JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2879 of 2016
Masroor Sarwar Khan
Versus
National Accountability Bureau and others

Date of Hearing:	25.10.2016
Petitioner by:	M/s Muhammad Anwar Dar and Muhammad Faiz Ahmad Cheema, Advocates
Respondents by:	Mr. Abrar Ahmad Kiani, Advocate, Sardar Muzaffar Ali Khan, learned ADPG NAB, Mr. Adnan Tahir, learned Prosecutor NAB, Mr. Umair Ahmad Rathur, Additional Director/I.O of NAB.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Masroor Sarwar Khan, seeks post-arrest bail. The petitioner claims to be running a business under the name and style of "MSK International", which provides Project Management Consultancy Services.

2. This Court, vide judgment dated 08.08.2016, passed in W.P.No.512/2016, had dismissed the petitioner's petition for pre-arrest bail.

3. Learned counsel for the petitioner submitted that the dispute between the petitioner and the Pakistan Post Foundation ("P.P.F.") is of a civil nature; that the said parties have instituted civil suits against each other which suits are pending adjudication; that in terms of the agreement dated 09.02.2012, the petitioner was supposed to provide land to P.P.F. for the establishment of a housing scheme for its employees; that the P.P.F. had issued a cheque of Rs. 100 Million in the petitioner's favour under clause 3.5 of the said agreement; that the petitioner was supposed to arrange the transfer of 111 *kanals* of land in *Mouza Jagiyot* or *Mouza Dar Kala* in favour of P.P.F. as a guarantee within seven days of the execution of the said agreement, and P.P.F. was to arrange payment of Rs.100 Million for the said land; that upon the transfer of 111 *kanals* of land in favour of P.P.F., and payment therefor, the

cheque for Rs.10 Million was supposed to be returned to P.P.F.; that the petitioner managed to transfer valuable land in favour of P.P.F. for which no payment was made to the petitioner, therefore, there was no occasion to return the cheque for Rs.10 Million to the petitioner; that although, the petitioner has encashed the said cheque, but P.P.F. has not made any payment for the transfer of land in its favour; that the petitioner has suffered a grave loss in his effort to procure land for P.P.F.'s housing scheme; that the petitioner has not committed any corruption or corrupt practice; that the petitioner is not a public servant, and has acted strictly in accordance with the terms of the agreement dated 09.02.2012. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned Additional Prosecutor-General submitted that on 09.07.2012, a complaint was received by NAB about corruption in the transaction for the procurement of land for P.P.F.; that on 07.05.2013, the inquiry was authorized, which inquiry was converted/upgraded into an investigation on 08.02.2016; that on 21.06.2016, the petitioner was arrested after his petition for bail before arrest was dismissed; that on 01.07.2016, the petitioner was sent to the judicial lock-up; that the petitioner has remained incarcerated for a period of four months; that the loss caused by the petitioner is in the region of Rs.10 Million, out of which Rs.415,00,000/- to the national exchequer, whereas Rs.585,00,000/- is the loss caused to P.P.F.; that the petitioner (who is a contractor/land supplier), in connivance with Raja Ikram-ul-Haq, the former Director General of the Pakistan Post Office Department, committed corruption and caused loss to the national exchequer; that the petitioner has also submitted an application to the National Accountability Bureau for plea-bargain under Section 25 of the NAB Ordinance, 1999; that a vehicle worth Rs.10 Million has been recovered from the petitioner; that the said vehicle was purchased with the proceeds of the crime; that the civil suit instituted by the petitioner was an afterthought; that the land provided by the petitioner was *Shamilat* and the same is in possession of third parties; that land for housing scheme was to be arranged for the employees of P.P.F., but they have been deprived of their hard

earned money; that the prosecution has a strong prima facie case which connects the petitioner with the offence of corruption; that the interim Reference is due to be submitted for approval in the next Executive Board Meeting of the National Accountability Bureau.

5. In rejoinder, learned counsel for the petitioner submitted that NAB has not informed the petitioner about the complaint; that after the execution of the agreement dated 09.02.2012, funds have been taken from the employees of P.P.F.; that in the civil suit instituted by the petitioner, a status quo order has been granted by this Court; that the inquiry has been completed, and the petitioner is no longer required for questioning; that Section 9 of the NAB Ordinance, 1999, is not applicable to the petitioner.

6. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. The petitioner claims to be running a business under the name and style of "MSK International", which provides Project Management Consultancy Services. P.P.F. was established under the provisions of the Charitable and Endowment Act, 1890, for the benefit of serving and retired employees of the Pakistan Postal Service, and their families. In order to provide low cost housing to the said employees, it was decided to launch a housing scheme by the name of Garden Enclave at Islamabad. The Management Board of the Pakistan Postal Services approved this scheme in its meeting held on 06.07.2011. Eventually, on 09.02.2012, a Joint Venture Agreement ("J.V.A.") was executed between the P.P.F. and MSK International through its Chief Executive i.e. the petitioner, for the establishment of a Housing Project in Zone-IV, Islamabad.

