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

**Before: Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Mohammad Karim Khan Agha**

**C.P. No. D-3219/2014**

Muhammad Azam Brohi  
V.  
The State

**C.P. No. D-5739/2015**

Muhammad Sadiq Rajar  
V.  
NAB & others

**C.P. No. D-4552/2013**

Abdul Qadir  
V.  
NAB & others

**C.P. No. D-5865/2014**

Rasheed Gul  
V.  
The State

**C.P. No. D-7974/2015**

Abdul Malik  
V.  
NAB & others

Date of hearing:	11.03.2016 and 21.03.2016
Date of Order	30.03.2016
Petitioners:	Through Mr. Ahmed Ali Ghumro, Advocate for petitioners in C.P.No.D-3219/2014 & C.P.No.D-5739/2015, Mr. Aziz-ur-Rehman Akhund, Advocate for petitioner in C.P.No.D-4552/2013, Mr. Mukesh Kumar Khatri, Advocate for petitioner in C.P.No.D-5865/2014 and Mr. Mushtaq Ahmed Jahangiri, Advocate for petitioner in C.P.No.D-7974/2015.
Respondents:	Through Mr. Noor Muhammad Dayo, ADPGA NAB. Mr. Aslam Bhutta, Special Prosecutor NAB a/w Waliullah I.O. NAB.

**ORDER**

**Mohammad Karim Khan Agha, J.-** By this common order, we propose to dispose of five petitions for grant of bail arising out of National Accountability Bureau(NAB) Reference 04/2014 State v.

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Muhammad Azam and others which is pending before the Accountability Court No.IV at Karachi.

2. The allegations against the petitioners according to Reference No. 04/2014 in a nutshell are that the petitioners in connivance with each other were involved in gross violation of procedure and bye laws of Central Information Employees Co-operative Society Limited Karachi (the Society) of misusing their authority, embezzlement of Society funds, obtaining wrongful gain and cheating the public at large in the cancellation and re-allotment of Society plots and due to massive corruption and corrupt practices by means of illegal gratification reflected in their personal accounts, embezzlement in Society's accounts, selling / re-allotting of allotted plots of old members to others.

3. The petitioners in furtherance of their common intention acted in such a manner which resulted in a huge loss to the tune of Rs.35,957,832/- (three crore fifty nine lacs fifty seven thousand and eight hundred thirty two rupees) to the Society in the shape of embezzlement of Society funds regarding development work in the Society as well as allotment of 3 x amenity plots and also caused wrongful loss of Rs.36,808,000/- to the previous allottees / members of the Society in the shape of 24 x cancelled / re-allotment of plots and got the benefit for themselves and as such all the accused persons committed acts of corruption and corrupt practices defined u/s 9 (a) and punishable u/s 10 of National Accountability Ordinance 1999 (NAO) which lead to NAB filing a reference against them which is now pending before Accountability Court No.IV at Karachi.

4. Learned counsel for the petitioner No1 Mohammed Azam Brohi who per Reference 4/2014 was the Administrator of the Society when the offense under the NAO was committed is on ad interim pre arrest bail granted by this Court on 14-6-2014. When the case was called petitioner No.1 was not present in person and learned Counsel submitted a medical certificate on his behalf signed by Dr. Hammedullah Cardiologist which according to learned counsel required the petitioner, who was an old heart patient, to take bed rest and hence he could not attend the court. Since the Court was not able to discern the precise meaning of the

medical certificate in respect of the current medical condition of petitioner No.1 and his ability to attend the Court Dr. Hammedullah was called to assist the Court on this issue on 21-3-2016 in the meantime however the Court decided to hear the case on merits in the absence of petitioner No.1.

