim Khan Agha, J.

**Petition number, name of the petitioner and his counsel.**

1. C.P. No.D-630 of 2016 Aftab Ahmed Memon V. The Chairman NAB & others.

Aftab Ahmed Memon S/o Muhammad Hashim Memon (petitioner)  
Through Mr. Ali Asghar Buriro, Advocate.

2. C.P. No.D-4509 of 2016 Najam u Zaman Khan V. The NAB through its Chairman & another.

Najam u Zaman Khan S/o Fateh Muhammad Khan (petitioner)  
Through Mr. Faiz H. Shah, Advocate.

3. C.P. No.D-4560 of 2016 Rauf Akhtar Farooqui V. NAB through its Chairman.

Rauf Akhtar Farooqui S/o Abdul Waheed Farooqui (petitioner)  
Through Mr. Shabeeh Ishrat Hussain, Advocate.

4. C.P. No.D-3543 of 2016 Dr. Suleman Shaikh & another V. NAB through its Chairman & another.

Dr. Suleman Shaikh S/o Muhammad Hussain Shaikh (petitioner)  
Through Ravi R.Pinjani Advocate

**Counsel for the Respondents**

Mr. Muhammad Altaf, Special Prosecutor, NAB.

Dates of hearing: 13.03.2018 and 16.03.2018

Date of order: 27.03.2018

**ORDER**

**Mohammad Karim Khan Agha, J:** By this common order we propose to dispose of the above mentioned petitions which have been filed by the petitioners for pre-arrest bail. The petitioners all have been granted ad-interim pre-arrest bail by various orders of this court.

2. The brief facts of the case are that on receipt of several complaints against the Officers/Officials of Land Utilization Department Govt. of Sindh for their involvement in the illegal allotment of land measuring 350 acres of Clifton Shore, an inquiry was authorized which was subsequently converted into an investigation.

3. That the investigation revealed that two different summaries were moved by the Local Government (LG) Department, Government of Sindh in respect of 5 and 300 acres of land for allotment of KMC on the basis of notes/proposals initiated by Administrator KMC.
4. That the investigation revealed that first summary was floated by Secretary, LG Department on 28.11.2013 before the Chief Minister Sindh regarding approval of proposals including creation of Plot No. ST-36 measuring 5 acres of land reclaimed from the sea for the purpose of Higher Education/Advanced Health Facilities and disposing it through public auction to generate funds for KMC. As per rules of business any summary pertaining to allotment of provincial government land shall have to be routed B.O. R/L.U. Department. However, in the instant case the summary was moved directly to the chief minister who accorded principal approval following the conditions of land grant policy.
5. That the investigation revealed that Secretary LG conveyed the approval to Senior Member Board of Revenue (SMBR) and the Administrator KMC vide letter dated 16.12.2013 for further necessary action in accordance with the orders of Chief Minister Sindh. In manipulated manner, on the very next day, i.e. 17.12.2013 application of Dr. Muhammad Suleman Shaikh (accused No.4) was processed and approval by Najam u Zaman (accused No.3) and Rauf Akhtar Farooqui (accused No.2). Subsequently, the above

4



mentioned 5 acres land was allotted to Shaheed Zulfiqar Ali Bhutto Institute for Science and Technology (SZABIST) Karachi vide KMC Land Management Department letter dated 21.02.2014 and possession of the same was given by KMC vide Possession Order dated 14.03.2014.

6. That the investigation revealed that the said plot of 5 acres has been created in un-surveyed reclaimed land from seabed which is Provincial Government land and same is the subject matter of LU Department. However, without completing due process the accused No.2 and 3 in connivance with accused No.4 illegally allotted the plot in favour of SZABIST for education purpose at a very meager rate of Rs.11,975/- per sq. yd without obtaining possession from LU Department and without following due public auction process as proposed by KMC and approved by the Chief Minister.

