

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

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

Mr. Justice Mohammed Karim Khan Agha, J.

Petition Nos. and name of Petitioners alongwith Counsel

1. C.P. No.D-2915 of 2016 Gada Hussain V. The Director General NAB, (Sindh) & another.
Gada Hussain S/o Nawab Khan (petitioner No.1)
Through Mr.Sarfraz Ali Metlo, Advocate

2. C.P. No.D-5910 of 2016 Jehangir Khan & another V. The Chairman NAB, & another.

1. Ghulam Rasool S/o Ghulam Qadir (petitioner No.2).

2. Jehangir Khan S/o Hadi Bux (petitioner No.3)

Through: Mr. Ghulam Sarwar Chandio and Mr.Rehman Ghous, Advocates

Counsel for the Respondents

Mr. Yassir Siddiq, Special Prosecutor NAB.

Date of Hearing : 03.10.2017

Date of Order : 10.10.2017

ORDER

Mohammed Karim Khan Agha, J. Through these petitions, the petitioners namely Gada Hussain S/o Nawab Khan, (petitioner No.1) Ghulam Rasool S/o Ghulam Qadir (petitioner No.2 and Jehangir Khan S/o Hadi Bux (petitioner No.3) have approached this Court for grant of bail before arrest as they are on ad-interim pre-arrest bail vide orders dated 18.05.2016 and 01.11.2016 respectively.

2. The case concerns the illegal transfer of 192 acres of Government land to private individuals which caused a massive loss to the government exchequer. The facts of the case as per National Accountability Bureau (NAB) Reference

No.01 of 2017 is that fake entry No.44 dated 06.04.2015 was illegally and malafidely incorporated by accused No.3 Nisar Ahmed Wagan, Supervising Tapedar in Deh Form VII-B, purporting that Ghulam Rasool S/o Jumma, Ghulam Haider, Abdul Qadir, Kareem Bux, Muhammad Ishaque and Ali Bux have sold out their land measuring 192 acres to **accused No.4 Ghulam Rasool** for a sum of Rs. 975,000/- vide registered deed No.201 of 15-04-1997. **The entry was verified by accused No.2 Gada Hussain Abro, Mukhtiarkar Revenue** and accused No.1 Karamuddin Panhyar Assistant Commissioner. Further, surprisingly a **cancellation note dated 07.04.2015** has been kept by accused No.1, 2 and 3 stating that the entry may be treated as cancelled due to non-provision of original documents though they did not have the power to cancel the said entry. However **at the same time they issued NOC for sale and further transferred the land through a fake entry No.46 dated 19.06.2015.**

3. It is further stated in the Reference that the investigation revealed that fake entry No.46 dated 19.06.2015 was incorporated by accused No. 3 (Nisar Ahmed Wagan) in Deh Form VII-B purporting that accused **No.4 Ghulam Rasool** had sold out, his total share in the subject land i.e. 192 acres, for a sum of Rs.48,00,000/- vide registered deed No.339 of 28.04.2015 to Irfan Hilal Ahmed. **The entry was verified by accused No.2 Gada Hussain Abro, Mukhtiarkar Revenue** and accused No.1 Karamuddin Panhyar Assistant Commissioner. Further, a cancellation note by accused No.3 (Nisar Ahmed Wagan) dated 26.06.2015 was kept stating that

the entry was treated as cancelled. The accused No.1 (Karamuddin Panwar) has stated in the note that the entry kept at 44 may also be treated as cancelled. Interestingly a letter dated 28.12.2015 was written by the **accused No.2 (Gada Hussain)** to accused No.1 (Karamuddin Panwar) through his office letter dated 31.12.2015, and forwarded to ADC-I, Thatta recommending therein that entries No.44 and 46 may be cancelled as said land was purely Government land.

4. According to the said Reference, the allegations leveled against the petitioners named above are as follows:

Petitioner No.1 Gada Hussain

"Investigation revealed that accused No.2 Gada Hussain Abro, the then Mukhtiarkar Taluka Mirpur Sakro District Thatta, **attested a fake entry No.44 dated 06.04.2016 which was placed on the basis of fake documents** purported to have been registered in the office of Sub Registrar Thatta vide RD No.201 dated 15.04.1997. **The accused No.1 further counter signed the sale for NOC dated 15.04.2015 on the basis of cancelled entry No.44. On the basis of fake entry No.44 and illegal NOC for sale, Govt. land measuring 192-00 acres have been illegally mutated by him vide entry No.46 dated 19.06.2015**".

Petitioner No.2 Ghulam Rasool

"Investigation further revealed that accused No.4 Ghulam Rasool a private person and residing in a village near the subject land. **He in connivance with accused No.5 Jehangir Khan Mari and Revenue officials managed fake document of the Government land purported to have been registered in the office of Sub Registrar Thatta on 15.04.1997.** He illegally got the Government land transferred into his name through fake entry No.44 dated 06.04.2015. Later on the Government land was sold to private person namely Irfan Hilal through a registered sale deed dated 28.04.2015".

