

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

Before: Mr. Justice Ahmed Ali M. Shaikh, CJ.  
Mr. Justice Mohammad Karim Khan Agha, J.

C.P. No. D-6230 of 2016  
Muhammad Younus s/o. Din Muhammad

Vs

Chairman NAB & others

C.P. No.D- 4841 of 2016  
Shoukat Hussain Jokhio s/o. Shamsuddin Jokhio

Vs

Chairman NAB & others

C.P. No.D- 281 of 2016  
Allah Bachayo s/o. Naseer Khan

Vs

Chairman NAB & others

C.P. No.D- 282 of 2016  
Ali Akbar Hingoro s/o. Muhammad Hashim Hingoro

Vs

Chairman NAB & others

C.P. No.D- 5945 of 2016  
Sabir Hussain s/o. Muhammad Saleh

Vs

Chairman NAB & others

C.P. No.D- 5946 of 2016  
Nazeer Amin Maqbool Memon s/o. Muhammad Khan

Vs

Chairman NAB & others

C.P. No.D-3937 of 2016  
Ali Sher Mirani s/o. Muhammad Qasim Mirani

Vs

Chairman NAB & others

C.P. No.D-6379 of 2016  
Nazeer Ahmed Malkani s/o. Abdul Rehman

Vs

Chairman NAB & others

C.P. No.D-6390 of 2016  
Abdul Rehman s/o. Ali Muhammad

Vs

Chairman NAB & others

Date of hearing	24.08.2017
Date of order	13.09.2017
Counsel for the Petitioners	Through 1. Mr. Ahmed Pirzada, Advocate alongwith petitioners in C.P. No.D- 6230, 4841, 281, 282/2016. 2. Mr. Metharam Dehrani, Advocate alongwith petitioners in C.P. No.D-5945 & 5946 of 2016. 3. Mr. Muawwar Ali Memon, Advocate alongwith petitioner in C.P. No.D-3937 of 2016 4. Mr. Shahnawaz Sahito, Advocate alongwith petitioner in C.P. No.D-6379 of 2016. 5. Mr. Abdul Jabbar Mirza, Advocate alongwith petitioner in C.P No.D-6390 of 2016
The Petitioners	1. Allah Bachayo Chandio 2. Ali Akbar Hingoro 3. Shoukat Hussain Jokhio 4. Sabir Hussain Shah 5. Ali Sher Mirani 6. Nazeer Maqbool Amin Memon 7. Muhammad Younus 8. Abdul Rehman 9. Nazeer Ahmed Malkani
Respondents NAB	Through Mr. Yasir Siddiq, Special Prosecutor NAB along with I.O. Hasan Noor.

### ORDER

**Mohammed Karim Khan Agha, J.** Through these petitions, the petitioners above were granted ad interim pre arrest bail by this court vide orders dated 16.11.2016, 06.09.2016, 18.01.2016, 18.01.2016, 01.11.2016,



01.11.2016, 04.07.2016, 23.11.2016 and 23.11.2016 respectively in connection with inquiries/investigations being conducted against them by the National Accountability Bureau (NAB) in relation to acts of corruption falling within the purview of the National Accountability Ordinance 1999 (NAO) which lead to NAB filing Reference **No.55/16 State v Allah Bachayo and others** on 07-10-2016 against the petitioners and others in effect for illegally allotting Government land situated at Deh Rehri . Bin Qasim Town Karachi and its sale to private persons which caused a colossal loss to the national exchequer to the tune of RS 385 million. By this common order we propose to dispose of the aforesaid petitions for the grant of pre arrest bail.

2. The brief facts of the case as per reference is that 77 acres of government land was usurped fraudulently under the garb of 8 fake leases for 30 years of government land of Na Class No.26, Deh Rehri, Bin Qasim Town, Malir Karachi. That the Revenue Officials in connivance with private beneficiaries illegally and malafidely incorporated fake entries in the record of Rights i.e. VF VII-B Deh Rehri Bin Qasim Town, Karachi whereby the initial entries were placed in the name of non-existing persons and then malafidely further transferred in the name of subsequent lessees. The 30 years lease lands have been currently illegally occupied by different illegal housing societies which were further fraudulently sold to the public at large. As per reference the role of each accused/petitioner is set out below

