

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.750/2020.

Aftab Ahmad Memon

Versus

Chairman, NAB, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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20.04.2020

Mr. Ali Nawaz Kharal, Advocate for the petitioner.
Barrister Rizwan Ahmed, Special Prosecutor NAB.
M. Gul Afridi, Deputy Director/case officer, NAB.

MOHSIN AKHTAR KAYANI, J. Through

this writ petition, the petitioner has prayed for post-arrest bail in Reference No.04/2019, pending with the Accountability Court No.II, Islamabad.

2. Brief facts referred in the instant writ petition are that the petitioner being Secretary Land Utilization Department, Board of Revenue, Sindh, Karachi misused his authority by illegally and fraudulently issuing offer letter dated 05.09.2014 with challan for payment of differential amount/malkano in respect of 07 Acre out of 30-31 Acre land. He being the member of Sindh Government Lands Committee issued fraudulent working paper and managed the regularization of land in the Committee meeting held on 11.09.2014. In addition to above, he also illegally, fraudulently and without authority issued offer letter dated

21.05.2018 and challan for regularization of land in favour of accused Muhammad Asalm Qureshi in respect of 23-31 Acre out of 30-31 Acre land in Scheme 33, District Malir, Karachi despite the fact that Sindh Government Land Committee had already been dissolved by the Government of Sindh.

3. Learned counsel for the petitioner contends that petitioner was arrested on 07.03.2019 and he was sent to judicial lock-up on 28.03.2019; that reference No.04/2019 being interim reference has been filed against 18 accused persons out of which four accused persons including petitioner were arrested and one accused Younas Kudwai is proclaimed offender, whereas rest of 13 accused have not been arrested in the reference; that trial has not yet been commenced and petitioner has been involved in this case on the charges of regularization of land on two different occasions, whereas matter in issue has been considered by the Sindh Government Land Committee comprising of four members headed by the then retired judge of Sindh High Court alongwith Secretary Finance and Secretary Law as such this is not a unilateral act of the petitioner, even no loss has been calculated by any of the competent authority, even the status of land is same as of today.

4. Learned counsel for the petitioner further contends that land in question was originally

allotted in the year 1994 to one Muhammad Hassan on his application dated 15.06.1993 submitted to the Chief Minister Sindh through his general attorney Nasir Sohail for exchange of 30-31 government land from the adjoining scheme 33, District East, Karachi in lieu of 30-31 Acre of Kabuli land situated in Deh Karamatiani, Gadap, Karachi, however, all the allotted land was canceled due to the promulgation of the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000; that due to promulgation of said law the land measuring 30-31 Acre cancelled and included in the list of properties exchanged in violation of law, rules or policy at lower market rate at the time of exchange, a committee was constituted to inquire into allotment of each land and determine the loss caused to Government and call upon the person concerned to pay such amount within specified time, where-after, the allotments, conversions or exchanges made at market value or in respect of which the amount determined had been paid were regularized; that in order to determine the loss, the above mentioned committee prepared a Deh wise rate list in respect of all cases affected under the ordinance No.III of 2000 and as per the said rate list, only the land measuring 11-20 Acres from Sector 31, Deh Dozan, Scheme 33, Karachi, is shown in favour of allottee

Nasir Sohail (attorney of Muhammad Hassan & others) with the recommended rate of Rs.10,64,800/- per acre as valuation table rates (differential amount); that as per record, on 14.12.2002 and 30.07.2007, Nasir Sohail submitted applications in the Land Utilization Department requesting the issuance of differential challan in respect of land measuring 30-31 acres, however, the said applications were not entertained; that on 06.04.2012, Muhammad Hassan and others revoked their General Power of Attorney in favour of Nasir Sohail vide Deed of Revocation No.947 dated 06.04.2012 and executed General Power of Attorney No.948 and 949 both dated 06.04.2012 in favour of Muhammd Qasim and Rehmat Elahi in respect of 30-31 acres and 37-32 acres land respectively; that on 13.06.2012, Muhammad Qasim and Rehmat Elahi executed sub-power of attorney No.1592 and 1593 dated 13.06.2012, in favour of Muhammad Aslam Qureshi in respect of 30-31 acres land from Sector 31 and 47, Scheme-3, Karachi and 07-01 acres land from Sector 24-A, 25-B or any other available corridor of Scheme-33, Karachi respectively; that on 28.08.2014, an application was received in the Land Utilization Department, shown to have been submitted by Muhammad Aslam Qureshi for regularization of 07-00 acres out of 30-31 acres of land situated in sector 40, Scheme 33, Karachi and