5. According to learned counsel for petitioner No.1 he is innocent of all allegations. He was appointed administrator of the Society on 10-11-2009 to replace the existing management which was corrupt and inefficient and it was largely due to petitioner No.1's hard work that the Society had been put back on track and the Reference had been filed against him on account of the malafides of the superseded management who out of jealousy had filed various complaints against him including with the NAB and that the NAB Investigating officer (IO) was biased against him. The petitioner contended that (a) the civil and electric works which he had undertaken on behalf of the Society were all made strictly in accordance with the law (b) that the allotted 3 amenity plots which had been allotted for the following purposes had been made strictly in accordance with the law (i) for the construction of a dispensary/clinic (ii) for the construction of a primary school and (iii) for construction of a community centre and that the cancellation of residential plots and their re-allotment had been done strictly in accordance with the law so all the allegations against him in the above respect in Reference 4/2014 were without substance. In any event if any wrong doing had been done by the petitioner this falls under the Co-operative Societies Act 1925 and not under the NAO.

6. Learned counsel for petitioner No.2 Syed Muhammed Adnan who at the time of the offense as per Reference 4/2014 was Chairman of the Society and petitioner No.3 Abdul Qadir who at the time of the offense as per Reference 4/2014 was honorary secretary of the Society are both on ad interim pre arrest bail as per orders of this Court dated 5-11-13. According to learned counsel the petitioners are completely innocent; there is no evidence against either petitioner 1 or 2; that Reference 4/2014 has been filed by the NAB in order to harass the petitioners and that being a part of the new management they have proceeded strictly in accordance with the law and have attempted to undo

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any unlawful acts which may have been carried out by petitioner no.1 during his tenure as administrator who they also initiated an inquiry against. Learned counsel placed reliance on the following cases in support of his submissions.

1. **Muhammad Nadeem Anwar & another v. NAB & others** (P.L.D. 2008 Supreme Court 645).
2. **Ch: Zulfiqar Ali v. The State** (P.L.D. 2002 Supreme Court 546).
3. **Muhammad Jahangir Badar v. The State & others** (P.L.D. 2003 Supreme Court 525).

7. Learned counsel for petitioner No.4 Rasheed Gul who purchased the plot for the construction of a community centre and later sold it on to another party is on ad interim pre arrest bail since 18-11-14 submitted that he was entirely innocent and had purchased the allotted plot in good faith but since he was unable to develop it he sold the same on to Syed Najmi Zargam; that there was no evidence of any wrongdoing on his part.

8. Learned counsel for petitioner No.5 Abdul Malik who is President of the Society and has applied for post arrest bail having been arrested on 20-12-15 submitted that he was not a part of the main Reference and had been included in a Supplementary Reference for violating S.23 NAO since he had allegedly allowed the cancelled allotments to be sold via auction despite being aware that they had been cautioned under S.23 NAO. According to learned counsel petitioner No.5 was entirely innocent and did know that the plots had been cautioned under S.23 NAO and therefore had no reason to stop their sale. According to him only the petitioners 1 to 3 were aware of the caution. He submitted that it was a case of further inquiry and undue delay and that he should be enlarged on bail especially as petitioners 1 to 4 were all on ad interim pre arrest bail despite being accused in the main Reference. Learned counsel placed reliance on the following cases in support of his submissions.

1. **Dr. Allah Nawaz A. Qazi v. The State through Chairman NAB** (2008 SCMR 196).
2. **Anwar Saifullah Khan v. The State & 3 others** (2001 SCMR 1040).

9. On the other hand learned ADPGA for NAB submitted that there was sufficient evidence against all the petitioners to prove

that they had committed the offense for which they had been charged in both the main Reference and Supplementary Reference beyond a reasonable doubt and that ad interim pre arrest bail should be recalled in respect of petitioner's No.1 to 4 and petitioner No.5 should not be entitled to post arrest bail.

10. We have considered the contentions raised by the learned counsel for the petitioners, perused the record and the authorities cited by them at the bar.

11. We would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us.

12. At the outset, as we have done before in other similar NAB cases, we observe that cases of white collar crime are generally of an intricate and complex nature and the whole transaction and each component part of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offense. However, notwithstanding this observation it is settled law that in cases of bail each of the accused needs in some way to be connected with the alleged offense and in the case of non bailable offenses such as this there are reasonable grounds for believing that the accused is connected to the offense charged.