7. That the investigation revealed that another summary along with sketch / layout plan of Kehkashan Scheme No.5 Clifton was floated by Secretary, Local Government Department on 20.03.2014 to Chief Minister Sindh regarding reclamation of land from seabed in Clifton. The Administrator KMC has suggested to develop a Public Housing Scheme at land measuring 300 acres from seabed in front of Block 1 and 2 of Clifton facing Coastal Line running parallel with Marine Promonado having Clifton Beach Park. The summary was routed through Secretary LU Department, Aftab Ahmed Memon (accused No.1) wherein he submitted that permission may be accorded by Chief Minister under Section 10(i) of

Statement of Conditions notified on 25.02.2006. The Chief Minister has approved the proposal / submission of Secretary LU Department wherein KMC is allowed for town planning and development on the reclaimed area measuring 300 acres for disposal as per Land Grant Policy. According to the Statement of Conditions for grant of State Land for non-agricultural purpose notified on 25.02.2006 in the Sindh Government Gazette, before submission of case to the Chief Minister, the market rate is called from District Price Committee and placed before Scrutiny Committee.

8. That the investigation revealed that Aftab Ahmed Memon (accused No.1), while serving as Secretary LU did not observe the mandatory provision of Condition No.8 in the instant case and illegally directed Deputy Commissioner (South) Karachi vide letter dated 13.08.2014 for delivery of the possession of land without following conditions of land grant policy. Accordingly, the land was handed over to KMC for planning and development purpose whereas there is no specific condition for delivery of the possession for planning and development. Further, the KMC illegally initiated the process of disposal by advertising the Prequalification of Builders/Developers for auction of plots at sea front project Kehkhashan Scheme-5 Clifton Karachi.

9. That the investigation revealed that during the pendency of inquiry/investigation in NAB Karachi, the then Secretary LU Department, Mr. Ghulam Mustafa Phul ordered the cancellation of above mentioned letter dated 13.04.2014



and directed Deputy Commissioner South Karachi to take over the possession of 300 acres land which was earlier allowed illegally by Aftab Ahmed Memon (accused No.1) establishing the fact that the possession was illegal allotted earlier.

10. That the investigation revealed that Rauf Akhtar Farooqui (accused No.2), while serving as Administrator KMC initiated Note to Secretary Local Government Department wherein he requested allotment of 5 acres land. Accordingly, the request was approved conditionally on Summary by Chief Minister Sindh and same was conveyed to Administrator by Secretary Local Government vide letter dated 16.12.2013. Rauf Akhtar Farooqui (accused No.2) was very much in knowledge that 5 acres of state land was just approved for allotment by Sindh Government subject to fulfillment of codal formalities and request of KMC in grant of such land was very much specific that such land was required to be disposed of through public auction after formal allotment. Further, the rules and regulations of KMC are also specific in respect of land reserved for amenities as such land is required to be disposed of through public auction. However, Rauf Akhtar Farooqui (accused No.2) in connivance with accused No.3 and 4 by misusing his authority has given his approval of Part Plan bearing Drawing No. PB-5/374 dated 21.02.2014 subsequently the land was allotted to SZABIST Karachi illegally on the same day, i.e. 21.02.2014.

11. That the investigation revealed that Najam u Zaman (accused No.3) was Director Land Management -1(KDA Wing)



KMC, who in connivance with accused No.2 and 4 misused his authority and allotted 5-00 acres land to SZABIST Karachi without considering due public auction of the same land and without ensuring the formal transfer of the same from Sindh Government. Further, Dr. Suleman Shaikh (accused No.4) without confirming the legal status of land; in connivance with accused No.2 and 3 manipulated the illegal allotment of above mentioned 5 acres land by writing a letter dated 17.12.2013 addressed to the Administrator KMC for grant of Amenity Plot. The SZABIST Karachi was benefited through him in connivance with accused No.2 and 3 by giving allotment and possession of Plot No.ST-36, Block-3 in Scheme No.5, Clifton, Karachi measuring 5 acres at throwaway price of Rs.11,975/- per sq. yard against the prevailing market price of Rs.90,000/- per sq. yard.

12. That it has been established from the investigation that accused No.1 by misusing his authority has handed over land measuring 300 acres worth Rs.130,680/- Billion to KMC in sheer violation of law and rules. Further, the SZABIST Karachi was benefitted through accused No.2, 3 and 4 by giving allotment and possession of land measuring 5-00 acres worth Rs. 2.178/- Billion for only Rs. 289.795/- Million. Thus the accused persons in connivance with each other committed the offence of corruption and corrupt practices as defined under Section 9(a) of the National Accountability Ordinance, 1999 (NAO).

