

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Const. Petition No. D- 2836 of 2017

Hameedullah Khan and another
VERSUS
Federation of Pakistan and others

Const. Petition No. D- 3496 of 2017

Shafaqat Ali Shah
VERSUS
Federation of Pakistan and others

Const. Petition No. D- 3706 of 2017

Muhammad Luqman
VERSUS
Federation of Pakistan and others

Const. Petition No. D- 4203 of 2017

Kausar Jabeen and another
VERSUS
Federation of Pakistan and others

Date of hearing: 09.09.2020.

Date of order: 17.09.2020.

Mr. Altaf Ahmed Shaikh, advocate for the petitioners in CPs. No.D-2836/2017 & D-3496/2017.

Mr. M.Mohsin Khan, advocate for the petitioner in C.P. No.D3706/2017.

Mr. Mustafa Safvi, advocate for the petitioners in C.P. No.D-4203/2017.

Mr. Zahid Hussain Baladi, Special Prosecutor, NAB assisted by I.O. Mr. Irfan Ali.

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ORDER

ZULFIQAR ALI SANGI, J:- Through C.P. No.D-2836 of 2017 (*Hameedullah Khan & Zulfiqar Ali Mirani*), C.P. No.D-3496 of 2017 (*Shafqat Ali Shah*), C.P. No.D-3706 of 2017 (*Muhammad Luqman*), C.P. No.D-4203 of 2017 (*Kausar Jabeen and Mumtaz Hussain*), seek confirmation of their pre-arrest bail in NAB Reference No.03 of 2019.

2. The facts relevant to these petitions are that upon receipt of a complaint against M/s. Shah Mirani Associates on the allegation of cheating public at large in the name of housing society namely Bait-ul-Noor Houses, an inquiry was authorized, which was subsequently converted into investigation vide letter No.242164/1/IW-II/CO-B/T-2/NAB(K)/2018/K-55 dated 03-01-2018. After completing the investigation a reference was filed before the accountability Court. It was alleged in the reference that the accused Nos.1 to 4 being Directors of M/s. Shah Mirani Associates, entered into an agreement on 21.04.2012 to purchase the land from accused No.5 by making partial payment. The owner signed a general power of attorney in favour of the builders, however, the power of attorney was not registered with Sub-Registrar and title of the land was agreed to be transferred after receiving complete payment from the builders; that the accused Nos.1 to 4, in connivance with the accused Nos.5 & 6, enticed the general public to invest in their housing project namely Bait-Ul-Noor Houses. They sold the plots without having N.O.C for sale and title documents of subject land; that the accused No.5 & 6 malafidely made different sale agreements with the builders from time to time. They kept the general public engaged in the project and kept on receiving payments from the builders. After the investment of millions of rupees by the general public, the accused refused to sell the subject land and left the allottees with no choice but to approach NAB; that the accused persons got approved layout plan and revised layout plan from the Master Plan and after executing the sublease in favor of third parties they malafidely started litigation, which put the investment of affectees at stake. A large number of people invested in the project and paid an approximate amount of Rs.123.025 million to the builders including the cost of plots and development charges, but the builders have not provided them any kind of ownership documents and have cheated the public at large. It was further

alleged in the reference that the allottees, who made full payment of their plots to the builders, demanded title documents, but the builders neither have title documents nor NOC for sale and in order to avoid the wrath of allottees they gave physical possession of plots to the allottees and thereafter, allottees built their houses on the respective plots without having title documents and started living there without provision of basic necessities of life. The accused persons also encroached upon extra 3 acres of land with the active connivance of accused No.6 and sold the same to the general public without having approved layout plan from SBCA which subsequently issued notices to the allottees. Furthermore, the builders also violated the revised layout plan and illegality developed plots in vacant area and amenity plots. These plots were sold to the general public which was also a sheer violation of the layout plan. It was further alleged that the evidence collected during the inquiry and the investigation established that the accused Nos. 1 to 4 being Directors in connivance with the accused Nos. 5 & 6 have cheated the public at large in the name of the housing project namely Bait-ul-Noor Houses. The accused builders with collusion and involvement of the owner and her husband dishonestly and fraudulently deceived the general public. Thus they have committed offences under section 9(a)(ix)(x)&(xii), punishable under section 10 of the National Accountability Ordinance, 1999, and Schedule thereto which lead to Reference No. 3 of 2019 being filed against them before the concerned Accountability Court at Karachi.

3. Learned counsel for the petitioners (Builders) the accused No. 1 to 3 in the reference contended that the petitioners started the project and after the payments by the allottees gave them the possession; that it was settled between the petitioners and the owners that the petitioners will sell the plots and the sale deeds are to be executed by the owners; that petitioners only sold the plots and about 80% sale deeds were also executed in favour of allottees and the same are pending before the sub-registrar; that the petitioners were not at fault but the owners and the PTCL filed civil suits respectively and obtained a restraining order, therefore, the sale deeds were not finalized; that NOC for the sale was also issued but

the same was subsequently canceled; lastly, he prayed that the pre-arrest bail of the petitioners may be confirmed.

