

**2021 P Cr. L J 729**

**[Sindh]**

**Before Mohammed Karim Khan Agha and Zulfiqar Ali Sangi, JJ**

**SHAH REHMAN DOSTAY and others---Petitioners**

**Versus**

**NATIONAL ACCOUNTABILITY BUREAU (NAB) through Director General and others--Respondents**

Constitutional Petitions Nos. D-7714 of 2019, D-1666, D-1785, D-3594, D-2145, D-2146 and D-2189 of 2020, decided on 8th September, 2020.

**National Accountability Ordinance (XVIII of 1999)---**

---Ss. 9(a) & 9(b)---Constitution of Pakistan, Art. 199---Constitutional petition---Pre-arrest bail, grant of---Mala fide---Proof---Sub-Registrar, duty of---Dispute was with regard to registered sale deed of government land in the names of co-accused persons---Validity---"Pre-arrest bail" was extraordinary relief and was only available in cases where there was mala fide on the part of complainant or investigating agency---Accused persons failed to show mala fides on the part of National Accountability Bureau (NAB) rather the officials admitted that they had issued "No Objection Certificate" in favour of accused who was principal beneficiary from whom other accused persons purchased the land---Petitioner was Sub-Registrar and by virtue of his post he was duty bound to register every document produced before him and had no option to refuse registration---Duties of Sub-Registrar were mentioned in S. 52 of Registration Act, 1908---Verification of documents and their validity and genuineness was not duty of Sub-Registrar to check the same under R. 135 of Registration Rules, 1929---Case of petitioner was one of further inquiry---Pre-arrest bail was confirmed, in circumstances.

Ali Akber v. Director General, National Accountability Bureau 2017 YLR 1045; Fayyaz Ahmed v. The State and others 2014 SCMR 1628; Fazalur Rehman and another v. The State 1991 SCMR 1577; Abdul Baqi Mehar v. Inspector General of Registration and Commissioner and others 1989 SCMR 570; Sh. Ashfaq-ur-Rasool v. Capital Development Authority, through its Chairman, Islamabad and 2 others 2004 YLR 1143; Muhammad Hameed v. District Officer (Revenue) Lahore and another PLD 2007 Lah. 490; Province of Punjab through Collector, Faisalabad and 8 others v. Muhammad Yaqoob 1992 CLC 2065; Ghulam Yasin v. District Officer (R), Jhang and 2 others PLD 2007 Lah. 689; Ghulam Mustafa Abbasi v. The State through ACE and another 2011 MLD 421 and Rana Mohammed Arshad v. Muhammad Rafique PLD 2009 SC 427 ref.

Ch. Abdul Rasheed for Petitioner (in Constitutional Petitions Nos. D-7714 of 2019 and D-2189 of 2020).

Zahid Hussain Baladi, Special Prosecutor, NAB for NAB (in Constitutional Petitions Nos. D-7714 of 2019, D-1666, D-1785, D-3594, D-2145, D-2146 and D-2189 of 2020).

Raj Ali Wahid Kunwar for Petitioner (in Constitutional Petition No. D-1666 of 2020).

G.M. Bhutto for Petitioner (in Constitutional Petition No. D-1785 of 2020).

Khawaja Saiful Islam for Petitioners (in Constitutional Petitions Nos. D-3594, D-2145 and D-2146 of 2020).

Dates of hearing: 24th and 25th August, 2020.

## **ORDER**

**ZULFIQAR ALI SANGI, J---**Through C.Ps. Nos. D-7714 of 2019 and D-1666 of 2020, petitioners Shah Rehman Dostay and Muhammad Hussain seek post-arrest bail, while petitioners Jam Abdul Razzaq, Jamaluddin, Pervez Ahmed, Manzoor Ali and M. Liaquat Ali Khan in C.Ps. Nos. D-1785 of 2020, D-3594 of 2020, D-2145 of 2020, D-2146 of 2020, and D-2189 of 2020 seek pre-arrest bail in NAB Reference No.03 of 2020 in respect of acts of corruption under section 9 of the National Accountability Ordinance, 1999 (NAO) punishable under Section 10 of the Ordinance and Schedule thereto. Since all the petitions arise out of reference No: 03 of 2020, therefore, the same are being decided through this single order.

