

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Constitutional Petition No.3691 of 2018

Syed Atif Hussain Naqvi. Petitioner

Versus

Chairman Nab & two others. Respondents

Constitutional Petition No.8422 of 2017

Faheem ud Din. Petitioner

Versus

Federation of Pakistan & 3 others. Respondents

Constitutional Petition No. 874 of 2018

Syed Adeeb Ahmed. Petitioner

Versus

Director General NAB & another. Respondents

Constitutional Petition No. 849 of 2018

Shaikh Farid. Petitioner

Versus

State through D.G. NAB & 2 others. Respondents

Constitutional Petition No.3840 of 2018

Syed Rizwan Ahmed.

Versus

Chairman NAB & 3 others. Respondents

Constitutional Petition No.2955 of 2018

Khuda Bux Soomro. Petitioner

Versus

Chairman NAB & 3 others. Respondents

Constitutional Petition No.1773 of 2018

Mushtaq Iqbal Khan. Petitioner

Versus

Chairman NAB & 3 others. Respondents

Constitutional Petition No.2387 of 2018

Muhammad Feroze. Petitioner

Versus

Federation of Pakistan & 2 others. Respondents

Constitutional Petition No.1883 of 2018

Akhtar Rasheed. Petitioner

Versus

State through DG NAB & 2 others. Respondents

Constitutional Petition No.1882 of 2018

Jehanzaib Iqbal. Petitioner

Versus

State through D.G. NAB & 2 others. Respondents

Constitutional Petition No.3939 of 2018

Muhammad Kamran Warsi. Petitioner

Versus

National Accountability Bureau & 2 others. Respondents

Constitutional Petition No.2429 of 2018

Muhammad Hanif Khan. Petitioner

Versus

Chairman NAB & 3 others. Respondents

Constitutional Petition No.4434 of 2018

Muhammad Idrees. Petitioner

Versus

National Accountability Bureau & another. Respondents

Constitutional Petition No.2534 of 2018

1. Sarfraz Ahmed.
2. Muhammad Jumman. Petitioners

Versus

Chairman NAB & 2 others. Respondents

Mr. Shaukat Hayat, Advocate for petitioner in CP D 3691 of 2018.

Mr. Khalique Ahmed, Advocate for petitioner in CP D 3939, 4434 of 2018 and CP D 3877 of 2017.

Mr. Muhammad Nizar Tanoli, Advocate for petitioner in CP D 849, 1882 & 1883 of 2018.

Mr. Muhammad Farooq, Advocate for petitioners in CP D 2955, 1773 & 3840 of 2018.

Mr. Naheed Afzal Khan, Advocate for petitioner in CP D 2429 of 2018.

Mr. Muhammad Akbar Khan, Advocate for petitioner in CP D 2534 of 2018.

Syed Amir Ali Shah, Advocate for petitioner in CP D 874 of 2018.

Mr. Yasir Siddiqui, Special Prosecutor, NAB a/w I.O. Jawwad Hassan.

Date of hearing 27.08.2018

Date of order 04.09.2018

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ORDER

SHAMSUDDIN ABBASI, J:- Through captioned petitions, the petitioners seek post arrest bail in NAB Reference No.14 of 2017 under Section 16 (c) of National Accountability Ordinance, 1999 (NAO), besides some of the petitioners have also made a prayer to

quash the proceedings arising out of the aforesaid Reference and pending before Accountability Court, at Karachi.

2. Facts relevant to these petitions are that Karachi Development Authority {KDA} was tasked with development within the Karachi City and in that connection KDA had reserved a number of amenity plots in KDA Scheme No.36, Karachi, which could not be allotted, exchanged and/or transferred for residential and/or commercial purposes, however, the officers/officials of KDA, nominated in the Reference, with conscious knowledge misused their authority and indulged themselves in allotting, transferring 23 amenity plots in Gulistan-e-Jauhar, KDA Scheme No.36, Karachi, by creating 296 residential plots (china cutting) illegally and unauthorizedly for pecuniary benefits/illegal gains for co-accused/beneficiaries named in the Reference, who in connivance with the KDA officials received the said plots through fake allotments, challans. Thereafter sold out the same to bonafide purchasers, who were completely unaware of the scam, thereby earned huge profits for themselves and caused heavy losses to the Government exchequer. The details of the said residential plots are set out in the Reference in table form at paragraph 2 and the same be read as if set out and reproduced herein *in extenso*.

