

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.572 of 2016

Muhammad Akram

V/s.

The State

Present: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 16.05.2016
Date of Order : 23.05.2016
Applicant : Through Mr. Shakeel Ahmed, Advocate.
Respondent/State : Through Mr. Sadaqat Khan, Spl Prosecutor,
S.S.G
: Mr. Zafar Ahmed Khan, Addl.P.G.

ORDER

ZULFIQAR AHMAD KHAN, J.:- The applicant/accused moved the instant bail application under section 497 Cr.P.C in Crime No.50/2016, registered on 30.03.2016 at S.S.G.C, Police Station, Karachi under sections 462(AH) C/E/34 PPC.

2. Brief facts of the case are that the applicant/accused was arrested at plot No.A-482, Sector 11-E, Fatima Jinnah Colony, North Karachi, at which premises a washing/dying factory was being run when the instant premises were raided by the officers and staff of Sui Southern Gas Company (SSGC) alongwith police party, they found illegal connection of Sui Gas being used, through which by short circuiting the meter a direct access was made to the main line and gas was being consumed. Photographs of the crime scene and material found therewith being rubber and steel pipes were taken into custody. A charge sheet was prepared on 13.04.2016. The applicant made bail application bearing No.382/2016, before the IIIrd Additional District & Sessions Judge, Karachi (Central), who vide his order dated 15.04.2016 refused the said bail application by

holding that the instant application was meritless. The said order is assailed through the instant bail application.

Since the matter pertains to Section 462 (AH), I find it appropriate to reproduce the relevant text of section 462-C, D & E as well as clause H of Section 462-A, which defines the term “petroleum”:

“462-C. Tampering with auxiliary or distribution pipelines of petroleum. (1) Any person who willfully does tampering or attempts to do tampering or abets in tampering with any auxiliary or distribution pipeline of petroleum not being main transmission and transportation pipeline but includes a distribution system, distribution pipeline or any other related system and equipment as the case may be, of petroleum is said to commit tampering with auxiliary or distribution pipelines of petroleum.

(2). Any person who commits or abets in tampering with auxiliary or distribution pipeline of petroleum for the purpose of:

(a). Theft of petroleum; or

(b). Disrupting supply of petroleum,

Shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than five years and with fine which may extend to three million rupees.

462-D. Tampering with gas meter by domestic consumer, etc. Any person or individual being the domestic consumer who does tampering or abets in tampering with any gas meter, regulator, meter index or gas connection or any other related system and equipment, whether to commit theft of gas or for the purpose of unauthorized distribution or supply of gas shall be punished with imprisonment for a term which may extend to six months or fine which may extend to one hundred thousand rupees or both.

462-E. Tampering with gas meter by industrial or commercial consumer, etc. Any person or individual being industrial or commercial consumer who does tampering or abets in tampering with any gas meter, regulator, meter index or gas connection or any other related system and equipments, whether to commit theft of gas or for the purpose of unauthorized distribution or supply of gas shall be punished with imprisonment which may extend to ten years but shall not be less than five years or fine which may extend to five million rupees or both.”

Contentions of the learned counsel for the applicant and my findings thereon are as under: -

(i). Per counsel, since the applicant/accused was not a consumer, therefore, provisions of section 462-E would not apply to him, as the said

provisions are “only binding on an industrial or commercial consumer of the gas”. To me, the above assertion is of no strength that only consumers of SSGC could be charged under section 462-E. One can clearly see from the above reproduced section 462-E that commences with the words “any person”, which means that the person charged under section 462-E does not need to be a consumer of SSGC and as long as offence is committed under section 462-E by any person, he could be charged under the said section.

(ii). The counsel contended that section 462-C only relates to petroleum and petroleum products, therefore, is not applicable to his client. I also find this assertion of no substance, because the term “petroleum” is defined under section 462(H) to include natural gas also, therefore, I have no reason to uphold that the accused who was stealing natural gas from the main distribution pipeline of SSGC could not be charged under section 462-C.

