

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI.**

Date	Order with signature of Judge
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Present:-  
Mr. Justice Muhammad Iqbal Kalhoro J.  
Mr. Justice Irshad Ali Shah J

**C.P.No.D-5482 of 2019**

Essa Khan Vs. NAB & other

**C.P.No.D-8324 of 2019**

Amin Muhammad Fazwani Vs. The Chairman, NAB & others

**Dates of Hearing** : 18.9.2020, 07.10.2020, 13.10.2020, 20.10.2020,  
23.10.2020, 03.11.2020 and 18.11.2020.

**Date of order** : 18.11.2020.

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Mr. Moulvi Iqbal Haider, Advocate for petitioner in C.P.No.D-5482/2019  
Mr. Altamash Faisal Arab, advocate for petitioner in C.P.No.D-8324/2019  
Mr. Riaz Alam Khan, Special Prosecutor, NAB.

**ORDER**

**Muhammad Iqbal Kalhoro, J:-** These petitions filed for post arrest bail in a Reference No.29/2018 were earlier dismissed along with other petitions of co-accused vide order dated 06.02.2020 have been resurrected in compliance of the Honourable Supreme Court's order dated 25.06.2020 remanding the case to this court for a fresh consideration passed in civil petitions challenging this court's aforesaid order. .

2. We have heard the parties and perused the record. Learned defense counsel have urged that the case against the petitioners is of no evidence, no record of misuse of authority, personal benefit or cash flow in their accounts has been traced; that no loss has occurred to national exchequer. The whole story is pillared on hypothesis of pilferage by converting and selling amenity areas, recording less than actual sale and purchase price of flats and shops in account books, embezzling transfer fee, etc. Learned special prosecutor NAB and I.O. however have not conceded to these contentions and opposed relief of bail to the petitioners.

3. Record reveals that NAB sprung to holding an inquiry/investigation on a complaint by residents of Karimabad Ismailia Multipurpose Cooperative Society Ltd. Karachi (the society) holding its management responsible for fake elections, construction against building plan and by-laws, misappropriation of the society's resources, selling of flats and shops in non-transparent manner,

making illegal allotments of flats to the relatives and favorites and giving shops to non-members without auction process and at lower than market price and converting amenity area into commercial and selling the same to its exclusive benefit; and finally found out that accused had caused approximately a loss of Rs.800 million to the society.

4. Against petitioner Essa Khan, who was working as director, it is alleged that he obtained a flat 405 in the society at lower than market price and gained benefit of Rs.7 million. The market price stated by IO is presumptive as *prima facie* no document officially reflecting actual price of the flat at that time is available on the record. Flight of certain amount in his or his son's bank accounts explained by his counsel was on account of loan which he kept on taking from Pak Fidia Cooperative Society Ltd. and that was largely meant for raising turnover as a qualification for sending his son abroad.

5. Against almost identical allegations leveled against petitioner Amin Muhammad Fazwani, who worked as treasurer in the society, his counsel has put forward similar explanation, besides pointing out that only loss to the tune of alleged figure of Rs.800 million has been calculated in the investigation and the expenditure in erecting a number of buildings at the site has completely skipped attention of the IO making the case one of further enquiry, which we find has force. But what has attracted our attention more is inability of the prosecution to examine even a single witness out of 60 witnesses cited in the reference since 08.07.2019, the date when the petitioners' plea for pre-arrest bail was dismissed and they were taken into custody. When the petitions in hand were earlier dismissed vide order dated 06.02.2020, it was informed that evidence of one witness was partially recorded. Surprisingly, till today nothing has changed and even after lapse of 9 months, we have been told that the prosecution has not been able to conclude his evidence, which we find not ignorable particularly for deciding an arrangement which is temporary and is contingent on final decision of the case. Further, given the pace of trial, it is not hard to extrapolate the time it is likely to take to conclude. It is not the scheme of law to keep an accused in jail for an indefinite period, for, among others, the prosecution is not likely to gain anything from such an outreach.

