

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

Present:-

Mr. Justice Abdul Maalik Gaddi.

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-447 of 2020

Nazeer Ahmed & others. ----- Petitioners.

Versus

Federation of Pakistan
& others -----

Respondents.

C.P No.D-811 of 2020

Hanif Lalani ----- Petitioner.

Versus

The State
Through DG NAB, Sindh -----

Respondent.

Date of hearing:
& Decision:

09.09.2020

Petitioners:

Through:

M/S Muhammad Umair Bachani & Kashif Hussain Agha, Advocate for petitioners in C.P No.D-447of 2020.

Mr. Muhammad Umair Bachani, Advocate for petitioner in C.P No.D-811 of 2020.

Respondents:

Through:

Muhammad Humayoon Khan, Deputy Attorney General for Pakistan.

NAB:

Through:

Mr. Jangu Khan, Special Prosecutor NAB a/w Mr. Qamar Abbas (Deputy Director NAB)

ORDER

ABDUL MAALIK GADDI, J- By means of these constitutional petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners are seeking their release on post-arrest bail in Reference No.01 of 2019 filed under Section 18(g) read with Section 24(b) of National Accountability Ordinance, 1999, pending against them in the Accountability Court at Hyderabad.

2. Precisely but relevant facts as disclosed in the said reference are that pursuant to information with regard to fraudulent sale of government land, situated at Deh Babbar Band Tapo Hathal Buth, Thana Bola Khan, Jamshoro, to DHA Karachi, in the year 2015, an inquiry was conducted which was subsequently converted into investigation wherein it was transpired that petitioner Muhammad Hanif Lalani in connivance with other petitioners / accused managed and processed fake and fabricated revenue entries in favour of accused Mian Bux, Imam Bux, Javed Hussain, Ghulam Dastagir, Muhammad Iqbal and Nazir Ahmed as well as deceased Mian Khan Palari in the record of rights and survey record under which petitioner Muhammad Hanif Lalani together with accused Mian Bux, Imam Bux, Javed Hussain and deceased Mian Khan Palari sold out 731.28 acres of land to DHA in the year 2015 in consideration for 1.135 files of plot, measuring 500 sq.yards each and in this way petitioners Mian Bux and Imam Bux received 300 plots file, accused Javed Hussain received 373 plots file and deceased Mian Khan Palari received 402 plot files.

3. During investigation it was established that petitioner Muhammad Hanif Lalani and Farooq Kasnani opened fake bank accounts with UBL, Jamshed Road and University road branches in the name of deceased accused Mian Khan Palari and gained illegal benefits while accused Farooq Kasnani illegally used and operated the above bank accounts of University road branch for its personal interest during life time of Mian Khan Palari and even after his death (12.01.2017). The investigation further emerged that accused Irshad Kamalani, Sohail Adeeb Baloch, Habib Ahmed, Javed Ahmed, Mumtaz Channa, Abdul Rauf and Ghulam Mustafa Dawich in the capacity as revenue officials, severally and jointly played role in processing the fake revenue entries in the name of fake land owners and also kept fresh revenue entries in the new computerized Deh Register whereas the accused Sohail Adeeb Bachani and Habib Ahmed failed to exercise their authority in preventing the said land fraud while accused Ghulam Muhammad paved the way for commission of offence while signing the fake and fabricated revenue entries. The accused Liyar managed, prepared and processed fake and fabricated 03 Ghat-Wadh Forms containing fake Survey No.301 to 498 pertaining to the said 731.28 acres of land. The petitioner Muhammad Hanif Lalani hired the services of accused Ghulam Nabi Mallah for obtaining back dated forged signatures of Badruddin Mangi (the then Mukhtiar) and

Abdul Latif Brohi (the then Deputy District Officer) who were posted their in the year 2009 and 2010.

4. The investigation further revealed that the DHA, Karachi, being affectee of the scam, purchased the land in good faith after due diligence and delivered 1135 plots of 500 square yards each to accused Mian Bux, Imam Bux, Javed Hussain and deceased Mian Khan Palari, the tentative market value whereof was approximately 2.84 billion while according to the government notified rates it was 146.3 million, Thus, it has been established that accused persons nominated in the reference, in connivance with each other, misused their authority and managed fake and fabricated revenue and survey record relating to 731.28 acres of government land in the name of private persons, thereby caused heavy loss to the national exchequer, which constitute offence of corruption and corrupt practices as defined under Section 9(a)(iii)(iv)(vi)(xii) punishable under Section 10 of NAO, 1999 and schedule thereto.