8. The salient features of the J.V.A. were that MSK International was responsible for arranging a compact piece of 2,000 *kanals* of land in Mouza Darkala, Zone-IV, Islamabad, for P.P.F. to establish a housing scheme. This land was to be in a compact piece without any pockets. Clearing the land and making it compact was the responsibility of MSK International, which was also responsible for all sorts of designing, infrastructure development and all other allied services. The price for the 2,000 *kanals* of land was agreed to be Rs.900,000/- per *kanal* for a period of nine months. The land price

was to be readjusted after every six months. The maximum time limit for the purchase of the 2,000 *kanals* of land was 24 months, and this period could only be extended with the mutual consent of both the parties.

9. Upon the signing of the J.V.A., a guarantee cheque dated 09.02.2012 for an amount of Rs.100 Million was issued by the P.P.F. in favour of MSK International. Clause 3.6 of the J.V.A. provided that MSK International would arrange transfer of 111 *kanals* of land in Mouza Jagiyot and Mouza Darkala as a guarantee to P.P.F. within seven working days of the signing of the J.V.A., and PPF would pay Rs.100 Million for 111 *kanals* of land through a bank draft in favour of a nominee of MSK International. Upon payment for the said land, MSK International would return the cheque, which had been issued as guarantee by P.P.F.

10. Under the terms of the J.V.A., P.P.F. was bound to make payment for the transfer of one thousand *kanals* of land to the petitioner within six months of the signing of the J.V.A. However, clause 3.9 of the J.V.A. provided that in case P.P.F. fails to arrange payment for one thousand *kanals* of land in 12 months at the signing of the J.V.A., than the petitioner would pay back Rs.100 Million to P.P.F. and get its land transferred back. Now, the petitioner did not transfer one thousand *kanals* of land in favour of P.P.F., and has also not returned Rs.100 Million received from P.P.F. The one hundred *kanals* of *shamilat* land transferred by the petitioner in favour of P.P.F. is in someone else's possession.

11. Disputes and differences between the said parties led to the filing of (i) Civil Suit No.87/2013 titled "MSK International Vs. Pakistan Post Foundation etc" for specific performance of the JVA, mandatory injunction and recovery of Rs.726,000,000,/- and (ii) Civil Suit No.43/2013 titled "Pakistan Postal Foundation Vs. MSK International" for the cancellation of the JVA under Section 39 of the Specific Relief Act, 1877, mandatory injunction and recovery of Rs.100 Million. These suits are still pending adjudication. We are not inclined to agree with the learned counsel for the petitioner that the petitioner should not be criminally proceeded against because the dispute is essentially of a civil nature. In the case of Irshad Bibi Vs. Iftikhar (2008 SCMR 839), it has been held as follows:

> ***"It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction.***

12. Just like in the proceedings for the petitioner's pre-arrest bail, it was suggested to the petitioner that the petitioner should return Rs.100 Million given to him at the time of the execution of the J.V.A., and upon doing so, the land transferred in favour of P.P.F. would be returned to the petitioner. The suggestion was again spurned by the learned counsel for the petitioner. The learned counsel for P.P.F. as well as the Additional Prosecutor General (Accountability) submitted that P.P.F. has no use for the land transferred by the petitioner. The said land is disputed and in someone else's possession.

13. The learned Additional Prosecutor General (Accountability) has brought on record the complaint dated 27.09.2014 against *inter-alia,* the petitioner by the employees of Pakistan Post Office Department. We have also seen the petitioner's application for plea bargain, which application bears the petitioner's signature and thumb impression. This application was not considered by NAB because the petitioner did not come up with any down payment alongwith the said application. In the said application the petitioner expressed his willingness to return Rs.100 Million.

14. The petitioner has remained incarcerated for period of more than four months. The interim reference is yet to be approved in the Executive Board Meeting of the NAB. The petitioner has already been sent to the judicial lock up, which means that he is not required any more for questioning. Due to these factors, we are inclined to allow this writ petition. Consequently, the petitioner is admitted to bail subject to the furnishing of cash security in the sum of Rs.100 Million subject to the satisfaction of the Additional Registrar (Judicial) of this Court.

15. Before parting with this judgment we may observe that nothing said herein should, in any manner, influence the legal proceedings before any civil or criminal court regarding this matter.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in an open court on _____/2016.

JUDGE JUDGE

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