the same was later on unanimously approved by all four members of the Government of Sindh Land Committee in its meeting held on 11.09.2014 through agenda item No.28; that the allegation regarding issuing an offer letter dated 05.09.2014 and issuance of challan in respect of the same is concerned, the same amounts to a procedural irregularity for which an approval of the Land Regularization Committee is available on record dated 11.09.2014 in its meeting through agenda No.28; that the allegation regarding issuance of working paper dated 28.08.2014 fraudulently is completely absurd, incorrect and against the referred record of the instant reference and NAB has also relied upon the same; that the alleged referred working paper is an unsigned document without any mention of designation even, attributing the same to the petitioner is completely unfair, untrue and fixing the responsibility of the same against the petitioner to any stretch of imagination is speaking itself as to the defective investigation conducted by the investigation officer; that after the amendment in Section 9 of NAO, 1999 by way of explanation, an act done in good faith and in discharge of duties and performance of official functions shall not unless there is corroborative evidence of accumulation of any monetary benefit or disproportion of his known source of income has

not been highlighted in this case against the petitioner, therefore, petitioner is entitled for concession of pos-arrest bail; that trial has not yet been commenced and 34 PWs have to be recorded against 18 different accused persons and it is not possible to conclude the trial in near future, therefore, incarceration of petitioner would not serve the ends of justice rather it would amount to punish him before trial; that other similar cases argued before Sindh High Court in C.P No.D-5143/2015 were allowed by the Sindh High Court vide order dated 01.06.2018 and as such case of petitioner falls within the concept of hardships.

5. Conversely, learned Special Prosecutor NAB contends that the entire inquiry and probe has been initiated on the orders of Apex Court vide order dated 07.01.2019 in *Suo Moto* Case HRC No.39216-G of 2018, whereby JIT has submitted final (synthesis) report before the Apex Court and in pursuance of direction of Apex Court the competent authority authorized the investigation on 30.01.2019, whereby instant case pertains to illegal allotment/regularization of Government Land of 07 acres situated in Deh Safooran, Sector 40, Scheme-33, Airport Sub-Division, District Malir, Karachi and illegal regularization of additional 23-31 Acres land situated in Scheme-33, District Malir, Karachi in violation of the Colonization of Government Lands

Act, 1912 and the Sindh Land Revenue Act, 1967; that petitioner being Secretary Land Utilization Department has illegally approved the regularization in access/misuse of his powers and Reference No.04/2019 (The State Vs. Abdul Ghani Majid and others) has been filed on 05.04.2019 before the Accountability Court No.II, Islamabad; that two co-accused namely Abdul Jabbar and Muhammad Shabbir have also filed their post-arrest bail applications which were dismissed by this Court vide order dated 29.07.2019, passed in W.P No.1458/2019 & W.P No.2029/2019 and as such petitioner is not entitled for concession of post-arrest bail.

6. Arguments heard, record perused.

7. Perusal of record reveals that petitioner was arrested in reference No.04/2019 on the charges of misuse of his authority being Secretary Land Utilization Department, Board of Revenue Sindh, Karachi on 07.03.2019, whereby he has illegally and fraudulently issued offer letter and challan without seeking approval from the Sindh Government Lands Committee under the law. The role ascribed to the petitioner in the instant reference is as under:-

He misused his authority by illegally and fraudulently issuing offer letter No.03-01-02/SO-I/465/14 dated 05-09-2014 and Challan No.465 dated 05-09-2014 for payment of differential Malkano in respect of 07-00 acres land out of the 30-31 acres land in question,

without seeking approval from the Sindh Government Lands Committee, without calling report from concerned revenue authorities to verify the authenticity of the claim made by the claimant or considering the rate list for the fixation of price as loss caused to the Government issued by the said Committee. Being one of the members and the Secretary of the said Committee, he issued fraudulent working paper and instead of pointing out the fact that applicant was allotted land from Sector 31 & 47 of Scheme-33, District East, Karachi and that he had applied for land situated in Sector 40, Scheme-33, District Malir, Karachi, malafidely misrepresented the matter before the said Committee; and fraudulently got approval of regularization of the land in question from the said Committee in its meeting held on 11-09-2014. Furthermore, he knowingly and with ulterior motives issued regularization order No.03-01-02/SO-I/238/16 dated 31-05-2016 in sheer disregard of ban imposed by the Honorable Supreme Court of Pakistan. Further, while replying to the clarification sought by the Mukhtiarkar, Airport Sub-Division, Karachi regarding the purpose of the land in question and the prohibition orders of the Honorable Supreme Court of Pakistan, he malafidely issued directions vide letter dated 07-10-2016 stating that the land in question "may be treated as residential/commercial/industrial purposes & orders of Apex Court are not applicable for private land". In addition to the above, while in league with the other accused persons, he illegally and fraudulently issued offer letter No.03-01-02/SO-I298/18 dated 21-05-2018, Challan No.298 dated 21-05-2018 and regularization Order No.03-01-02/SO-I/333/18 dated 04-06-2018 in favour of Accused