6. In view of above, we allow these petitions and grant bail to the petitioners subject to their furnishing two solvent sureties in the sum of Rs.1 Million each and P.R. bond in the like amount to the satisfaction of Nazir of this court. In addition, their names shall be placed on Exit Control List (ECL) till pendency of the reference against them and they shall also deposit their original passports, if issued. Further, they are directed to cooperate in the proceedings of trial and the trial court, if finds the petitioners causing any delay in the trial or attempting

to tamper with the prosecution evidence, shall file a reference before this court for recalling the concession granted to them by means of this order.

7. Petitions stand disposed of in the above terms. The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

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Allegations against petitioner Amin Muhammad Fazwani, the treasurer, revolve around his role in allotting flats to co accused, his family members, and associated at lower than market price; converting amenity area into commercial and selling it illegally; embezzling transfer fee etc. and in return receiving huge sums that were found in his bank accounts. Learned counsel's explanation of such amounts was the loan taken by him from co accused Karim Farshta, already convicted in this case in terms of his Plea Bargain, which he neither could establish nor justify against the backdrop of him acquiring so many premises in the Society at the same time and the fact of such amounts, obtained as an urgent call, not leaving his bank accounts later.

5. Besides, there is sufficient oral and documentary evidence against him. Statements of PWs u/s 161 CrPC Mst. Tag Begum, Muhammad Ashraf, Abdul Aziz and others are a direct charge implicating him. They have given details of actual amount paid by them against sale and purchase of certain premises and the fact that when they verified did not find them reflected in the record the society. Numerous other purchasers' statements confirming large amounts given to petitioner and other accused are also on record, but nowhere in the society's' books the same are reflected. Learned special prosecutor NAB and I.O. of the case have specifically pointed out to the bank record of the petitioner and his family members showing deposit of amounts and cheques actually received against sale and purchase of the premises in the society. The seizure of documents, files, etc. pertaining to various premises from his house contain different detail of the amounts received on sale and purchase than the ones recorded in the society's books and its distribution among the petitioner and co

accused which is yet another indictment pillorying him. The differential amount has been estimated to be whopping Rs.25.52 million. Neither the presence of such record in his house nor the difference in detail respecting the amounts furnishing a *prima facie* evidence against the petitioner could be explained by his counsel.

6. The case of petitioner Essa Khan is almost on similar footings. He was director of the Society. In the documents seized from the house of petitioner Amin Muhammad Fazwani, various amounts accrued on sale and purchase have been specifically shown to have been received by him as his share. The bank statements of accounts belonging to him and his son Danis Khan (stated to be minor) in the First Micro Finance Bank Ltd. reflect deposit of large unaccounted for amounts. His counsel filed accounts statements of the petitioner from Pak-Fidai General Co-Operative Society Limited to show that petitioner had obtained loans from the said society. But such amounts do not tally with the sums deposited in the bank accounts of the petitioner and his son on the one hand and on the other such statements display huge amounts unmatched to his source of income being deposited towards loan satisfaction for which, when asked, learned counsel could not offer any justification. Transfer of Rs.1.514 million in his Soneri Bank account by Karim Farishata, a co accused convicted in this case on his application for plea bargain, is another piece of incriminating evidence against the petitioner which has persuaded us of sufficiency of *prima facie* evidence disentitling him to discretionary relief of bail.

Consequently, both the petitions for post arrest bail are dismissed. The observations herein above are tentative in nature and shall not prejudice case of either party at the trial.

5. We have considered submissions of the parties and perused the record. In earlier petitions filed pre arrest bail, we besides considering ground of mala fide had examined merits of the case tentatively and did not find the petitioners entitled to bail. These petitions for same relief have been filed after a short while and are ostensibly without any fresh ground except that of being for post arrest bail. Nonetheless, in order to re-appreciate the case of petitioners, we have had a fresh look at the record, and are convinced that there is *prima facie* sufficient material connecting the petitioners with the alleged offence. A number of accusations have been leveled against them of which some are of managerial failures on their part in running the affairs of the society. But of importance for issue in hand are the allegations of conducting fake elections for retaining management of the society with *mala fide* intention, changing amenity area into commercial one for reaping personal benefit and of financial bungling, such as embezzlement of several amounts through various modes like recording less sale price of a flat or a shop in account books than the actual one received from the purchaser; usurping security deposits amounting to millions received against sales of flats and shops; pilfering millions of rupees paid on account of transfer fee. Further transferring amounts of the society first into the accounts of some other housing society within their domain and finally transmitting the same therefrom to their several personal or family member's accounts. Relevant documentary evidence to vouch for said allegations has been collected. And the material showing that only small portion of actual sale price of a flat or a shop received from the buyer was recorded in the account books has also been made part of the investigation report. The purchasers' statements revealing actual amount paid by them have been recorded, which

*prima facie* lend sufficient credence to connection of the petitioners in the alleged offence.