13. In our view none of the authorities cited by petitioners 2 and 3 will be of any assistance to them since these cases largely relate to the grant of post arrest bail in cases of excessive delay. In this case petitioners 2 and 3 have been on ad interim pre arrest bail so if there has been any delay in their trial it would not have unduly prejudiced them as they have not been in custody. With regard to the citations on behalf of petitioner No.5 we will consider these later as he is in custody.

14. With regard to the contention that this matter does not fall within the purview of the NAB under the NAO as it falls within the exclusive domain of the Co-operative Societies Act 1925 this

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contention is misconceived. The NAO is a special law with overriding effect over other laws and provided that the transaction/act complained of falls within S.9 of the NAO NAB has jurisdiction over the matter and can proceed to inquire into the same.

15. In this case as per Reference 4/2014 all the petitioners have been given a specific role as under:

**Petitioner No.1 (Mohammed Azam Brohi)**

"3. That the investigation report reveals that the accused No.1, in the capacity of Administrator was found involved in corruption and corrupt practices by misusing his authority. He is found guilty of embezzlement of society funds of Rs.8,824,568/- in shape of civil work & electrical work and sustained loss of Rs. 2,71,33,264/- in allotment of 3 amenity plots of the society in favour of accused No.4, 5 & 6. In addition to this he (accused No.1) cancelled 24 plots of the genuine members of the society and re-allotted the same to his favourite persons during this tenure of 18 months and thereby obtained wrongful gain of Rs.36,808,000/- for himself and other accused persons. The accused No.1 collected the money from the society funds and from resale of the cancelled plots and deposited the same in his personal Account No.1001861 in Muslim Commercial Bank, Maisam Plaza Branch, Gulshan-e-Iqbal, Karachi. He was asked for clarification, justification and evidence or sources of finance to justify the transactions in his account but the same were found un-satisfactory.

**Petitioner No.2 (Syed Muhammed Adnan)**

3. That the investigation report reveals that accused No.2, Syed Muhammad Adnan (unfairly elected as Honorary Secretary of CIECHS in the year 2010 in order to favour all illegal actions of accused No.1, Muhammad Azam Brohi) during his 18 months period, credited an amount of Rs.2,010,300/- from the society funds into his personal Account No.125522 in Habib Metropolitan Bank Ltd., Gulshan Chowrangi Branch, Karachi. He kept violating the rules and Byelaws of the society although he was asked by this bureau to stop sale / purchase of plots in the society till finalization of investigation as required under section 23 of NAO, 1999. He continued the sale/purchase of society plots and recently allotted 40 commercial plots without approval of layout plan in violation of the society rules / Byelaws and thereby caused heavy loss of Rs.50 million to the society.

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**Petitioner No.3 (Abdul Qadir)**

4. That the investigation report reveals that accused No.3, Abdul Qadir (who was elected as Chairman of CIECHS by unfair means with the connivance of accused No.2, in order to favour all illegal actions made by accused No.1&2) credited an amount of Rs.7,44,500/- from the society funds into his personal account No.1027-0081-008940-01-8 in Bank Al-Habib, Gulshan Chowrangi Branch, Karachi. The accused was asked by this bureau to stop sale / purchase of plots in the society till finalization of investigation as required under section 23 NAO, 1999 but with the connivance of accused No.2 continued / allowed the sale / purchase of society plots and recently allotted 40 commercial plots without approval of layout plan in violation of the society rules / Byelaws and thereby caused loss of Rs. 50 million to the society.

**Petitioner No.4 (Rasheed Gul)**

8. That the investigation report reveals that the accused No.6, Rasheed Gul is a beneficiary for obtaining wrongful gain of Rs. 7462000/- in the allotment of leased amenity Plots No.PB-1 of 1066 Sq. Yds for 99 years lease and thereby caused heavy loss to the society."

