

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Cr.B.A.No.S-759 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on office objection
2. For hearing of main case.

20.09.2019.

Mr. Mujjan Ali Panhwar, advocate along with applicant.
Ms. Safa Hisbani, A.P.G.
Mr. Khalid Saeed Soomro, advocate for complainant.
=

Irshad Ali Shah J;- It is alleged that the applicant with rest of the culprits was found tempering with the pipe line of PARCO for that he was booked and reported upon by the police.

2. The applicant on having been refused pre-arrest bail by the learned Additional Sessions Judge-III, Dadu has sought for the same from this court by way of instant application U/s 498 Cr.P.C.

3. It would be necessary to mention here that the instant bail application was placed before my learned brother (Justice Amjad Ali Sahito) who after hearing the same announced its dismissal but at the time of dictating the order he came to know that the bail application of co-accused Ghulam Hussain alias Sachal (B.A.No.770 of 2019) has been disposed of by me therefore, he directed the office to place the instant bail application before me by making following observations:

“These bail applications were heard in Court so also announced and dismissed. However, while dictating the order in Chamber, I have come to the conclusion that previous to these bail applications, the bail application of co-accused namely Ghulam Hussain alias Sachal son of Jumo Khan bearing No.S-770 of 2019 was decided by my learned brother (Mr.Justice Syed Irshad Ali Shah), who is also sitting here at Hyderabad Circuit Court. Further, while noting this fact

earlier, the undersigned vide order dated 30.08.2019 had already directed the office to place the applications before my learned brother (Mr. Justice Syed Irshad Ali Shah) in view of dicta laid down in the cases of '**NASIR AHMED and another v. THE STATE and others**' [PLD 2014 Supreme Court 241] and '**TARIQUE BASHIR and 5 others v. THE STATE** [PLD 1995 Supreme Court 34] but mistakenly today these cases were fixed before the under-signed.

In view of above of position and taking guidance from the order passed by the Hon'ble Supreme Court of Pakistan in the case of '**Haji MOHAMMAD IBRAHIM v. THE DEPUTY COMMISSIONER, THARPARKAR AND EX-OFFICIO CONTROLLING AUTHORITY, TOWN COMMITTEE JAMSABAD AT MIRPURKHAS**' [1971 SCME 63], the oral pronouncement of the order in Court is recalled. Office is directed to place these bail applications before my learned brother (Mr. Justice Syed Irshad Ali Shah) on **20.09.2019**, for which notice to all parties concerned be issued".

4. In compliance to above directions, the instant bail application was placed before the undersigned by office for its disposal in accordance with law.

5. It is contended by the learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party; the FIR has been lodged on 3rd day of incident; 161 Cr.P.C statements of the PWs have been recorded on 4th day of the FIR; no damage to the pipe line has been caused, it is the case of mere attempt to commit theft of oil and co-accused Nauman and four others have already been admitted to bail by this Court. By contending so, he prayed for grant of pre-arrest bail to the applicant on point of malafide.

6. Learned A.P.G for the State and learned counsel for the complainant have opposed to grant of bail to the applicant by contending that he has put an attempt to cause damage to public exchequer. In support of their contention they have relied upon case of **Abdul Hameed vs State (2016 SCMR 748)**.

7. I have considered the above arguments and perused the record.
8. The FIR of the incident is lodged on 3rd day of the incident, without plausible explanation, such delay could not be lost sight of. The applicant as per FIR was identified by PWs Muhammad Haroon and Mir Murtaza, they significantly have been examined by the police u/s 161 Cr.P.C statement on 4th day of registration of FIR, such delay in recording their 161 Cr.P.C statements could not be overlooked. Even otherwise, the identity of the applicants at night time on torch light is appearing to be a weak piece of evidence. No damage is caused to the pipe line. No theft of oil is committed. Co-accused Nauman and four others have already been admitted to post arrest bail. In these circumstances, no useful purpose would be served, if the applicant is taken into custody and then is admitted to bail on point of consistency.
9. The case law which is relied upon by learned A.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In that case the accused was apprehended at the spot with stolen crude oil. In the instant case no oil is stolen what to talk of its recovery.
10. In view of above, the interim pre-arrest bail already granted to the applicant is confirmed on same terms and conditions.
11. The instant bail application is disposed of accordingly.

JUDGE