6. Amenity areas which include Air Raid Shelter, Emergency Exit, etc. within the building were converted into shops, etc. and sold but the amounts so received by the petitioners remained unaccounted for. Learned defense counsel argued that the money was deposited into the accounts of some other housing society whose affairs were with the petitioners for protection but could not explain the need behind such a shift when the society was a separate entity with independent accounts. The relevant documentary evidence and bank statements reflecting flight of money from the society's accounts to different accounts and then deposit of large amounts in petitioners' accounts is available on record. Independent and collective role played by each petitioner in furtherance of common intention has been adequately highlighted in the investigation report along with relevant documentary and oral evidence. Further, plea bargain of at least two of the co-accused with similar allegations have been accepted which could be considered an additional circumstance against the petitioners at least to the extent of relief of bail.

7. Further, the trial has already commenced and evidence of one witness has been partially recorded. In the facts and circumstances, we are of the view that the petitioners are not entitled to bail. Consequently the petitioners in hand are dismissed. However the trial court shall expedite pace of the trial and conclude it within a reasonable time. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the trial.

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have been collected and made part of the reference.

Aga Khan Ismailia Charitable Trust had gifted a Plot No.ST-2, Block-3, situated in K.D.A. Scheme No.16, F.B. Area, Karachi admeasuring 8-30 acres (40,172 square yards) with buildings constructed thereon to the Society to run its affairs for the benefits of their members vide a Gift Deed dated 04.03.1992. But as per documentary evidence and stamens of witnesses u/s 161 CrPC, the accused/petitioners proceeded to violate bye-laws, got unfair and illegal allotment of flats and shops to themselves and family members. Further, they manipulated elections of the



Society in their favour and remained at the helm of its affairs illegally for their own benefit. The total 23 buildings blocks were approved by Sindh Building control authority (SBCA) and the private petitioners/management of KIMCSL converted amenity areas including Primary School, Recreational area, Library, Lavatories, air raid shelters and Emergency Exit (Gate) of building No. (s).KA10, KA11, KA16 & KA17 into the commercial area, the total area of amenity areas and others were 19,500 square feet. The revised plan was submitted by the management/private petitioners of KIMICSL before the official Petitioners/SBCA. The official respondents by misusing their authority, power and position, connivance with each other converted into commercial which was in violation of Sindh Building Control Authority rules and regulations as well as in contravention of the revised proposed building plan dated 24.8.1998, and they have approved the same and the petitioners/management sold that amenity and other areas at high rates, but the amount received by selling the amenity areas put in to their pockets. Further, it has also come on the surface that the transfer and registration fees, Rs.30.5 Million, the security deposit amounting to Rs.76 Million were collected by the management/petitioners, which was not mentioned in the books of accounts and embezzled by the office bearers of KIMCSL/petitioners.

11. The corruption has spoiled Pakistan completely and is resulting in an increase in poverty, unemployment, and hunger. Corruption has been deep-rooted in all levels either private or government, in this case, the land 8-30 acres ( 40,172 sq.yards) was gifted by Aga Khan Ismaili Charitable Trust to the KIMCSL for welfare of the people, but the additional amount received by the private petitioners by selling amenity areas used in their welfare and all such objects were not possible but the role played by the official/accused belonged to the Sindh Building Control Authority, made possible and approved revised plan and caused loss to the society at the tune of Rs.800 Million. It is the well-settled principle of law that at bail stage only tentative assessment is to be made. Therefore, we are of the view that *prima facie* there is sufficient material available on record to connect the petitioners, namely,

Barkat Ali, Nizar Ali Fazwani, Karim Farishta, Amin Muhammad Fazwani and Essa Khan with the commission of the offence. Learned counsel for the petitioners has failed to make out the case for grant of pre-arrest bail. No malafide on the part of NAB authorities or investigating officer has been pointed out. Accordingly, their bail petitions stand dismissed and the orders of this Courts granting interim pre-arrest bail to the said petitioners are hereby recalled and the post-arrest bail of the petitioners, namely, Hameedullah Shaikh, Sikandar Ali, Muhammad Ali, Pervez Akhtar Khan, and Syed Mazhar Ali Shah also stand dismissed.

