

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

MR. JUSTICE MUHAMMAD IQBAL KALHORO

MR. JUSTICE SHAMSUDDIN ABBASI.

Const. Petition No.D- 5231 of 2016

Petitioner Abdul Salam Mandhro son of Abdul Rehman Mandhro through Mr. Faisal Siddiqui, Advocate.

Respondent National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 6114 of 2016

Petitioner Muhammad Arif Baluch son of Abdul Qadir through Mr. Nisar Ahmed Tarar, Advocate.

Respondent National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 5891 of 2017

Petitioner Danish son of Abdul Latif through Mr. Nisar Ahmed Tarar, Advocate.

Respondent National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 8064 of 2017

Petitioner Abdul Salam Mandhro son of Abdul Rehman Mandhro through Mr. Faisal Siddiqui, Advocate.

Respondents National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 4620 of 2019

Petitioner Qasim Ali Mandhro son of Muhammad Yaqoob Mandhro through Mr. Muhammad Vawda, Advocate.

Respondents National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 4781 of 2019

Petitioner Syed Jawed Ali son of Syed Muhammad Ali through M/s Syed Shafqat Ali Shah Masoomi and Shahbaz Ali Shah Masoomi, Advocates.

Respondents National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 5146 of 2019

Petitioner Abdul Rehman Mandhro son of Abdul Salam Mandhro through Mr. Muhammad Vawda, Advocate.

Respondents National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 5147 of 2019

Petitioner Muhammad Yaqoob Mandhro son of Muhammad Umer Mandhro through Mr. Muhammad Vawda, Advocate.

Respondents National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Const. Petition No.D- 8014 of 2019

Petitioner Farman Ali Kalhoro Abbasi son of Qurban Ali Abbasi through Mr. Mehboob Ali Kapri, Advocate.

Respondents National Accountability Bureau {NAB} through Mr. Riaz Alam Khan, Special Prosecutor NAB a/w I.O. Waqar Anwar.

Dates of hearing 15.10.2020, 22.10.2020, 05.11.2020, 11.11.2020, 26.11.2020, 08.12.2020 and 15.12.2020.

Date of order **23.12.2020**

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ORDER

Shamsuddin Abbasi, J:- By means of listed petitions, Syed Jawed Ali, Abdul Rehman Mandhro and Muhammad Yaqoob Mandhro, petitioners, seek post-arrest bail while Abdul Salam Mandhro, Muhammad Arif Baluch, Danish, Qasim Ali Mandhro and Farman Ali Kalhoro Abbasi petitioners, are seeking pre-arrest bail in Reference No.20 of 2019, pending before relevant Accountability Court, at Karachi. Besides, seeking pre-arrest bail, Abdul Salam Mandhro, petitioner through C.P.No.D-8064 of 2017 also seeks direction against NAB to decide his application dated 03.11.2018 under Section 18 of National Accountability Ordinance, 1999 {NAO, 1999} for change of investigating officer Waqar Anwar, Assistant Director, while Farman Ali Kalhoro Abbasi, petitioner in addition to the relief of pre-arrest bail has also made a prayer to declare the proceedings arising out of the aforesaid reference as illegal, *void ab initio* and of no legal effect.

2. Briefly stated, the accused Abdul Salam Mandhro acting as mastermind of the entire scam in connivance with other co-accused took over the control of Pakistan Navy {Civilian Non-Gazetted Employees} Cooperative Housing Society, Karachi, through fake and

engineered election of Managing Committee, held by accused Muhammad Arif Baluch on the orders of accused Muhammad Sadiq Rajar, usurped an amenity plot of the Society through fake and forged documents, illegally carved out 80 x plots, 250 x plots of genuine/original members and 8 x un-allotted plots, sold out the same to fake members /general public and received illegal sale proceeds in cash either direct or indirect channels into his account, through which he purchased different properties in his name, in the names of his wife, father and father-in-law. He also opened a bank account No.104-047001319-001 in the name of the Society in Telenor Microfinance Bank Limited through a fake and forged resolution of the Society, through which an amount of Rs.6,924,800/-, alleged to have been obtained from the fake members of the Society towards costs of land and transfer fees, which was received into his bank accounts maintained at Summit Bank Limited, Habib Bank Limited, Muslim Commercial Bank Limited and JS Bank Limited. He also got registered subleases of 47 x plots, illegally carved out from the said amenity plot, through accused Farman Ali Abbasi as well as obtained a fake and fraudulent audit report for the period from July, 2013 to June, 2015 from accused Syed Jawed Ali just to legitimize the illegal replacement of genuine/original members of the Society with fake members causing a loss of Rs.1,367,299,800/- to the Society, its genuine /original members and general public.

