

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

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

Mr. Justice Mohammad Karim Khan Agha, J.

C.P. No.D-5639 of 2015

Petitioner: Mohammad Akhtar Pathan through
Mr. Shakeel Ahmed, Advocate.

Respondents: Chairman National Accountability
Bureau & others, through Mr.
Muhammad Altaf, Special Prosecutor,
NAB.

Date of hearing: 06-09-2017.

Date of order: 08-09-2017.

ORDER

Mohammad Karim Khan Agha, J:- Through this petition, the petitioner seeks pre-arrest bail. The petitioner was granted ad interim pre arrest bail by this court vide order dated 21.12.2015.

2. Briefly stated the facts of the case as per Reference **No.51/2015 State V Muhammed Akhter Pathan** is that on receipt of a complaint regarding illegal creation of 36 plots on the conduit of main water supply line passing through Quetta Town Cooperative Housing Society Ltd Scheme 33, Karachi by Muhammad Akhter Pathan the then Administrator of M/s. Quetta Town Cooperative Housing Society Ltd Scheme 33, Karachi, an inquiry was authorized, which was subsequently converted into investigation by the DG NAB (K) vide letter NO.221089-Khi/IW-1/CO-A/NAB(K)2015/1563 dated 10th

April 2015. The perusal of investigation report reveals that the accused Muhammad Akhter Pathan in the capacity of Administrator Quetta Town Cooperative Housing Society Ltd, Scheme-33, Karachi was found involved in corruption and corrupt practices by misusing his authority. He has committed serious violations of Cooperative Societies Act, 1925, Sindh Cooperative Housing Authority Ordinance 1982 and bylaws of Quetta Town Cooperative Housing Society Ltd, Scheme-33, Karachi by fraudulently revising the layout plan of Sector 18-A from Master Plan Department KMC Karachi and illegally allotted 27 plots to the non members of the society and received an amount of Rs.4,860,000/- from affectees / allottees and subsequently embezzled the whole amount. During the course of investigation, it has been established that accused has made gross violation of rules, procedures and bylaws of the society and cheated public at large by fake allotment of illegal plots. It is established that due to massive corruption and corrupt practices by means of revising the layout plan of Sector 18-A from Master Plan Department, KMC in furtherance of malafide intention corruption and corrupt practices and thus the accused unlawfully allotted 27 plots of the society to the non members and collected the amount in cash which he subsequently embezzled which resulted into personal gain of Rs.4,860,000/- to the accused. Thus the accused has committed the offence of corruption and corrupt practices as envisaged under section 9(a) of National Accountability

Ordinance, 1999 punishable u/s.10 of the Ordinance and schedule thereto.

3. Learned counsel for the petitioner contended that he was completely innocent and had complied with all rules and regulations and had not committed any illegality and as such his ad-interim pre arrest bail should be confirmed. On the other hand learned Senior Prosecutor, NAB contended that there was more than enough evidence on record to show that there were reasonable grounds to connect the petitioner with the commission of offence for which he has been charged and as such his ad-interim pre arrest bail should be recalled.

4. We have considered the submissions / contentions of the parties and carefully examined the record.

5. It is a well settled principle of law that for the grant of pre-arrest bail there must be some malafide on the part of the complainant or the police. Reference in this regard is made to the cases of **Rana Mohammed Arshad V Muhammed Rafique** (PLD 2009 SC 427) and more recently **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064).

6. The petitioner has leveled no allegation of any malafide on the part of the NAB and from a review of the record there is no material to suggest that NAB has acted in any malafide way in filing the aforesaid reference against the petitioner. Thus on this ground alone the petitioner's ad-interim pre arrest bail is liable to be recalled.

7. The petitioner has been given a specific role in the reference as set out above and is the sole accused in the reference. Furthermore from a tentative assessment of the material before us it appears that PW-2 Syed Nishat Ali Rizvi and PW-5 Syed Hajan Shah have implicated the petitioner in the offence for which he has been charged. We have also noted that the signature of the petitioner also appears on the allotment orders and that the petitioner has made no application to the Court concerning his alleged forged signature and requesting a hand writing expert.

8. Taking the above material into consideration apart from a lack of malafides on the part of the NAB we are also of the view that there is sufficient material on record to prima facie connect the petitioner with the offence for which he has been charged and as such his ad interim pre arrest bail stands recalled with immediate effect.

9. It is made clear that nothing in this order shall prejudice the petitioner at trial which shall decide the case against the petitioner on merits based on the evidence before it. The trial court is directed to complete the trial within 04 months of the date of this order a copy of which shall be sent to the concerned trial court for compliance.