13. **Learned counsel for the petitioner Aftab Ahmed Memon** submitted that he was completely innocent of any

wrong doing; that he was only involved with the allotment of 300 acres of land and had nothing to do with the allotment to SZABIST; that he had complied with all the relevant rules; that he had not benefited personally and that as the allotment had been cancelled no loss had been caused to the Government of Sindh (GOS). With regard to malafide this was apparent from the record as NAB had no material whatsoever against him to warrant his inclusion in the reference but the NAB deliberately and malafidely included him. Thus for all the above reasons he was entitled to the confirmation of his pre arrest bail.

14. **Learned counsel for the petitioner Najam u Zaman Khan** also contended that he was completely innocent of any wrong doing; that the sale of plots does not have to be by auction; that the SZABIST and the KMC had paid the market value for the plots; that he had not misused his authority in selling the plots; that in any event the allotments to both SZABIST and the KMC had been cancelled and no loss had been caused to the exchequer; that he had not personally benefited out of the transaction; that the malafide of the NAB was in including him in the reference without any evidence against him and that for all the above reasons he was entitled to the confirmation of his pre arrest bail. In support of his contentions he placed reliance on the following cases **Maqbool Ahmed Lehri and another v. NAB and another** (2016 SCMR 154) and **Abdul Qadir V Federation of Pakistan** (2002 SCMR 1478).



15. **Learned counsel for the petitioner Rauf Akhtar Farooqui** submitted that he was quite innocent of any wrong doing as he was only posted as Administrator KMC on 21-11-2013 and since the allotment process had been made prior to his taking up post he could not be liable for any offense as alleged in the reference and in this respect he relied on a notification dated 21-11-2013 which showed the date of his posting which according to him also showed that since he was not posted at the time of the offense NAB's malafide by including him in the reference. He also submitted that he had made no personal gain and that no loss had been caused to the exchequer as the allotments were cancelled and as such he was entitled to the confirmation of his pre arrest bail.

16. **Learned counsel for the petitioner Dr. Suleman Shaikh** (Secretary of SZABIST) submitted that he was innocent of any wrong doing; that he was secretary of the Board of Trustees (BOT) of SZABIST who by resolution had authorized him to purchase the 5 acres in question on behalf of SZABIST for educational uses; that he was not the beneficiary; that he did not know about the rules concerning the purchasing of Government land; that he on behalf of SZABIST had paid a fair price for the plot; that the plot had been cancelled and the purchase price had been returned to SZABIST and as such no loss had been caused and the malafides of NAB was shown by the NAB only including him in the reference and not the BOT's of SZABIST who had authorized him to purchase the plot; that SZABIST had no claim on the land nor will they make any claim in the future.



as to the land allotted to the Institution which has now been cancelled and thus for all the above reasons he was entitled to the confirmation of his pre arrest bail. In support of his contentions he relied on the cases of **The State and others v. M. Idress Ghauri and others** (2008 SCMR 1118), **Ramesh M. Udeshi v. The State** (2005 MLD 1854), **Muzammil Niazi and others v. The State** (PLD 2003 Karachi 526).

17. On the other hand, learned Special Prosecutor NAB submitted that there had been no malafides on the part of NAB and that there was more than sufficient material on record to connect all the petitioners to the offence for which they had been charged in the reference and as such he submitted that the pre arrest bail earlier granted to the petitioners should be recalled. In this connection he took the court through a number of relevant documents.

18. We have considered the arguments of the parties and gone through the record with their able assistance and considered the case law cited by them.

19. We would also 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.

#### **Findings on malafides.**

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 agency which in this case is the NAB. In this regard reference may be made to the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) and the more recent Supreme Court case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066).

21. It is often difficult to prove malafides and thus it may be inferred from the facts and circumstances surrounding/concerning a particular case. In this respect reference is made to the recent Supreme Court case of **Khalil Ahmed Soomro and others V State** (unreported dated 28-07-2017)

22. In this case all of the petitioners who are on pre arrest bail have alleged malafides on the part of the NAB. Petitioners Aftab Ahmed Memon and Najam-uz-Zaman have claimed malafides as there was no material against them and as such they should not have been included in the reference; Rauf Akhtar Farooqui has claimed that the malafides of NAB is shown by including him in the reference despite knowing that his notification of taking up post as Administrator was after the offense was committed and Dr Suleman Shaikh has claimed malafides as this was a pick and choose exercise whereby the person's who had authorized him to purchase the land had been left out of the reference.

