

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

MUHAMMAD IBRAHIM---Petitioner

Versus

FEDERATION OF PAKISTAN through DG NAB, Sindh---Respondent

Civil Petition No. 4599 of 2017, decided on 20th January, 2022.

(Against the judgment dated 23.11.2017 of the High Court of Sindh, Karachi passed in Constitution Petition No.D-881 of 2017)

(a) Criminal Procedure Code (V of 1898)---

---S. 498---National Accountability Ordinance (XVIII of 1999), S. 9(a)---Constitution of Pakistan, Art. 185(3)---Ad-interim pre-arrest bail, confirmation of---Housing Society---Fraudulent transfer of plots of original allottees to fake persons and illegal sale of plots to builders---Record revealed that the accused was neither an original member of the Housing Society nor a subsequent fake member of the Society as no plot was transferred by the Society to him---Accused had no active role to play in the Managing Committee of the Society---Name of the accused appeared as a nominee of a co-accused, who was the actual transferee of the plots from the Society, and the accused held 25 plots as a sub-lessee of the co-accused---However, on finding out about the illegalities in the transfer of these plots, the accused surrendered the said 25 plots to the Society through a duly registered deed of surrender---Said plots were not transferred to the building project, hence the allegation in the Reference that the plots were illegally procured by the accused and sold for gain to the project was not supported by the record---No material was available on the record, at present stage, to connect the accused with the violations allegedly committed by the Society or with the alleged illegally elected Managing Committee---Petition for leave to appeal was converted into appeal and allowed, and ad-interim pre-arrest bail granted to the accused was confirmed.

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

---Ss. 18(g), 18(e), 24(a) & 24(d)---National Accountability Bureau Reference---Arrest of accused---Pre-requisites---Permission of the Chairman National Accountability Bureau (NAB) or any officer of NAB duly authorized by the Chairman NAB must be obtained by the investigating officer before the accused can be arrested, and there must be reasonable grounds and substance on the basis of which permission to arrest is to be granted.

Under section 24(a) of the National Accountability Ordinance, 1999 ('the Ordinance'), the Chairman National Accountability Bureau (NAB) has the power, at any stage, of the inquiry or investigation under the Ordinance, to direct that the accused be arrested, while under section 24(d) of the Ordinance the officer making the arrest is under an obligation to inform the accused of the grounds and substance on the basis of which he is arrested. The proviso to section 18(e) of Ordinance mandates that no person shall be arrested without the permission of the Chairman NAB or any officer of NAB duly authorized by him. Collective reading of these provisions show that the permission of the Chairman NAB or any officer of NAB duly authorized by the Chairman NAB must be obtained by the investigating officer before the accused can be arrested, and there must be reasonable grounds and substance on the basis of which permission to arrest is to be granted. Mere filing of the Reference by the Chairman NAB or an officer of the NAB duly authorized by him, under section 18(g) of the Ordinance, against the accused does not carry an implied permission to arrest the accused. Arrest and filing of the Reference are two independent actions under the Ordinance. The permission to arrest must be express and based on reasonable grounds and substance.

Munir A. Malik, Senior Advocate Supreme Court for Petitioner along with Petitioner.

Nasir Mehmood Mughal, Special Prosecutor for NAB.

Date of hearing: 20th January, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks leave to appeal against order dated 23.11.2017 passed by the High Court of Sindh on his constitutional petition under Article 199 of the

Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"), whereby pre- arrest bail has been denied to him in NAB Reference No.6/2017 ("Reference").

2. The case set out in the Reference is that there were various complaints filed against the Management Committee of the Pak Punjab Cooperative Housing Society ("Society") with the allegations that they fraudulently transferred the plots of the original allottees to fake persons and also illegally sold plots to some builders. According to the Reference, the investigation in the matter revealed that the Society had 358 plots, which were allotted to the original/genuine members of the Society. However, with the connivance of Abrar Ahmed and Afzal Khan (co-accused), bogus share certificates were issued to enroll fake members, which were employees of the Sindh Workers Welfare Board ("SWWB"). Thereafter, a fraudulent Managing Committee was illegally elected under the supervision of Mirza Munir Baig and Mirza Afzal Baig, the other co-accused. The illegally elected Managing Committee approved a new layout plan in which all previous categories of residential plots were cancelled and converted into one category of plots measuring 120 sq. yards each in order to be sold further through fake allotment process. As a result, 541 plots in the name of employees of SWWB were allotted. The investigation further revealed that 100 such plots of the Society were transferred in the name of Messrs Falak Naz Golden Pebbles, 336 plots were transferred to a joint venture run and managed by Syed Amir Ali Shah, Muhammad Iqbal and Muhammad Arif (co-accused) who further transferred these plots for a building project namely, Premier Regency Villas ("Project").