2. The facts relevant to these petitions are that on receipt of complaint against Officers/Officials of Revenue Department Deh Jam Chakro, Taluka Mangopir, District West Karachi on 18.10.2016 regarding the insertion of fake and fabricated pre-dated entry No.36 dated 20.10.1933 in VF-VII-B Deh Jam Chakro, Tapo Mangopir Taluka Karachi, District Karachi for 40 acres of Government Land in the name of Allah Dino S/o Gul Muhammad Bakra and further alleged that 16 acres land out of 40-00 acres were transferred in the name of Shah Rehman son of Dostay vide entry No.351 dated 12.08.1996 purporting the owner has gifted the land but the said gift deed has no existence. In this regard, an inquiry was initiated which was subsequently converted to investigation vide letter No. NABK20180219113934/1/IW-2/CO-C/ NAB(K)2019/155 dated 09.01.2019; that during the investigation it came to surface that the accused No.1, Shah Rehman is the fake owner of land measuring 16-00 acres entered at Entry No.351 dated 12.08.1996 of VF-VII-B Deh Jam Chakro Tapo Mangopir Taluka Karachi East; that investigation has revealed that the accused No.1 in connivance with the accused Nos.3, 4, and 5 managed insertion of Entry No.351 dated 12.08.1996 in his favor vide fake gift deed No.3944 dated 11.10.1991 page No.95 to 98 of volume No.3325 dated 24.10.1991; that investigation has found that the accused No.1 again in connivance with the accused Nos.3, 4 and 5 got N.O.C for sale vide book No.0680 page No.AB067925 dated 21.11.2017. Then he sold 4-00 acres of Government Land to accused No.7 Muhammad Suleman vide Register Deed No.RD/80/SRO/38 dated 11.04.2018 entered in VF-VII-B at entry No.58 dated 16.04.2008 and also sold 3-00 acres to accused No.8, Muhammad Liaquat Ali Khan and accused No.9, Ali ur Rehman vide Registered Deed No. RD/78/SRO/38 dated 11.04.2018 entered in VF-VII-B entry No.59 dated 16.04.2008; that the investigation has further disclosed that the accused No.2, Manzoor Ali Dars countersigned NOC for sale vide book No.0680 page No.AB067925 dated 21.11.2017 in connivance with accused Nos.3 and 4 without verifying the genuineness of entries. He extended undue and unjustified benefit to accused No.1 by issuing N.O.C for sale of Government Land and caused loss to Government Exchequer to the tune of Rs. 160 million; that investigation has found that the accused No.3 Pervaiz Ahmed Malik issued N.O.C for sale vide book No.0680 page No.AB067925 dated 12.11.2017 to accused No.1 in connivance with accused No.4 without

ascertaining the genuineness of entries and extended undue benefit to accused No.1 by issuing N.O.C for the sale of Government Land and caused loss to Government Exchequer to the tune of Rs. 160 million; that the investigation has further explained that the accused No.4 Jamal Din Mahar prepared N.O.C for sale vide book No.0680 page No.AB067925 dated 21.11.2017 without ascertaining the genuineness of relevant entry. He misused his authority and prepared N.O.C for the sale of Government Land and also extended undue benefit to the accused No.1 and caused loss to Government Exchequer; that the investigation has found that the accused No.5 Muhammad Hussain being the Tapedar, entered the entry No.351 dated 12.08.1996 in the VF-VII-B of Deh Jam Chakro, Tapo Mangopir Taluka Karachi West and also extended undue benefit to the accused No.1 and caused loss to National Exchequer; that the investigation has further narrated that the accused No.6/Abdul Razzaq Dahar being the Sub-Registrar, registered conveyance deed No.79 in favour of accused No.7 and conveyance deed No.80 in favour of accused No.8 and accused No.9 without verifying gift deed on basic of which entry No.351 dated 12.08.1996 was entered in the VF VII-B. The said gift deed has no existence at all; that the investigation has unearthed that the accused No.7/Muhammad Suleman illegally purchased 4-00 Acres of Government Land from accused No.1 in connivance with accused Nos. 2, 3, and 4, and he in connivance with accused No.6 registered the said land through conveyance deed No.80 dated 15.12.2017; that the investigation has further unearthed that the accused No.8/Muhammad Liaquat Ali Khan and accused No.9/Ali ur Rehman purchased 3-00 Acres (50% share each) Government Land out of 18 acres from accused No.1 through conveyance deed No.79 dated 15.12.2017; that in view of above, it has been established that all the accused in active connivance, collaboration and collusion with each other and by misusing their authority have caused loss to the National Exchequer to the tune of Rs.160 Million by arranging the fake entries of Government Land in favour of accused No.1. Thus, the accused persons have committed the offence of corruption and corrupt practice as defined under section 9(a) punishable under section 10 of the NAO, 1999, and Schedule thereto, hence this reference has been filed on 12.02.2020 nominating nine {09} accused persons including the present petitioners.