**Petitioner No.5 in Supplemental Reference (Abdul Malik)**

- "5. That the further investigation also reveals that the accused No.2 to 5 (includes Abdul Malik) in connivance with each other violated the provision of section 23 (a) of NAO, 1999, by auctioning 40 commercial plots of the society and created title on the said properties illegally. It is further submitted that at the time of approval of the Layout Plan there was only one commercial plot, which was illegally converted into 40 commercial plots.
6. That during the course of further investigation it has been established that accused No.1 to 5 (includes Abdul Malik) in connivance with accused No.6 have made gross violation of rules, procedures and byelaws of the society and thus the accused No.1 to 5 (includes Abdul Malik) failed to exercise their authority to prevent huge loss to Central Information Employees Cooperative Housing Society. It is established that due to massive corruption and corrupt practices by means of embezzlement in Society's accounts, selling / re-allotting of already allotted plots of old members for personal gains to themselves and others, the accused in furtherance of common intention acted in such a manner which resulted in huge loss of 24 residential plots, 40 commercial plots, 1 amenity plot of Rs.10,504568/- Million in respect of development

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work at exorbitant rates to the said Society and Non-payment of Income Tax to the tune of Rs.1,680,000/-. Thus the accused persons have committed the offence of corruption and corrupt practices as envisaged under section 9 (a) of the National Accountability Ordinance, 1999 punishable U/s 10 of the ordinance and scheduled thereto."

16. We have reviewed the S.161 Statement of PW Mohammed Nazim Khan whereby he states, amongst other things, that when petitioner 1 took over the Society he made him sign blank forms relating to the Society (including cancellation forms, deposit slips and allotments certificates) at gun point, his statement also implicates petitioners 2,3, and 4 as petitioner No.1's associates/front men in enabling him to commit fraud and embezzlement of the Society funds and in illegally canceling and selling the society's plots to friends/associates/relatives instead of those on the waiting list at prices below the current market rate who then resold them for vast profits at the current market rate with the connivance and collusion of petitioners 1,2 and 3. Furthermore, petitioner No.1 illegally opened a bank account in the Society's name at Askari Bank with himself as signatory from which he illegally withdrew large sums of money. S.161 Statement of PW Mohammed Akram corroborates the illegal sale of plots by petitioner No.1 and the by passing of those on the waiting list, that petitioner No.1 illegally opened a Society Bank account in Askari bank, petitioners 2, 3 and 4 were also cited as accomplices of petitioner No.1 in carrying out his illegal activities, that petitioner 1 in collusion with petitioners 2 and 3 abused their position and misused their authority by violating Cooperation Department Government of Sindh and Chairman Sindh Co-operative Housing Authority Circular dated 14-12-09 (the Circular), petitioner No.1's illegal allotment of 3 amenity plots (hospital, primary school and community Centre) and gave 5 examples of the illegal cancellation and resale of plots to non members which lead to vast profits to the petitioners 1, 2 and 3. PW Faheem Ahmed in his S.161 statement states about massive illegal cash withdrawal from the bank account of the Society by petitioner No.1, the cancellation and sale of plots to petitioner 1's front men whilst petitioners 2,3 and 4 colluded with petitioner no.1, in particular he states about the sale of the 3 amenity plots, in general he corroborates the S.161 statements of Mohammed Nazim Khan and Mohammed Akram. The

S.161 Statement of Rizwan Siddique also largely corroborates the three S.161 statements referred to above.S.161 statements of Syed Riaz Hussain and Syed Taqi Ahmed also state about the illegal cancellation of their plots and their illegal sale to other persons.

17. Although three of the S.161 statements have been recorded by the superseded management (Mohammed Nazim Khan, Mohammed Akram and Faheem Ahmed) which may caste doubt over their reliability other documentary evidence tends to corroborate their statements.

18. For example, the Circular reads as under:

**COOPERATIVE DEPARTMENT, GOVERNMENT OF SINDH**

**C I R C U L A R**

1. ....
2. ....
3. ....

Following instructions are therefore issued for strict compliance.

