

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Application No. S-1737 of 2021

Applicant / Accused : Muhammad Khan Khoso
Through Mr. Tarique Ali Jakhrani, Advocate

Complainant : Nadeem Ahmed
Through Mr. Ahmed Raza A. Sundrani, Advocate

State : Through Mr. Zahoor Ahmed, Addl P.G.

Dates of hearing : 20.09.2021 and 21.09.2021
Date of Order : 21.09.2020

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant bail application under Section 497 Cr. P.C, the applicant Muhammad Khan Khoso is seeking post-arrest bail in respect of cognizable offense, registered on 16.05.2021 under the complaint of Major (Retd) Nadeem Ahmed, Security Officer, Pumping Station (PARCO), Shikarpur, under Section 54 Cr. P.C, at Police Station Bakhshapur, being FIR No. 43/2021, under Sections 462 (b), 462-F, 427, P.P.C. The applicant was arrested in the aforesaid crime by the investigating officer, and after completion of the investigation, he submitted the final report before the concerned Judicial Magistrate, who after completing initial formalities sent up the case to Sessions Court, Kashmore @ Kandhkot as the case was exclusively triable by the Sessions Court. The applicant being aggrieved by and dissatisfied with his arrest preferred Criminal Bail Application No.158/2021, which was heard and rejected by the learned Sessions Judge Kashmore @ Kandhkot vide order dated 26.07.2021 on the ground that the applicant being a Public officer i.e. Head Constable in Police department, abused his official position and committed the offense of theft of Oil from the pipeline of PARCO, thus caused loss to the strategic Organization.

2. 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 this is the inordinate delay of about 18 hours in the lodgment of FIR for which no plausible explanation has been furnished, which caused serious doubt about the genuineness of acquisition 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 kept

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 the 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 the Rule of consistency is fully applicable in the present case on the premise that co-accused have already been admitted on post-arrest bail by this Court vide order dated 12.07.2021 passed in Cr. B. A No.S-274/2021 and 259/2021, thus the applicant is entitled to the concession of post-arrest bail in the said crime; that the recovered property i.e. water tank and the tractor have been restored on super dark to its original owner thus it could not be said that the said property 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 pipelines of PARCO has not been established during the investigation as such the guilt of the applicant is yet to be proved during the trial; that ingredients of alleged offenses are yet to be determined in trial. He lastly prayed for allowing the instant bail application.

3. On the contrary, learned counsel representing the complainant has opposed the grant of post-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 extracted from PARCO pipeline and he is the culprit being in police uniform to escort the co-accused to commit the crime and he being beneficiary is not entitled to the concession of bail. He further argued that the post-arrest bail allowed to the co-accused will not be helpful in his case on the premise that they were not named in the FIR. He lastly prayed for dismissal of the bail application with the assertion that the applicant is serving as HC in the police department 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).

4. Mr. Zahoor Ahmed, learned Addl P.G has supported the impugned order. According to him, the role of the applicant is consistently described in the crime report. According to him, stealing oil from the main pipeline is a serious and heinous offense hence the applicant ought not to be treated leniently. He

requested to reject the bail application of the applicant as the prosecution has sufficient material to connect him to the alleged offense.

5. After having heard the learned counsel for the parties and after tentatively going through the records, it appears that the applicant is Head Constable in Police Department and is bound to prevent the offenses in the area concerned; and, if he, from his acts or omissions, allows happening of the offense (s), or commits the offense, by escorting the vehicle, whereby he facilitated the co-accused to transport, the theft oil, thereby he breaches his official duties/obligations. The applicant, prima facie appears to be linked with the alleged offense of theft of a huge quantity of diesel oil, by allowing co-accused to tamper with the main Petroleum Pipe Line of PARCO. As per prosecution story, the theft oil was recovered along with 10 plastic drums containing 2200 liter oil, pipes connection and other material as disclosed in the column No.5 of the challan, under Mushirnama, and a sample of the same was sent up for expert opinion, which came positive; besides that the punishment of the offense alleged against the applicant may extend to fourteen years with which he is charged and he has failed to bring his case within the meaning of 'further inquiry' hence is not entitled to concession of bail. Learned counsel for the applicant is unable to point out any malice on the part of the complainant for his false implication in this case. Prima-facie, the case against the present applicant is not in any manner similar to the case against the co-accused, who were enlarged on post-arrest bail by this Court, as discussed supra. In these circumstances, the principle of consistency is not applicable in the present case.

6. Before parting with this order the Senior Superintendent of Police Kashmore @ Kandhkot has to look into the state of affairs and take up the matter on the disciplinary side within a reasonable time and take precautionary measures in all respect to avoid the involvement of Disciplinary Force in such sort of matters, in future.

7. The Learned counsel for the applicant has relied upon the cases as discussed supra, suffice to say that in criminal administration of justice every case is to be decided on its facts and circumstances hence the case law relied upon, is not applicable in this case.

8. For the reasons discussed above, this bail application is dismissed. 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 the recording of evidence of the complainant the applicant would be at liberty to file a fresh bail application before the learned trial Court which shall be decided afresh on its own merits without prejudice to the above observations of this court, which is tentative so far as this bail application is concerned. Let a copy of this order be transmitted to Senior Superintendent of Police Kashmore @ Kandhkot for compliance.

9. These are the reasons for dismissal of the bail plea which was rejected vide short order dated 21.9.2021.

JUDGE