3. That the accused No.1 & 2 /(petitioner No.1 Allah Bachayo Chandio) and (petitioner No.2 Ali Akbar Hingoro) **were the DO Revenue officials Karachi who without verifying the record** of their office passed **illegal orders** for transfers of 30 year lease holding rights of total 51-00 acres and 23-00 acres land on the basis of **fake entries**. That at that time accused No.3 /(petitioner No.3 Shoukat Hussain Jokhio) was **the Revenue Officer**, Bin Qasim Town, Karachi and **he malafidely forwarded reports of Mukhtiarkars** for transfer of 30 years lease holding rights of total 22-00 acres on the basis of said fake entries. That accused No.4 (petitioner No.4) Sabir Hussain was the **Assistant Mukhtiarkar**, Bin Qasim Town Karachi who attested the 3x entries No.538, 539 and 540 dated 17.09.2005 for transfer of 08-00 acres land without verification of the allotment / lease file of the first lessee. He verified the above stated 3x entries with his single signature **in gross violation of the Village Manual** wherein it is prescribed



that every entry shall be attested separately. As per investigation Assistant Mukhtiarkar was the accused and not the authorized officer who signed the entries of Deh Rehri.

4. That accused No.5 (petitioner No.5 Ali Sher Mirani) was the **Mukhtiarkar** Bin Qasim Town, Karachi who forwarded reports with recommendation to transfer lease hold rights of total 10-00 acres of 30 years lease for which the accused has malafidely used a tampered outward No.924-A/2005 for forwarding his recommendation and without having entry in the name of Muhammad Iqbal forwarded report dated 28.12.2005 to the DDOR with recommendation of transfer of lease hold rights of 02-00 acres land in favour of Muhammad Siddique.

5. That accused No.6 (petitioner No.6 Nazeer Amin Maqbool Memon) was **Mukhtiarkar** Bin Qasim Town, Malir, Karachi who with malafide intentions verified a fake entry No.508 dated 01.07.2003 for transfer of total 35-00 acres of lease hold rights of 10.00 acre government land **in favour of Noor Muhammad**. He verified a fake entry No.509 dated 01.07.2003 about extension of lease of 10.00 acres from Na Class 26 and 15-00 acres from sea shore.

6. That accused No.8 (petitioner No.7 Muhammad Younus) was **Tapedar**, Ibrahim Hyderi Bin Qasim Town, Malir, Karachi, who with malafide intentions kept 3x entries No.538, 539 and 540 dated 17.09.2005 with single signature for transfer of lease hold rights of total 32-00 acres of 08-00 acres government land. **These signatures are in gross violation of Village Manual wherein it is prescribed that every entry shall be attested separately.** He further placed entry No.543 dated 07.06.2006 for transfer of lease hold rights of 08-00 acres land without confirming the genuineness of the previous corresponding entry. He further placed entry No.541 dated 13.02.2006 for transfer of lease hold rights of 04-00 acres land from Maqbool Hussain Shah to Zafar Iqbal without verifying entry No.120, where Maqbool Hussain has already transferred his lease hold rights of Lt. Col. (R) Muneer Ahmad. The accused also placed the entry No.542 for transfer of lease hold of 03-00 acres land from Murad Bux to 3x persons namely Shahbaz, Noorullah and Muhammad Sarwar without verifying unattested entry No.148 dated 23-09-1998. The accused has also placed the entry No.547 about the transfer of lease hold rights of 04-00 acres government land from so called lessee Ashfaq Ahmad to his so called

heir without having any previous corresponding entry and in addition to it he has incorporated entry No.546 dated 19.06.2006 regarding transfer of lease hold rights of 05-00 acres of government land to Muhammed Umer to his legal heirs **in utter violation of statement of condition of allotment of lease for poultry farming purposes**

7. That accused No 9 (petitioner No.8 Abdul Rehman) was **Tapedar Ibrahim Hyderi Bin Qasim Town, Karachi** he kept the entry No.508 dated 01.07.2003 regarding transfer of lease hold rights of total 35-00 acres of 10-00 acres of government land on 30 years lease to **unduly favour accused No.10 Noor Muhammad**. The accused has kept the entry in connivance with other revenue officials and on the basis of so-called extension of lease order of the then DC Malir and kept a fake entry No.507 dated 01.07.2003 about extension of lease of 10-00 acres from Na Class 26 and 15-00 acres from Sea shore **to unjustifiably favour accused No.11 Nazeer Ahmed Malkani**.

8. That, accused No.11 (petitioner No.9 Nazeer Ahmed Malkani) is the beneficiary of 10-00 acres from Na Class No.26 and 15-00 acres from Sea shore total 25-00 acres govt. land illegally transferred to him vide entry No.507 dated 01.07.2003 **in connivance with Accused No.9 Abdul Rehman the then Tapedar and accused No.6 Nazeer Maqbool Amin Memon the then Mukhtiarkar**. The accused No.6 further transferred his lease hold rights to Naved Athar Hussain vide entry No.550 dated 11.09.2006.