23. Considering the reference as a whole, and the petitioner's submissions on malafide, we are of the view that there may be tinges of malafide by NAB in including the



petitioners in the reference especially as both the allotments to SZABIST and the KMC were cancelled and there was no loss caused to the state and no benefit to any of the petitioners.

### **Findings on Merit.**

24. As is apparent from the reference this case divides into 2 main parts:

- (a) attempt to illegally allot 5 acres of land owned by the GOS to SZABIST at less than the market value in breach of the relevant rules.
- (b) attempt to illegally allot 300 acres of land owned by the GOS to KMC at less than the market value in breach of the relevant rules so that KMC could then sell on such land to builders for commercial development and thereby obtain badly needed funds.

**Turning firstly to the attempt to illegally allot 5 acres plot to SZABIST at less than the market value in breach of the relevant rules.**

25. **Turning to the case of petitioner Najam u Zaman Khan** who at the time of the offense was Director Land management KDA. It appears that the main allegation against him was that he sold the 5 acres plot to SZABIST without an auction in accordance with the rules so that the market value of the property could be ascertained. It appears from the minute sheet that he sold the plot at the average auction rate rather than public auction. The plot itself however was not sold for commercial purposes but to an educational Institution for educational purposes and as such it is not entirely clear whether a public auction was required since

this was GOS land which had been reclaimed from the sea and was proposed to be used for educational purposes as opposed to commercial purposes. This aspect in our view needs further inquiry. Furthermore, it appears that the plot was cancelled and returned to the GOS and SZABIST has been refunded and as such there has been no loss caused to the GOS. Taking the above factors into account and based on the particular facts and circumstances of the case we hereby confirm the pre arrest bail earlier granted to the petitioner on the same terms and conditions.

26. **Turning to the case of petitioner Rauf Akhtar Farooqui who at the time of the offense was Administrator KMC.** It appears that the allegations against him are generally the same as petitioner Najam u Zaman Khan whose case has been discussed above. As such the same considerations apply to him as discussed above in connection with Majam-uz-Zaman Khan. In addition it appears from the record that it is unclear when he actually assumed charge as Administrator as a notification on record indicates that he assumed charge **after** the note for the transfer of land was moved. As such based on the particular facts and circumstances of the case we find that his case is also one of further inquiry and his pre arrest bail is confirmed on the same terms and conditions.

27. **Turning to the case of petitioner Dr. Suleman Shaikh** who at the time of the offense was secretary Board of Trustees (BOT) SZABIST. He was only acting on behalf of the



BOT as per Board resolution in purchasing the land however none of the board members have been made part of the reference nor have they been made PW's and as such this appears to be a case of pick and choose. Furthermore, as Secretary he was simply a go between who as per resolution was carrying out the instructions of the Board; that he was not benefiting personally and was attempting to benefit an educational institution; that the land allotment has been cancelled and taken over by the GOS; that SZABIST have not claimed any right, title or claim to the land whether now or in the future; that no loss has been caused to the GOS and as such based on the particular facts and circumstances of the case we find that his case is also one of further inquiry and his pre arrest bail is confirmed on the same terms and conditions.

28. **Now turning to the attempt to illegally allot 300 acres of land owned by the GOS to KMC at less than the market value in breach of the relevant rules** so that KMC could then sell on such land to builders for commercial development and thereby obtain badly needed funds.

29. It appears that the main accused in respect of this aspect of the case is petitioner **Aftab Ahmed Memon** who at the time of the offense was Secretary Land Utilization Department who while transferring the 300 acres of land to the KMC did not comply with rule 8 of Notification dated 25<sup>th</sup> February 2006 by the GOS Land Utilization Department which provided the procedure for the determination of market

value. The question that has emerged in our view is whether this rule applied when the GOS was transferring the land to a kind of inter government body such as the KMC as opposed to private builders for commercial use. We consider this issue to be one of further inquiry. It is also relevant that again this allotment was cancelled and as such no loss was caused to the GOS and no illegal gain was made by the petitioner or KMC as this land has now been taken back by the GOS. As such based on the particular facts and circumstances of the case we find that his case is also one of further inquiry and his pre arrest bail is confirmed on the same terms and conditions.

**In summary.**

30. Pre arrest bail is confirmed on the same terms and conditions to:

1. Aftab Ahmed Memon
2. Najam u Zaman Khan
3. Rauf Akhtar Farooqui
4. Dr. Suleman Shaikh.

31. The petitions stand dispose of in the above terms