5. Learned counsel for the petitioners in both above petitions contended that petitioners are innocent and have no concerned with the commission of alleged offence as they have been booked by the NAB authorities *mala-fidely*; that initially after due investigation the reference was filed in Accountability Court No.1 at Karachi on 02.07.2018 and its number was assigned as 13 of 2018 and thereafter, the reference was transferred to Accountability Court at Hyderabad where new number was assigned as 01 of 2019; that present petitioners are in custody and the learned trial Court after framing of charge has examined only 01 witness out of 66 witnesses and more than two years have been passed but trial has not been concluded despite of the directions issued by the Honourable Supreme Court of Pakistan vide order 04.02.2020 passed in Civil Petition No.340-K, 1755 and 2067 of 2019; that no specific role has been assigned by the complainant and there is no any cogent martial / evidence available with prosecution which connect the petitioners in the commission of alleged offence; that out of 18 accused persons, 11 have been granted bail either by this Court or by Honourable Supreme Court of Pakistan therefore, the present petitioners are also entitled for the same relief and the case of the petitioners require further probe; that present petitioners are law abiding citizen and they never involved in any other criminal case; that all allegations leveled in the reference are false and based on *mala fide* intention just to save the skin of the real culprits who belong to DHA and actually involved in the scam;

that the PWs in their statement record under Section 161 Cr.P.C did not implicate the petitioners with the commission of alleged offence. Learned counsel lastly prayed for grant of bail to the petitioners.

6. In contra, learned Special Prosecutor NAB has vehemently opposed the grant of post-arrest bail to the petitioners on the ground that the case pertains to corruption and corrupt practices and misuse of authorities whereby the petitioners in collusion with other accused have managed forged entries in the revenue record and sold the government land, measuring 731.28 acres situated at Deh Babbar Band Tapo Hathal Buth, Thana Bola Khan, Jamshoro, to the persons of their choice, who further sold out the same to DHA, Karachi, thereby caused colossal loss to the national exchequer; that sufficient documentary evidence coupled with ocular evidence in shape of statements of witnesses under Section 161 Cr.P.C is available on record, which substantiated the allegation leveled against the petitioners who in connivance with other accused committed offence of corruption and corrupt practices; that the bail application of the present petitioners have been rejected by this Court vide order dated 21.03.2019 and the said order with respect to petitioner Hanif Lalani was maintained up-to the level of Honourable Supreme Court of Pakistan whereas according to him bail plea raised by Nazeer and others in Civil Petition No.1507, 1508 and 1509 of 2019 have been dismissed as withdrawn; that as per progress submitted by the trial Court shows that matter could not conclude because of seeking time by learned defence counsel and during this period as many as six counsels have been changed so far. Moreover, the case could not be concluded due to ongoing COVID-19 and continued lock-down in recent past.

7. We have heard the learned counsel for the parties at a considerable length and have gone through the case papers so made available before us with their able assistance.

8. It is noted that present petitioners are nominated in the NAB reference with specific allegation that they with collusion and connivance with each other managed fake entries in the revenue record whereby the land belonging to government was fraudulently sold to the persons of their choice who further sold out the same to DHA, Karachi, illegally and thereby caused colossal loss of Rs.146.3 million to the national exchequer as per notified rates of 2015-16 and

Rs.1.84 billion as per market rates of 2015-16 in respect of 1,135 plots files of DHA City, Karachi Project.

9. We have noticed that during investigation the prosecution has recorded the statement of number of witnesses under Section 161 Cr.P.C. who in their statements have supported the case and claim of the NAB Authority. The case against the present petitioners based upon numerous documents showing the alleged involvement of present petitioners in corruption and corrupt practices which entail serious punishment as prescribed by law.

10. It is also noted that initially the present petitioners have filed constitutional petitions bearing C.P No.D-600 & 648 of 2017 and 169 of 2019, before this Court for grant of bail however, the same were dismissed vide order dated 21.03.2019. Thereafter, the said order was assailed by the petitioner Muhammad Hanif Lalani before Honourable Supreme Court of Pakistan in Civil Petition No.340-Kof 2019 and the same was dismissed vide order dated 04.02.2020. For the sake of convenience it would be proper to reproduce the last para of the said order which reads as under:-

“We have heard the learned counsel for the parties and have examined the record of the case, as is appropriate in a bail matter. We note that the petitioners are, prima facie, connected with the allegations leveled in the Reference and there appears to be sufficient material against them on the record. Nothing has been brought on the record to show any malice or ulterior motive on behalf of the prosecution to establish false implication of the petitioners. Moreover, it has also been pointed out that the trial against the petitioners is underway. Therefore, at this stage, we are not persuaded to take a view different from the one taken by the High Court and are not inclined to interfere in the impugned order. We, however, direct NAB to expeditiously conclude the trial within a period of six months from today. These petitions are, therefore, dismissed and leave refused in the above terms”.