Turning firstly to the petitions for post-arrest bail.

3. Learned counsel for petitioner Shah Rehman contended that about 16 acres of land were gifted to him by one Allah Dino through a registered gift deed dated: 24-10-1991; that said Allah Dino was the owner of land which entry was kept in the record of rights in the year 1933; that investigation officer with mala fide intentions has not verified the said gift deed from the proper sub-registrar; that petitioner obtained the certificate from sub-registrar office about the genuineness of the gift deed (which he also placed on record); that petitioner being owner through gift deed had legally sold out the portion of land; that petitioner had committed no offence and had been behind the bars for nearly one year; Lastly he prayed for grant of bail.

4. Learned Special Prosecutor NAB contended that the petitioner in collusion with other accused persons managed a fake document (Form-VII) in respect of entry in the name of Allah Dino and then managed a fake gift deed in his favour; that there is no existence of Allah Dino nor any entry in the original record of rights but after he managed the forged documents he

was successful in keeping the entry in his favour and sold out the land; that petitioner is the main beneficiary of the scam and is not entitled to grant of bail.

5. Learned counsel for petitioner Muhammad Hussain contended that the entry No.351 dated 12.08.1996 in favour of Shah Rehman is a fake entry and was not signed by the petitioner; that the entry No.351 dated 12.08.1996 in favour of Mst. Saira Begum is correct and genuine and was signed by the petitioner; that petitioner requested the investigation officer for verification of signature available on fake entry but Investigation Officer did not verify the same; that the Prosecutor General, NAB also filed a statement concerning no objection for grant of bail to the petitioner.

6. Learned Special Prosecutor, NAB conceded that the signature available on fake entry was not sent for verification to the handwriting expert and confirmed that the Prosecutor General had also filed a statement for no objection on bail, therefore, he is not opposing the grant of bail to the extent of petitioner Muhammad Hussain.

7. We have carefully examined the Form-VII produced by the petitioner Shah Rehman which reflects that entry No.351 dated 12.08.1996 was made on the basis of gift deed No.3944 at Page Nos. 95 to 98 Volume No.3325 dated 24.10.1991. Whereas, the original entry Nos.350 and 351 dated 12.08.1996 shows that the land was transferred from the Government to Muhammad Maadod son of Muhammad Mehmood Ansari and Mst. Saira Begum wife of Nizamuddin Qureshi. We have also examined the gift deed produced by petitioner Shah Rehman which was allegedly registered on 24.10.1991 and its paragraph 3rd shows about entry No.36 dated 20.10.1993. Furthermore, the verification certificate produced by the petitioner shows that its registration No.3944 at Pages 25 to 29 Volume 7 of the book No. I Addl. dated 24.10.1991, conflicts with the entry made in Form-VII in favour of Shah Rehman which leads us to conclude that the fraud and forgery are made in the revenue record. It is also observed that petitioner Muhammad Hussain has given true facts of these entries but for reason best known to the NAB he was made accused instead of a witness. In these circumstances, the case of petitioner Shah Rehman is on different footings from Muhammad Hussain and there is strong evidence against the petitioner Shah Rehman which connects him with the offence and in our view, there is no evidence against Muhammad Hussain which connects him with the commission of the offence. Therefore, the petitioner Shah Rehman is not entitled to grant of bail which is hereby dismissed, whereas the case of petitioner Muhammad Hussain falls within the ambit of further inquiry, therefore, he has made out a case for post-arrest bail.

With regard to the petitioners seeking pre-arrest bail.