Petitioner No.3 Jahangir Khan.

"Investigation further revealed that accused No.5 Jahangir Khan Mari a private person and residing in Gharo and runs business of Real Estate. **He in connivance with accused No.4 Ghulam Rasool and Revenue officials managed fake documents of the government land purported to have been registered in the office of Sub Registrar Thatta on 15.04.1997. The accused No.5 further illegally got the Government land transferred into the name of accused No.4 Ghulam Rasool through fake entry No.44 dated 06.04.2015.** Later on the Govt. land was sold to private person namely Irfan Hilal through a registered sale deed dated 28.04.2015. **The accused No.5 got the complete compensation money from Irfan Hilal through cheque and cash**".

5. In view of the above allegations, according to the reference petitioner No.1 Guda Hussain and other official co accused have caused loss of Rs.60 million by misusing/failing to exercise thier authority and fraud and also cheated Irfan Hilal by selling Government land to him for an amount of Rs.4.8 million and petitioner No. 2 (Ghulam Rasool) and petitioner No.3 Jahangir Khan being beneficiaries of this misusing/failing to exercise authority and fraud by petitioner No.1 Guda Hussain and other official co accused and thus they have committed the offense of corruption and corrupt practices as defined u/s 9(a) of the National Accountability Ordinance 1999 (NAO) punishable u/s 10 and schedule thereto.

6. Learned counsel for petitioner No1 Gada Hussain who was Mukhtiarkar Revenue at the time contended that he was completely innocent of any wrong doing and claimed that the entire reference was based on malafide by the NAB as all his actions were based on the verification of sale deed letter dated

21-11-2103 from the sub registrar HQ Thatta (P.84 IR) who had not even been made an accused in this reference. According to him the accused No.1 Karamuddin Panwar the then Assistant Commissioner and accused No.3 Nassar Ahmed Wagan the then supervising Tapedar in the reference were responsible for the fake entry No.44; that he had maintained his same stance from the day he was first interviewed by NAB and had not deviated from the same; that he had sent letters on 28-12-2015 and 31-12-2015 to the concerned authorities alerting them to the fake entries (44 and 46) and requesting action under S.164 of the Sindh Land Revenue Act 1967 and thus for all the above reasons his pre arrest bail should be confirmed. In support of his contentions he placed reliance on the cases of **Ziagham Ashraf Vs. The State & others** (2016 SCMR 18) and **Maqbool Ahmed Lehri & another Vs. NAB & another** (2016 SCMR 154).

7. Learned counsel for petitioner No.2 Ghulam Rasool contended that he was a private person who was completely innocent of any wrong doing as he was bona fide purchaser of the land in question which he purchased through a registered sale deed dated 1997 which then he simply sold on to Irfan Hilal who is the complainant in this reference and as such his pre arrest bail should be confirmed.

8. Learned counsel for petitioner No.3 Jahangir Khan submitted that he was simply an estate agent involved in the sale of the land from petitioner No.2 Ghulam Rasool to Irfan Hilal Ahmed and was completely innocent of any wrong doing.

He received only his commission; that he was not the beneficiary; that he was not the vendor and the whole matter was being resolved via civil suit No.8/2017 which was still pending and for all the above reasons his pre arrest bail should be confirmed.

9. On the other hand learned senior prosecutor for the NAB submitted that there was more than sufficient material on record to link all the petitioners with the offense for which they have been charged and that the pre arrest bail granted by this court earlier to all the petitioners should be recalled.

10. We have considered the submissions of learned counsel for the parties, carefully perused the material available on record and the case law cited at the bar.

11. 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.

12. The first point to note is that the two accused who petitioner No.1 (Gada Hussain) is trying to blame; namely accused No.1 (Karamuddin Panhyar) is already in jail in another NAB case and accused No.3 Nisar Ahmed Wagan is an absconder in this case. Secondly, we find the authorities cited by the petitioner No1 to be of little, if any, assistance to him based on the particular facts and circumstances of this case.

13. 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 Muhammad Rafique** (PLD 2009 SC 427) which was more recently reiterated by the Supreme Court in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064),

14. In this case neither petitioner No.2 Ghulam Rasool nor petitioner No.3 Jahangir Khan has claimed any malafides on the part of NAB. Only petitioner No.1 Gada Hussain has claimed malafide on account of the fact that the sub registrar Mr. Yassir Hussain whose verification certificate he relied on and according to him is the foundation of the case was not included in the reference by NAB.

15. In our view, however, the reason why NAB have not included the sub Registrar Yassir Hussain in the reference is because based on the S.161 statements of Sub Registrar Yassir Hussain who denies his signature on the letter and claims that the letter is fake which is corroborated by S.161 Statement of Liaquat Hussain who confirms that the verification letter is a fake it is apparent that the sub registrar was not involved in the offense and hence NAB excluded him from the reference for good reasons. Thus, there has been no malafide on the part of NAB in omitting the Sub Registrar from the reference.