JUDGE

JUDGE

Rafiq/P.A.

**IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Muhammad Iqbal Kalhoro***  
***Mr. Justice Amjad Ali Sahito***

Constitution Petition No.D-792 of 2019  
Constitution Petition No.D-8454 of 2018  
Constitution Petition No.D-2314 of 2017  
Constitution Petitions No.D-1485 & 1486 of 2019  
Constitution Petitions No.D-7746 & 7747 of 2017  
Constitution Petition No.D-1519 of 2019  
Constitution Petition No.D-8002 of 2017  
Constitution Petition No.D-8284 of 2018  
Constitution Petition No.D-5252 of 2018  
Constitution Petition No.D-3530 of 2019

Petitioners in :  
CP No.D-792/2019 : Zulfiquar Hassan Ali S/o Hassan Ali  
CP No.D-1519/2019 : Shoukat Hussain S/o Husasin Ali  
Through Mr.Moulvi Iqbal Haider, Advocate.

Petitioner in : Pervez Akhtar Khan  
CP No.D-8284/2018 : S/o Muhammad Zarait Khan  
Through M/s.Syed Mehmood Alam Rizvi  
and Obaid-ur-Rahman Khan, Advocates.

Petitioner in : Syed Mazhar Ali Shah  
CP No.D-8454/2018 : S/o Syed Fazal Ali Shah

Through Mr. Abdul Qayyum Abbasi,  
Advocate

Petitioner in Karim Farishta  
CP No.D-8002/2017 : Through Mr. Samsam Ali Khan, Advocate

Petitioner in Hameedullah Shaikh S/o Gul Muhammad  
CP No.D-3530/2019 : Through Mr. Riaz Ahmed Phulpoto,  
Advocate

Petitioners in :  
CP No.D-2314/2017 Barkat Ali S/o Muhammad Bux  
CP No.D-7746/2019 Amin Muhammad Fazwani  
CP No.D-7747/2017 Essa Khan S/o Inayat Khan  
CP No.D-5252/2018 Nizar Ali Fazwani S/o Muhammad Ali  
CP No.D-1485/2019 Sikandar Ali S/o Muhammad Buksh  
CP No.D-1486/2019 Muhammad Ali S/o Shamsuddin  
All through Mr. Muhammad Munsif Jan,  
Advocate.

Respondent : The State  
Through Mr. Riaz Alam Khan, Special  
Prosecutor for NAB alongwith Investigating  
Officer Sarwar Ahmed Khan

Dates of hearing : 13.05.2019, 27.05.2019, 08.07.2019 &  
09.07.2019

Date of order : \_\_\_\_ .07.2019

## **ORDER**

**AMJAD ALI SAHITO, J--** Through captioned petitions, petitioners, namely, Zulfiqar Hassan Ali, Shoukat Hussain, and Nazar Ali seek post-arrest in NAB Reference No.29/2018 filed under Section 18(g) read with Section 24(b) of the National Accountability Ordinance, 1999. Whereas, petitioners, namely, Karim Farishta, Essa Khan, Barkat Ali and Nizar Ali Fazwani sought pre-arrest bail and are on ad-interim pre-arrest bail granted to them, same were dismissed by this Court vide common order dated 16.10.2018 with the observations that “there is sufficient prima facie material on record to suggest that the petitioner had exercised his authority to enrich himself and a number of persons have also implicated him as the principal beneficiary of the defalcated amounts, but we do not want to make any further observations in this regard as it may prejudice

the case of either party.” The petitions were dismissed with the further observation that “the petitioners shall be free to file fresh petitions for bail before this Court after filing of reference in the matter if so desired.” However, after the dismissal of their application Reference No.29/2018 was filed before the learned Administrative Judge, Anti-Terrorism Court, Sindh Karachi against 15 accused persons, hence the names of the petitioners also included in the reference.