8. Learned counsel for petitioner Jam Abdul Razaq Dahar contended that the petitioner was Sub-Registrar and was duty-bound to register any document produced before him. He is not bound to check the document produced before him as to the genuineness or otherwise and his duty is only to identify that the person who produced the document for registration is the same. The learned counsel, in support of his submissions, has placed reliance on the cases of Ali Akber v. Director General, National Accountability Bureau (2017 YLR 1045), Fayyaz Ahmed v. The State and others (2014 SCMR 1628), unreported order dated 16.12.2016 passed in Criminal Bail Application No.1740 of 2016 by this Court, Fazalur Rehman, and another v. The

State (1991 SCMR 1577), Abdul Baqi Mehar v. Inspector General of Registration and Commissioner and others (1989 SCMR 570), Sh. Ashfaq-ur-Rasool v. Capital Development Authority, through its Chairman, Islamabad and 2 others (2004 YLR 1143), Muhammad Hameed v. District Officer (Revenue) Lahore and another (PLD 2007 Lahore 490), Province of Punjab through Collector, Faisalabad and 8 others v. Muhammad Yaqoob (1992 CLC 2065), unreported order dated 22.7.2010 passed in C.P. No.D-872 of 2010 by this Court, unreported judgment dated 23.04.2018 passed in Criminal Appeal No.102 of 2015 by this Court, unreported judgment dated 06.01.2020 passed in Criminal Appeal No.S-109 of 2019 by this Court, Ghulam Yasin v. District Officer (R), Jhang and 2 others (PLD 2007 Lahore 689) and Ghulam Mustafa Abbasi v. The State through ACE and another (2011 MLD 421).

9. Learned Special Prosecutor, NAB opposes the grant of bail to the Sub-Registrar on the ground that he was under a legal obligation to verify Form-VII and other documents produced before him as to whether the same are genuine or otherwise and further submits that the petitioner is not entitled to grant of bail.

10. Learned counsel for petitioner Jamal ud Din Mahar contended that the petitioner was supervising tapedar and on the basis of an entry in favour of Shah Rehman he prepared a no-objection certificate for sale for which he was duty-bound to prepare on the basis of those documents hence he is entitled to confirmation of his pre-arrest bail.

11. Learned Special Prosecutor NAB contended that there was no entry in the name of Shah Rehman and on the basis of a bogus document i-e Form VII petitioner prepared no objection certificate and failed to verify the original record which was available with him hence he committed the offence and is not entitled for confirmation of his pre-arrest bail.

12. Learned counsel for petitioner Pervaiz Ahmed Malik submits that the petitioner was Mukhtiarkar and under the law was empowered to issue a No Objection Certificate for sale and he signed the same on the basis of entry No.351 in favour of petitioner Shah Rehman and submits that he is not a beneficiary of the scam; therefore, he is entitled to confirmation of his pre-arrest bail.

13. Learned Special Prosecutor, NAB submits that No Objection Certificate was issued on the basis of fake entries, whereas the petitioner was duty-bound to verify from the record and if he had not issued and signed the certificate then the further transaction may not have occurred; that the petitioner himself admitted that he had issued No Objection Certificate for sale, therefore, he is not entitled for confirmation of his pre-arrest bail.

14. Learned counsel for the petitioner Manzoor Ali Dars contended that petitioner was posted as Assistant Commissioner and only countersigned the no-objection certificate prepared by Jamal Ud Din and signed by him so also Parvaiz Ahmed Malik the then Mukhtiarkar and they were the proper persons to verify the record of rights available with them; that the petitioner is not beneficiary of the scam hence he is entitled to confirmation of his pre-arrest bail.

15. Learned Special Prosecutor, NAB submits that No Objection Certificate was issued on the basis of fake entries, whereas the petitioner was duty-bound to verify from the record and if he had not countersigned the certificate then no further transaction may have occurred and

he admitted that he had countersigned the no objection Certificate for sale, therefore, he is not entitled to confirmation of his pre-arrest bail.

16. Learned counsel for the petitioners Muhammad Liaquat Ali Khan submitted that the petitioner is bona fide purchaser of the property; that he purchased the property from Shah Rehman who showed him the documents in his favour; that the officials of the revenue also issued a no-objection certificate in favour of Shah Rehman hence he had committed no any offence and is entitled for confirmation of his pre-arrest bail.