9. Learned counsel for petitioners 1,2,3(Allah Bachayo Chandio, Ali Akbar Hingoro and Shoukat Hussain Jokhio) contended that 30 year leases are transferable under the Land Registration Act 1967 and that by making the transfer the petitioners 1,2 and 3 had acted completely legally and in good faith. He did not however deny that the land had been transferred on the basis of fake entries but contended that it was not the role of petitioners 1,2 and 3 being District officers and Deputy District officer revenue respectively to check whether the concerned entries were fake or not. He submitted that the land was now vacant and as such no loss had been caused to the national exchequer and in any event the removal of illegal encroachments on land was for the Mukhtiarkar to deal with in respect to the cheating the public at large element of the case. With regard to



petitioner No.3 he contended that he had been falsely and malafidely involved in the case at the behest of a local MPA who he had an enmity with. With regard to petitioner No.8 (Muhammad Younus) who was the concerned tapedar he contended that he had acted strictly in accordance with the law in performing his obligations.

10. Learned counsel for petitioner No.5 (Ali Sher Mirani) contended that he was simply a Mukhtiarkar who had forwarded the report of the tapedar to the District Revenue officer and had acted strictly in accordance with the law; that it was a case of pick and choose by NAB and that none of the 194 PW's had implicated him in the case and even otherwise the land is vacant and no loss had been caused to the exchequer.

11. Learned counsel for petitioner No. 4 (Sabir Hussain) and petitioner No.6 (Nazir Maqbool Memon) contended that they were Assistant Mukhtiarkar and Mukhtiarkar respectively and they had simply followed the order of the DO Revenue and as such they had acted in good faith and had not committed any illegal act. According to him government officials were obliged to follow illegal orders. Petitioner No.6 also submitted that he had not signed any order and/or report and that his signature had been forged although he conceded that he had not raised this issue before the trial court.

12. Learned counsel for petitioner No.9 Nazeer Ahmed Malkani contended that he was a bona fide purchaser of the land and had committed no illegality and that he had been malafidely added in the reference by NAB because he refused to be a PW. In support of his contentions he placed reliance on the case of **Farhan Ali vs. The State** (SBLR 2014 Sindh 1017) and **Khalid Ahmed Khan Lund V State** (PLD 2015 Sindh 20)

13. Learned counsel for accused No.9 (petitioner No.8 Abdul Rehman) who was a tapedar contended that he was completely innocent and that his signature had been forged although he also conceded that he had not raised this issue before the trial court and requested a handwriting expert.

14. Learned special prosecutor NAB vehemently opposed the confirmation of bail to each of the petitioners. He contended that most of the petitioners were government officials who had breached rules.

regulations and laws in connivance with each other in order to benefit others by fraudulently granting leases and as such had misused there authority which lead to a massive loss to the government exchequer in giving away government land to land grabbers who ended up cheating the public at large through various Housing Societies. He referred to the documents on record and S.161 statements in support of his various contentions and also placed reliance on an order of this Court in CPD.No.5535/2016 **Muhammed Tariq V NAB** dated 31-05-2017 whereby the post arrest bail of accused No.12 (Muhammed Tariq) in the reference had been rejected.

15. We have heard the parties and have carefully gone through the record and considered the case law cited by them. At the outset we are of the view that the authorities cited by the learned counsel for petitioner No.9 Nazeer Ahmed Malkani are of little, if any, assistance to him. Likewise the post arrest bail order referred to by learned special prosecutor NAB is not particularly relevant as this order seems to refer to the land/grabbing cheating the public at large aspect of this case whereby accused No.12 through his company Royal Builders illegally sold plots to members of the public which he had no legal title to.

16. 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.

17. 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 police. In this regard reference may be made to the case of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) which held at P. 431 that the following conditions need to be satisfied before pre arrest bail can be granted as set out below:

“9. Even since then, the said interpretation so made, the said powers so found and the parameters so prescribed, have been regularly and repeatedly coming up for scrutiny by the Superior Courts including this Court. But each time the matter was re-examined, the same was only re-affirmed. The said concept as it was initially propounded: as it developed and as the same stands today, may be summarized for the benefit of us all as under:-



- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations **to protect innocent persons against victimization through abuse of law for ulterior motives;**
- (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- (c) bail before arrest can not be granted unless the person seeking it satisfies the conditions specified subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- (d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.”(bold added)

18. The requirement of malafide in order to qualify for pre arrest bail has recently been emphasized by the Hon’ble Supreme Court in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064, relevant page 2066) as under:-

“..... This Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person **unless** the court feels satisfied about seriousness of the accused person’s assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police”

19. In this case only petitioner No.3 Shoukat Hussain Jokhio and petitioner No.9 Nazeer Ahmed Malkani have claimed malafide on the part of the NAB. The former claimed that he had been falsely implicated because a local MPA had an enmity with him and the latter claimed that he



had been falsely implicated as he refused to become a PW. Neither of the aforesaid allegations have been substantiated with any material and are simply bare allegations and as such we find their claims of malafide on the part of NAB to be of no substance.