Muhammad Aslam Qureshi in respect of 23-31 acres out of the 30-31 acres land in question, although the Sindh Government Lands Committee had already been dissolved by the Government of Sindh on 3rd October, 2017. Hence he has committed the offence under Section 9(a)(vi) of NAO, 1999.

8. The tentative assessment of record reflects that petitioner being Secretary Land Utilization Department/Board of Revenue Sindh Karachi was part of committee known as Government of Sindh Lands Committee constituted under the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000. It is the role of committee which has to decide the fate of all those lands, which were earlier allotted to different individuals for the purpose of residential, commercial, industrial concerned at the rates lower than market in violation of law or ban from 1st January, 1985, the committee so constituted under the said law was headed by the then retired Justice of Sindh High Court Mr. Justice (R) Zahid Kurban Alavi alongwith Secretary Land Utilization Department i.e. present petitioner, Secretary Finance and Secretary Law of Government of Sindh who have to assess the loss caused to the Government exchequer in terms of Section 4(1) of the Ordinance, 2000. The mandate of the committee has been defined in Section 4(2) of the said ordinance, which is as under:-

4(2). Where the committee, after making such enquiry as deemed fit is satisfied that the allotments, conversions or exchanges of urban state land are obtained or granted for residential, commercial or industrial purpose at the rates lower than the market value in violation of law or ban, it shall determine the amount of loss caused to Government and call upon the person concerned to pay such amount within the specified time.

5. The allotments, conversions or exchanges made at the market value or in respect of which the amount determined under sub-section (2) of section 4 has been paid shall be regularised.

9. While considering the above provisions of the ordinance, it has been observed from the record that the petitioner being Secretary Land Utilization Department has a direct nexus regarding the status, eligibility and entitlement of a person, who has sought regularization of his land and even a report has been generated through his office. The tentative assessment of record reflects the following illegalities:-

- (a) 07 Acres of land out of 30-21 Acres of land in question was given regularization by way of illegal order dated 05.09.2014 and challan No.465 dated 05.09.2014 for payment of differential Malkano without seeking approval from the ~~Singh~~¹ Government Lands Committee, even no report has been called from the revenue authorities concerned to verify the authenticity of the claim made by claimant.

- (b) Rate list of fixation of price for the purpose of calculation of loss to the Government has also not been presented or issued to the said committee to be considered for the purpose of regularization.
- (c) Working paper prepared by the petitioner being Secretary Land Utilization Department discloses certain facts which are contrary to record.
- (d) The applicant was allotted land from Sector 31 & 47 of Scheme 33, District East, Karachi and he had applied for the land situated in Sector 40, District Malir, Karachi and got approval for regularization of the land in meeting dated 11.09.2014.

10. The status-quo order was passed by the Sindh High Court as well as Apex Court and land in question could not be regularized or allotted but the petitioner issued a direction vide his letter dated 07.10.2016 stating that land in question *"may be treated as residential/commercial/industrial purposes & orders of Apex Court are not applicable for private land"*, hence, violated the Court's orders.

11. The petitioner has also issued offer letter dated 21.05.2018 and challan No.298, dated 21.05.2018 for regularization of land in favour of accused Muhammad Aslam Qureshi in respect of 23-31 Acres out of 30-31 Acres despite having knowledge that the land committee had already been dissolved by the Government of Sindh on

03.10.2017. The loss calculated by the NAB authorities for illegal and fraudulent act of the petitioner has caused loss to the national exchequer worth Rs.3 billion in terms of market value of the Government Land illegally regularized by the petitioner. One of the co-accused Zain Malik has applied his case for plea bargain on behalf of Pink Residency of Bahria Town to the extent of 07 Acres of land whereas 23 Acres of land is still not settled which was regularized by the petitioner.