4. Learned counsel for the petitioner Muhammad Luqman the accused No. 4 in the reference contended that the petitioner was a sleeping partner in the project; that the petitioner invested the amount of Rs2 million and received only Rs1.5 million from the project; that the petitioner was expelled by the other partners (accused No.1 to 3 in the reference) from the partnership to which he filed suit No. 2735 of 2016 and obtained status quo order in his favour; that the petitioner did not sell out any plot nor is he the beneficiary of the scam and being a sleeping partner had no idea of what the other partners were up to. Lastly, he prayed that the pre-arrest bail of the petitioner may be confirmed.

5. Learned counsel for the petitioners (accused No.5 and 6) contended that they are the real owners of the land; that they sold out the land to the accused No.1 to 4 who launched the housing scheme on it; that the petitioners did not sellout any plot nor received any amount from the allottees; that the accused No.1 to 4 had not paid them the entire amount though they received the same from the allottees and that is why they had a dispute with them; that they are ready if the accused No. 1 to 4 paid them the entire amount which they owe to them to execute all the sale deeds in favour of the allottees. Lastly, he prayed that the pre-arrest bail of the petitioners may be confirmed.

6. Learned Special Prosecutor, NAB, contended that all the petitioners in connivance with each other cheated about 125 allottees; they received entire amount from the allottees but did not hand over the title documents to them; that SBCA also issued notices to the allottees and they are suffering due to such cheating; that all the petitioners admitted that they launched the housing scheme and received the amount from allottees; that they in connivance with each other continuously made agreements and extended them every year for payments to facilitate each other for cheating the allottees; that on the basis of unregistered power of attorney they launched the scheme and received huge amount from the allottees; that the petitioners managed to revise the master plan in violation of rules and the

regulations; that petitioners created dispute only to cheat the allottees as they are in connivance with each other and filed cases in order to prevent handing over of the title deeds to the allottees; that ownership is also disputed as PTCL have also claimed ownership on the same land; that no malafides on the part of investigating officer or the NAB has been pointed out by the petitioners. Lastly, he prayed that the petitioners are not entitled to confirmation of their pre-arrest bail and the same may be recalled.

7. We have heard the counsel for the parties, considered the record as well as the relevant law including that cited at the bar.

8. The complaint was filed by the affectees with the NAB and during investigation it has come on the surface that accused No.5 and 6 sold out the land to accused No.1 to 4 who then registered the firm M/s Shah Mirani Associates and launched the project with the name and style of M/s Bait-Ul-Noor Houses. The accused persons then in connivance with each other without obtaining NOC for sale and without an approved layout plan started to sell out the plots which act of the accused was objected by the Sindh Building Control Authority which took sealing action on 07-05-2013 and 16-03-2016 along with demolition squad and the police force.

9. It is admitted position that the title of the land where the housing scheme was launched by the accused persons was under dispute with PTCL and cases are still pending before competent courts of law despite which the petitioners in collusion with each other by making different agreements between themselves sold out the plots to the different allottees and have not handed over the title documents to the allottees who are facing difficulties in getting necessities of life and are fearful of being evicted and losing their entire investment as they have no evidence of their title. The sale deeds were not registered by the sub-registrar due to such litigation, resultantly allottees were keeping away from the right of their ownership and were cheated by the petitioners.

10. The relief claimed by the petitioners through the instant petitions is a relief for which no provision exists in the relevant laws for which the petitioners were charged; only the High Court by

invoking extraordinary constitutional jurisdiction can grant this relief very sparingly in rare and exceptional circumstances for valid reasons to be recorded in writing. The above petitioners are seeking pre-arrest bail, therefore, before considering the cases of the petitioners for such a relief, we may observe that the conditions for grant of pre-arrest and post-arrest bail are quite different as was set out in the case of Rana Mohammed Arshad v. Muhammad Rafique (PLD 2009 SC 427).

11. No *mala fide* on the part of NAB officials have been pointed out by the learned counsel for the petitioners nor have we seen any from the record. It is a well-settled principle of law that pre-arrest bail is an extraordinary relief and is only available in cases where there has been mala fide on the part of the complainant or the investigating agency. In this regard, reference may be made to the case of Rana Mohammed Arshad v. Muhammad Rafique (PLD 2009 SC 427) and Mukhtar Ahmad v. The State and others (2016 SCMR 2064).

12. We may observe here that while deciding bail petitions an elaborate sifting of evidence cannot be made but only a tentative assessment is permissible and a cursory glance of the record shows that all the petitioners in connivance with each other have cheated the allottees after taking a huge amount from them and have deprived them of their right of ownership and title, therefore, the interim pre-arrest bail granted to all the petitioners is recalled with respect to each and every one of the petitioners with immediate effect.

13. Needless to say that the observations made hereinabove are only tentative in nature and shall not prejudice the right of either party at trial.

14. The above petitions are disposed of in the above terms.

JUDGE

JUDGE