3. Precise accusations against Abdul Salam Mandhro, Danish, Qasim Ali Mandhro, Abdul Rehman Mandhro and Muhammad Yaqoob Mandhro, petitioners, as set-forth in the reference are that they in connivance with each other got arranged fake election of Managing Committee with the help of accused Muhammad Arif Baluch, the then Sub-inspector Cooperatives, Government of Sindh/ Election Officer of P.N. {CNGE} Cooperative Housing Society, obtained a fake audit report for the period from 01.07.2013 to 30.06.2015 from accused Syed Jawed Ali, the then Assistant Registrar, Cooperative Audit {East} Cooperative Societies, Sindh and got registered sub-leases of 47 residential plots, illegally carved out from the said amenity plot on the basis of forged layout plan of the Society, with the help of accused Farman Ali Kalhoro Abbasi, the then Sub-

Registrar-II, Gulshan Town, Board of Revenue, Sindh, and thus misappropriated huge amount of the Society.

4. The allegations against Muhammad Arif Baluch, Syed Jawed Ali and Farman Ali Kalhoro Abbasi, petitioners, as set-out in the reference are that they in their capacity as Sub-inspector Cooperatives, Government of Sindh/ Election Officer of P.N. {CNGE} Cooperative Housing Society, Assistant Registrar, Cooperative Audit {East} Cooperative Societies, Sindh and Sub-Registrar-II, Gulshan Town, Board of Revenue, Sindh, misused their authority, conducted fake election of Managing Committee of the Society, issued a fake audit report for the period from 01.07.2013 to 30.06.2015 and illegally registered sub-leases of 47 residential plots, and thus aided and abated co-accused to usurp land of the Society.

5. It is jointly contended on behalf of the petitioners that they have been falsely implicated in this reference with malafide intention and ulterior motives; that the respondent {NAB} has failed to establish charges of corruption and corrupt practices against petitioner Abdul Salam Mandhro and others in Reference No.21 of 2015 with regard to the affairs of M/s Kokan Muslim Cooperative Housing Society Limited, which led to their acquittal by Accountability Court No.III, Karachi, vide judgment dated 14.07.2016 and that they have no nexus with the affairs of Pakistan Navy {Civilian Non-Gazetted Employees} Cooperative Housing Society, Karachi. It is next submitted that no iota of evidence relating to "mens rea" has been brought on record to connect the petitioners in the alleged offence of corruption and corrupt practices and misuse of authority, thus their involvement seems to be based on malafide assumptions, presumptions and hypothesis. It is also submitted that no incriminating evidence in the shape of documents has been collected against the petitioners to show their involvement in the commission of alleged offence. The learned counsels have pointed out that the reference has been filed on 22.10.2019 after the delay of more than 3½ years of complaint dated 02.12.2015, hence the same has lost its sanctity. Per learned counsel petitioners Abdul Rehman Mandhro and Muhammad Yaqoob Mandhro neither are named in the complaint nor members of the Managing Committee of the Society as such inclusion of their names in the reference is based on malafide

intention. Per learned counsel petitioner Syed Jawed Ali neither is Chairman nor Secretary of the Society, hence the allegation leveled against him with regard to sale of 80 plots through forged documents is not attracted, he has only conducted audit on the directions of his high-ups and nothing to do so with the alleged scam. It is jointly argued that the reference has already been submitted and the entire case of the NAB is based on material already procured, therefore, there is no likelihood of tampering with the evidence. Lastly submitted that the petitioners are entitled to the grant of post-arrest and pre-arrest bail on the grounds, *inter-alia*, that reference is unconstitutional, ultra vires the Ordinance, 1999, *void ab initio*, illegal and based on malafide intention. In addition, the learned counsel for petitioners Syed Jawed Ali, Abdul Rehman Mandhro and Muhammad Yaqoob Mandhro also seek bail on the ground of hardship as they are languishing in jail for a period of more than one year and four months without any progress in the trial and that too is not expected to conclude in near future as such their further incarceration would tantamount to punish them before their guilt is proved. Reliance has been placed on the cases of *Rana Muhammad Arshad v M. Rafiq* {2009 PLD SC 427}, *Zaigam Ashraf v The State* {2016 SCMR 18}, *M. Fakhar Kohkar Javed v N/AB* {2018 P.Cr.L.J. 477}, *Pervez Zaki v The State* {2017 P.Cr.L.J. 747}, *Anwar Saifullah Khan v The State* {2001 SCMR 1040}, *Maqbool Lashari v NAB* {2016 SCMR 154}, *The State v Hanif Hyder & others* {2016 SCMR 2031}, *Muneer Ahmed Sheikh v NAB* {2019 SCMR 1738}, *Nazir Ahmed Sheikh v NAB* {2020 SCMR 297} and *Ghulam Sarwar Sandhu v NAB* {2020 YLR 909}.

