

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD.**  
C.P.No.D-2074 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case

05.11.2019.

M/s Syed Mahmood Alam, Noor-ul-Haq Qureshi,  
Abdul Majeed Khoso, Jazib Aftab & Saad Salman,  
advocates for petitioners

Mr. Jangu Khan, Special Prosecutor NAB a/w IO  
Mir Osaf Ahmed

Mr. Zulfiqar Ali Rajput, Assistant Attorney General

Mr. Muhammad Ismail Bhutto, Additional A.G  
Sindh

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The facts in brief necessary for disposal of instant petition are that the petitioners together with rest of culprits being officers of Hyderabad Development Authority were found to have allotted /leased out 51 plots in Hyderabad Railway Employees Cooperative Housing Society, illegally, thereby caused loss to the public exchequer to tune of Rs.1.48 billion for such act they after due inquiry were booked by NAB authorities by way of filing reference against them before NAB Court at Hyderabad.

2. On being involved in above said reference, the petitioners sought for pre-arrest bail, which was declined by this Court on 10.04.2019. They then approached Hon'ble Supreme

Court of Pakistan for grant of pre-arrest bail by filing Civil Petition No.2152/2019 but withdrawn the same, which was disposed of accordingly by Hon'ble Supreme Court of Pakistan on 10.07.2019.

3. Subsequently, the petitioners were apprehended by NAB authorities and after transitory remand, they were produced at NAB Court Hyderabad, which authorized their detention by order dated 13.07.2019. It was in these circumstances the petitioners by way of instant petition have sought for their release.

4. It is contended by learned counsel for the petitioners that no warrant for arrest, (which is to be issued by Chairman NAB) of the petitioners was operating against the petitioners, therefore, their arrest and custody is illegal. By contending so, they sought for release of petitioners. In support of their contention they relied upon order (of this Court) dated 02.04.2019 passed in C.P No.D-7235 of 2018 regarding ***"Syed Fida Hussain Shah versus Superintendent Central Prison Karachi"***.

5. It is contended by learned Special Prosecutor NAB that warrant for arrest of the petitioners duly issued by Director General NAB Karachi under delegation was operating against the petitioners, the operation whereof was suspended when the petitioners were admitted to interim pre-arrest bail by this Court and subsequently by Hon'ble Supreme Court of Pakistan and after

dismissal /disposal of their petition before this Court and Hon'ble Supreme Court of Pakistan, they have been taken into custody lawfully which is authorized by NAB Court, having jurisdiction, such order is not challenged as such, the custody of the petitioners could not said to be illegal one to be interfered by this Court in shape of release of the petitioners in pending reference. By contending so, he sought for dismissal of the instant petition.

6. We have considered the above arguments and perused the record.

7. Admittedly a reference has been filed against the petitioners to face trial for the above said offence and charge against them has also framed by learned NAB Court Hyderabad. On filing of such reference, the petitioners apprehending their arrest by NAB authorities, sought for their admission to pre-arrest bail by way of filing petition before this Court. They were granted interim relief. Subsequently, their such petition was dismissed by this Court and then petitioners approached Hon'ble Supreme Court of Pakistan by filing Civil Petition No.2152 of 2019, obviously for grant of pre-arrest bail. It was withdrawn by them. On withdrawal of such petition, the petitioners were arrested by NAB authorities and they now are in custody under lawful authorization of NAB Court at Hyderabad through an order dated 13.07.2019. Such order

obviously has not been challenged by the petitioners to be declared illegal or unlawful. In that situation, the custody of the petitioners could not be said to be illegal or unlawful to be interfered with by this Court by ordering release of the petitioners in pending reference, in exercise of its constitutional jurisdiction, particularly when the petitioners have not been able to obtain pre-arrest bail.

8. The case law which is relied upon by learned counsel for the petitioners is on distinguishable facts and circumstances. In that case, the production order was issued by the Court, for the accused when he was found to be in custody in some other case. No warrant for arrest of the accused was issued by NAB authority/Court. In that context that accused was ordered to be released. In the instant matter the warrant for arrest of the petitioners was issued. It is why the petitioners apprehending their arrest, sought for interim pre-arrest bail and they now are in custody under lawful order of learned NAB Court.

9. Based upon above discussion, the instant petition fails and it is dismissed accordingly.

JUDGE

JUDGE