

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-5858 of 2016

Date	Order with signature of Judge
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Present-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Muhammad Karim Khan Agha.

PRIORITY

1. **For HG. OF cma No.16371/2017(Contempt)**
2. **For Hg. of CMA No.16391/2017(passport)**
3. **For hearing of main case**

Petitioner : **Ali Asghar Banbhan**
through M/s. Mansoor-ul-Haq Ansari
and Mukesh Kumar Khatri, Advocate

Respondents : **National Accountability NAB &**
others Through Mr. Yasir Siddique,
Special Prosecutor NAB

Date of hearing : **27.04.2018, 04.05.2018 and**
11.05.2018

Date of Judgment : **22.05.2018**

ORDER

MUHAMMAD IQBAL KALHORO J:- By this order the captioned petition filed by the petitioner namely Ali Asghar Banbhan seeking pre-arrest bail is disposed of.

2. As per record a complaint was made to the NAB against the petitioner for accumulating assets beyond his known source of income. Accordingly an inquiry which later on was converted into investigation was authorized during which it was found that the petitioner was appointed as Sub-Engineer (BPS-11) in Sindh Industrial Trading Estate (SITE) in the year 1999. At the time of investigation he was posted at SITE Nooriabad as Assistant Engineer (BPS-17). The total salary that the petitioner received during entire tenure of his service was calculated to be Rs.5,564,531/-. However, in his name a large number of chunks of agriculture land; commercial and residential plots in Mehrapur City which he had purchased either in his name or his family members were found. The worth of such properties was calculated to be Rs.38,277,000/-. Besides, the petitioner was found to be owner of one house 126 sq. yds. in Malir Cantt., Karachi; a plot 350 sq. yds. in Karachi Callachi Cooperative Society, Karachi; a plot 200 sq. yds. in Ahsenabad Scheme 33, KDA, Karachi; and a plot 250 sq. yds. in Bahria Town, Karachi. The NAB also found that petitioner was operating five Bank accounts in different Banks,

wherein he had deposited in all Rs.137, 428,235/- from 2004 to 2016. The petitioner was also found to be owner of a Petrol Pump namely Al-Mustafa Petroleum Service situated at National Highway Kotri Kabir Mehrapur in partnership with two others. The Petrol Pump was purchased for Rs.50 million and the accused being shareholder of 36.67% had paid Rs.18.3 million as his share. In the investigation, it was also found that petitioner had completed construction of a bungalow on his plot at Callachi Cooperative Society, Karachi, and the cost of such construction was estimated to be Rs.6,000,000/-. The investigation further revealed that the petitioner and his family was in use of three cars of different make and models. Total liability of the accused determined by NAB on the basis of cash flow chart was estimated to be Rs.251,825,004/-. On the basis of such discovery a reference bearing No.26/2017 has been filed against the petitioner.

3. Learned Counsel for the petitioner has argued that the petitioner is innocent and has been falsely implicated in this case; that the petitioner had inherited agriculture lands from his late father along with his other brothers and sisters and from the income of such property he had been purchasing the listed properties but only on installments; that NAB has exaggerated the market value of these properties, which were purchased by the petitioner a long time ago on cheaper rates. According to him, the petitioner has been implicated due to a family dispute with his brother namely Hussain Bux Wagan, who had lodged a false complaint against him with NAB; that his said brother before complaining to NAB had filed a complaint against the petitioner with Anti-Corruption Establishment, who conducted inquiry against the petitioner but nothing incriminating was found against him and he was honorably exonerated; that I.O. of this reference has not conducted investigation properly and he in league with his said brother has filed reference against the petitioner. Learned defence counsel further argued that with mutual consent his brother Haji Muhammad, who is looking after the lands of entire family used to purchase the lands, plots etc. from the income of the family property in the name of petitioner and his children, as such they are simply benamidar and these properties actually belong to the whole family. He has relied upon the case laws reported in *PLD 2005 SC 63*, *2016 P. C.L.J. 1498*, *2012 XLR 2809*, *2017 P. Cr. LJ 631*, *2016 P. Cr. J 1331*, *PLD 2017 Sindh 2243*, and *unreported judgment passed in C.P.No.D-2703/2016*.

4. On the other hand, learned Special Prosecutor, NAB opposed grant of bail to the petitioner on the ground that petitioner is a civil servant and has received an amount of Rs.5564,531/- towards his salary but has

accumulated different properties in his name and in his family members' name which are disproportionate to his said income. Regarding claim of the petitioner that he had inherited agriculture lands from his father, he submitted that at the time of death of his father, the petitioner inherited only 22 acres of the land but currently he is owner of more than 130 acres of the land besides many other properties, whereas his other brothers and sisters, who are not in government service have not made any noticeable increase in their properties. He further read out 161 Cr. P.C. statements of the witnesses recorded during the course of investigation and submitted that these witnesses have fully implicated the petitioner to have accumulated all the said properties illegally and unlawfully.

5. We have considered submissions of the parties and perused the material available on record including the case laws cited at bar. This petition has been filed mainly for the purpose of seeking pre-arrest bail, which is an extraordinary relief and is granted on the grounds *inter alia* when there is malafide or ulterior motives on the part of prosecution to falsely implicate the accused. Here in this case, although the petitioner has alleged malafide against the NAB but has not been able to show any material remotely suggesting the same and which influenced the NAB to act against him. Admittedly the petitioner is a civil servant in the government service and was appointed in the year 1990 as a Sub-Engineer (BPS-11) in SITE, Karachi and only after a considerable time was promoted in grade BPS-17 as Assistant Engineer and has received an amount of Rs.5,564,531/- as his salary. The properties enumerated in the reference are obviously disproportionate to such amount which he has received during his entire service. *Prima facie* he has failed to account for such properties and apparently there is no justification for him to accumulate such huge assets. As to his contention, that he purchased these properties from the income of the agriculture land which he had inherited, it may be stated that no such material is available on record to substantiate the same. No document either to show how much amount the petitioner earned from his agriculture lands has been placed on record. He does not dispute his ownership of all these properties and in these circumstances was required to show how he was able to acquire these properties plus a petrol pump in partnership. More so, during investigation it was found that only the petitioner from amongst other legal heirs who like him inherited the agriculture land from their father has accumulated such huge assets. The other siblings, who at the time of death of their father were at par with the petitioner in terms of inherited wealth have not made a noticeable increase in their properties. We are not persuaded by

the contention of the petitioner that his elder brother namely Haji Muhammad, who is agriculturist and allegedly was looking after the family lands had purchased the properties in the name of the petitioner and his son Fahad, for a simple reason that the petitioner is a civil servant and therefore purchasing a property by his agriculturist brother in his name or in his son's name would look strange because such unaccounted properties can put a civil servant in trouble. We are of the view that in our society the case is other way around, the civil servants in order to hide their ill-gotten wealth purchase the properties in the name of their near relatives. The petitioner does not deny either operating five bank accounts in which he has deposited an amount of Rs.137,428,235/- from 2014 to 2016 but has not been able to account for such a huge cash flow in his said accounts. The case laws relied by the defence counsel are distinguishable to the facts and circumstances of the case in hand and are therefore not applicable. The petitioner has not able to make out a case for grant of extra-ordinary relief of pre-arrest bail. Consequently, this petition being meritless is dismissed accordingly along with listed applications.

6. The petition is disposed of in the above terms; the findings made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE

Rafiq/P.A.