

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**Cr. Bail Application No.S-652 of 2021**

(Aijaz Ali versus the State)

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicant:	Through Mr. Samad @ Sadam Khaskheli, advocate
Complainant:	Through Mr. M.A Javed advocate
The State:	Ms. Safa Hisbani, Assistant P.G
Date of hearing:	29.10.2021
Date of decision:	29.10.2021

**O R D E R**

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**ADNAN-UL-KARIM MEMON, J. -** Through instant bail application under Section 498-A Cr. P.C, applicant Aijaz Ali is seeking pre-arrest bail in respect of cognizable offense, registered on 26.6.2021 under the complaint of Sayed Shahid Iqbal, Security Officer, Pumping Station (PARCO/PEPCO), being FIR No. 37/2021, at Police Station Nooriabad under Sections 462 (B), 462-C, 379, 511 & 34, P.P.C.

2. Concise facts of the case, according to FIR lodged by Complainant / Security Officer PARCO Syed Shahid Iqbal, are that he had information that Oshaq Ali Rind and Ghulam Hussain @ Yousuf Palari are involved in theft of oil from underground pipelines of PARCO, heading from Port Qasim towards Macheki, through iron clips, accordingly on 26.06.2021 he alongwith staff went at Police Station Nooriabad and informed the Station House Officer (SHO) about such information; thereafter, on the direction of SHO, ASI Wazeer Ahmed Solangi accompanied them at the site alongwith his subordinate staff, when they reached at site, they saw with the help of headlights of vehicle, a truck and 8/10 persons standing over there, from whom 3/4 persons were digging the pipeline, who were identified by complainant as Oshaq Ali Rind, Aijaz Bikak and Ghulam Hussain @ Yousif Palari; the accused persons on seeing the police

party escaped away; however one of them was arrested by the police at the spot, who disclosed his name as Oshaq Ali Rind, from whose possession one Oppo and Nokia mobile phone as well as cash of Rs.10,000/- were recovered; the arrested accused disclosed the names of other accused as Ghulam Hussain, Yousif Palari, Aijaz Bikak, Ibrahim Sherro Punjabi and Sadiq Punjabi, such FIR was lodged on 26.6.2021. The applicant being aggrieved by and dissatisfied with the inclusion of his name in the aforesaid crime preferred Criminal Bail Application No.561/2021, which was heard and rejected by learned Additional Sessions Judge-II, Kotri vide order dated 2.8.2021, on the ground that the applicant failed to show any enmity with the Complainant.

3. It is inter-alia contended on behalf of the applicant that he is innocent and has falsely been implicated in the present case due to enmity; that the story as narrated in the aforesaid crime seems to be concocted, managed, and engineered one; that there is inordinate delay of several hours in lodgment of FIR for which no plausible explanation has been furnished, which caused serious doubt about the genuineness of accusation against the applicant. Learned counsel emphasized that the alleged incident is un-witness; that the prosecution story is clouded with mystery thus no fruitful result will come out if the applicant is sent behind the bar for an indefinite period in the crime which he has not committed at all; that nothing has been recovered from the possession of applicant, during the investigation; that the offenses applied by the prosecution do not carry maximum punishment up to 14 years, however lesser punishment up to seven years is to be looked into even at the bail stage; that prohibition contained in Section 497(1) is not attracted in the present case. Learned counsel invited the attention of this court that initially co-accused Ghulam Hussain was granted interim pre-arrest bail by this Court vide order dated 27.8.2021 in Criminal Bail Application No. 723 of 2021 but subsequently, he was arrested by Nooriabad Police in violation of the direction of this Court and the same factum was disclosed vide order dated 8.10.2021, however his bail was dismissed on account of non-prosecution, thus the applicant is entitled to the concession of pre-arrest bail in the said crime; that the purported recovered property from co-accused is not owned by the applicant, which factum requires further inquiry into

the guilt of the applicant as provided under Section 497(2) Cr.P.C. In support of his contention, he relied upon in the case of Waseemullah v. The State (2016 SCMR 1282), Abdul Haleem and another v. The State and two others (2016 PCRLJ 482), Mumtaz Ali v. The State (2013 YLR 1178), and Faheem v. The State and others (2021 YLR 1680) and argued that tampering with auxiliary or distribution pipeline of PARCO has not been established during the investigation as such the guilt of the applicant is yet to be proved during trial; that ingredients of alleged offenses are yet to be determined in trial. He lastly prayed for allowing the instant bail application.

4. On the contrary, learned counsel representing the complainant has opposed the grant of pre-arrest bail to the applicant on the ground that the applicant is nominated in the crime with the specific role of committing theft of crude oil which was attempted to extract from PARCO pipeline and he is the culprit being in collusion with the co-accused to commit the crime and he being facilitator/ beneficiary is not entitled to the concession of extraordinary relief of pre-arrest bail. He further argued that the post-arrest bail was declined to the co-accused by this court which supports the case of prosecution on the premise that all accused including the applicant were named in the FIR. He lastly prayed for dismissal of bail application with the assertion that the applicant is involved in such cases which is an alarming situation. In support of his contention, he relied upon the case of Muhammad Ejaz v. Abid Hussain and another (2021 SCMR 552) and Raz Muhammad V. The State (2017 PCRLJ note 47), unreported order dated 06.09.2021 passed by this Court in Cr. Bail Application No.S-619 of 2021 and un-reported order dated 09.02.2021 passed in Cr. Bail Application No.S-1936 of 2021.

