

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

Before:-

Mr. Justice Muhammad Iqbal Kalhoro, J.  
Mr. Justice Mohammed Karim Khan Agha, J.

**Petition No. and name of petitioner along with counsel.**

1. C.P No.D-91 of 2018 Sabbir Hussain (petitioner) V/s The Chairman National Accountability Bureau through Mr. Mukesh Kumar, Advocate.
2. C.P No.D-1607 of 2018 Ali Sher Mirani (petitioner) V/s The Federation of Pakistan & another through Mr. Munawar Ali Memon, Advocate.
3. C.P No.D-2549 of 2018 Ali Akbar Hingora (petitioner) V/s National Accountability Bureau through Mr. Mohsin Shahwani, Advocate
4. C.P No. D-2524 of 2018 Nazeer Ahmed (petitioner) V/s Chairman NAB through Mr. Shanawaz Sahito

**Counsel for the Respondents.**

Mr. Yassir Siddiqi, Special Prosecutor, NAB.

Dates of Hearing: 12.04.2018, 18.04.2018 and 25.04.2018

Date of Order: 11.05.2018

**ORDER**

**Mohammed Karim Khan Agha, J.** By this common order we propose to dispose of the petitions filed by the above mentioned petitioners Sabbir Hussain, Ali Sher Mirani, Ali Akbar Hingoro and Nazeer Ahmed Malkani for post arrest bail whose pre-arrest bail granted to them by this court was recalled vide order of this court dated 13.09.2017. Thereafter the petitioners absconded and approached to the Hon'ble Supreme Court of Pakistan for seeking pre-arrest bail. The Hon'ble Supreme Court dismissed their petitions for pre-arrest bail vide order dated 25.10.2017 where after the petitioners were taken into custody and hence these petitions for post arrest bail.

2. Briefly stated the facts of the case as per NAB reference are that the above-named petitioners and other co-accused were facing inquiries/investigations against them by the National Accountability Bureau (NAB) in relation to acts of corruption and



corrupt practices falling within the purview of the National Accountability Ordinance 1999 (NAO) which led to NAB filing Reference **No.55/16 State v Allah Bachayo and others** on 07.10.2016 against the petitioners and other co-accused in effect for their involvement in illegally allotting 77 acres of Government land situated at Deh Rehri , Bin Qasim Town Karachi and its sale to private persons through illegal entries which had been made/allowed without verification in the land registers by the official accused (including the petitioners)which caused a colossal loss to the national exchequer to the tune of RS 385 million.

3. The role of the petitioners in connection with the aforesaid land scam as set out in the Reference is as under:-

(i) That the accused No.1 (Allah Bachayo Chandio) **and accused No.2 petitioner (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 (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 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.

(ii). That petitioner **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.

(iii) That the investigation revealed that accused No.11 **petitioner Nazeer Ahmed Malkani** is the beneficiary of 10-00 acres from Na class No.26 and 15 acres from seashore total 25 acres government 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



4. Learned counsel for petitioner Sabbir Shah submitted that the situation has drastically changed since his pre arrest bail had been recalled by this court. He submitted that NAB's case largely revolved around fake entry 150 and that now that entry had come to light in a separate reference which had been filed by NAB, and as such was not fake; even otherwise although the entries were made during his tenure he was acting on the orders of the then DO Revenue; that the land had been reverted back to the Government and as such there was no loss to the State; that he had made no personal gain; that the alleged star PW Aijaz ul Hassan Khan against him had not implicated him at trial; that the Hon'ble Supreme Court vide orders dated 21-02-2018 and 21-03-2018 had granted post arrest bail to the main beneficiary in the case accused Muhammed Tariq and one of the main accused Shoukat Hussain Jokio and as such he was entitled to post arrest bail based on the rule of consistency as his case was on a better footing. Thus, he submitted for all the above reasons he was entitled to be granted post arrest bail.

5. Learned counsel for petitioner Ali Sher Mirani made similar submissions to that of petitioner Sabbir Shah.

6. Learned counsel for Ali Hingoro also relied on the rule of consistency; he further submitted that since his post arrest bail was declined 3 PW's had now given evidence which revealed that the original entries had now been found and as such the entries were not fake; that one PW had not supported his original statement and had been declared hostile and thus had also not implicated him; that another PW had conceded that the loss had been inflated; that he did not create any leasehold rights and only transferred them and as such his case was one of further inquiry and as such he should be granted post arrest bail.

7. Learned counsel for Nazeer Ahmed Malkani submitted that he was not a beneficiary and that according to PW Aijaz Ul Hasan he was a minor of 15 years of age at the time of the transfer and that he would only have been 8 years old at the time of the original allotment and as such he could not have been the beneficiary. Thus his case was one of further inquiry and he was entitled to post arrest bail.



8. Learned special prosecutor NAB opposed the grant of post arrest bail to all the petitioners and contended that there was sufficient material on record to connect each of the petitioners to the offense for which they had been charged and as such submitted that the post arrest bail of each of the petitioners should be dismissed.

9. We have heard the counsel for the parties, re considered the material on record and the relevant case law.

10. At the outset we make it clear that this order shall have no bearing on the outcome of the trial which shall be decided on merits by the trial court based on the evidence before it and that this order is based only on a tentative assessment of the material on record and not a deeper appreciation of the same.

11. We would also observe that when we dealt with the case of the petitioners at the pre arrest bail stage we also dealt with each of their cases on merits. We note however that since the pre arrest bail of the petitioners was recalled by this court a number of new developments have come to light; namely the concerned entries now apparently being not fake has come on record; that the star PW at trial Aijaz Ul Hasan has not implicated the petitioners; that another PW has resiled from his S.161 statement and even submitted an affidavit before the trial court which has been exhibited stating that some of material parts of his S.161 statement was added without his knowledge by the IO; that two co-accused with somewhat similar roles in respect of the Government officials and the beneficiary have been granted post arrest bail by the Hon'ble Supreme Court. In addition admittedly the land in question has now reverted back to the government and thus no loss has been caused to the State; that out of 196 PW's only 3 have been examined to date and most of the petitioners have now been behind bars for about 6 months and in some cases are relatively old like Ali Hingoro who is aged 71.

12. Thus, based on these new developments and the other factors mentioned above we find that the case of the petitioners has now become one of further inquiry and as such all the petitioners Sabbir Shah, Ali Sher Mirani, Ali Akbar Hingoro and Nazeer Ahmed Malkani are each granted post arrest bail subject to them furnishing solvent surety in the sum of RS 2.5M (25 lacs)

**each** and PR bond in the like amount to the satisfaction of the Nazir of this court. The names of all the petitioners shall be placed on the ECL by the Ministry of Interior with immediate effect.

13. A copy of this order shall be transmitted to the Secretary Ministry of Interior for compliance in terms of putting the names of petitioners Sabbir Shah, Ali Sher Mirani, Ali Akbar Hingoro and Nazeer Ahmed Malkani on the ECL.

14. The above petitions stand disposed of in the above terms.