

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

<><><><><>

Const. Petition No. D 1143 of 2020

Petitioner Abdus Subhan son of Muhammad Ismail Memon through Mr. Shaukat Hayat, Advocate.

Respondents The Chairman NAB & 2 others through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Const. Petition No. D 1176 of 2020

Petitioner Ghulam Hyder Chandio son of Punhal Khan Chandio through M/s Zia-ul-Haq Makhdoom and Asad Ali, Advocates.

Respondents The National Accountability Bureau {NAB} and 2 others through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Const. Petition No. D 1177 of 2020

Petitioner Muhammad Arif son of Muhammad Abbas through M/s Zia-ul-Haq Makhdoom and Asad Ali, Advocates.

Respondents The National Accountability Bureau {NAB} and 2 others through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Const. Petition No. D 1178 of 2020

Petitioner Zulfiqar Ali son of Muhammad Paryal through M/s Zia-ul-Haq Makhdoom and Asad Ali, Advocates.

Respondents The National Accountability Bureau {NAB} and 2 others through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Const. Petition No. D 1179 of 2020

Petitioner Tufail Ahmed Khaskheli son of Muhammad Ismail through M/s Zia-ul-Haq Makhdoom and Asad Ali, Advocates.

Respondents The National Accountability Bureau {NAB} and 2 others through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Const. Petition No. D 2931 of 2020
 Petitioner Muhammad Ayub Sheikhani son of Muhammad Yousuf through Mr. Muhammad Jaffar, Advocate.

Respondents Federation of Pakistan & another through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Const. Petition No. D 3185 of 2020
 Petitioner Manzoor Ali son of Mumtaz Ali through Mr. Muhammad Ahmed Pirzada, Advocate.

Respondents The National Accountability Bureau {NAB} and 2 others through Mr. Zahid Hussain Baladi, Special Prosecutor NAB a/w I.O. Umesh Kumar.

Dates of hearing 22.10.2020 and 29.10.2020

Date of short order 29.10.2020

Date of detailed reasons **09.11.2020**
 <><><><><><>
ORDER

SHAMSUDDIN ABBASI, J:- Through their respective petitions, the petitioners Abdul Subhan son of Muhammad Ismail Memon, Ghulam Hyder Chandio son of Punhal Khan Chandio, Muhammad Arif son of Muhammad Abbas, Zulfiqar Ali son of Muhammad Paryal, Tufail Ahmed Khaskheli son of Muhammad Ismail, Muhammad Ayub Sheikhani son of Muhammad Yousuf and Manzoor Ali son of Mumtaz Ali seek pre-arrest bail in Reference No.08 of 2020, pending adjudication before Accountability Court, at Karachi, and are on interim pre-arrest bail granted to them by this Court.

2. Facts relevant for the purpose of deciding these petitions as stated in the reference are that pursuant to a complaint from Transparency International Pakistan against officers /officials of Revenue Department, Government of Sindh and others for illegal allotment of lands from Malir River Bed in Deh Dih, District Korangi, Karachi, an inquiry was authorized and subsequently upgraded into investigation on 20.09.2018, wherein it was found that the lands allotted to lessees were exchanged illegally by the officers /officials of Board of Revenue, Land Utilization Department, Government of Sindh and others, by invoking Section 17 of Colonization Act, 1912,

in favour of six allottees, however, the same were cancelled when NAB took cognizance. The land consisting of NC Deh Dih actually comprised of Malir River Bed was allotted through fresh and exchange allotments with the approval of the then Chief Minister Sindh through summaries initiated by the then Secretary, Land Utilization, Government of Sindh despite Nai Malir falls in Deh Drigh Road, District Korangi, Karachi, and not in Deh Dih, District Korangi, Karachi, however, the abovesaid six allotments were cancelled by the Government of Sindh with the approval of competent authority and the refund of occupancy value was approved and under process while the fresh allotments were referred to Board of Revenue, Government of Sindh in order to extinguish the rights of allottees. It further came on the surface of record that accused Ghulam Mustafa Phull and Kazi Jan Muhammad being members of the Supervising Committee in connivance with accused Shahzar Shamoan {deceased} illegally invoked Section 17 of Colonization of Government Lands Act, 1912, and allowed illegal exchange of lands, measuring 69-03 acres, from and to Malir River Bed, Deh Dih. The petitioner Abdus Subhan being Secretary, Land Utilization and member of Sindh Government Lands Committee, chaired by Justice {R} Agha Saifuddin {late}, accorded/endorsed an illegal regularization of land, measuring 19 acres, in favour of petitioner Muhammad Ayub, thereby caused a loss of Rs.28,500,000/- to the national exchequer. He also accorded/endorsed illegal regularization of another land, measuring 8 acres, in favour of Syed Raza Haider Bilgrami {late} causing a loss of Rs.12,000,000/- to the national exchequer. The said lands of 19 acres and 8 acres were illegally regularized by Sindh Government Lands Committee on the grounds that the allottees did not pay the initial occupancy price at the time of allotment and as per the approved recommendations such cases where occupancy price is not paid by the allottees are not supposed to be regularized, however, could be allotted a fresh. The petitioner Muhammad Ayub is unlawful beneficiary of 19 acres land which was illegally regularized and subsequently exchanged illegally under Section 17 of Colonization Act, 1912. The petitioners Ghulam Hyder Chandio, Muhammad Arif, Tufail Ahmed Khaskheli, Manzoor Ali and Zulfiqar Ali illegally allowed the exchange to tenants instead of lessees by preparing and endorsing the availability reports for the exchange of lands unlawfully