3. It was revealed in the investigation that initial allottees of the said plots were either fake or denied to have applied for allotment, transfer and shifting of said plots in KDA as such the said allotments are fake and fraudulent. The fake allotments and illegal transfer of files of said plots by way of shifting was managed by Shifting Department of KDA {some of the officials named in the Reference} in connivance with the private persons/beneficiaries named in the Reference. The fake and illegal transfer challans were fraudulently prepared by officials of Recovery Department of KDA named in the Reference. The said carved out plots were later on clandestinely sold out to the general public by private persons named in the Reference (mainly brokers and estate agents) in connivance with KDA officials, hence the officials of KDA named in the Reference alongwith the beneficiaries named in the Reference have committed acts of corruption by misusing their authority/failure to exercise their

authority in order to benefit the beneficiaries, which caused a massive loss to the Government exchequer amounting to Rs.1,439,901,714/- and clear cut case of corrupt practices and illegal gains, led to the filing of the aforesaid Reference under the NAO on 28.04.2017, which is pending adjudication before the Accountability Court, at Karachi.

4. Some of the petitioners named above earlier filed petitions seeking post arrest bail and some of them sought protection of this Court by way of grant of pre-arrest bail. Initially, they were granted ad-interim pre-arrest bail through various orders and finally at the time of confirmation and hearing, the bail pleas with regard to grant of post arrest and pre-arrest bail were declined by this Court by dismissing all the petitions on merits except that of accused Gul Hassan Zaidi, who was granted pre-arrest bail, by short order dated 21.12.2017 {reasons recorded on 23.12.2017}.

5. Feeling aggrieved by the order of Divisional Bench of this Court passed on 23.12.2017, accused Syed Nasir Hussain Kazmi preferred Civil Petition No.189 of 2018 before Hon'ble Supreme Court of Pakistan and vide order dated 21.02.2018 he was admitted to bail being a case of further inquiry while accused Syed Atif Hussain Naqvi preferred Civil Petition No.43-K of 2018 before Hon'ble Supreme Court of Pakistan, which was dismissed as not pressed vide order dated 28.03.2018. Accused Muhammad Idrees, who is a private person and beneficiary, also preferred Civil Petition No44-K of 2018 before Hon'ble Supreme Court of Pakistan seeking bail, which was dismissed on merits vide order dated 04.04.2018.

6. It is jointly contended on behalf of the petitioners that they are innocent and have falsely been implicated in this case with malafide intention and ulterior motives as otherwise they have nothing to do with the alleged Reference; the allegations are general, vague and after thought; no reasonable ground exists to believe that the petitioners are guilty of the offences with which they have been charged and the same could only be determined only after recording the evidence; the impugned Reference has been filed just to disrepute and question the untarnished reputations of the petitioners. They