(iii). The learned counsel contended that there is discrepancy in the size of the rubber pipe as mentioned in the F.I.R. and in the Charge Sheet. I note that F.I.R. suggests the rubber pipe having length of 20/21 feet, whereas in column 5 of the charge sheet, the size of pipe is given as 3 feet. In the given circumstances that there are pictures available of the said rubber pipe, I only would read the error in column 5 of the Charge Sheet, as a typographical, and notwithstanding whatever sized pipe was found at the crime scene, it would not come forward of any assistance to the case of the present accused. The offence is created, notwithstanding the size of the rubber pipe.

(iv). The counsel asserted that his client is not the owner of the plot, therefore, could not be held responsible for any illegal act done therewith. I also find such an assertion of no material benefit to his client’s case, who was running instant washing/dyeing factory at the said premises and have

actually submitted in his defense certain receipts showing that he was using LPG also at the same premises.

(v). The counsel contended that the name of the police officers was not given in the statement made under Cr.P.C. The above assertion is also not correct as the copy of the statement as found on the record of the case, has been duly signed by ASI Abid Shah, of Police Station, SSGC.

(vi). As the last leg of his submissions, the counsel contended that though the law named the Gas (Theft Control and Recovery) Act, 2016 (the Act, 2016), (that came into force on 23.03.2016) was in force, the F.I.R. which has been lodged under the relevant provisions of PPC, if at all has to be filed, the cognizance of the matter ought to have been taken under the provisions of the said Act, 2016.

(vii). The counsel further contended that the reliance placed in the impugned order on the case law reported as 2014 P.Cr.L.J 1474 was not appropriately applied in the instant case as it related to judgment of conviction and not to the stage of bail. The counsel also mentioned 2004 SCMR 2357, PLD 2005 Karachi, 113, PLD 1995 SC 34 and PLD 1992 SC 81 in support of his contentions.

Leveling his arguments, learned Special Prosecutor for SSGC as well as learned Additional Prosecutor General, Sindh state that all the citations made by learned counsel for the applicant are in relation to the private dispute between the parties, whereas in the instant case, the matter relates to the state property as the natural gas belongs to the State, so does SSGC, therefore, none of the cases referred hereinabove should be applicable in the instant case. With regard to the size of rubber pipe, counsel said that this ground was not taken before the trial Court and thus cannot be raised in the instant bail application also. Counsel submitted that L.P.G reports submitted are shame documents, which have been only created with a view to defeat the current action taken by the respondent

against the theft of natural gas by the applicant. With regard to the assertions of a specialized law, having taken into effect as of 23.03.2016, the counsel submitted that the relevant provisions of the said law have identical offence and proposes similar punishment in respect of the offence related to the theft of gas and other petroleum products. I also note that the provisions of section 462-C are para materia to the provisions of section 15 of the 2016 Act and imposes equivalent punishment and fine, as well as, provisions of section 462-E are also para materia to the provisions of section 16 of the Act, 2016. Notwithstanding therewith I note that pursuant to section 31, the provisions of 2016 Act are held to have effect notwithstanding any contrary contents of any other law for the time being in force, therefore, by no means, the 2016 Act aims to delete the applicable provisions of PPC. Learned Special Prosecutor for SSGC vehemently opposed the grant of bail to the applicant and stated that the instant case also falls within the ambit of prohibitory clause of Section 497(1) Cr.P.C.

Heard the counsel, perused the record and have considered the submissions of the parties and examined the relevant provisions of PPC and those provided for under the 2016 Act, I have no doubt in my mind that the prosecution has made a *prima facie* case and there been no enmity between the SSGC, government officials and the present accused thus no malice could also be alleged. For the reasons, thereof, I do not find any merit in the instant bail application, which is dismissed. However, learned trial Court is directed to expedite the trial and conclude the same preferable within a period of two months.

The observations made hereinabove are tentative in nature and would not prejudice the case of the either party at trial.

Judge