and fraudulently. Both lands, measuring 19 acres and 8 acres were regularized illegally and recommended for approval from Sindh Government Lands Committee constituted in accordance with the Ordinance III of 2001, which caused a loss of Rs.40.5 million to the national exchequer, which constitute an offence of corruption and corrupt practices as defined under Section 9{a}{iv}{vi}{xii} punishable under Section 10 of NAO, 1999 and Scheduled thereto.

3. Since the captioned petitions relate to a same reference involving similar question of law and facts, therefore, we deem it appropriate to decide all petitions together through a single order.

4. It is jointly contended on behalf of the petitioners that the petitioners have been falsely implicated in this reference with malafide intention and ulterior motives as otherwise they have no nexus with the offence charged with. It is next submitted that no iota of evidence inasmuch "*mens rea*" has been brought on record to connect the petitioners in the alleged offence of corruption and corrupt practices, thus their involvement seems to be based on malafide assumptions, presumptions and hypothesis. The petitioners have not committed any illegality and irregularity. There is not a single complaint with regard to causing loss to anyone and all acts and deeds done by them are in accordance with law. The petitioners have not been named in the complaint as such inclusion of their names in the reference is a matter of further inquiry. No incriminating evidence has been collected against the petitioners for their involvement in the commission of alleged offence and in absence thereof, the case of the petitioners requires further probe. The learned counsel have emphasized that no iota of evidence has been brought on record to show that the petitioners are beneficiaries of the scam. The reference has already been submitted in Court and the entire case against the petitioners rests on the documentary evidence already available with the NAB, therefore, there is no likelihood of tampering with the evidence even if the petitioners are admitted to pre-arrest bail. The learned counsel for petitioner Muhammad Ayub Sheikhani {C.P.No.D-2931/2020} while summing up his submissions has also expressed his willingness to pay the differential amount of Rs.28.500,000/- in respect of 19 acres of land as calculated by Sindh Lands Committee. In support of their submissions, the learned

counsel have relied upon the cases of *Rana Muhammad Arshad v M. Rafiq* {2009 PLD SC 427}, *Mukaram v the State* {2020 SCMR 956}, *Zaigam Ashraf v The State* {2016 SCMR 956}, *M. Fakhar Khokhar Javed v NAB* {2018 P.Cr.L.J. 477}, *Anwar Saifullah Khan v The State* {2001 SCMR 1040}, *Maqbool Lashari v NAB* {2016 SCMR 154}, *The State v Hanif Hyder and others* {2016 SCMR 2031}, *Muneer Ahmed Sheikh v NAB* {2019 SCMR 1738} and *Nazir Ahmed Sheikh v NAB* {2020 SCMR 297}.

5. Learned Special Prosecutor NAB and investigating officer have opposed the grant of pre-arrest bail on the ground that the petitioners are involved in a heinous crime of corruption and corrupt practices and misuse of authority; they have caused a colossal loss to the national exchequer, which constitutes an offence of corruption and corrupt practices as defined under Section 9{a} punishable under Section 10 of NAO, 1999; there is sufficient documentary evidence against the petitioners to connect them with the commission of offence; no reasonable ground has been agitated to show any malafide or ill will on the part of NAB for their false implication in this reference; the allegations of corruption and corrupt practices are of heinous nature attracting prohibitory clause, hence the petitioners do not deserve for grant of pre-arrest and prayed for dismissal of their petitions.

6. Heard and record perused minutely.

7. A bare look at the reference reflects that there are two different issues involved viz fresh allotments and exchange of allotments of lands. The inquiry was conducted regarding 15 fresh allotment cases, but only six allotments of land, measuring 94-20 acres, were found illegal on the grounds that the land reserved for public purposes cannot be allotted and the rights of allottees are intact in lieu of amount paid against occupancy price by the allottees.

8. The land in question physically comprised of Malir River and as per revenue record falls in Deh Drigh Road, District Korangi, and not in Deh Dih, District Korangi as such the fresh allotments have been cancelled by the Board of Revenue, Government of Sindh, which led to closure of inquiry by NAB. As to the issue pertaining to exchange of land from and to Malir River Bed is concerned, such allotments

have also been cancelled by Revenue Department, Government of Sindh, but NAB has taken the cognizance in the matter on the ground that officers/ officials of Revenue Department have misused their powers by allowing exchange of lands against kickbacks and commissions in utter violation of Section 17 of Colonization Act, 1912.

