

# IN THE COURT OF ACCOUNTABILITY HYDERABAD

Ref. No 02 of 2015

**THE STATE**

**VERSUS**

**XXXXXX & OTHERS**

MOHAMMAD XXXXXX

House No.A-21,Mohalla Deply Memon

Colony, Qasimabad Hyderabad.....Applicant/Accused

## **APPLICATION UNDER SECTION 265-K OF CRIMINAL PROCEDURE CODE 1898**

It is respectfully prayed on behalf of the applicants/accused No.04 namely Mohammad XXXXXX that this Hon'ble Court may be pleased to acquit the applicant/accused in afore-mentioned reference from the groundless charge, because there is no any probability to convict him in above mentioned reference/case on consideration of the following facts and grounds:-

## **F A C T S**

### **The Role of Applicant/Accused:**

“7. That during the course of investigation it has been surfaced that on 04-10-2011 Muhammad XXXXXX, Director HDA (accused No.5) in order to suppress the action taken by Muhammad Bashir Awan restored the tampered revised layout plan through DG HDA Ghulam Muhammad Kaim Khani (accused No. 4) vide latter No. HDA/P&DC/MP/PHS/2231/2011 dated 04.10.2011.

That allegation as per reference reflects that the Applicant/Accused misused his official position and authority by approving the revised layout plan while record shows that the Hyderabad Railways Employees Housing Society (HRECHS) initially got approved their layout plan of 19 acres and 34 ghuntas, thereafter revised layout plan was approved in the year 1998. A complaint was filed by fareedullah Khan & Raees Ahmed Khan Yousf Zai, through inquiry it transpires that the revised plan was scrutinized on 23.7.2010 by Deputy Director, Master Plan, HDA, which was also recommended by the Additional Director Master Plan thereafter, it was forwarded to the Director General, HDA. The same Additional Director

moved a note that both the plans were compared with each other and it is found that revised plan dated 26.7.2010 is looking on the excess area from the layout plan dated 2.4.2010. The said note sheet was forwarded to the Director (P&DC) who put up a note for the DG, HDA, with the words that the scheme was approved with the approval of competent authority (GB, HDA and DG, HDA). He further proposed that prior taking any action/suspension of scheme the Administrator, (HRECHS) may be advised to submit the layout demarcation within 3 months. Copies of the entire proceedings are annexed as annexure "A-1 to A-24".

That on this note the Applicant in the capacity of Director General, HDA noted;

*"How did it happened? IT should on 19 acres & Guntas only".*

As such Prosecution has failed to bring any material evidence against the applicant/accused which shows that there is no any probability of accused being convicted of any offence. Hence this application on the consideration of following grounds:-

Being aggrieved with impugned order dated 2/08/2016 passed by the learned trial Court whereby, bail application of the application/accused was dismissed, and this Hon'ble Court may be pleased to set aside the orders and bail after arrest may be granted to the application on consideration of following facts and grounds:

### **GROUND S**

1. That the applicant / accused is innocent and has been falsely implicated by the complainant at the false and fictitious complaint.
2. That prosecution has failed to bring any material on record against the applicant /accused involving him with alleged commission of offence.
3. That, if the prosecution would be allowed to lead the evidence its amount to be futile and there is no probability for conviction and the entire proceeding become futile exercise.
4. That it is golden principle of criminal administration of justice that the accused is deemed to be innocent till convicted by the court of competent jurisdiction.
5. That the applicant/accused role in the reference is that he misused his official position and authority by approving the revised layout plan while record shows that the Hyderabad Railway Employees

Cooperative Housing Society (HRECHS) initially got approved their layout plan was approved in the year 1998 from Governing Body HDA. Whereas no approval was given beyond 19.34 Ghuntas, therefore there cannot be any misuse of authority.

6. That the applicant/accused has written two notes which are self explanatory , the same are as under;

Note 1, which is subject “Approval of Existing Revised lay Out Plan of Railway Employees Co-operative Housing Society at Auto Bhan road, Latifabad, Hyderabad, through which the revised lay out plan was approved, the said note says;

“As proposed for but on 19.34 Ghuntas”.

Note 2. Complaint / Objections on the approval of Revised layout plan of Hyderabad Railway Employees Co-Operative Housing Society, Latifabad, Hyderabad.

The note says;

“How did it happen? It should on 19.34 Ghuntas”.

