

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

**Writ Petition No.211-P/2017**

Date of hearing:- 09.02.2017

Petitioner(s):- Muhammad Waseem etc by Mr. Muhammad Ilyas Khan, Advocate.

Respondent (s):-Chairman National Accountability Bureau, (NAB) Islamabad etc by Mr. Zair Nawaz Khattak, ADPG.

**ORDER**

**ROOH-UL-AMIN KHAN, J:-** By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, (**Constitution**), petitioners Muhammad Waseem Deputy Manager Sales & Marketing, Syed Rizwan Mehmood Shah Deputy Manager Finance, Qazi Ibrar Hussain Deputy Manager Internal Audit, Zamurad Khan Executive R&D Telephone Industries of Pakistan (**TIP**) and Tahir Jan General Secretary CBA TIP, who are behind the bars in consequence of an Inquiry initiated by the National Accountability Bureau (NAB) on a complaint of Ministry of Information Technology and Telecom, Islamabad qua corruption and corrupt practices in allotment of Plots in TIP Housing Scheme, seek quashment of the above proceedings against them. In interim relief, the petitioners have sought for bail till disposal of the case.

2. Since, the matter is still under investigation before the NAB. It is settled law that High Court seldom interfere in investigation of the case by exercising its inherent powers or constitutional jurisdiction, so that the Investigating Agency come to a definite conclusion without interference of any authority. The learned counsel for petitioners when confronted with the proposition regarding maintainability of writ petition for quashment of Inquiry proceeding and that too in infancy, he candidly conceded. However, requested for conversion of prayer in instant petition for quashment to grant of bail. The learned ADPG, at this moment opposed the request that grounds for quashment of proceedings and grant of pre-arrest bail are absolutely different and in the circumstances a relief sought under constitutional jurisdiction cannot be molded. In view of the submissions of learned counsel for the parties coupled with complex position of the matter and in the interest of justice, we deem it appropriate to treat this writ petition for the purpose of bail of the petitioner by deriving wisdom from the recent dicta of the Hon'ble Apex Court in case titled, "**Mian Asghar Ali Vs Government of Punjab through Secretary (Colonies) BOR, Lahore and others**" (2017 SCMR 118), wherein it has held that High Court and Supreme Court have the powers to convert or treat one kind of proceeding into another and such powers derived from authority to do ex debito justitiae,

always existed and is exercised by the Court not only to advance the cause of justice but also to prevent injustice. No fetters or bar can be placed on the High Court and on the Supreme Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself provided it had jurisdiction over the lis that was before it for adjudication or it may remit the lis to the Court/forum/authority of competent jurisdiction for decision of the lis on its own merits.

3. Allegations against the petitioners are that they being the members of a so-called Committee, constituted by the co-accused Chairman TIP Housing Scheme, Huripur, recommended change of Master-plan, conversion of amenities plots into residential despite the fact that similar report was disapproved by the then Chairman TIP Housing Scheme in 2013, and a result of their recommendations, plots were allotted to some 145 allottees including them, resultantly, they caused a huge financial loss to government exchequer.

4. Valuable arguments of learned counsel for the parties heard and record perused with their able assistance.

5. It appears from the record that TIP Housing Cooperative Society was established in the decade of late 80's on the acquired land of 1030 Kanals to meet the residential needs of TIP employees/workers. The Bye-laws were framed in 1988. The Primary Objectives of this

Society were to provide affordable residential facilities to employees & Workers of the Organization, so the land was divided into the plots of 4 different sizes viz 5, 7, 10 and 20 Marlas to make the scheme affordable for all income groups. During the meeting held on 27.03.1990, the status of Cooperative Housing Society was changed and it was decided that the plots would be allotted under the name of TIP Employees & Workers Housing Scheme. Vide agreement/Iqrar Nama dated 22.04.1996 plots were allotted to some employees in TIP Housing Scheme No.2. Record reflects that in the year 2013, on the basis of number of applications from TIP employees, the Management constituted a Committee, comprising TIP Employees Workers Union (Registered) CBA and Officers to study the establishment documents, approved bylaws, layout plan, agreement etc of Housing Schemes and explore the possibilities of creation of residential plots while maintaining sufficient provision of land/space for Schools, Hospitals, Markets and Community Centre etc at standard level and to suggest criteria for allotment of the Plots to deserving officers/staff of TIP. The Committee submitted its report on 02.07.2013, fevering the demand. However, no action was taken on the report of the Committee. Subsequently, by virtue of re-demand of the employees and workers Union (CBA) vide application bearing No.E&W/TIP/DED/26 dated 04.04.2016 to the Managing

Director TIP Haripur qua fulfillment of their demand in respect of allotment of plots to eligible staff in TIP Housing Scheme, another Committee was constituted. Petitioners were the member of the said Committee. The mandate of the Committee was to look into the matter and propose method of allotment of plots to the deserving staff of the TIP. The Committee submitted its report on 18.04.2016, wherein procedure and criteria of eligibility for allotment of Plots were formulated, and resultantly, plots were allotted on lease for a period of 99 years to some 145 staff members of TIP including the petitioner.

6. On tentative assessment of the material on record, nothing solid has been collected by the NAB during investigation to show that the allotments have been done on the basis of favoritism, nepotism or against any monetary gain. The allotment has not been done by the petitioners, rather, they being members have only made recommendations. Nothing is on the record to show these recommendations to be based on any mala fide. Sufficient record is available which shows that the lease money has been deposited by the allottees directly in the Account of TIP. The damage allegedly caused by the petitioners to the government exchequer has not been determined till date. Though, the petitioners have been allotted Plot in the said allotment but it is apparent from the minutes of the meeting that such allotment was for those staff/officials who were

not previously allotted any Plot in said Scheme. We do not see anything in black & white to show that petitioners were the previous allottees of the scheme. Except the petitioners and Chairman of the committee, none from the rest 140 allottees has been made as accused by the respondents. None from the TIP employees Workers union has made any complaint against such allotment.

7. All the above observed facts and circumstances of the case make the case of the petitioner arguable for the purpose of bail coupled with the fact that investigation qua the petitioners is complete and they are no more required for further interrogation, hence, they are entitled to the concession of bail. Accordingly, this petition is allowed. Accused/petitioners are admitted to bail provided each one of them furnishes bail bonds in the sum of rupees two millions with two sureties each in the like amount to the satisfaction of learned Accountability Court, Peshawar.

**Announced:**

**09.02.2017**

*Siraj Afridi P.S.*

**JUDGE**

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