2. Brief facts of the prosecution case, as depicted in the Reference No.29/2018, are that on receipt of a complaint from the residents of the Karimabad Ismalia Multipurpose Cooperative Society Limited (hereinafter referred to as “KIMCSL”), Karachi against the management/accused persons of the Society regarding their involvement in corruption and corrupt practices, an inquiry followed by investigation was authorized by DG, NAB (K) vide letter No.NABK2015092210360/IW-1/co-a/2017/9242, dated 17.10.2017. During the course of the investigation, the case has been established against the accused No.1 to 15 through oral and documentary evidence that they caused loss to the public exchequer to the tune of Rs.800 Million (Approx) and embezzled the funds as well as resources of the KIMCSL.

3. Mr. Moulvi Iqbal Haider, learned counsel for the petitioners Zulfiqar Hassan Ali in C.P. No.D-792/2019 and Shoukat Hussain in C.P. No.D-1519/2019 mainly contended that the petitioners are innocent and have been falsely implicated in this case; that there neither any piece of evidence directly or indirectly against the petitioners nor any witness in respect of any benefit or commission, kickback or bribe while performing his duty as Honorary Secretary of the society towards allocation of any flat/shop, conversion lavatory into commercial shop, fake election, nomination of Administrator or none deposit security fee or any fund in the account of the society during his tenure from 1991 to 2001; that not a single PWs has deposed against the petitioner with the commission of alleged offence. He lastly submitted that the petitioners are in jail and they are no more required for further investigation in the reference. He, therefore, prayed that petitioners may be enlarged on bail.

4. Mr. Abdul Qayoom Abbasi, learned counsel for the petitioner Syed Mazhar Ali Shah in C.P. No.D-8454/2018 mainly contended that the petitioner is innocent and has been falsely implicated in the reference with malafide intention and ulterior motives; that nothing has been brought on record that petitioner has made any financial gain for himself or for his family members etc; that no loss has been caused to the public exchequer at the hands of petitioner from any transaction with respect to the residents and management of KIMCSL; that the residents of KIMCSL have not deposed against the petitioner that he in the league with management of the society has committed any offence; that the respondent has failed to place on record any single piece of documentary evidence or any other documents signed by the petitioner, which could connect him with the alleged offence. He lastly prayed that the petitioner may be released on bail. In support of his contention, learned counsel has relied upon the cases (1) *M. Anwar Saifullah Khan vs. The State (PLD 2002 Lahore 458)*, (2) *Maqbool Ahmed Lehri and another vs. NAB and others (2016 SCMR 154)*, (3) *The State vs. M.Idrees Ghauri and others (2008 SCMR 1118)* and (4) *Sikandar Ali Qureshi vs. Chairman NAB and 2 others (2017 P.Cr.L.J. 269)*.

5. M/s. Syed Mehmood Alam Rizvi and Obaid-ur-Rahman Khan, learned counsel for the petitioner Pervez Akhtar Khan in C.P. No.D-8284/2018 mainly contended that the petitioner is innocent and has been falsely implicated in the reference; that there is no reasonable ground to believe that the petitioner has committed any offence; that there is no allegation that petitioner has made any financial gain for himself or for his family members etc; that the involvement of petitioner in the instant reference is based on malafide on the part of the office of the respondent to shelter the actual culprits and the petitioner has performed his duty as required by the law and never misused his powers for the wrongful benefits through illegal means; that as per certificate issued by Engineer certifying the completion of KA 16 & KA 17 blocks the summary was floated and in para No.10 of the summary the petitioner signed the same and there after he was transferred hence petitioner has not committed any offence; that

even at bail stage the matter requires tentative assessment of evidence/material available on record; that no loss has been caused to the public exchequer at the hands of petitioner from any transaction with respect to the residents and management of KIMCSL. He lastly prayed that the petitioner may be enlarged on bail.