9. Admittedly, the fresh allotments and exchange allotments have been cancelled by the Government. Record further reflects that all entries have been cancelled and reversed by the Revenue Department. The only allegation against the petitioners is that they have misused their authority and allotted lands in violation of Section 17 of Colonization Act, 1912. It has been alleged that two lands {08 acres in favour of Raza Haider and 19 acres in favour of Muhammad Ayub Sheikhan} have been regularized illegally on the ground that initial occupancy prices of the said lands were not paid and were regularized by Sindh Lands Committee against its mandate, which caused loss to national exchequer to the tune of Rs.40.5 million. Surprising to note that in terms of Ordinance No.III of 2001, the Sindh Government Lands Committee in its meeting held on 11.03.2009 at 10:00 am under the Chairmanship of Mr. Justice {R} Agha Saifuddin Khan and attended by Muhammad Hanif Solongi {Solicitor to Government of Sindh/ Representative of Law Department, Fazlullah Pechuho {Secretary Finance Department, Government of Sindh} and Abdus Subhan {Secretary Land Utilization Department, Government of Sindh, Karachi} as Members, unanimously decided the issue involved in this case. Despite that, none from them has been arrayed as accused in the reference except Abdus Subhan {Petitioner in C.P. No.D-1143 of 2020}. Justice {R} Agha Saifuddin Khan has expired while Muhammad Hanif Solongi and Dr. Fazlullah Pechuho are still alive, but they have not been nominated as accused in this case without furnishing any plausible explanation. On our query as to why Muhammad Hanif Solongi and Dr. Fazlullah Pechuho have not been arrayed as accused in the reference, the investigating officer failed to furnish a satisfactory explanation and he simply replied that Dr. Fazlullah Pechuho was Secretary to Finance Department, Government of Sindh and

Muhammad Hanif Solangi was Solicitor to Government of Sindh and they did not belong to Revenue department as such they had no knowledge about its affairs, which is not a valid and cogent reason. In view of this background of the matter, malafide on the part of the investigating officer cannot be ruled out. It is noteworthy that the investigating officer is an important character, who is under obligation and duty bound to dig out the truth. In the case in hand, it seems that just formalities have been completed and no sincere efforts have been made by the investigating officer to dig out the truth. Thus, it is a clear cut case of pick and choose, whereby certain persons on the same pedestal were set free and not joined as accused in the Reference. Law does not permit an investigating officer to follow the policy of pick and choose and he is bound to treat all accused equally qua their role as revealed in the investigation. Here in this case, the investigating officer was supposed to deal with each accused fairly, justly, honestly and treat them in accordance with law without any discrimination, but he has not done so. Reference may be made to an unreported case of *Mansoor Ahmed Khan v The State through NAB, Sindh*, in Civil Petition No.540-K of 2017, wherein the Hon'ble Supreme Court held as under:-

“Many other persons similarly placed who are prima facie a part of this transaction have not been even glared at for being roped in or rounded up. In the circumstances we won't like to become a part of a discriminatory accountability which is based on pick and choose by declining bail to the petitioner”.

10. Admittedly, the reference has already been filed in Court and the entire record in the shape of documentary evidence is available with the NAB. Examination of voluminous documentary evidence is likely to consume long time in the trial. No legal or technical purpose would be served by committing the petitioners to prison for an indefinite period when it is not known as to when trial would be concluded. The Courts have invariably leaned in favour of granting of bail when the case is dependent upon documentary evidence and the same is in possession of the prosecution agency. Reliance may well be made to the cases of *Saeed Ahmed v The State* {1996 SCMR 1132} and *Muhammad Nawaz v The State through Chairman, NAB, Islamabad and another* {PLD 2008 SC

438}. Likewise, the august Supreme Court in the case of *Muneer Ahmed Sheikh v NAB* {2019 SCMR 1738} held as under:-

“Dispatching petitioners into prison, on a subjective belief of their having manipulated the impugned transaction, would be rather harsh in circumstances, particularly when the prosecution has the opportunity to possibly transform allegations into proof during the trial, already in progress.

11. For what has been discussed above, we are of the view that the petitioners have been able to make out a case for their admission on pre-arrest bail. Consequently, vide our short order dated 29.10.2020, we had allowed these petitions and confirmed the interim pre-arrest bail granted to the petitioners in terms of earlier orders of this Court on the terms and conditions to be stated in the order containing reasons and these are the reasons thereof. However, since petitioner Muhammad Ayub Sheikhani's counsel gave an undertaking that petitioner is ready to deposit a sum of Rs.28.500,000/- against differential amount in respect of 19 acres of land, his bail is confirmed subject to deposit of such amount in the trial Court within a period of one month from today, failing which the relief of pre-arrest bail shall be deemed to be cancelled without notice.

12. While parting with this order, we would direct the learned trial Court to expedite the trial and complete it as quickly as possible by adopting all methods in procuring the attendance of prosecution witnesses. It is, however, made clear that if any of the petitioners causes any delay in completion of the trial, the Accountability Court may move a reference to this Court for cancellation of bail of such petitioner who is causing delay. It may also be clarified that the trial Court shall not be influenced by the observations made herein above and shall decide the case purely on merits and material made available before it without causing prejudice to either side. A copy of this order shall be sent to the concerned Accountability Court for information.

JUDGE

JUDGE