3. The specific allegation against the petitioner in the Reference is that he was acting as a nominee of Muhammad Iqbal, the co-accused, and was holding 25 such plots as a sub-lessee and the said plots were subsequently transferred to the Project, hence he is alleged to be liable under section 9(a) of the National Accountability Ordinance, 1999 ("Ordinance").

4. We have heard the learned counsel for the parties and have gone through the record of the case. The record reveals that petitioner (accused No.19 in the Reference) was neither an original member of the Society nor a subsequent fake member of the Society as no plot was transferred by the Society to him. The name of the petitioner appears as a nominee of Muhammad Iqbal, who was the actual transferee of the plots from the Society, and the petitioner held 25 plots as a sub-lessee of Muhammed Iqbal. However, on finding out about the illegalities in the transfer of these plots, the petitioner surrendered the said 25 plots to the Society through a duly registered deed of surrender dated 12.3.2019. It is also observed that the said plots were not transferred to the Project, hence the allegation in the Reference that the plots were illegally procured by the petitioner and sold for gain to the Project is not supported by the record. Learned Prosecutor when confronted with this position of the case against the petitioner was unable to refer to any material available on record, at this stage, connecting the petitioner with the scam that allegedly took place in the Society. He also could not controvert that the said 25 plots were duly surrendered, and not transferred to the Project, by the petitioner.

5. In absence of such incriminating material, it needs examination, whether the NAB can lawfully arrest the petitioner. Under section 24(a) of the Ordinance, the Chairman NAB has the power, at any stage, of the inquiry or investigation under the Ordinance, to direct that the accused be arrested, while under section 24(d) of the Ordinance the officer making the arrest is under an obligation to inform the accused of the grounds and substance on the basis of which he is arrested. The proviso to section 18(e) of Ordinance mandates that no person shall be arrested without the permission of the Chairman NAB or any officer of NAB duly authorized by him. Collective reading of these provisions show that the permission of the Chairman NAB or any officer of NAB duly authorized by the Chairman NAB must be obtained by the investigating officer before the accused can be arrested, and there must be reasonable grounds and substance on the basis of which permission to arrest is to be granted. Mere filing of the Reference by the Chairman NAB or an officer of the NAB duly authorized by him, under section 18(g) of the Ordinance, against the accused does not carry an implied permission to arrest the accused. Arrest and filing of the Reference are two independent actions under the Ordinance. The permission to arrest must be express and based on reasonable grounds and substance. In this case, the NAB Prosecutor could not place before us

any such permission to arrest the petitioner given by the Chairman NAB or any officer of NAB duly authorized by the Chairman NAB.

6. In this case, examination of the record available before us prima facie shows that the petitioner has no nexus with the Society as he is not a member of the Society nor has an active role to play in the Managing Committee of the Society. According to the record, no plot was transferred to the petitioner from the Society and only 25 plots were sub leased to him by Muhammad Iqbal, the co-accused, which were surrendered by him through the registered deed dated 12.3.2019, and no gain was thus made by the petitioner in the said transaction. There is also no material on the record, at this stage, connecting the petitioner with the violations allegedly committed by the Society or with the alleged illegally elected Managing Committee. Thus, there are no reasonable grounds and substance to believe that the petitioner is involved in the commission of the offence alleged.

7. We, therefore, convert this petition into appeal and allow the same. Consequently, the constitution petition of the petitioner is accepted and the ad-interim bail granted to the petitioner vide order dated 29.11.2017 is confirmed, subject to his furnishing bail bond in the sum of Rupees one million with one surety in the like amount to the satisfaction of the learned Trial Court.

8. Foregoing are the reasons for our short order dated 20.01.2022, which is reproduced hereunder for sake of convenience and completion of record:

For reasons to be recorded later, this petition is converted into appeal and allowed. The ad interim pre-arrest bail granted to the petitioner is confirmed subject to his furnishing bail bonds in the sum of Rupees One million with one surety in the like amount to the satisfaction of the learned Trial Court.
MWA/M-31/SC Bail confirmed.