6. The learned Special Prosecutor NAB and Investigating Officer have controverted the above submissions and opposed the grant of relief{s} on the ground that the petitioners are involved in a heinous crime of corruption and corrupt practices and misuse of authority; they in connivance with each other have sold out the plots of genuine/original members of the Society to fake members /general public and caused a colossal loss of Rs.1,367,299,800/- approximately to the Society, its genuine /original members and general public, which constitutes an offence of corruption and corrupt practices as defined under Section 9{a} punishable under Section 10 of NAO, 1999; that sufficient documentary evidence has

been collected against the petitioners to connect them with the commission of offence; that 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; that the delay in trial is not singly attributed to the prosecution, but petitioners are also equally responsible for causing delay in the trial; that the allegation of corruption and corrupt practices are of heinous nature attracting prohibitory clause, hence the petitioners do not deserve for grant of post-arrest and pre-arrest bail and prayed for dismissal of their petitions.

7. Heard and record perused minutely.

8. What we understand from the record is that the Society was allotted 25-00 acres land in Sector 21-A, Scheme 33, Gulzar-e-Hijri, Karachi, and as per approved layout plan, there were 373 x residential plots, 55 x commercial plots, 6 x amenity plots including ST-3 {playfield}, measuring 368 feet x 383 feet and as on 30.06.2013, 365 x residential plots were allotted to 367 x genuine/ original members of the Society. Abdul Salam Mandhro, petitioner is alleged to be mastermind of the entire scam. He in connivance with co-accused nominated in the reference took over the Society and its record through fake and engineered election of Managing Committee held by petitioner Muhammad Arif Baluch, the then Election Officer of P.N. {CNGE}, on the orders of co-accused Muhammad Sadiq Rajar the then Registrar, Cooperative Societies, Government of Sindh, usurped an amenity plot {ST-3 playfield} through fake and forged documents, illegally carved out 80 x plots, 250 x plots of genuine/original members and 8 x un-allotted plots of the Society, sold out the same to fake members /general public and received illegal sale proceeds in cash either direct or indirect channels into his accounts and also purchased different properties in his name and in the names of his wife Mst. Qamar-un-Nisa, father Abdul Rehman Mandhro and Muhammad Yaqoob Mandhro {father-in-law} from the said illegal sale proceeds obtained by way of corruption and corrupt practices. He in connivance with other co-accused opened a bank account No.104-047001319-001 in the name of the Society in Telenor Microfinance Bank Limited through a fake and forged resolution of the Society and misappropriated an amount of

Rs.6,924,800/- received into his accounts maintained at Summit Bank Limited, Habib Bank Limited, Muslim Commercial Bank Limited and JS Bank Limited from the fake members of the Society towards costs of land and transfer fees. He also got registered subleases of 47 x plots illegally carved out from the said amenity plot through petitioner Farman Ali Abbasi, the then Sub-Registrar, Gulshan Town, and got obtained a fake and fraudulent audit report for the period from July, 2013 to June, 2015 from co-accused Syed Jawed Ali just to legitimize the illegal replacement of genuine/ original members of the Society with fake members, thereby caused a colossal loss of Rs.1,367,299,800/- approximately {at the market rate} and Rs.471,704,800/- {at FBR rate} to the Society, its genuine/ original members and general public.