further contended that the Reference has been filed on 28.04.2017 citing 23 witnesses but till today no progress has been made in the case and only single witness has been examined and petitioners/accused are in custody since last eight months. They further contended that bail has been granted to accused Syed Nasir Hussain Kazmi being a case of further inquiry and the case of the present petitioners/accused also calls for further inquiry. Learned counsel for petitioners Syed Rizwan Ahmed {DDO Recovery}, Khuda Bux {Superintendent Recovery}, Akhtar Rasheed {Superintendent Recovery}, Muhammad Kamran Warsi {DDO Recovery}, Muhammad Hanif Khan {Superintendent Recovery} and Sarfraz Ahmed {Superintendent Recovery}. All belong to Recovery Department and they have nothing to do with the transfer/conversion of amenity plots into residential and transfer of plots from amenity to residential is function of Shifting Department of KDA. Learned counsel for petitioners Muhammad Jumman, Jehanzaib Iqbal and Shaikh Farid have placed on record certified copies of the bail grant orders passed by the Hon'ble Supreme Court of Pakistan to accused Syed Nasir Hussain Kazmi and submits that in view of rule of consistency their clients are entitled to the grant of bail as their case is par with that of accused Syed Nasir Hussain Kazmi. Learned counsel for the petitioners lastly submits that the matter requires further inquiry and pending trial of the Reference, the petitioners deserve concession of bail. Learned counsel for petitioner Muhammad Idrees, besides other grounds, also seeks bail on the ground of hardship and has placed on record certified copies of case diaries and contended that his client is behind the bars since last eight months and there is no progress in the case. Learned counsel for petitioners Muhammad Feroze, Syed Adeeb Ahmed, Mushtaq Iqbal Khan and Muhammad Hanif have contended that they are private persons and have nothing to do with the scam; they were unaware of the fact that plots were reserved for amenity; they are bonafide purchaser of plots and have not caused any loss to the exchequer; they are in custody since last eight months; they have falsely been implicated in this case and their case calls for further inquiry.

7. Conversely, Learned Special Prosecutor NAB has opposed the grant of bail on the ground that it is a case of corruption and

corrupt practices by misusing the power and authority just to extend illegal benefits and cause illegal gain; the petitioners by their illegal and unlawful acts have caused huge losses to the Government exchequer and sufficient documentary evidence is available on record to connect them with the commission of the crime; no reasonable ground exists to believe that the case is of a further inquiry; the allegations of corruption and corrupt practices are of heinous nature attracting prohibitory clause, therefore, prayed for dismissal of the petitions. He, however, submits that one of the accused Syed Nasir Hussain Kazmi has been granted bail by the Hon'ble Supreme Court of Pakistan, therefore, concedes grant of bail to petitioners, Muhammad Jumman, Jehanzaib Iqbal and Sheikh Farid who are clerks in KDA and their case is identical to that of accused Syed Nasir Hussain Kazmi, on the principle of consistency.

8. We have considered the submissions of the respective parties, considered the relevant law and perused the entire material available before us.

9. Record reflects that petitioner Muhammad Nasir Sheikh, who is nominated as accused No.1 in the aforesaid Reference, while posted as Additional Director {Shifting}, KDA knowingly misused his authority and approved note sheets for illegal transfer of the amenity land into residential plots for illegal gain and undue benefit while petitioner Muhammad Shakir, who is nominated as accused No.2 in the NAB Reference while posted as DDO {Shifting} KDA signed note sheets for illegal transfer of amenity land into residential plots despite the fact that initial allotment was based on fake and managed documents and none of the original allottees appeared before him and in the same capacity signed transfer letters and also transfer challans in the capacity of Official Recovery Department, KDA, despite the fact that initial challans were fake and further could not have been prepared. It was also revealed in the investigation that petitioners Muhammad Ali Khan, Syed Atif Hussain Naqvi, Rashid Ali Khan and Irfan Khan Yousuf Zai, who are nominated as accused No.3, 4, 5 and 6 in the impugned Reference, were DDO {Shifting} KDA, they have signed note sheets for transfer of amenity land into residential plots with conscious knowledge that initial allotment was

