

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

**Cr. Bail Application No.S-1047 of 2020**

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**DATE**                      **ORDER WITH SIGNATURE OF JUDGE(S)**

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For hearing of main case.

Date of hearing      26.04.2021

Date of order        26.04.2021

Ms. Tahreem Jawehery, Advocate alongwith applicant.  
Mr. Muhammad Asif, Special Prosecutor SSGCL.

**ORDER**

**NAIMATULLAH PHULPOTO, J:-**      Applicant/accused seeks pre-arrest bail in Crime No.89 of 2020 registered at Police Station Phuleli, under Sections 15, 17 and 24 of Gas (Theft Control & Recovery) Act, 2016. Previously, the applicant/accused moved an application for same relief before the learned Sessions Judge / Gas Utility Court, Hyderabad, same was declined vide order dated 21.10.2020.

2.                      Brief facts of the prosecution case as disclosed in the above mentioned FIR are as follows:-

“I am posted as Engineer at CG-TO Regional Office, Hyderabad. On 06.10.2020 I alongwith other staff each and every one 1. Qamaruddin S/o Mahmood Ali, Deputy Manager Maintenance, 2. Masood Ahmed S/o Mehfooz Ahmed Shaikh, Executive Officer (CRO), 3. Rafique Ahmed S/o Ghulam Qadir, Deputy Manager CGTO Regional Office, Hyderabad in government vehicle bearing No.BEK-238 were outside for checking in the area regarding illegal connections when received spy information that in Vishan Nagar near Pakistan Chowk (jurisdiction of police station Phuleli) one factory of confectionary is running inside a house while stealing gas from commercial gas line and is running their factory when on such information alongwith staff went for checking factory inside the house of one namely, Muhammad Shahid Malik S/o Muhammad Shafi Malik in Vishan Nagar and found that namely, Muhammad Shahid was stealing gas from commercial pipeline of ¾ inch pipeline with a cut of ½ inch and was running his confectionary factory when I immediately took photographs of

the same and taken into custody 02 rubber pipeline about 5 feet long ½ inch pipeline alongwith nozel and came to aforementioned office and informed high officers and after receiving letter has now appeared before police station alongwith taken photographs and handover ½ pipe about 4 inches nozel and 02 rubber pipelines about 6 feet long and do complaint that accused namely Muhammad Shahid Malik S/o Muhammad Shafi Malik has committed offences U/S 15-17-24 of Gas Theft Control & Recovery Act, 2016 while stealing gas from commercial pipeline for running of confectionary factory. I am the complainant, investigation be made.”

3. Learned Advocate for the applicant/accused mainly argued that factory was closed due to loss at the time of the raid; that complainant has lodged false FIR against the applicant/accused to show his efficiency to his superiors; that the other witnesses of the incident are subordinate to the complainant, hence, highly interested. It is also argued that refusal of the pre-arrest bail to the applicant would serve no purpose except to bring disrepute him. In support of his submissions, reliance is placed upon the case reported as SOHAIL UDDIN v. THE STATE (2020 P.Cr.LJ 957).

4. On the other hand, learned Special Prosecutor appearing on behalf of SSGCL vehemently opposed the confirmation of the bail, particularly on the ground that appellant caused loss to the sui gas company by committing theft of gas from the main pipeline to his factory used for the commercial purpose. It is submitted that articles viz. rubber pipeline alongwith nozel used by the applicant for committing theft were secured from the place of incident and it is submitted that applicant is not entitled for extraordinary relief of pre-arrest bail. In support of his submissions, reliance is placed upon the cases reported as ALAMGIR KHAN v. THE STATE and another (2019 SCMR 1457).

5. Heard, learned Advocate for the applicant, learned Special Prosecutor for SSGCL and perused the material available on the record.

6. In the present case, applicant/accused Malik Muhammad Shahid was found committing theft of gas from the main pipeline for his factory. From the place of wardat, two rubber pipelines of about five inches long and half inch pipeline alongwith nozel were recovered. Photographs were taken by the complainant. During investigation, sufficient material was collected against the applicant/accused for his involvement in this case. Primafacie, there appears reasonable grounds for believing that the applicant has committed an offence under Section 14 of the Gas (Theft Control and Recovery) Act, 2016, punishable upto 14 years with fine which may extend to rupees 10 Million.

7. The principles for grant of pre-arrest bail are well settled in the case of RANA ABDUL KHALIQ v. The STATE (2019 SCMR 1129) wherein it was observed by the honourable Supreme Court that;

“2. Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation.”

8. In the case of ALAMGIR KHAN v. The STATE (2019 SCMR 1457), the honourable Supreme Court has observed that;

“Alamgir Khan, petitioner herein, declined downstairs throughout, seeks admission to bail; he was surprised by a raiding party, within the precincts of Police Station Lakki Marwat, surreptitiously siphoning natural gas in a residential premises to unauthorizedly generate electricity being distributed to a large number of consumers in the neighborhood; he is also accused of criminally intimidating the contingent, brandishing a pistol on them, however took to the heels on arrival of police. Appliances being used, comprising electric generators, stabilizers with electric panels as well as other paraphernalia to power the system were secured vide inventory.

2. Position taken by the learned counsel for the petitioner requires an in-depth analysis, essentially on the basis of evidence, yet to be recorded and thus falls far

outside the barriers of tentative assessment. Statements of the witnesses, functionaries of the State with no animus or malice, duly corroborated by apparatus secured from the spot, constitute 'reasonable grounds', within the contemplation of section 497 of the Code of Criminal Procedure, 1898 to prima facie frame the petitioner with the charge that attracts the bar contained therein as section 462-C of the Pakistan Penal Code, 1860 carries a punishment that may extend to ten years' rigorous imprisonment. View taken by the Courts below being well within the remit of law is not open to any exception."

9. For the above stated reasons, no case for grant of pre-arrest bail is made out. Application for pre-arrest bail is rejected. Interim pre-arrest bail already granted to applicant/accused is hereby re-called.

10. Needless to mention that the observation made hereinabove are tentative in nature; trial Court shall not be influenced while deciding the case on merits.

JUDGE

Shahid