11. So far as the case of petitioners in C.P No.D-447 of 2020 is concerned, we also note that the bail plea of the petitioners in the said constitutional petition was also declined by this Court vide order dated 21.03.2019 however, it is informed by learned Special Prosecutor NAB that being aggrieved with the said order the petitioners in the said constitutional petition have filed Civil Petition No.1507 and 1509 of 2019 which were subsequently withdrawn resultantly the petitioners were arrested.

12. It is argued by learned counsel for the petitioners that despite of direction issued by Honourable Supreme Court vide order dated 04.02.2020 whereby the trial Court was directed to conclude the trial

within a period of six months, but the trial Court has failed to do so. In order to confirm this fact, we have called progress report from the trial Court who submitted report dated 01.09.2020 on record wherein the trial Court has described the reasons for non-conclusion of trial within stipulated period which are as under:

“3. That, this Court received R&Ps of this reference on 29.01.2019 from the Court of learned Judge Accountability Court No.1, Sindh Karachi, as per directions of the Honourable High Court of Sindh Karachi vide Crl. Transfer Application No.69 of 2018 dated 11.01.2019 for disposal according to law.

4. That, this Court has so far recorded the evidence of one prosecution witnesses namely, Imamuddin Larak and due to non-production of PWs as well as non-production of original documents by the prosecution the case could not proceed. The learned defence counsel also sought adjournment as many as six learned counsel each namely, Mr. Ishrat Ali Lohar, Mr. Kashif Hussain Agha, Mr. Zulfiqar Ali Abbasi, Mr. Raja Jawad Ali Sahar, Mr. Muhammad Umair Bachani and Mr. Muhammad Daud Narejo counsel have been engaged by the accused in the instant reference.

5. That the case could not proceed due to the ongoing COVID-19 and continued lockdown.

6. That the Court was lying vacant w.e.f. 08.05.2020 till 14.07.2020. The undersigned took over the charge on 15.07.2020.

7. That, now the reference is fixed on 08.09.2020 for recording of evidence”.

13. From the perusal of above report it reveals that the delay in conclusion of trial could not be attributed to the prosecution only but the defence counsel were also responsible for the same. Apart from the above, due to ongoing COVID-19 the trial has not been pace-up so far. The reasons as described by the trial Court in its report as stated *supra* appears to be reasonable. However, trial Court is directed to pace-up the trial and decide the case as per directions issued by the Honourable Supreme Court of Pakistan and no unnecessary adjournment shall be granted to either side.

14. Apart from above, we have gone through the case of **Talat Ishaq v. National Accountability Bureau through Chairman & others** [PLD 2019 Supreme Court 112], wherein the Honourable Supreme Court has held as under:

“Delay in conclusion of trial. Direction issued by the High Court or Supreme Court to the trial Court to conclude trial within a specific time limit. Such direction was an administrative direction and non-compliance of such direction by the trial Court for whatever reason may not entitle the accused / person to claim bail as of right”.

15. Similar view was taken by Honourable Supreme Court of Pakistan in the case of **Nisar Ahmed v. The State** [PLD 2016 SC 11] wherein it has been held that “non-compliance of the directions issued by

the High Court (to the trial Court) to conclude the trial expeditiously or within specified time. Non-compliance with such direction could not be considered a valid ground to grant bail to the accused”.

16. On court query, learned counsel for the petitioners have failed to establish any fresh ground for grant of bail to the petitioners and also failed to address and establish that delay in conclusion of trial is shocking one.

17. As observed above, the case in hand pertains to corruption and corrupt practice and we have noticed that corruption, fraud, forgery, cheating have become great menace to our society and needless to say that same is not an offence against individual rather an offence against society and the involvement of the petitioners in such like offences is further detrimental to social fabric.

18. It is also argued by learned counsel for the petitioners that some of the co-accused have already been granted bail either by this Court or by Honourable Supreme Court of Pakistan in the same reference and almost on same allegations therefore, present petitioners are also entitled for the same relief on the basis of rule of consistency. However, we are not impressed with the said argument of learned counsel for the petitioners for the reasons that the cases of the present petitioners are altogether different as that of co-accused who have already been granted bail, therefore, under these circumstances, no question does arise for applying the principle of rule of consistency in the case in hand.

19. As observed above, sufficient material is available on record to connect the petitioners in the commission of offence which appears to serious and heinous in nature; therefore, at this stage the petitioners have failed to make out their case for grant of bail. Consequently, both above captioned petitions being without any merits are **dismissed** along with pending application(s).

20. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

JUDGE

JUDGE