based on fake and managed documents while petitioners Syed Rizwan Ahmed, Nisar Hussain, Muhammad Kamran Warsi and Wasif Jalil, who are nominated as accused No.7, 8 9 and 10 in the NAB Reference, in the capacity of DDO {Recovery} KDA, with conscious knowledge that the land was reserved for amenity and cannot be allotted for residential purposes, approved transfer challans, despite the fact that initial challans were fake. The petitioners Akhtar Rasheed, Khuda Bux Soomro, Sarfraz Ahmed and Muhammad Hanif Ali Khan, who are nominated as accused No.11, 12, 13 and 14, while posted as Superintendent (Recovery) KDA, with conscious knowledge that the land was reserved for amenity and cannot be allotted for residential purposes, signed transfer challans, despite the fact that initial challans were fake while petitioners Muhammad Feroze @ Feroze Bengali, Jehanzaib, Irfan Ahmed, Mushtaq Iqbal Khan and Abdul Shakoor, who are nominated as accused No.20, 22 to 25 were the private persons/beneficiaries and they in connivance with KDA officials got transferred various plots in their names by way of fake and fraudulent transactions and sold out the same to general public, thereby caused huge losses to the national exchequer. The petitioners Faheem ud Din Ahmed, Muhammad Idrees and Syed Adeeb Ahmed, who are nominated as accused No.26, 27 and 28 in the NAB Reference, in connivance with the officials of KDA managed fake files of three plots each and sold out the same to general public, thereby caused heavy losses to the national exchequer.

10. As to the allegations against petitioners Syed Atif Hussain Naqvi, Syed Rizwan Ahmed, Muhammad Kamran Warsi, Akhtar Rasheed, Khuda Bux Soomro, Sarfraz Ahmed and Muhammad Hanif Khan that they in capacity as Additional Director (Shifting), DDOs {Shifting} and {Recovery} and Superintendents {Recovery} KDA have misused the authority, approved and signed note sheets, signed transfer letters, transfer challans and approved the same with conscious knowledge that the land, situated in Gulistan-e-Jauhar, KDA Scheme No.36, Karachi, was reserved for amenity and cannot be allotted for residential purposes and based on such illegal and unlawful acts petitioners Muhammad Feroze @ Feroze Bengali, Mushtaq Iqbal Khan, Abdul Shakoor, Faheem ud Din

Ahmed, Muhammad Idrees and Syed Adeb Ahmed in connivance with the officials of KDA got transferred various plots in their names, managed fake files of the plots by way of fraudulent transactions and sold out the same to general public, thereby caused huge losses to the national exchequer. Such allegations are of substantial nature in that the alleged plots were created on land reserved for amenity plots, which obviously is a serious allegation and constitutes an act of corruption and corrupt practices and needs proper adjudication by the Court, therefore, it will be unsafe to quash the proceedings of a case *subjudice* before the Accountability Court. So far as bail plea of the Petitioners named above is concerned, *prima facie*, the allegations leveled against them are of serious nature and this Court has already rejected their bail pleas vide order dated 23.12.2017 on merits, wherein all the material points have been discussed. From tentative assessment of material available on record, reasonable grounds exist to believe that they are connected with the commission of crime.

11. Insofar as the plea of seeking bail on the ground of statutory delay/hardship, taken by petitioner Muhammad Idrees is concerned, admittedly his bail pleas were rejected by this Court as well by the Hon'ble Supreme Court of Pakistan on merits vide orders dated 23.12.2017 and 04.04.2018 respectively. To ascertain as to whether which party is responsible for the delay in the trial of the case, we have perused the case diaries, placed on record by the counsel for the petitioner. It reveals that after supplying the copies as required under Section 265-C, Cr.P.C. to the accused persons and initiating proceedings against absconding accused, the matter was fixed on 23.11.2017 for framing of charge, but the same could not be framed for want of accused Muhammad Feroze, who made himself absented on that date and the matter was adjourned to 07.12.2017. On 07.12.2017 the trial Court framed the charge against the accused and adjourned the matter to 23.12.2017 for recording of evidence of the prosecution witnesses. On 23.12.2017 and 10.01.2018 the matter could not be proceeded as some of the accused made themselves absented on that dates while on 10.02.2018 and 21.03.2018 the work was suspended due to strikes of Bar. On 07.04.2018 the trial Court recorded examination-in-chief of PW