9. Muhammad Arif Baluch, Petitioner is said to be Sub-inspector Cooperatives, Government of Sindh/ Election Officer of P.N. {CNGE} Cooperative Housing Society, Syed Jawed Ali, Petitioner is stated to be Assistant Registrar, Cooperative Audit {East} Cooperative Societies, Sindh and Farman Ali Kalhoro Abbasi, Petitioner is said to be Sub-Registrar-II, Gulshan Town, Board of Revenue, Sindh, misused their authority and extended undue benefit to other petitioners by electing a bogus Management Committee, issuing a fraudulent audit report for the period from 01.07.2013 to 30.06.2015 and registering sub-leases in respect of 47 residential plots illegally carved out from the aforesaid usurped amenity plot on the basis of forged layout plan of the Society. Worth to mention here that due to massive corruption and corrupt practices by means of embezzlement in Society's funds, the petitioner Abdul Salam Mandhro in connivance with co-accused in furtherance of common intention acted in such a manner which resulted huge loss of Society's funds. Such allegations are of heinous nature and falls within the meaning of corruption and corrupt practices and misuse of authority, which comes within the definition of white collar crime. The NAB has been able to collect documentary as well as oral evidence to support allegations, which prima facie connect the accused with the offence they are charged with and the Special Prosecutor and I.O. were able to point out such material available in the Investigation Report.

10. The cases of white collar crime are generally of an intricate and complex nature and the whole transaction and each component part

of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offence. However, notwithstanding this observation, it is settled law that in cases of bail, each of the accused needs in some way to be connected with the alleged offence and in the case of non bailable offences such as this one where reasonable grounds exist to believe that the petitioners in some way or the other are connected with the offence charged with, the question of grant of bail in such like cases does not arise because now-a-days financial corruption and commission of white collar crime in the housing societies is a big issue being faced by our country and is liable to be curbed with iron hands. Even otherwise, the apex Court in recent judgment imposed special duty upon the Courts to perform their duties actively, diligently to eliminate such kind of corruption and corrupt practices. It is high time that standards are set and system put in place to develop a culture of accountability at all level in order to cleanse over system and institutions from the evil of corruption, loot and plunder of national resources by a few irrespective of their status in the system.

11. Since the allegations are of ushering in an era of rampant infectious corruption whereby they mis-appropriated the funds and caused huge loss to the Society as well as rendered their help, knowingly and purposely, and facilitated co-accused in usurping the land of the Society and depriving hundreds of genuine /original members from their legally and lawfully allotted plots, which were fraudulently sold to the fake members /general public in billions of rupees causing a colossal loss to the Society, which cannot be taken lightly.

12. Admittedly, Abdul Salam Mandhro, Muhammad Arif Baluch, Danish, Qasim Ali Mandhro and Farman Ali Kalhoro Abbasi, petitioners are enjoying bail since the date of filing their respective petitions for grant of pre-arrest bail in terms of interim orders passed by this Court in their favour. At the stage of bail deeper appreciation is not permissible but as far as the evidence which is on the surface of record of this case shows that they are, *prima facie*, connected with the allegations leveled against them in the reference. The witnesses

too in their statements have implicated them with the commission of offence. No evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the NAB authorities to falsely implicate them; thus, they are, *prima facie*, involved and are well connected with the commission of offence. The concept of criminal misconduct which led to such kind of corruption has been defined in the case of *Abdul Sattar and another v. The State* {2016 P.Cr.LJ. 396} as follows:-

"High Court observed that 'corruption' in a civilized society is like a disease like cancer, which, if not detected in time, is surely to malign the polity of country leading to disastrous consequences---'Corruption' is now termed as 'Royal thievery, which affects not only an individual', but also the economy, and the same destroys cultural heritage---Crime of 'corruption' is to be considered as one of the serious problems and threats posed to stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and rule of law--- One must keep distinction between an act of receiving money as 'consideration' for doing an illegal or legal act and the act which falls within meaning of corruption qualifying the term 'misappropriation'."

13. For the foregoing reasons, we are of the considered view that Abdul Salam Mandhro, Muhammad Arif Baluch, Danish, Qasim Ali Mandhro and Farman Ali Kalhoro Abbasi, petitioners are not entitled to the relief(s) claimed in the petitions including grant of pre-arrest bail, therefore, the petitions being shorn of reasons are yielded in dismissal and the facility of interim pre-arrest bail granted to them is recalled.