6. Mr. Muhammad Munsib Jan, learned counsel for the petitioners, namely, Barkat Ali in C.P. No.D-2314/2017, Amin Muhammad Fazwani in C.P. No.D-7746/2017, Essa Khan in C.P. No.D-7747/2017, Nizar Ali Fazwani in C.P. No.D-5252/2018, Sikandar Ali in C.P. No.D-1485/2019 and Muhammad Ali in C.P. No.D-1486/2019, mainly contended that the petitioners are innocent and have been falsely implicated in the instant reference; that no loss has been caused to the national exchequer by the petitioners; that no embezzlement has been proved against the petitioners by the NAB authorities; that no public cheating or fraud has been committed by the petitioners; that the petitioners were worked honorary in the society, but not a single complaint has been made against them from any members of the society. He lastly contended that co-accused Barkat Ali has moved several applications against the NAB authorities and due to which they have become annoyed and malafidely booked the petitioner in the instant reference. He prayed for confirmation of the interim pre-arrest bail.

7. Mr. Samsam Ali Khan, learned counsel for the petitioner Karim Farishta in C.P. No.D-8002/2017 mainly contended that the petitioner is innocent and has been falsely implicated in the instant reference, as the petitioner did not receive any call-up notice, whereas, other persons, who were named in the instant reference, have received call-up notices and they have got pre-arrest bail on the basis of such notice; that after search notice, there was no further intimation or action in knowledge of the petitioner, but the petitioner received a telephone call on 9.11.2017 from the government PTCL number and threatened to show up in the office of respondent No.2 on the next day, thereafter, the petitioner has been threatened through calls and raids in his home headed by the respondent No.3 which shows

the malafide on the part of the respondent No.2. He lastly submitted that petitioner apprehends undue arrest, harassment, humiliation, and torture at the hands of the respondents. He prayed for confirmation of pre-arrest bail.

8. Mr. Riaz Ahmed Phulpoto, learned counsel for the petitioner Hameedullah Shaikh in C.P. No.D-3530/2019 mainly contended that the petitioner is innocent and has been falsely implicated in the instant reference; that the petitioner has no concern with the alleged offence and has not made any kind of violation/illegality in their official duties as performing according to law and by-laws of the society, but the respondents with malafide wants to involve them in the false, forged, concocted, baseless and self-designed reference/case in order to give mental torture and agony as well as ruin the honour and respect of petitioner in the eyes of community and social society. He lastly submitted that petitioner apprehends undue arrest, harassment, humiliate and torture at the hands of respondents. He prayed for confirmation of the interim pre-arrest bail to the petitioner.

9. Conversely, Mr. Riaz Alam Khan learned Special Prosecutor for NAB assisted by Investigating Officer Sarwar Ahmed Khan vehemently opposed for confirmation of the pre-arrest bail as well as a grant of post-arrest bail to the petitioners. It is, *inter alia*, contended by the learned Special Prosecutor for NAB that private respondents with the connivance of the official respondents have caused loss to KIMCSL/public exchequer and embezzled the funds/millions of rupees by converting the amenity plots into the commercial by misusing their powers and positions. He further submitted that total of 23 buildings were approved as per revised proposed building plans dated 24.08.1998 and during investigation of these buildings/blocks violation was noticed and report was submitted on 06.11.2017; that the management of KIMCSL misused amenity areas for commercial purposes, hence they have given lost to the society/exchequer approximately to the tune of Rs.800 Million. He lastly submitted that no malafide on the part of the NAB authorities or investigating officer has been pointed out, hence the petitioners/accused are not entitled for the concession of pre-arrest as well as post-arrest bail.

