

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. B.A. No. S- 943 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
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22.01.2018

Mr. Ali Abbas, advocate for applicant in Cr. B.A. No. S- 920 of 2017

Mr. Zulfiqar Ahmed Abbasi, advocate for applicant in Cr. B.A. No. S- 943 of 2017

Mr. Qurban Ali, advocate for applicant in Cr. B.A. No. S- 957 of 2017

Mr. Zeeshan Ali Memon, advocate for applicant in Cr. B.A. No. S- 998 of 2017

Mr. Shahid Ahmed Shaikh, D.P.G.

OMAR SIAL, J.- Applicants Abdul Wahid and Safdar Ali and Mohammad Ilyas Vistro, have sought pre-arrest bail in Crime No. 02 of 2017 registered under Section 409, 420, 465, 468, 471, 34 P.P.C. r/w section 5(2) of the Prevention of Corruption Act, 1947 at the Anti-Corruption Establishment police station, Thatta; whereas Applicant Mohammad Soomar and Mohammad Haroon have sought post arrest bail in the same crime; therefore, through this common order I will dispose of all the captioned bail applications.

2. It has required a lot of time and effort to decipher the prosecution case as the details are vague and garbled to say the least. It appears that one Madhu Das filed a complaint with the Anti-Corruption Establishment that he ran a pan cabin over a small piece of land situated in Sujawal which piece of land was part of a larger piece of irrigation land that was allotted to **Abdul Wahid Bhatti** (Applicant in Criminal Bail Appl. No. S-957 of 2017) in 1999 at the rate of Rs. 7 per square feet, when according to Madhu Das, the land was worth Rs. 100 per square feet. Abdul Wahid Bhatti paid an amount of Rs. 53,427 for the execution of a 99 year lease for the said land, which was received by a clerk of the XEN's office by **Mohammad Soomar Jamari** (Applicant in Crl. Bail App. No. S-998 of 2017) who issued official receipts for the amounts received but did not deposit the said amount in the Government's Treasury. On behalf of the Irrigation department this lease was executed by Ghulam Mohammad Memon and

registered at the office of the Sub-Registrar, Sujawal. The witnesses to the execution of the lease were Mohammad Achar and Mohammad Makki and the registration was aided by a clerk in the Sub-Registrar's office named **Mohammad Haroon Bhatti** (Applicant in Cr. Bail Appl. No. S- 943 of 2017). Upon the lease being executed, an entry was made in the City Survey Record (in the name of Abdul Wahid Bhatti) by the then City Surveyor, **Mohammad Ilyas Vistro** (Applicant No. 1 in Cr. Bail Appl. No. S-920 of 2017) and was verified by the then Mukhtiarkar of Sujawal, **Safdar Ali Bughio** (Applicant No. 1 in Cr. Bail Appl. No. S-920 of 2017). Based on the aforementioned complaint of Madhu Das made in the year 1999 an enquiry was initiated in the year 2003. In 2017, a F.I.R. bearing Crime No. 02 of 2017 was registered at the Anti-Corruption Establishment police station in Thatta under Section 409, 420, 465, 468, 471, 34 P.P.C. r/w section 5(2) of the Prevention of Corruption Act, 1947.

3. I have heard the learned counsel as well as learned DPG and perused the available record with their able assistance. My observations are as follows.

- i. There is absolutely no reason given for the inordinate delay of 18 years in the registration of the FIR. The lethargy and inefficiency of the Government machinery is obvious. If indeed the allegations of the Government are correct and valuable land has been illegally allotted, it must also be seen as to who, in the Anti-Corruption Establishment is responsible for this shocking and inordinate delay. The learned APG's submission that Government inquiries take a substantially long time and hence the delay, with much respect, does not find favour with me. No person should have the Sword of Damocles hanging over him for nearly two decades due to the inefficiency of the Government departments. The learned trial court shall decide the impact of the delay when the trial proceeds and after the prosecution is given an opportunity to explain its position through evidence in this regard.
- ii. The interim investigation report under Section 173 submitted by the Anti-Corruption Establishment is a replica of the FIR and it appears that to date, even after a lapse of 18 years, no meaningful investigation has been conducted in the matter. There is no evidence that has been brought before the Court to even prima facie establish a nexus between the accused and the commission of the offence(s).
- iii. It appears that in 2004, Madhu Das, the person on whose complaint this case was initiated, had filed a Suit for Declaration, Possession, Mesne Profit, Damages and Perpetual Injunction against the Applicant Abdul Wahid Bhatti and various other government officials, which also included the offices of some of the Applicants. This Suit was numbered 49 of 2004 and was initiated in the court of the learned

Senior Civil Judge, Sujawal with regard to a portion of the same piece of land. He had claimed in it that he had been in possession of 120 square feet for at least 20 years and was running a pan cabin on it. He had alleged that the Applicant Abdul Wahid had come to him and informed him that he had purchased the land upon which the cabin of Madhu Das was situated. Madhu Das had claimed damages of RS. 616,000 from Applicant Abdul Wahid. The suit was dismissed vide a judgment dated 27-9-2006 and Revision (Civil Revision No. 61 of 2003) filed by him at the Principal Seat of thus same was also dismissed by this Court, the date of which judgment is not clear from the record made available at this stage. Keeping this background in mind, ulterior motives on part of Madhu Das in filing the complaint against the Applicants cannot be overruled conclusively at this preliminary stage.

- iv. Prima facie, the land in question was leased out to the Applicant Abdul Wahid through a registered lease deed after completion of all legal formalities. Whether the allotment and subsequent lease was unlawful and illegal will have to be proved after evidence in trial.
- v. The case of the Applicants falls within section 497(2) Cr.P.C. and thus one of further inquiry.

4. Above are the reasons for my short order of 22-1-2018 in terms of which the interim pre-arrest bails of Applicants Abdul Wahid, Safdar Ali and Mohammad Ilyas Vistro were confirmed on the same terms and conditions as the interim pre-arrest bail granted to them on 22-1-2018 whereas Applicants Mohammad Soomar and Mohammad Haroon were admitted to post arrest bail subject to each furnishing a solvent surety in the amount of Rs. 100,000 and a P.R. Bond in the like amount subject to the satisfaction of the Incharge A.R. of this Court.

JUDGE