Beside the said two notes the Applicant / Accused has not issued any directions as per the entire record which had been confiscated and produced by the NAB in this reference. The said dissenting note proves that he never accorded approval of revised lay out plan. It is also submitted that beside the said two noting there is nothing on record to show and prove the corroboration with the other accuses and specially in respect of allowing the revise plan.

7. That it is matter of record that till the Applicnat/ Accused remained on post the revised lay out plan was never approved, beyond the limits of 19.34 ghuntas.
8. That as per aforesaid note sheets the applicant / accused himself questioned the legality of the revised plan, beyond 19.34 ghuntans, and no incriminating material has been collected against the applicant / accused has been implicated in the reference.
9. That a dissenting note does not show or prove that applicant/accused has ever misused his authority nor acted contrary to law. In fact he was working in accordance with law and within his powers.
10. That the entire transaction in respect of 51 Plots, carved out on the excess land, i.e .4.2 Acres was made much prior to any sanction /

approval given by the Applicant / Accused. Which was duly verified by the relevant department,as;

“.....

5. the revised lay out plan existing as been examined and scrutinized

i...

ii. that accordingly the revised lay out plan has been prepared as per site position...

Similarly, vide approval of revised lay out plan (existing as per site ) dated: 26-07-2010, with the condition that;

1. The chairman / General Secretary / Administrator of the Society should submit the demarcation lay out plan within 03 months duly verified by the Executive District Officer (Revenue) Hyderabad”.

Even as per the so called approval letter, on the basis of which the Applicant / Accused has been implicated, it does not alter the condition as per letter dated: 26-07-2010, the said approval letter, dated: 04-10-2011, only extent the time for the submission of verified lay out plan. Therefore no illegality can be attributed towards the Applicant / Accused.

11. That the Applicant / Accused has endorsed the note sheet, as stated above, with his specific remarks only to safe guard the interest of the HDA and the same cannot be termed misuse of authority in any manner what so ever.

12. Not even a single document has been placed on record which shows that the Applicant / Accused has acted in any manner contrary to law or gained any monetary benefit out of his dissenting note. Even otherwise this aspect has also been accepted by the prosecution. It is further submitted that no plot was taken or was / is in the name of the Applicant / Accused.

13. That it is pertinent to mention that identical case has been registered by the Anti Corruption Department vide FIR No. GO-03/2013 of ACE Hyderabad City. Interestingly when NAB authority moved an application under section 16-A of NAB Ordinance before the Hon’ble High Court of Sindh at Karachi, vide CP No. D-2802 of 2016, which was dismissed as not pressed.

It is pertinent to mention that in the said FIR the name of the Applicant / Accused was not mentioned and as such the name of the Applicant / Accused had been cleared by the Anti Corruption Authority. Copy of the said Petition and its order are annexed as annexure "B-1 & B3".

14. That vide order dated: 07-02-2019, this court accepted the Application under section 25 (B) NAB Ordinance 1999, where by plea bargain of some 14 allottees was accepted, whereas two allotment were cancelled. The remaining 40 allottees VR was accepted by the NAB authorities.

Therefore loss if any had already been recovered.

15. It is also respectfully submitted that in any organization / authority the head of the department, does not physically go and verify the ground. As per procedure he relies upon nothing of his subordinate department and specially the nothing of the department head even in this case the Applicant / Accused when came to know about the illegal act he wrote his dissenting note.

16. That the allegation / evidence against the Applicant / Accused leveled in reference is void, though he is not involved in the offence of corruption or corrupt practices, thus, there is no probability of conviction of Applicant / Accused.

17. That it is respectfully submitted that NAB has recorded 161 Cr. PC statement of some 18 Witnesses including IO. Interestingly non of the witnesses has leveled or uttered a single word against the Applicant / Accused.

18. That therefore, under the circumstances accused cannot be put at the mercy of prosecution for indefinite period, even the entire record of the prosecution case does not show material evidence against him.

19. That the charge is groundless, under section 265-D Cr.PC, it is well settled law that fruitless proceedings be buried at its earliest.

20. That there is no material to proceed further with the present case, therefore, accused is entitled for acquittal u/s 265-K Cr.PC.

21. That further grounds if any would be submitted at the time of arguments

The prayer is made in the interest of justice.

Hyderabad

Dated .09.2019

**Advocate for Applicant/Accused**

**XXXXXXXX**