20. Thus, since there has been no malafide on the part of the NAB in this case the ad interim pre arrest bail of all the above mentioned petitioners No.1 to 9 deserves to be recalled on this ground alone.

21. At this point we would like to emphasis that land grabbing/usurping land in Sindh and in particular Karachi by builders/developers and the land mafia in connivance with government officials has in recent times become a common phenomena and has deprived the government of valuable land and caused a great loss to the exchequer what to speak of damaging the infrastructure and planning of the city and as such government officials from the BOR have to be extra vigilant and cautious to avoid such illegal actions. This is because without the connivance of the BOR officials such as tapedars, mukhtiarkars, and other revenue officials such activities would not be possible as such officials are the custodians and guardians of the land records who being government servants have a particular fiduciary duty of trust in protecting government land.

22. In this case out of the 9 petitioners before us 8 are government officials who were serving in the BOR at the time when the crime was alleged to have been committed. Two of them were District Revenue officers, one was a Deputy District Revenue officer, one was an Assistant Mukhtiarkar, two were Mukhtiarkars and two were tapedars whilst the other was a beneficiary. We have observed that all of these officers had vast experience in the BOR and ought to have been well aware of the relevant law, rules and procedures in connection with the management of land records and in particular the creation of leases and transfer of land.

23. All the petitioners have been given a specific role in the reference as set out in the earlier parts of this order which need not be repeated here in order to avoid repetition.

24. Starting from the bottom upwards in our view it was the tapedars (petitioners 7 and 8) who had the primary responsibility to ensure that all

entries were correct. It is apparent from the record that both the tapedars failed to check the existing entries in respect of this case which were fake and may have even been added by the tapedars. The Assistant as well as the Mukhtiarkars (Petitioners 4, 5 and 6) also had an obligation to check the entries rather than blindly relying on the tapedars as they are also field officers but all 5 of them failed in their duties. With regard to the leases these were all granted on the illegal orders of the District officer Revenue and Deputy District officer revenue (petitioners 1, 2 and 3) who again made no effort to ensure that the entries were correct. The contention that following an illegal order is a defense is completely rejected. In this respect reference may be made to **Muhammed Asghar Khan's case** (2013 PLD SC 1) and the case of **Syed Mahmood Akhtar Rizvi vs. Federation of Pakistan** (PLD 2013 SC 195). The illegal actions and connivance of petitioners 1 to 8 is further shown by the fact that hardly any of the lessees existed and as such have not been traceable, that in breach of various Government of Sindh Land Utilization Department Notifications the land was transferred by lease with no payment or only part payment in a few cases; that no open kutchery was held and that the land was not used for poultry farming. Instead it appears to have been transferred to land grabbers for other purposes. With regard to petitioners 6 (Nazeer Maqbool Amin Memon) and 8 (Abdul Rehman) contention that their signatures on the relevant documents had been forged this seems to be an after thought and a concoction as neither of these petitioners have made any application before the trial court to have a handwriting expert appointed in order to verify the disputed signatures. Both petitioners 4 (Sabir Hussain Shah) and 5 (Ali Sher Mirani) have also violated the village manual which they would have both been fully aware of by attesting more than one entry at a time. Thus in connivance and collusion with each other petitioners 1 to 8 caused a colossal loss to the national exchequer through the creation of fake leases. It appears that rather than being the guardians of precious government land the petitioners 1 to 8 were instrumental through their connivance and misuse of authority/failing to exercise authority in dishing out such precious Government land in an illegal manner to unknown, unverified lessees in most cases which caused a colossal loss to the national exchequer.