16. Thus, none of the petitioners have been able to show malafide on the part of NAB and on this ground alone their pre arrest bail deserves to be recalled.

17. **Turning to the case of petitioner No.1 Gada Hussain who at the time of the offense was Mukthiakar Revenue Mirpur Skaro.** He has been given a specific role in the reference as reproduced at Para 4 of this order.

18. Through the S.161 statements of Sub Registrar Yassir Hussain who denies his signature on the verification letter and claims it to be a fake which is corroborated by S.161 Statement of Liaquat Hussain who confirms that the verification letter is a fake which is further supported by the outward register which makes no reference to such a letter it appears that the letter is a fake and persons responsible for this fake letter as a part of the overall scam are all the accused in the reference including petitioner No.1 who misused his authority by making this fake letter in order to favour petitioners 2 and 3 who were the beneficiaries.

19. The illegal entry 44 which relates to the aforesaid letter was made on 06-04-2015 whilst the cancellation note dated 07-04-2015 and signed by the petitioner was made a day later hence at first instance it appears that petitioner No.1 is trying to protect the precious Government land. However on a closer examination this is totally belied by the NOC for the sale of the land which petitioner No.1 gave to petitioner No.2 on 21-04-2015 which was **after** he had cancelled the entry. Thus being fully aware of the cancellation of the entry he then

gave his NOC for the illegal sale of the land and has completely misused his authority in order to favour/benefit petitioner No.2 and later petitioner No.3. (S.161 statements of Mahngomal and Mohammed Juman)

20. As for the so called letters of alert sent by petitioner No.1 none of these were ever received by the competent authority as is revealed by the incoming correspondence logs of the competent authority. In our view these letters, like the verification letter, was made up after the event in an attempt to camouflage the earlier illegalities committed by petitioner No.1 and the other official co-accused in the reference. (relevant registers and S.161 statements of Taufique Ahmed and Iqbal Ahmed)

21. Thus, in our view based on the material before us there is prima facie sufficient material to connect petitioner No.1 to the offense for which he has been charged and as such his pre arrest bail stands recalled with immediate effect.

22. **With regard to the case of petitioner No.2 (Ghulam Rasool)** who at the time of the offense was allegedly a bona fide purchaser who simply sold the land on to Mr Hilal through petitioner No.3 Jahangir Khan who acted as a broker a specific role has been assigned to him in the reference as reproduced at para 4 of this order.

23. We have already found in this order that the verification letter was fake. This letter was requested by petitioner No.2 so in our view it was faked by him in connivance with the

Government officials. The land was valued at RS 300,000 per acre (S.161 Statement of Mohammed Khan) yet petitioner No.2 sold it for only RS 25,000 per acre and all the money ended up in the bank account of petitioner No.3 (Jahangir Khan) (S.161 statements of Islahuddin and Sohail Sajjad Shaikh). When confronted as to how he received the proceeds of sale petitioner No.2 said that he had received it in cash from petitioner No.3 however he was not able to produce any evidence to this effect. In our view he was an integral part of the scam and was likely only to have been paid a small amount for the sale of the land as he was being used as an instrument by the government officials and petitioner No.3 Jahangir Khan. Based on the above discussion we are of the view that prima facie sufficient material has come on record to connect petitioner No.2 to the offense for which he has been charged and as such his pre arrest bail stands recalled with immediate effect.

24. **With regard to the case of petitioner No.3 (Jahangir Khan)** who at the time of the offense was the estate agent who brokered the sale between petitioner No.2 and Mr.Hilal he has been given a specific role in the reference as set out at Para 4 of this order.

25. As already discussed we have found the verification letter to be fake and forged by the accused in the reference with a view, in connivance with each other, to illegally sell off Government land on the cheap which caused a massive loss to the exchequer and a huge gain to the beneficiaries of which

he was one. In our view petitioner No.3 played a full part in this case from the fake verification letter to arranging the illegal sale from petitioner No 2 to bona fide purchaser Irfan Hilal Ahmed at an undervalue. He was fully involved in the registration process, he had recommended Hilal to buy the land and ascertained the rate and he had kept all the sale proceeds in his bank account. In effect he was the ultimate beneficiary in this case. (S.161 statements of Irfan Hilal Ahmed, Usman Ibrahim, Islahuddin and Sohail Sajjad Shaikh). Thus in our view there is prima facie sufficient material on record to connect petitioner No.3 to the offense for which he has been charged and as such his pre arrest bail stands recalled with immediate effect

26. In summary the pre arrest bail granted to petitioner No 1 Gada Hussain, petitioner No.2 Ghulam Rasool and petitioner No.3 Jahangir Khan stand recalled with immediate effect.

27. These petitions stand disposed of in the above terms