

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

W.P No.4332-P/2016 & W.P No.433-P/2017

Date of hearing.....15.03.2017

Syed Ijaz Hussain Shah

Vs

Chairman NAB & others.

&

Mian Muhammad Irfan & another

Vs

Chairman NAB & others

Petitioner(s) by M/S Barrister Aqeel Malik & Sardar Ali
Raza, Advocates

Respondent(s) by M/S. Umar Farooq Khan, ADPG & Zair
Nawaz, Special Prosecutor, NAB.

MUHAMMAD YOUNIS THAHEEM, J:- Through

this single judgment, we propose to decide instant
petition as well as **W.P No.433-P/2017** titled **Mian**

Muhammad Irfan & another Vs Chairman NAB

& others by invoking the Constitutional jurisdiction

of this Court under Article 199 of the Constitution

of Islamic Republic of Pakistan, seeking post

arrest bail in offence u/s 9 punishable u/s 10 of

NAO 2009 with further prayer for grant of any

other relief which this Court deems just and

proper.

2. Brief facts of the case are that Reference N.12 of 2016 has been filed against Malik Habib s/o Malik Abdul and 05 others for the offence of cheating to the public at large for fake transactions of property, issuing fake copies of Fard Jamabandi by showing particular land as ownership of co-accused and instead selling other land of less value not adjacent but distant to the main road by adopting such modes operadi as detailed in the reference and expropriated huge amount of money from the affectees. The accused Adil Shoukat has filed his WP No.1157-P/2016 for his post arrest bail which was dismissed alongwith W.P No.1081-P/2016, filed by co-accused Mehtab Ali Qureshi, W.P No.1106-P/2016 filed by co-accused Bostan Khan and W.P No.1616-P/2016 filed by co-accused Malik Habib. All above writ petitions were dismissed vide order of this Court dated 28.06.2016. Above said accused Mehtab Ali Qureshi, Bostan Khan and Malik Habib approached Hon'ble Supreme Court by filing their respective Civil Petitions No.2343, 2555 & 2994 of 2016 which after hearing were dismissed, however the Hon'ble Supreme Court directed the NAB

authorities to take action against other involved persons including Government Officials having role. The same para No.6 of the judgment of Hon'ble Supreme Court is reproduced:-,

6. The arguments that many others including officials of the Revenue Department having a serious role in the commission of the crime have not been touched altogether may necessitate the issuance of a direction to the NAB authorities to be even handed while investigating the case, but shall not furnish a justification for release of the petitioners on bail."

3. In the light of above observations made by the Hon'ble Supreme Court of Pakistan and in the light of claim of 14 others affectees, the matter was further investigated by the NAB authorities and 15 others accused including petitioners of W.P No.433-P/2017 were charged in the supplementary reference in reference No.12/2016.

4. The brief facts of the reference are that petitioner Syed Ijaz Hussain Shah alongwith other co-accused namely Malik Habib, Bostan Khan, Adil Shaukat, Chaudhry Masood and Mehtab Ali Qureshi are involved in the offence of cheating under garb of fake property transactions through

which accused persons persuaded different people to purchase the land not owned by the pretended owners which was, shown to the affectees and in this manner the accused persons obtained pecuniary benefits in the form of cash and properties by entering into agreement to sell the land with defective title. Similarly, the accused of the connected W.P No.433-P/2017 Mian Muhammad Irfan and Ghulam Murtaza being revenue officials had allegedly played a pivotal role in the scam, since they were primary source to ascertain the ownership and particulars of land in league with other co-accused generated and provided false information and fake record against the actual one, thus by misusing their authority facilitated and abetted the offence of cheating the public at large and committed offence of breach of trust, embezzled and misappropriated the amount of worth Rs.231,680,000/-, so committed offence u/s 9(a) punishable u/s 10 of NAO 1999 and scheduled there to.

5. The learned counsel for petitioners argued that petitioner namely Mian Muhammad Irfan was working as Patwari in the Revenue Department,

Haripur and it was included in his duties to incorporate the factum of inheritance, sale mutation etc for which under law Patwari is bound to enter the report of the same and provide the copies of Fard Jamabandi according to the law to the persons in need. He added that attestation of mutation is the duty of revenue officer. Similarly, the learned counsel submitted that the petitioner namely Sardar Ghulam Murtaza being revenue officer has acted according to law and whatever he attested the mutations, those were attested upon the already reported entry by the Patwari. The learned counsel further argued that both are revenue officials and have malafidely been roped in case. Similarly, learned counsel for accused Syed Ijaz Hussain Shah argued that petitioner is businessman engaged in real estate business at Islamabad, Taxila and Rawalpindi who has been falsely implicated in the alleged offence. Learned counsel added that the only role given to the petitioner is of "introducer" as wrongly stated by Mr. Muhammad Ijmal Khan (now deceased) who recorded his statement u/s 164 Cr.P.C during investigation before the Magistrate at Peshawar as

an approver, so is entitled for the concession of bail. Moreover the petitioner is only a witness to sale agreement dated 06.07.2013 between Mehtab Ali Qureshi co-accused and Umar Farooq a so-called affectee/applicant/complainant. Both the learned counsel for petitioners lastly argued that number of witnesses is 64 and up till now evidence has not been recorded of a single witness.

6. On the other hand learned ADPG Mr. Umer Farooq Khan, Advocate argued that petitioners are member of a criminal gang who persuaded the public at large for fake property transactions to purchase the land not owned by pretended owners, shown to affectees and obtained pecuniary benefits in the form of cash and properties by entering into agreement to sell for land with defective title. He further added that petitioners have committed the offence of corruption and corrupt practices by expropriating money from affectees. The petitioners Mian Muhammad Ifran being Patwari entered wrong repot in different mutations attested by other petitioner Sardar Gul Murtaza as revenue officer

on the verification of Bostan Khan, Adil Shaukat and thumb impressed by so called vendee Malik Habib. He further argued that bail petitions of co-accused Malik Habib, Bostan Khan, Adil Shaukat, Chaudhry Sasood, Mehtab Ali Qureshi have been turned down by this Court and maintained by Hon'ble Supreme Court of Pakistan.

7. Arguments heard and record perused.

8. From the perusal of record, material collected during investigation, it reveals that prima facie accused petitioners together with other above mentioned accused Malik Habib etc, sold land to different people by making wrong entries, attesting mutations, preparing fake revenue papers showing land adjacent to road but transferring land quite away from road, signing sale agreements as witnesses. Similarly, petitioner Mian Muhammad Irfan in the capacity of Patwari entered sale mutation No.10990 showing Malik Habib as owner, who thumb impressed the same while verified by Bostan Khan and Adil Shaukat co-accused and attested by Sardar Ghulam Murtaza. Similar is the position about sale mutations No.10996, 10997, 10998 & the sale

agreement dated 06.07.2013 between Mehtab Ali Qureshi and Umar Farooq applicant/affectee, witnessed by Syed Ijaz Hussain Shah. All the above acts of accused/petitioners and the others co-accused connect them with each other and with the commission of offence.

9. So after making tentative assessment of available record, the accused/petitioners are connected with the commission of offence which falls under the prohibitory clause of section 497 Cr.P.C, thus in view of above, we are not inclined to issue a writ for directing respondents to release accused/petitioners on bail, hence this petition alongwith connected writ petition being without substance are dismissed. However, respondents are directed to conclude the trial as early as possible within three (3) months, failing which the petitioners shall have the right to move petition for release on bail.

Announced.
15.03.2017.

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