- i. No allotment/cancellation of residential, commercial or amenity plots should be made without approval of the Government.
- ii. No new members should be enrolled in the society.
- iii. No property/assets of the society should be disposed off sold or transferred.
- iv. No paid employees/legal advisor should be appointed prior approval of the Government.
- v. No payment and expenditure towards development of land should be incurred without prior approval of the Government.
- vi. The Bank accounts must be operated under the joint signatures of the Administrator and the Secretary of the society. No new account be operated in the Bank without prior approval of the Government.
- vii. Only normal day to day expenditure relating to the affairs of the society is incurred.
- viii. Payment of Rs.500/- and above shall be made through cross cheque only with prior approval of the Authority/Government.
- ix. Except for monthly salaries to the staff prior approval should be obtained from the Authority/Government for expenditure of Rs.25,000/- (Rupees twenty five thousand only) and above.
- x. Monthly statement of income & expenditure must be submitted to the administrative department and office of the Managing Director, Sindh Cooperative Housing Authority, Karachi by 5<sup>th</sup> of every succeeding month.
- xi. Only genuine cases of transfer of plots be processed and forwarded to the office of the Managing Director,

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Sindh Cooperative Housing Authority for grant of NOC.

- xii. The Secretary posted by the department in the superceded Cooperative Societies shall be responsible to provide all legal, administrative and procedural help and assistance to the Administrators in the management of the affairs of the superceded Cooperative Societies.

Sd/-

Secretary to Government of Sindh  
Cooperative Department &  
Chairman.

Sindh Cooperative Housing Authority, Karachi.  
NO:MD/SCHA/845/2009 Karachi dated 14.12.2009.

**Copy f.w.e. for necessary action and strict compliance**  
to:-

1. **Mr. Muhammad Azam Brohi, Administrator, Central Information Employees Cooperative Housing Society, Ltd., Karachi.**
2. The Section Officer (C-1) Government of Sindh, Cooperative Department, Karachi with reference to letter No.SO(C-1)II(10) 99 dated 10.11.2009.
3. The Sub-Registrar of M/s. Central Information Employees Cooperative Housing Society Ltd., Karachi, Registration Department, Government of Sindh, for information and necessary action.
4. **Office Secretary of M/s Central Information Employees Cooperative Housing Society Ltd., Karachi.(bold added)**

Sd/-

(IMRAN ATTA SOOMRO)  
Managing Director,  
Sindh Cooperative Housing Authority,  
Karachi.

19. It would appear that most instructions contained in the Circular have not been complied with and have been violated by the petitioners especially 1, 2 and 3 by either misusing their authority or failing to exercise their authority

20. The banking documents which are also part of the record also tend to show that after the date when the petitioner 1 became administrator of the Society large unjustified amounts were paid into and taken out of the personal bank accounts of petitioners 1, 2 and 3 respectively in their respective bank accounts at MCB, Habib Metropolitan Bank Limited and Bank Al Habib which would further tend to corroborate the illegalities. It has also not been explained why it was necessary to open a second bank account of the Society in Askari bank when the Society already had a bank account with Habib bank. It also appears that in violation of the

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circular amounts in cash were withdrawn from such accounts in excess of RS 500

21. Thus, in our view there is sufficient material before us to conclude that there are reasonable grounds to connect petitioners 1, 2 and 3 to the offense for which they have been charged.

22. Petitioner No.4 is a beneficiary and the material placed before us tends to show that he acted in collusion and connivance with petitioners 1,2 and 3 in order to have allotted to himself the amenity plot ear marked for a community centre which he later sold on for a massive profit. It would not be out of place here to note that the other 2 accused beneficiaries who were originally a part of the Reference Fahad Naseem Khan who was leased the clinic land and Mohammed Shoaib Khan who was leased the primary school land have both entered into plea bargains with NAB and have thus admitted their guilt. Thus, in our view there is also sufficient material before us to conclude that there are reasonable grounds to connect petitioner 4 to the offense for which he has been charged.

