

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-3960 of 2015

Present:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Muhammad Humayon Khan

Mohammad Amin Chapal & others-----Petitioners.
Versus
National Accountability Bureau----- Respondent.

Date of hearing: 22.05.2017

Date of Order: 22.05.2017

Petitioners: Through Mr. Khawaja Shamsul
Islam, Advocate alongwith Petitioners
Mohammad Amin Chapal, Mohammad
Hanif Chapal, Mohammad Rauf Chapal,
Mohammad Ayub Chapal & Syed
Mohammad Asif Qadri.

Respondents: Through Mr. Yasir Siddique,
Spl. Prosecutor NAB.

Ms. Naheed Parveen, DAG.

ORDER

Muhammad Junaid Ghaffar, J. Through this Petition all the Petitioners seek Pre-arrest Bail in Reference No.07/2016, which is pending before the Accountability Court at Karachi. Initially the petition was filed pursuant to issuance of Call-up Notices dated 21.1.2015 and 2.7.2015 and subsequently Reference has been filed. The precise allegation against the Petitioners, as stated in the Reference appears to be that they launched a Project namely **“Chappal Navinta Mall & Luxury Apartment”** in the year 1997 and were supposed to hand over the possession in 2003 but have failed to do so. It is further alleged that the Project comprising 474 Units (Flats and Shops) was saleable to general public but since

the Project was not completed and handed over, an offence of Corruption and Corrupt Practices as envisaged under Section 9(a) of the NAB Ordinance, 1999 has been committed.

2. We have heard the learned Counsel for the Petitioners and learned Special Prosecutor NAB and our observations are as under:-

- a. It appears to be an admitted position that though construction was raised substantially, but due to objection by the Karachi Cantonment Board regarding the alleged violation of the Building Plan, the Petitioners are in litigation with Karachi Cantonment Board. On refusal by the Karachi Cantonment Board for regularization, the Petitioners filed a Suit No.328/2003 before this Court, which was dismissed vide Judgment and Decree dated 30.07.2004 against which HCA No.165/2004 was preferred, which was decided on 03.10.2011 also reported as **PLD 2012 Sindh 1 (Muhammad Amin Chapal v. Karachi Cantonment Board through Cantonment Executive Officer)**, by issuing certain directions to the Karachi Cantonment Board. However, it appears that the matter still stands unresolved. The Petitioners are again agitating such conduct of the Karachi Cantonment Board. This in our view is a case, which admittedly requires further inquiry as to the guilt of the Petitioners under the NAB Ordinance.
- b. It further appears and as stated in the Investigation Report and conspicuously lacking and missing in the Reference that only four (4) persons made complaint to the NAB Authorities. This could hardly be termed as a case involving **public** at large. The Honourable Supreme Court in the case reported as **2015 SCMR 1575 (Rafiq Haji Usman v. Chairman, NAB and another)** dealing with a more or less similar situation has been pleased to hold that 13 persons would hardly

constitute **public** in its literal and ordinary sense. In that case, the facts were more or less similar as the Project was launched by the Developers in the year 1992 and offered apartments for sale to public upon periodical or full payment of the sale consideration, the possession was to be handed over. Out of 438 Allottees 22 persons step forward and made a complaint to the NAB Authorities, thereafter the accused was arrested and his Bail Petition was dismissed by a Division Bench of this Court against which the accused had approached the Honourable Supreme Court, who had granted bail and the relevant observations are as under:-

“The above transaction between the complainants/purchasers/allottees and the firm for all intents and purposes was/is in the nature of an agreement to sell/contract for the sale of immovable property as mentioned above and according to the settled law the consequences of violation of such an agreement are prescribed through civil remedies available to an aggrieved party; such as to seek the specific enforcement of the agreement, if the same is capable of enforcement or to ask for the damages. But in any case the relationship inter se the parties carries the implications of a civil dispute giving rise to rights and obligations of the civil nature. Therefore, where the element of fraud, deceit etc. or a specific provision of any law which constitutes a criminal offence is not attracted and made out and there also is no material available on the record in this context, the exercise of discretion for granting bail by the courts in appropriate cases should not be withheld as a punishment. However it should not be understood that if a clear case of criminal offence has been made out, only for the reason that there also is some element of civil dispute involved that the bail should be granted as a matter of course; rather what shall be seen and evaluated in such cases would be what is the predominate factor, criminal or the civil. It may also be added here that the matter having some tinge of civil dispute simpliciter and/or singularly shall not be a ground by itself for the grant of bail. But this factor should be relevant along with other grounds raised entitling the petitioner (in a bail) matter for the said concession.

We are also of the opinion that the provisions of the NAB Ordinance are neither meant nor attracted/applicable for the purposes of settling scores of civil nature or the disputes emanating out of the contract between the few individuals and the delinquents (who allegedly violated the contract) having no criminal intent and motive behind it. The person aggrieved of the contractual breach of a civil contract, must resort to the civil remedies as has been mentioned above. But subject to what has been opined in the preceding paragraph.

Furthermore it is not a case where the money has been taken from the public in large number and scale and not utilized for the purposes of building of the project as has been mentioned earlier, it is only 22 people out of 438 who have come forward and out of these, three have patched up the matter with the firm, six have gone to the Court of law where the matter is pending regarding

three, while three cases have been dismissed as being time barred or on some legal issue (these facts are not controverted by the Prosecutor NAB). In case of certain persons (out of these 22) the contract of sale, we are told, have also been cancelled by the firm, and there is no material on the record in relation to them whether they had taken any legal action about the cancellation of the contract. In essence, only thirteen persons are left who have grouse against the firm or the petitioner and the challenge obviously is that the terms and conditions of the contract which was entered into between them and the firm have not been fulfilled.”

- c. While respectively following the aforesaid Judgment of the Honourable Supreme Court, We are of the view that the Petitioners’ case is of further inquiry. Whereas, we have been informed that 5 out of 7 witnesses have already been examined and perusal whereof reflects that nothing incriminating has come on record at least to the extent of refusing bail to the Petitioners. This Petition is pending since 2015, whereas, it is not the case of NAB Authorities that the Petitioners have misused the concession of bail by not appearing before this Court or for that matter before the Trial Court.

3. In view of hereinabove facts and circumstances of the case, we are of the view that no useful purpose would be served, if bail is refused to the Petitioners as their case appears to be of further inquiry and so also for the fact that the refusal of regularization is still under challenge, therefore, Ad-interim Pre-arrest Bail granted to the Petitioners pursuant to the Order dated 03.07.2015 is confirmed on the same terms.

Dated: 22.05.201

Judge

Judge