25. In support of the above illegalities the following S.161 Cr.PC statements and documents are relied upon **in respect of lease No.1.**



statement dated 28.03.2017 u/s. 161 of Muhammad Yousuf, Assistant Commissioner, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016. Statements u/s 161 Cr.PC **regarding lease No.2** Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 28.03.2016. Statements recorded u/s 161 Cr.PC **regarding lease No.3** Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016. **With regard to lease No.4** statements u/s. 161 Cr.P.C. of Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016 were recorded. **In connection with Leases No.5 & 6** statements u/s.161 Cr.P.C. of Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016 were recorded. **With regard to Lease No.7** statements u/s. 161 Cr.P.C of Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016 **and in Lease No.8** statements of Muhammad Yousuf, Assistant Commissioner dated 28.03.2016, statement of Ali Gul Kalwar, Supervising Tapedar dated 27.05.2016 and Aijaz ul Hassan Khan, Mukhtiarkar dated 22.03.2016. Statement of Qurban Ali, Ex-Assistant Mukhtiarkar under Section 161 Cr.P.C. was recorded on 14.03.2016. **In respect of the violation of various laws, rules and regulations** certain Notifications of Land Utilization Department, Government of Sindh which includes the requirement to hold Kutcheries, the land solely being used for poultry and farming purposes, failing to grant leases only to persons who have interest and experience in poultry and farming alongwith proof, failure to pay lease money in full etc. Certificates, dated 17.11.2015 from the office of Deputy Commissioner, Karachi stating that there is no record of open Kutchery and letter from the office of Mukhtarar Bin Qasim dated 10.11.2015 stating that no register for open Kutchery was received in his office since creation of Bin Qasim Town, 2001. **With regard to fraudulent allotments** statements under Section 161 Cr.P.C. of Aqeel Ahmed, Assistant posted at the office of Assistant Commissioner, Bin Qasim and Farooque Ali, Junior Clerk posted in the office of Mukhtiarkar Taluka, Bin Qasim, District Malir, Karachi were recorded on 31.05.2016. **With regard to attesting more than one**

**transaction at a time** the village manual in respect of Form VII and mutation and copies of fake entries

26. As for petitioner No.9 (Nazeer Ahmed Malkani) the record shows that he is the beneficiary of 25 acres of land on account of undue benefit being given to him by petitioner No.8 Abdul Rehman and petitioner No.6 Nazir Amin Memon by misusing/failing to exercise their authority.

27. As such based on the material placed on record we are also of the view that prima facie there is sufficient material to connect all the petitioners to the commission of the offense for which they have been charged apart from the lack of malafide on the part of NAB as discussed earlier.

28. Thus, for the above reasons the aforesaid orders of this court granting ad interim pre arrest bail mentioned earlier in this order to all the petitioners Allah Bachayo Chandio, Ali Akbar Hingoro, Shoukat Hussain Jokhio, Sabir Hussain Shah, Ali Sher Mirani, Nazeer Maqbool Amin Memon, Muhammad Younus, Abdul Rehman and Nazeer Ahmed Malkani stand recalled with immediate effect. The concerned trial court is directed to complete the trial within 4 months of the date of this order.

29. The above mentioned petitions stand disposed of in the above terms.



IN THE SUPREME COURT OF PAKISTAN

Justice Arshad Ali Khan

PRESENT  
MR. JUSTICE AFIAL KHAN  
MR. JUSTICE WAGDOOL BAGAT  
MR. JUSTICE HAJI AHSAN

CIVIL PETITION NO. 3243-3245, 3355-3358, 3502 & 3510 OF 2017

Against the order dated 28.04.2017 of the High Court of Sindh, Karachi  
bearing: CHS No. 252 of 2017, 253 of 2017, 254 of 2017 & 255 of 2017

Shah Sohaib  
Ali Akbar Hingor  
Shah Mir Husein Jorhi  
Nazeem Arshad Mughal Memon  
Sohail Hussain  
Ali Shehryar  
Waseem Ahmed Malik

Petitioners

VS

NAB Mr. Director General NAB Sindh Karachi and Respondents  
and/or

For the Petitioners:

Mr. Ahsan Ali Khan, A.C.  
Mr. Kamran Khan, A.C.  
Mr. Ahsan Ali Khan, A.C.  
Mr. Ahsan Ali Khan, A.C.  
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Mr. Ahsan Ali Khan, A.C.  
Mr. Ahsan Ali Khan, A.C.  
Mr. Ahsan Ali Khan, A.C.

For the Respondents:

Mr. Ahsan Ali Khan, A.C.  
Mr. Ahsan Ali Khan, A.C.

Date of Hearing

25.12.2017

ORDER

AFIAL KHAN, 2 Defendant who are among 3

Reference in one of the above titled cases of Sindh High Court dated 28.04.2017  
for the concession of one order but from the High Court sought  
indulgence of the Court mainly on the grounds that there is absolutely  
nothing on the record to connect them with the case and that the case is