23. With regard to petitioner 5 in his submission he was only charged with an offense under S.23 NAO for enabling the sale of the plots despite them being cautioned by NAB which he was apparently unaware of. The maximum sentence under S.23 NAO is up to 3 years and so prima facie it would appear that petitioner No.5 would fall within the rule laid down in **Tariq Bashirs case** (PLD 1995 SC 34) that in such cases the grant of bail was the general rule. He is also the only petitioner who is in custody as he was arrested on 20-12-15 (approx 3 months ago). He has also submitted that he is entitled to bail due to the undue delay in the trial and cited various authorities in this connection

24. In our view however the matter is not as simple as that. This is because although in the Supplemental Reference he has been charged under S.23 NAO he has also been charged with the sale of the plots at auction in connivance with the other accused in the main reference and of having made gross violation of rules, procedures and byelaws of the society and thus the accused No.1 to 5 (which includes Petitioner No.5) failed to exercise their authority to prevent huge loss to the Society. It is established that

due to massive corruption and corrupt practices by means of embezzlement in Society's accounts, selling / re-allotting of already allotted plots of old members for personal gains to themselves and others, the accused (including petitioner No.5) **in furtherance of common intention** acted in such a manner which resulted in huge loss of 24 residential plots, 40 commercial plots, 1 amenity plot of Rs.10,504568/- Million in respect of development work at exorbitant rates to the said Society and Non-payment of Income Tax to the tune of Rs. 1,680,000/-.

25. After further investigation the NAB has found the petitioner No.5 equally as guilty of all the offenses which the other accused were charged with under the main Reference so in our view his role is not limited to violating S.23 NAO but includes all the other provisions of the NAO which the accused have been charged with violating in the main Reference.

26. The role of petitioner No.5 was in essence to approve the auction of the plots which caused a huge loss to the Society knowing full well that such plots were under caution. If petitioner No.5 had not given his approval for the auction then in respect of this aspect of the reference the loss to the Society would have been greatly reduced. He was a part of the joint criminal enterprise with all the other petitioners all of whose active participation was necessary in order for the offense in respect of the sale of the plots to take place. Thus, in our view there is also sufficient material before us to conclude that there are reasonable grounds to connect petitioner No.5 to the offense for which he has been charged under the Supplementary Reference along with the accused in the main Reference of corruption under S.9 (a) NAO punishable under S.10 NAO and as such his offense falls within the prohibitory clause of S.497 (1) Cr.PC.

27. The upshot of the above discussion is that:

- (a) Petitioner No.1 Mohammed Azam Brohi's ad interim pre arrest bail granted by this Court by order dated 14-6-2014 is recalled. In his case we would also like to point out that when Dr. Hammedullah was called to assist the Court on 11-3-2016 concerning the fitness of the petitioner, who was absent, to attend the proceedings Dr. Hammedullah on 21-3-2016 candidly informed the Court that the petitioner was well enough to attend the proceedings on 11-3-2016. Hence in our

view the petitioner also abused the extraordinary concession of pre arrest bail (which he had the benefit of for approx 2 years) and on this count alone, aside from merits as discussed above, his order dated 14-06-2014 granting him ad interim pre arrest bail was subject to recall.

- (b) Petitioner No.2 Syed Muhammed Adnan's ad interim pre arrest bail granted by this Court by order dated 5-11-13 is recalled.
- (c) Petitioner No.3 Abdul Qadir's ad interim pre arrest bail granted by this Court by order dated 5-11-13 is recalled.
- (d) Petitioner No.4 Rasheed Gul's ad interim pre arrest bail granted by this Court by order dated 18-11-14 is recalled
- (e) Petitioner No.5 Abdul Malik's petition for post arrest bail is dismissed.
- (f) In order to prevent any undue delay in the trial as per the dictum laid down in **Muhammad Jahangir Badar's case (Supra)** the Accountability Court hearing this matter is directed to hear and decide the same within 3 months of the date of this order. The office is directed to send a copy of this order to the Accountability Court hearing this reference for compliance which shall also submit fortnightly progress reports to this Court through MIT II.

28. Before parting with this order we would like to make it clear that our findings are based only on a tentative review of the material before us and shall not prejudice the case of either party at trial which will be decided by the accountability court on merits based on the evidence before it.

Dated:- 30-03-2016