10. We have heard the learned counsel for the parties and have minutely perused the record of the cases with their able assistance. It is established from the documentary evidence that Aga Khan Ismailia Charitable Trust had gifted a Plot No.ST-2, Block-3, situated in K.D.A. Scheme No.16, F.B. Area, Karachi admeasuring 8-30 acres (40,172 square yards) with buildings constructed thereon and the possession thereof was also handed over to the Society to run the affairs for the benefits of their members, who were residents of the colony known as Karimabad Ismailia Multipurpose Cooperative Housing Society, Karachi (hereinafter referred to as "KIMCSL") vide Gift Deed dated 04.03.1992, but the private petitioners/respondents by violating the bye-laws occupied illegally and unlawfully the management of the society. The total 23 buildings blocks were approved by Sindh Building control authority (SBCA) and the private petitioners/management of KIMCSL converted amenity areas including Primary School, Recreational area, Library, Lavatories, air raid shelters and Emergency Exit (Gate) of building No. (s).KA10, KA11, KA16 & KA17 into the commercial area, the total area of amenity areas and others were 19,500 square feet. The revised plan was submitted by the management/private petitioners of KIMICSL before the official Petitioners/SBCA. The official respondents by misusing their authority, power and position, connivance with each other converted into commercial which was in violation of Sindh Building Control Authority rules and regulations as well as in contravention of the revised proposed building plan dated 24.8.1998, and they have approved the same and the petitioners/management sold that amenity and other areas at high rates, but the amount received by selling the amenity areas put in to their pockets. Further, it has also come on the surface that the transfer and registration fees, Rs.30.5 Million, the security deposit amounting to Rs.76 Million were collected by the management/petitioners, which was not mentioned in the books of accounts and embezzled by the office bearers of KIMCSL/petitioners.

11. The corruption has spoiled Pakistan completely and is resulting in an increase in poverty, unemployment, and hunger.



Corruption has been deep-rooted in all levels either private or government, in this case, the land 8-30 acres ( 40,172 sq.yards) was gifted by Aga Khan Ismaili Charitable Trust to the KIMCSL for welfare of the people, but the additional amount received by the private petitioners by selling amenity areas used in their welfare and all such objects were not possible but the role played by the official/accused belonged to the Sindh Building Control Authority, made possible and approved revised plan and caused loss to the society at the tune of Rs.800 Million. It is the well-settled principle of law that at bail stage only tentative assessment is to be made. Therefore, we are of the view that *prima facie* there is sufficient material available on record to connect the petitioners, namely, Barkat Ali, Nizar Ali Fazwani, Karim Farishta, Amin Muhammad Fazwani and Essa Khan with the commission of the offence. Learned counsel for the petitioners has failed to make out the case for grant of pre-arrest bail. No malafide on the part of NAB authorities or investigating officer has been pointed out. Accordingly, their bail petitions stand dismissed and the orders of this Courts granting interim pre-arrest bail to the said petitioners are hereby recalled and the post-arrest bail of the petitioners, namely, Hameedullah Shaikh, Sikandar Ali, Muhammad Ali, Pervez Akhtar Khan, and Syed Mazhar Ali Shah also stand dismissed.

12. Reverting to the cases of petitioners, namely, Zulfiqar Hassan Ali and Shaukat Hussain, both had already left the affairs of the KIMCSL before 2005 and thereafter they have no concern with the society. As far as the role assigned against both the petitioners that they have converted Laverty into commercial shops and sold illegally and got possession of two commercial shops for which both the petitioners have denied and submitted that they have already left the affairs of the society, hence they have no concern with the alleged involvement. The role assigned against both petitioners could be determined by the trial court after recording evidence. At the bail stage, only tentative assessment is to be made and deeper appreciation is to be avoided.

13. In view of the above, learned counsel for the petitioners has made out the case for further inquiry in terms of subsection (2) of section 497 Cr.P.C. Consequently, CP No.D-792/2019 filed by Zulfiqar Hassan Ali and CP No. D-1519/2019 filed by Shaukat Hussain are allowed. The petitioners namely Zulfiqar Hassan Ali and Shaukat Hussain are granted post-arrest bail subject to their furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Lacs Only) each with P.R. bond in the like amount to the satisfaction of the Nazir of this Court.

**J U D G E**

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Brief facts of the prosecution case, as depicted in the Reference No.29/2018, are that on receipt of a complaint from the residents of the Karimabad Ismalia Multipurpose Cooperative Society Limited (hereinafter referred to as "KMICSL"), Karachi against the management / accused persons of the Society regarding their involvement in corruption and corrupt practices, an inquiry followed by investigation was authorized by DG, NAB (K) vide letter No.NABK2015092210360/IW-1/co-a/2017/9242, dated 17.10.2017. It is alleged that during the course of the investigation, the case has been established against the accused No.1 to 15 through oral and documentary evidence that they caused loss to the public exchequer to the tune of Rs.800 Million (Approx) and embezzled the funds as well as resources of the KIMCSL