Jameel Ahmed, whose cross-examination was reserved at the request of defence counsel and the matter was adjourned for 18.04.2018. On that date the matter could not be proceeded for want of adjournment sought by the counsel for accused Muhammad Idrees. On 28.04.2018, 08.05.2018 and 22.05.2018 also adjournments were sought on behalf of different accused persons by their counsel. This position clearly reflects that the delay in the trial of the case is not occasioned on the part of the prosecution but it was the accused party who sought adjournments on different grounds. Even otherwise the practice of making mathematical calculations, for ascertaining the actual period of delay attributable to the prosecution or the accused for the purpose of computing the period of statutory delay has not been approved by the apex Court as even delay on few dates of hearing at the instance of an accused can be fatal for this purpose, irrespective of the actual time wasted on that account. More particularly provisions of section 497, Cr.P.C. are not applicable for the purpose of grant of bail in the cases where accused is being tried under the Ordinance, 1999, which is a special law and specifically bars grant of bail to an accused by virtue of its sections 3 and 9(b), hence this ground too is devoid of any legal force. Reliance is placed on the case of Syed Rashid Hussain Rizvi v Chairman, National Accountability Bureau and 2 others {2017 MLD 818}, wherein it has been held as under:-

“As such based on the case of NAB v. Bakhat Zameen (Supra) which came after Atta Abbas Zaidi's case and further enunciated the law on the grounds of statutory bail and bail on hardship grounds in NAB cases and the progress which has been made in the trial in the short period of time since Atta Abbas Zaidi's case was decided we reiterate and find that bail on statutory grounds is not available in NAB cases and find that the petitioner has not made out a case for bail on hardship grounds based on the current law and the particular facts and circumstances of this case and as such his petition for post arrest bail on hardship grounds is dismissed”.

12. It is pertinent to mention here that petitioner Syed Adeeb Ahmed had approached this Court for seeking pre-arrest bail in CP No.D- 874 of 2018 and by an order dated 01.02.2018 he was granted ad-interim pre-arrest bail. However, on the date of hearing i.e.

27.08.2018 he was called absent, but his counsel was present and argued the matter. Record reflects that the case of petitioner Syed Adeb Ahmed is at par with that of other petitioners whose bail pleas were rejected by this Court as well by the Hon'ble Supreme Court of Pakistan on merits vide orders dated 23.12.2017 and 04.04.2018, hence he does not deserve concession of bail in circumstances.

13. For what has been discussed above, we are of the considered view that the petitioners are not entitled for the relief claimed through instant petition including concession of bail. Resultantly, their petitions are dismissed simultaneously recalling the interim order passed on 01.02.2018 in CP No.D-874 of 2018.

14. As to the bail pleas of petitioners Muhammad Jumman, Jehanzaib Iqbal and Sheikh Farid are concerned, in our view they are entitled to the concession of bail on the principle of consistency and matter of further inquiry inasmuch the Hon'ble Supreme Court of Pakistan in Civil Petition No.189 of 2018 has granted bail to co-accused Syed Nasir Hussain Kazmi, whose case is identical to that of the present petitioners. The learned Special Prosecutor NAB also recorded his no objection for grant of bail to them. Accordingly, while allowing their petitions, we direct the release of petitioners Muhammad Jumman, Jehanzaib Iqbal and Sheikh Farid on bail subject to their furnishing two sureties in the sum of Rs.10,00,000/- (Rupees one million only) each and execution of P.R. bonds in the like amount to the satisfaction of the trial Court.

15. We may add here that object of the criminal trial is to make an accused to face the trial and not to punish an under trial prisoner for the offence alleged against him and accused is entitled to expeditious excess to justice which included a right to fair and expeditious trial without any unreasonable delay. The trial Court is, therefore, directed to expedite the trial and conclude it at an earliest, preferably within a period of six months under intimation to this Court through M.I.T-II.

16. Before parting with the order, it needs no clarification that the observations recorded herein above are tentative in nature

and relevant for the purpose of the instant Petitions, therefore, the trial court shall not be influenced in any manner whatsoever.

JUDGE

JUDGE

Naeem