

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-3380 OF 2016

Petitioner : Kamran Nabi Ahmed & others, through
Mr. Mahmood Alam Rizvi, Advocate.

Respondent : Chairman, NAB, through Mr. M. Altaf,
Special Prosecutor.

Constitutional Petition. D-3421 OF 2016

Petitioner : Syed Tehzeeb Hussain Zaidi, through
Mr. Mirza Sarfaraz Ahmed, Advocate.

Respondent : Director General NAB & Others,
through Mr. M. Altaf, Special
Prosecutor.

Constitutional Petition No. D-3801 OF 2016

Petitioner : Jallat Khan, through Mr. Mr. Shafi
Rajput, Advocate.

Respondent : Federation of Pakistan & Others,
through Mr. M. Altaf, Special
Prosecutor.

Constitutional Petition NO. D-3813 OF 2016

Petitioner : Umer Abul Hassan, through Mr. Mirza Sarfaraz Ahmed, Advocate.

Respondent : Director General NAB & Others, through Mr. M. Altaf, Special Prosecutor.

Date of hearing : 25.05.2017

Date of Judgment :

Present: Syed Muhammad Farooq Shah, J
Yousuf Ali Sayeed, J

JUDGEMENT

YOUSUF ALI SAYEED, J. - The captioned Petitions under Article 199 of the Constitution pertain to Reference Number 33 of 2016 (the “**Reference**”) submitted by the Director General of the National Accountability Bureau (“**NAB**”) under Section 16(c) of the National Accountability Ordinance, 1999 (the “**NAO**”), as is pending before the Accountability Court No. III, Sindh, Karachi (the “**Trial Court**”), whereby the Petitioners stand accused of having colluded so as to embezzle/misappropriate the funds of the Pakistan Post Office Employees Cooperative Housing Society Limited (the “**Society**”) in the sum of Rs.160,369,092/-, said to constitute the offence of ‘corruption and corrupt practices’ in terms of S.9(a) of the NAO, punishable under S.10 thereof, as read with the Schedule thereto.

2. The Petitioners in C.P. No. D-3380/2017, namely Kamran Nabi Ahmed, Mohammad Jaffer Khan and Abdul Aleem Khan as well as the Petitioners in connected C.P. Nos. D-3421/2016 and D-3801/2016, namely Syed Tehzeeb Hussain Zaidi and Jallat Khan, are in custody and in terms of the said Petitions seek to be enlarged on bail pending trial in respect of the Reference. Conversely, the Petitioner in C.P. No. D-3813/2016, namely Umer Abul Hassan, was granted ad-interim pre-arrest bail in relation to the Reference on 27.06.2016 and seeks confirmation thereof.

3. Briefly, the substance of allegations disclosed in the Reference is that Society, which is possessed of land in different dehs and sectors of Gulzar-e-Hijri (Scheme-33) Karachi (i.e. NBP/48-A, 53-A, 13-A, 25-A & 26-A), incurred Rs.173,776,466/- as expenses during the period 2004 to 2013 on account of internal development work, but the physical verification subsequently carried out by the experts of Pakistan Works Department (“**PWD**”) revealed that no significant work had been carried out on ground, which showed that millions of rupees had been misappropriated by the management in collusion with the recipients.

4. Kamran Nabi Ahmed (Chairman of the Society), as well as Mohammad Jaffar Khan and Abdul Aleem Khan (who between them held the office of Honourary Secretary of the Society between 2003 to 2013), are said to have made the fraudulent payments to contractors and also to have withdrawn vast amounts from the bank account of the Society in cash in violation of the Bye-Laws, which remained unaccounted for. The involvement of the said Petitioners in the embezzlement is

said to be to the extent of Rs.148,376,892/- in the case of Kamran Nabi Ahmed, Rs.108,433,632/- in the case of Muhammad Jaffer Khan, and Rs. 51,935,460/- in the case of Abdul Aleem Khan.