17. Learned Special Prosecutor, NAB contended that the petitioner is the beneficiary of the scam; that he purchased land from Shah Rehman who was not the owner of the property but on the basis of forged documents posed himself to be the owner of the land; that after the knowledge of the fraud committed by Shah Rehman he had not surrendered the property in favour of the Government, and hence he is not entitled for confirmation of his pre-arrest bail.

18. The above petitioners are seeking pre-arrest bail, therefore, before considering the cases of the petitioners for such a relief, we may observe that the conditions for grant of pre-arrest and post-arrest bail are quite different as set out in the case of Rana Mohammed Arshad v. Muhammad Rafique (PLD 2009 SC 427). It is settled by now that pre-arrest bail is extraordinary relief and is only available in cases where there has been mala fide on the part of the complainant or the investigating agency. In this case the petitioners have failed to show mala fides on the part of NAB rather the official petitioners have admitted that they issued a no-objection certificate in favour of petitioner Shah Rehman and Private petitioners have admitted that they have purchased the land from the petitioner Shah Rehman.

19. We have carefully examined the cases of each petitioner, the petitioners Muhammad Liaquat Ali Khan is the beneficiary and had admitted that he purchased the said land from Shah Rehman. Shah Rehman was not the original owner of the land and committed fraud and forgery in collusion with revenue officials and entry in favour of the Allah Dino is not in existence nor the said Allah Dino is on the surface.

20. As regards to the case of petitioners Jamal ud Din Mahar, Pervaiz Ahmed Malik, and Manzoor Ali Dars, all the three petitioners belong to revenue department being posted as Supervising Tapedar, Mukhtiarkar and Assistant Commissioner and signed the no-objection certificate in favour of Shah Rehman knowing that Shah Rehman was not a real owner of the land and managed the Form VII showing entry in his favour; further more they failed to verify the original entry in favour of others regarding another land which was available in their record and even the gift deed was not verified which otherwise was doubtful on the face of it.

21. The case of petitioner Jam Abdul Razaq Dahar is on different footings from the other petitioners. He was sub-registrar and by virtue of his post he was duty-bound to register every document produced before him and he had no option to refuse registration. The duties of sub-registrar are mentioned in section 52 of the Registration Act, which is reproduced as under:-

"52. Duties of registering officers when document presented:---(1) (a) The day hour and place, of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

- (b) a receipt for such document shall be given by the registering officer to the person presenting the same; and
  - (c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefore according to the order of its admission.
- (2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

22. The verification of the documents and their validity and their genuineness is also not the duty of the sub-registrar to check the same under rule 135 of the West Pakistan Registration Rules, 1929 which is reproduced as under:-

"135. Registering officers not concerned with validity of document.--- Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the following, e.g., that the executant was dealing with property not belonging to him, or that the instrument infringed the rights of third persons not parties to the transaction, or that the transaction was fraudulent or opposed to public policy. These and similar matters are for decision, if necessary, by competent Courts of law and registering officers, as such, have nothing to do with them. If the document is presented in a proper manner by a competent person at the proper office within the time allowed by law and if the registering officer is satisfied that the alleged executant is the person he represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects."

23. We find the case of petitioner Jam Abdul Razaq Dahar is one of further inquiry as has been discussed above therefore the petitioner Jam Abdul Razaq Dahar has made out his case for confirmation of his pre-arrest bail which is confirmed on the same terms and conditions.

24. In view of the above, (a) we dismiss the petition for post-arrest bail of the petitioner Shah Rehman and allow the petition for post-arrest bail of petitioner Muhammad Hussain and grant him bail subject to furnishing his solvent surety in the sum of Rs: 1000000/= (Ten Lacs) and PR bond in the like amount to the satisfaction of Nazir of this court. (b) As regards the petitions for pre-arrest bail of the petitioners namely Jamal ud Din Mahar, Pervaiz Ahmed Malik, Manzoor Ali Dars and Muhammad Liaquat Ali Khan all such petitions are dismissed, and interim pre-arrest bail granted to them earlier is recalled with immediate effect. (c) The petition for pre-arrest bail filed by the petitioner Jam Abdul Razaq Dahar (Sub-registrar) is allowed, the interim pre-arrest bail granted to him is hereby confirm on the same terms and conditions.

25. The observations made hereinabove are tentative in nature and shall not prejudice the right of either party at trial.

26. The above petitions are disposed of in the above terms.  
MH/S-111/Sindh Order accordingly.

