

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.

C.P. No.D-6736 of 2017 Syed Nasir Abbas V. The Chairman NAB & others.

Syed Nasir Abbas S/o Syed Alamdar Hussain (petitioner)

Through Mr. Aamir Raza Naqvi, Advocate.

Counsel for the Respondents

Mr. Yasir Siddiqui, Special Prosecutor, NAB.

Date of hearing: 09.03.2018.

Date of order: 16.03.2018.

ORDER

Mohammad Karim Khan Agha, J: By this order we propose to dispose of the above mentioned petition filed by the petitioner (Syed Nasir Abbas) for post arrest bail.

2. The brief facts of the case are that the petitioner alongwith co-accused Syed Ubaid Ahmed who is in judicial custody were allegedly involved in illegally renting out Karachi Development Authority (KDA) amenity plots /government land for the purpose of commercial activities i.e. marriage halls, petrol pumps, etc which were reserved for amenity purposes as per Master Plan. The detail of said amenity plots are as under:-

(a). ST-17, Block 5, Scheme 24, **reserved for Playground.**

(b). **Green Belt** Block 3, Shah Faisal Town Township (1000 Sq. yds).

©. ST-5, Block 15, Scheme 36, **reserved for Car Parking.**

(d). ST-8, Block 14, Scheme 36, **reserved for Playground.**

(e) **Green Belt**, Block-2, Shah Faisal Town Township (1500 Sq. yds).

(f). ST-7/A, Federal. B. Area, **reserved for Cinema.**

3. That at the time of allotment some of which were approved by the petitioner in his capacity as Director General KDA it was against the rules and regulations for amenity plots to be used for any other purpose.

4. That by misusing his authority and/or failing to exercise his authority the petitioner approved allotment of amenity plots on rent for commercial use in violation of the relevant rules which caused undue favour to the beneficiary allottees and caused colossal loss to the KDA. It is also alleged that the allotment of non-amenity plots were also made without open auction which caused heavy loss to the government / KDA exchequer. The difference of market value and amount received by KDA through illegal and unlawful allotment is set out in the table under para 6 of the reference which is not reproduced in this order but may be found in the reference. Thus on account of this misuse of authority/failure to exercise authority by the petitioner and the other co-accused which caused a loss to KDA/national exchequer the National Accountability Bureau (NAB) filed a reference against the petitioner and his co-accused for corruption and corrupt practices under section 9 of the National Accountability Ordinance, 1999 (NAO) on 23-02-2018 before the accountability courts at Karachi.

5. Learned counsel for the petitioner submitted that the petitioner is completely innocent of any wrong doing; that he had not been involved in the renting out of any amenity plots for commercial activities; that in any event there was no rule which provides that amenity plots cannot be let out for commercial purposes and in this respect he placed reliance on KDA Resolution No.207 in minutes of the 24th meeting of the Governing body of the KDA dated 14-09-1965. He further submitted that the petitioner had been unnecessarily humiliated by the NAB as he was arrested on 13.10.2017 from his office which was given publicity in the electronic media. For all the above reasons he submitted that the petitioner was entitled to be released on post arrest bail.

6. On the other hand, learned Special Prosecutor NAB submitted that there was sufficient material on record to connect the petitioner with the offence for which he had been charged and as such the petitioner's petition for post arrest bail should be dismissed. In this connection he took the court through a number of relevant documents and S.161 Cr.PC statements.

7. We have considered the arguments of the parties and gone through the record with their able assistance.

8. 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.

9. With regard to the petitioner since he is a Government official we have also taken into consideration that he is paid and employed to serve the State/Province out of tax payers money and has a special fiduciary duty to protect, safe guard and ensure that the tax payers property is utilized to its best effect and legally and that tax payers money is well spent and not squandered needlessly or misappropriated through corruption in performing his duties/functions.

10. We have also taken into account that in offences of corruption charged under NAO (white collar crime) the Hon'ble Supreme Court of Pakistan in the recent case of **Rai Muhammad Khan v. NAB** (2017 SCMR 1152) has emphasized that the **grant of bail in such cases must be construed strictly and rigidly** and we have accordingly applied this approach in this case.

