

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

Cr. Bail Application No.S-293 of 2020
Cr. Bail Application No.S-310 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicant Muhammad Yaseen:	Through Mr. Mian Taj Muhammad Keerio advocate
Applicant Imtiaz Ahmed:	Through Mr. Ali Ahmed Zaman Patoli advocate
Complainant:	Through Mr. Khalid Saeed Soomro advocate
State:	Through Mr. Shawak Rathore, DPG
Date of hearing:	17.08.2020
Date of Decision:	17.08.2020

ORDER

ABDUL MAALIK GADDI, J:- By this common order I intend to decide the fate of both captioned bail applications, as they arise out of same crime and incident.

2. Through these bail applications, applicants/accuse seek post arrest bail in crime No.10 of 2020 registered with Police Station B-Section Dadu u/s 462-B, 462-F, 379 and 427 PPC, as their post arrest bails were dismissed by learned Trial Court vide orders dated 17.03.2020 & 31.03.2020 respectively.

3. Brief facts of the case, as per FIR, are that on 11.01.2020 Parco Security Supervisor Mukhtiar Chandio left the Parco Office alongwith subordinate staff for usual checking and during checking when they reached at R.O.W 31+500 Birhmani Hotel Bypass Road Dadu on 12.01.2020 at 02:30 am (night), at the land of Muhammad Yaseen (one of the applicants), they felt smell of diesel oil; they alighted from vehicle and on search saw the footprints of many persons and also saw that the diesel was poured on earth and there was also a ditch; they also saw that two pipes of black colour were going towards water, on following them, both pipes led them towards Birhmani Hotel, where they saw some persons in suspicious condition; on seeing them all said persons escaped away; on further search the Parco staff found one ditch in courtyard of said Hotel

and two pipes were installed and two walls were affixed from which diesel was flowing; they also saw the marks of 10 wheeler tanker, from which they assured that accused persons, who fled away, have committed theft of oil; then all these facts were informed by them to Admn Officer Shahid Hussain Ghallo, who lodged the present FIR.

4. Mr. Mian Taj Muhammad Keerio, counsel for the applicant in Cr. Bail Application No.S-293 of 2020 argued that applicant is innocent and he has been falsely implicated in the alleged crime due to personal grudge; that no specific role has been assigned to applicant; the only allegation against the applicant is that the land through which the alleged theft was committed, was being looked after by him, he stated that even the applicant is not the owner of said land. It is further argued by him that nothing has been recovered from the applicant and the alleged pipe has been produced by the complainant himself; that there is no eye witness of the alleged incident and the complainant lodged the FIR on hearsay evidence; that applicant is CVA patient, report of which is also available on record, and is behind the bars since last 8 months. He lastly prayed for bail.

5. Mr. Ali Ahmed Zaman Patoli, advocate for applicant in Cr. Bail Application No.S-310 of 2020 while adopting the arguments of Mr. Mian Taj Muhammad Keerio advocate, has further added that though the place of alleged incident is thickly populated area, yet no private witness has been associated; that there is delay of one day in registration of FIR without any explanation; that learned DPP before the Trial Court, after submission of report by the Investigation Officer, has recommended to dispose of the case under "C" class, however, the same was not approved by the learned Magistrate without any reason; that all the story is false and concocted one. He also prayed for concession of bail. In support of his arguments he has relied upon un-reported orders dated 26.12.2019 & 02.01.2020, passed by Hon'ble Supreme Court of Pakistan in Criminal Petitions No.189-K, 188-K of 2019 respectively as well as an unreported order dated 14.05.2020 passed by this Court in Criminal Bail Applications No.S-160 & 162 of 2020.

6. On the other hand learned DPG assisted by learned counsel for the complainant vehemently opposed the bail applications on the ground that applicants are involved in heinous crime against the State; that the pipe, through which the theft was committed, has been recovered from the

place of incident; that the land through which theft was committed, was being looked after by the applicant Muhammad Yaseen while the hotel where the accused persons were present in suspicious condition, belongs to accused Imtiaz Ahmed and he was also present over there at that time, as such both applicants/accused are exclusively involved in commission of crime, therefore, they are not entitled for bail. In support of their contention they have relied upon 2016 SCMR 748 as well as on unreported order dated 15.07.2019 passed by Hon'ble Supreme Court of Pakistan in Criminal Petition No.611-L of 2019.

7. Heard the learned counsel for parties and perused the case papers, so available before me.

8. Admittedly nothing has been recovered from the applicants/accused. Merely alleging that the subject land was being looked after by accused Muhammad Yaseen and the Hotel belongs to accused Imtiaz Ahmed is not sufficient to keep the applicants/accused behind bar as the same requires further inquiry. It is noted that the complainant is not the eye witness of alleged incident and the entire story, narrated by him in FIR, is on hearsay basis. It is also noted that though admittedly the raiding party followed the alleged pipes and immediately reached at the place of alleged incident, where accused were present, yet neither oil was recovered nor the raiding party tried to even caught hold at least one of the accused persons at the spot. It also appears from the medical report, furnished by Superintendent District Prison and Correction Facility Dadu, that accused Muhammad Yaseen is patient of old CVA (Cerebrovascular accident), hence keeping him behind the bar can be dangerous for his life. Even otherwise, the allegations against the present applicants/accused are general in nature, which require further inquiry, which can only be determined at trial.

9. Nothing on record that applicants/accused are previous convicted or they remain involved in such type of activities in past. It is pertinent to mention here that case has been challaned and applicants are no more required for further investigation. It is also noted that the case is at initial stage and even the charge has not yet been framed and the applicants are behind the bars since their arrest i.e for last more than 7 months and if the Trial Court proceeded the trial with such speed then it would not be concluded in near future and under these circumstances keeping the applicants behind the bars for an indefinite period would not serve any

purpose. In this regard I have gone through the case of Himesh Khan versus The National Accountability Bureau (NAB) Lahore and others (2015 SCMR 1092), wherein, the Hon'ble apex Court has held that:

"Speedy trial was the alienable right of every person, therefore, even if the provisions of S. 497, Cr.P.C in ordinary course was not applicable to an accused person facing charges under National Accountability Ordinance, 1999, the broader principle of the same could be pressed into service in hardship cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period."

10. As observed above the allegations against the applicants/accused require further probe. Therefore, in view of the above, both these bail applications are allowed. Consequently, both applicants/accused, who stated to be behind bars, are directed to be released forthwith, if not required in any other custody case; however, subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs Only) each and P.R Bond in the like amount to the satisfaction of Trial Court. Applicants/accused are directed to appear before the Trial Court and to face the trial. The case laws relied upon by the learned counsel for the complainant have been perused and considered by me but did not find applicable to the facts of present case. Even otherwise, the precedents in bail matters were of no help to an party, as it varied from case to case depending upon the facts of each case. Court has to examine as to whether accused had made out a case for further inquiry or not. In this connection I am fortified with the case of Muhammad Faiz alias Bhoora versus The State an another reported in 2015 SCRM 655.

11. Needless to mention here that observations made hereinabove are tentative in nature and they shall not affect the merits of the case before learned Trial Court.

12. Before parting with the order I would like to further observe that if the applicants, after getting bail, fail to appear before the Trial Court and the Trial Court is satisfied that the applicants have become absconders then Trial Court is fully authorized to take every action against applicants and their surety including cancellation of bail without making a reference to this Court.

Both these bail applications are disposed of in above terms.

JUDGE