14. Before touching the merits of the case, we are conscious of the fact that petitioners Muhammad Yaqoob Mandhro, Syed Javed Ali and Abdul Rehman Mandhro are in custody since 09.07.2019, 10.07.2019 and 10.07.2019 and despite elapse of more than one year and five months there is no progress in the trial. No doubt it is not attributable to prosecution, but given the pace with which the trial is proceeding, it would take the Court a long time to conclude the trial. Undisputedly, the inquiry started in the year 2016 and since then they are facing the rigorous of the same as well as of the trial. On our specific query at the time of arguments, the learned Special Prosecutor NAB admitted that charge was not framed till

27.08.2020. Though the 3rd proviso to Section 497 Cr.P.C. is not attracted in cases where accused is facing charges under NAO, 1999, but an unreasonable delay in conclusion of trial could be treated as a valid ground and cause of hardship for the purposes of granting bail. Moreover, while exercising powers under Article 199 of the Constitution in cases wherein bail has been sought in proceedings under the Ordinance of 1999, the broader principles of Section 497, Cr.P.C. can be pressed in hardship cases to provide relief to an accused who has been incarcerated for an unreasonable period due to delay in conclusion of trial. It is also not the scheme of law to keep an accused in jail for an indefinite period. Reference may well be made to an unreported judgment rendered by Hon'ble Supreme Court of Pakistan in C.P. No.476 of 2018 *{Tariq Mehmood v National Accountability Bureau through its Chairman, Islamabad and others}*, wherein it has been observed as under:-

"The fact that the petitioner has been in jail for almost two years yet conclusion of his trial in near future is not in sight would tip the scales of justice in favour of bail, rather than jail, it is, however, correct, as argued by the learned Special Prosecutor that the prosecution cannot be blamed for delay in trial but it is equally correct that the petitioner too cannot be blamed for it when it was on account of belated arrest of one of the co-accused".

15. After having an overview of the principles laid down hereinabove, we are mindful of the fact that it is an inalienable right of every accused to have expeditious and fair trial, which right is even guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. An accused person cannot be left at the mercy of the prosecution to rot in jail for an indefinite period. The object of trial is to make an accused to face the trial and not to punish an under trial prisoner. Accused is entitled to expeditious access to justice, which includes a right to fair and expeditious trial without any shocking, unreasonable and inordinate delay. Delay in prosecution of accused amounts to abuse of process of law and is a valid ground for bailing out an accused. In such an eventuality, we are of the view that the case of the petitioners is good for grant of post-arrest. The petitioners Muhammad Yaqoob Mandhro, Syed Javed Ali and Abdul Rehman Mandhro are, therefore, admitted to post-arrest bail subject to their furnishing solvent sureties in the sum of Rs.500,000/- {Rupees five hundred

thousand} each and P.R. Bonds in the like amount to the satisfaction of the Nazir of this Court. We would, however, direct that their names be placed on Exit Control List {ECL} till pendency of the reference against them and they shall also deposit their original passports, if issued. They are further directed to cooperate in the proceedings of trial and the trial Court, if finds any of them causing any delay in the trial or attempting to tamper with the prosecution evidence, shall be free to file a reference before this Court seeking recalling of the concession granted to them by means of this order.

16. Before parting with this order, it need not to state that the observations recorded herein above are of tentative assessment and meant for the purpose of the instant petitions, therefore, the trial Court shall not be influenced in any manner whatsoever while deciding the case(s) of the petitioners on merits.

17. The listed petitions seeking bail stand disposed of in the foregoing terms. Insofar as the other relief{s} sought by petitioners Abdul Salam Mandhro in C.P. No.D-8064 of 2017 and Farman Ali Kalhoro Abbasi are declined as having become infructuous because the reference has already been filed and pending adjudication before a Court of competent jurisdiction.

Summary:-

Petitions for pre-arrest bail dismissed:-

1. Const. Petition No.D- 5231 of 2016 Re: Abdul Salam Mandhro;
2. Const. Petition No.D- 6114 of 2016 Re: Muhammad Arif Baluch;
3. Const. Petition No.D- 5891 of 2017 Re: Danish;
4. Const. Petition No.D- 8064 of 2017 Re: Abdul Salam Mandhro {dismissed as infructuous}.
5. Const. Petition No.D- 4620 of 2019 Re: Qasim Ali Mandhro; and
6. Const. Petition No.D- 8014 of 2019 Re: Farman Ali Kalhoro Abbasi.

Petitions for post-arrest bail allowed:-

1. Const. Petition No.D- 4781 of 2019 Re: Syed Jawed Ali;
2. Const. Petition No.D- 5146 of 2019 Re: Abdul Rehman Mandhro;
3. Const. Petition No.D- 5147 of 2019 Re: Muhammad Yaqoob Mandhro.

JUDGE

JUDGE