12. While considering the entire case in *juxtaposition* with the law there is no denial to the proposition that the petitioner has issued the regularization order of land by exercise of illegal authority in violation of law, even not through proper manner as he has not observed the minimum standard of caution and procedural requirements through which the rates could have been calculated and the loss to the Government of Sindh could be reduced. However, at this stage two of the members of the said lands committee are no more alive including the Chairman and Secretary Finance. There is no denial to the proposition that regularization issued by Land Utilization Department by the petitioner is provisional but as of today such regularization has not been withdrawn by the Government of Sindh or Land Utilization Department for the reasons best known to them.

However, the ground argued by the petitioner to shift the liability upon other members of the committee is not justified from his own misconduct. He has exercised his authority knowing well that the committee has been dissolved by the Government of Sindh, he has issued order on 21.05.2018 in favour of Muhammad Aslam Qureshi co-accused.

13. The record *prima-facie* reflects that the petitioner has misused his authority in terms of Section 9(a)(vi) of NAO, 1999 and even he willfully failed to exercise his authority to prevent the loss caused to the Government, although NAB authorities have conceded before this Court that no corresponding benefit or accumulation of wealth has been surfaced till date but this does not extend any benefit to the petitioner who was under lawful obligation to demonstrate that he performed his duties honestly, diligently, in a careful manner but we have seen him being instrumental to cause loss to the national exchequer. No *malafide* or ill will against the petitioner on the part of NAB is apparent nor petitioner has demonstrated through any material that he is not connected with the offence of corruption and corrupt practices which is the key factor highlighted in case reported as 2017 P.Cr.L.J 340 (Kamran Saeed Vs. Chairman NAB).

14. We have also considered the concept of

misuse of authority on the reported judgment of Apex Court 2019 SCMR 372 (Malik Din Vs. Chairman NAB), wherein it was held that:-

As far as the last contention that the 'petitioner had not drawn any personal gain or caused any financial loss to the Society is concerned, suffice it to state that the offence of corruption or corrupt practices as provided in clause (vi) of subsection (a) of section 9 of the Ordinance includes even an attempt to misuse authority so as to gain any benefit to any other person and it need not necessarily result in any personal gain to the accused. The said provision reads:

**"9. Corruption and Corrupt Practices:---
"(a)(vi)**

[If he] misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt to render to do so, for willfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority]."

15. In view of above principles of the superior Courts there is no denial that the misuse of authority is apparent, the reference has already been filed and trial is insight, although acts done by the petitioner *prima-facie* highlighted his misuse of authority and illegalities committed by him in violation of the Sindh Land Revenue Act, 1967, the Colonization of Government Lands Act, 1912 as well as the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000, even the orders of Apex Court and Sindh High Court have been violated to extend

benefit to individuals. Two of the co-accused of petitioner namely Abdul Jabbar and Muhammad Shabbir have already been denied post-arrest bail by this Court vide order dated 29.07.2019, passed in W.P No.1548/2019 & W.P No.2029/2019.

16. We have also gone through the case reported as PLD 2019 SC 112 (Talat Ishaq Vs. NAB) whereby the relevant consideration for the purposes of instant petition, are provided in sub-paras (d), (f) & (g), which are as follows:-

(d) In an appropriate case through exercise of its jurisdiction under Article 199 of the Constitution a High Court may grant bail to an accused person arrested in connection with an offence under the National Accountability Ordinance, 1999 and section 9(b) of the said Ordinance does not affect the jurisdiction of a High Court conferred upon it by the Constitution. The constitutional jurisdiction of a High Court is, however, an extraordinary jurisdiction meant to be exercised in extraordinary circumstances and not in run of the mill cases or as a matter of course.

(f) Ordinarily bail is allowed to an accused person on the ground of delay only where the delay in the trial or the period of custody of the accused person is shocking, unconscionable or inordinate and not otherwise. The primary consideration for grant of bail on the ground of such delay is undue hardship and more often than not prima facie merits of the case against the accused person are also looked into before admitting him to bail on the ground of delay.

(g) Before admitting an accused person to bail on the ground of hardship caused by a shocking,

unconscionable or inordinate delay a High Court or this Court also looks for the reasons for the delay and if some significant or noticeable part of the delay is found to be attributable to the accused person then the relief of bail is withheld from him.

17. The petitioner has failed to make out his case of extreme hardships or exceptional circumstances at the touch stone of Talat Ishaq case supra, therefore, instant petition is misconceived the same is hereby **dismissed** with direction to the learned trial Court seized with the matter to conclude the trial within period of next 08 months under intimation to this Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 23 April 2020.

JUDGE

JUDGE