5. Learned Asstt. P.G has supported the impugned order. According to her, the role of applicant is consistently described in the crime report. According to her, attempting to steal oil from the main pipeline is a serious and heinous offense hence the applicant ought not to be treated leniently. She requested to reject the bail application of the applicant as the prosecution has sufficient material to connect him to the alleged offense.

6. After having heard the learned counsel for the parties and after tentatively going through the records, prima-facie the grounds

agitated by the learned counsel for the applicant is worth consideration on the premise that the main accusation against the applicant is that he facilitated the co-accused to commit the theft oil; thereby he is vicariously liable for the breaches for the offense as alleged. However the story of complainant did not end here, he narrated a different story in the aforesaid crime; that the name of applicant was given by his accomplice, who was allegedly arrested at spot. If this is the position of the case, then the question arises whether the statement of co-accused could be considered at bail stage to withhold the relief of pre-arrest bail, in this regard, I have noticed that the applicant has been implicated by the co-accused, in his statement during investigation, which has been relied upon by the learned counsel for the complainant to oppose the prayer of the applicant for pre-arrest bail. No doubt, as per Article 43 of the Qanun-e-Shahadat Order 1984 when more persons than one are being jointly tried for the same offence and a confession made by one of such persons admitting that the offence was committed by them jointly, is proved, the court may take into consideration the confessional statement of that co-accused as circumstantial evidence against the other co-accused. However, the Honorable Supreme Court has, in several cases, held that conviction of co-accused cannot be recorded solely on the basis of confessional statement of co-accused unless there is some other independent evidence corroborating such confessional statement. The principle ingrained in Article 43 of the Qanun-e-Shahdat is applied at bail stage and the statement of co-accused can lead the court to form a tentative view about prima facie involvement of his co-accused in the commission of the alleged offence; but as in the trial, at the bail stage also, the prima facie involvement of co-accused cannot be determined merely on the basis of statement of co-accused without any other independent incriminating material corroborating the statement. Therefore, the trial court has to examine whether there is any other tangible incriminating material available on record that corroborates the statement of the co-accused, by connecting the applicant with the commission of the alleged offences, for which the applicant has shown to have been attending the trial court, as per diary sheet produced by him. On the aforesaid proposition I seek guidance from the decisions of Honourable Supreme Court in the cases of Javed Masih v. State, **PLD 1994 SC 314**; Faqir Ullah v. Khalil-uz-

Zaman,**1999 SCMR 2203**; Mushtaq v. State, **2012 SCMR 109**, Naseem Malik v. State, **2004 SCMR 283**; Muhammad Irshad v. Muhammad Bashir, **2006 SCMR 1292**;and Ghulam Ahmed v. State, **2013 SCMR 385**.

7. As far as the argument of learned counsel for the complainant that bail pleas of co-accused persons have been rejected by this Court is concerned, prima-facie there is much difference between post arrest bail and pre-arrest bail. In principle, the remedy of extraordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial and humiliation. The Hon'ble Apex Court in case of Gulshan Ali Solangi and others v. The State through P.G. Sindh (**2020 SCMR 249**) has held as under:

“grant of pre-arrest bail is a remedy routed into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law with a view to protect his dignity and honour. It cannot be granted in every run of the mill criminal case, particularly to the accused confronted prima facie charges structured upon material/ evidence, warranting custody, that too, on the basis of positions/pleas verification whereof, is consequent upon recording of evidence.”

8. The record shows that bail plea of co-accused has been dismissed for non-prosecution rather than on merits, so far as rejection of bail plea of co-accused is concerned, as per FIR, he was arrested at the spot, while the present applicant alleged to be present at the spot however he has allegedly been shown to have escaped from the place of incident, primarily question arises whether he was present there or otherwise; if he would have been there then what prompted the police not to arrest him as such case of both these accused is on different footings. On the tentative assessment of the case, the applicant has made out a case for further inquiry.

9. The Learned counsel for the complainant has relied upon the cases as discussed supra, suffice to say that in criminal administration of justice each case is to be decided on its own facts and circumstances hence the case law relied upon, is not helpful to him in this case.

10. For the reasons discussed above, this bail application is allowed, hence, Interim Pre-arrest Bail granted to Applicant vide Order dated 9.8.2021 is hereby confirmed in the same terms.

However, the learned trial Court is directed to expedite the trial and conclude the same within a reasonable time, at least the complainant must be examined within one month from the date of receipt of this order, in case of non-compliance strong reasons shall be furnished. However, it is made clear that after recording of evidence of the complainant, if the evidence comes on record against the applicant, the learned trial court would be at liberty to cancel his bail application without referring the matter to this court on its own merits without prejudice to the above observations of this court, which is tentative so far as this bail application is concerned.

JUDGE

Sajjad Ali Jessar