5. Syed Tehzeeb Hussain Zaidi, as proprietor of M/s. Planning & Development Consultants, and Umer Abul Hassan, proprietor of M/s. Hani Enterprises and M/s. Techno Construction, and Jallat Khan, are said to have been recipients of the Society's funds, to extent of Rs.4,701,580/-, Rs.105,142,822/- and Rs.4,060,000/- respectively.
6. In support of his prayer for grant of bail, learned counsel for the Petitioner in C.P. No. D-3380/2017 pointed out that the Reference had been filed on 31.05.2016 in relation to a Complaint to the Director General, NAB, dated 10.04.2006 (the "**Complaint**"), after a gap of 10 years. Furthermore, he submitted that it was pertinent that whilst the Complaint purportedly related to misappropriation of funds of the general public, the same had only been lodged by 4 persons.
7. He contended that the Reference had been filed with mala fide intent at the behest and instigation of the previous management with the ulterior motive of ousting the Petitioners represented by him from management of the Society, so as pave the way for its usurpation. He submitted that the previous management had acquired the office of the Society just 2 days of the arrest of the Petitioners in connivance with the Investigating Officer.

8. Learned counsel referred to the reports submitted by the functionaries of PWD, as said to form the basis of the allegation that no significant internal development work had been carried out on ground, and submitted that such reports evidently lacked substance and the findings recorded therein were bereft of foundation.

9. Learned counsel denied that work had not been carried out within the Society, and submitted that, in reality, extensive development had been undertaken. In this regard, he referred to various photographs annexed with the main Petition. He also submitted that a substantial period of time had elapsed since commencement of the internal development work, and that some of the work that had been completed had subsequently been damaged due to rain and flooding in 2010.

10. He also pointed out that an enquiry had previously been initiated by NAB in respect of the affairs of the Society as regards a parcel of land measuring 18 Acres, which was investigated over a protracted period and a reference bearing No.2/2011 had been filed and was pending adjudication before the learned trial Court, wherein besides the Investigation Officer, 27 witnesses had recorded their statements in the year 2008, including the previous members and office bearers of the Society. However, in that matter none of them had deposed that no development had been carried out, as alleged in the Complaint or in the Reference.

11. He submitted that the depositions of several prosecution witnesses had been recorded before the Trial Court, and contended that no case stood made out at present as against the Petitioners on the basis thereof.

12. Learned counsel for the Petitioners in the connected Petitions adopted the aforementioned submissions made on behalf of the Petitioners in C.P. No. D-3380/2017.

13. The learned Deputy Prosecutor, NAB strongly opposed the grant/confirmation of bail to the Petitioners, and contended that the Petitioners had been directly implicated in the Complaint and that there was sufficient material to connect them to the allegations set out in the Reference, as per which specific roles had been ascribed to them and the means and extent of misappropriation had been disclosed in depth, and the outflows from the accounts of the Society to the particular contractors was fully documented, and that the plea taken as to work carried out on the ground was completely specious. He further submitted that even the amount of unauthorised cash withdrawals made by the office bearers from the accounts of the Society remained unexplained and unaccounted for. He pointed out that the trial in respect of the Reference had already commenced and the prosecution evidence was underway.

14. Having heard the arguments and perused the record, it appears that the principal thrust of the arguments advanced on behalf of the Petitioner essentially relate to the motives underpinning the Reference as well as the sufficiency and quality of evidence against the Petitioners as regards the allegations relating to them. Having considered the matter, we

are of the view that no impelling grounds have come to the fore on the basis of a tentative assessment, as is envisaged at the stage of bail, and at this juncture, it would not be appropriate for us to embark on a deeper appreciation so as to dissect the prosecution evidence as partly recorded and make any comment thereon, lest any observation prejudice the outcome at trial. Suffice it to say that the Petitioners have been directly implicated in the Reference, and the photographs and other material sought to be relied upon in support of their plea for grant of bail requires a deeper appreciation than what is permissible or desirable at the present stage and raises questions that properly fall to be determined at trial, following the completion of evidence.

15. Accordingly, whilst dismissing these Petitions, we direct the learned trial Court to proceed expeditiously with recording the evidence of the remaining prosecution witnesses, and complete such exercise preferably within sixty (60) days of the date of receipt of this Order. The Petitioners shall be at liberty to file fresh Petitions for grant of bail should further grounds emerge supporting such a measure.

16. The captioned Petitions are dismissed in the aforementioned terms. Interim pre-arrest bail already granted to accused the Petitioner in C.P. No. D-3813/2016 thus stands recalled.

JUDGE

JUDGE

Karachi
Dated _____