11. Since this is the post arrest bail stage we would not like to comment on any humiliation which may have been caused to the petitioner on account of his arrest instead we will focus on the material on record to see if it connects him to the offense for which he has been charged especially as NAB have the power of arrest after an inquiry is authorized provided the proper procedure is followed and it is difficult if not unlawful for NAB to impede the freedom of the media.

12. The petitioner was not a naive novice at the time of the offense rather he was a very senior and experienced government officer who at the time of offence was serving as Director General KDA.

13. S.2(2) of the KDA (Sindh Amendment) Ordinance 1994 makes it clear that no amenity plot reserved for the purpose mentioned in the clause shall be converted to or utilized for any other purpose. Like wise the Sindh Disposal of Urban Land Ordinance 2002 at S.10 (2) makes it clear that no amenity plot can be converted to or utilized for any other purpose other than the purpose for which it is reserved. Thus, no amenity plot can be let out for commercial purposes. Thus, if the petitioner let out any amenity plot of the KDA for commercial purposes he would have misused his authority in order to favour/benefit others and where the letting was not at a market value caused loss to the KDA. As DG KDA it beggars belief that he was unaware of this law i.e. amenity plots cannot be used for commercial purposes which most citizens of Karachi are aware of due to the widespread illegal encroachment and china cutting of Government land. The Hon'ble Supreme Court has recently taken notice of this illegal phenomenon and ordered the demolition of such illegal constructions. The Resolution which the petitioner relies on is completely irrelevant as it relates to setting up of an enforcement cell in KDA.

14. The S.161 statements of Taufiq Ahmed Soomro, Jameel Baloch, Syed Atta Abbass and Syed Muhammed Saim clearly show the illegal actions of the petitioner in renting out amenity purpose land for commercial purposes and that the petitioner was involved in the same. We have also seen an application dated 05-01-2017 by Syed Muhammed Saim to

the petitioner to allot amenity land for commercial use on which the petitioner has marked "put up".

15. **More significantly** we have been shown a note sheet which reflects that the application regarding temporary use of the land ST-5 for opening Marriage Hall on the above plot for five years which was approved by the petitioner. This plot is an amenity plot and it is found in paragraph 2 © of the reference ST-5 Block 15, Scheme 36, reserved for Car Parking which was approved by the petitioner for commercial purposes on 24.10.2016 and bears the petitioner's signature which has not been disputed. Likewise we have been shown another note sheet which contains application for temporary use for petrol pump which relates to Green Belt Block 3 Shah Faisal Town Township (1000 Sq. yds) which again has been approved under the petitioner's signature on 05.06.2017. Again this was an amenity plot which is referred to in the reference at para 2 (b). Yet another note sheet where the applicant has applied to put up a marriage hall/marquee lawn in respect of land at 2 (d) in the reference dated 4/5/2015 is approved under the signature of the petitioner. All this land was amenity land and could **not** have been used for commercial purposes. In addition the table under Para 6 of the reference reveals that not only was the petitioner illegally letting out such amenity plot land for commercial purposes but he was also charging rent at throwaway rates as opposed to the market rate which caused a great loss to the KDA/exchequer and gave further benefit to the illegal allottees.

16. It was the responsibility, duty and obligation of the petitioner to ensure that the amenity plots were used for their allocated purposes e.g. parks, play grounds, schools, hospitals, mosques etc which was to benefit the public in the area. Instead the petitioner completely betrayed the trust of the people and illegally by misusing his authority let out such amenity plots for commercial purposes which deprived the public of valuable and vital facilities such as the aforementioned parks, play grounds, schools, hospitals, Mosques etc. The petitioner illegally misused his authority in complete disregard of the welfare of the people in favor of commercial interests.

17. Thus, after taking into consideration the material discussed above we are of the considered view that there is prima facie sufficient material available on record to connect the petitioner to the offence for which he has been charged in the reference and as such his petition for post arrest bail is dismissed.

18. The above petition stands disposed of in the above terms.