

*Order Sheet*

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

Cr. Bail Appln. No. S- 147 of 2022.

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Date	Order with signature of Hon'ble Judge
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- 1.For orders on office objection as flag A.
- 2.For orders on M.A No. 1559 of 2022.
- 3.For hearing of bail application.

**21.7.2022.**

Mr.Asif Hussain M. Nawaz Chandio, advocate alongwith the applicant.

Mr. Aitbar Ali Bullo, D.P.G.

Mr. Muhammad Ramzan Chandio, Law Officer on behalf of SSGC Larkana.

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**ORDER**

**ADNAN-UL-KARIM MEMON-J.**Through this bail application, applicant Farhan Illahi Mahar is seeking pre-arrest bail in F.I.R No.30 of 2022, registered with Police Station Thul, for the offenses under Sections15, 17 (24) Gas Theft Control and Recovery Act 2016 readwith Section 462-C, 427 PPC.

2. After registration of FIR, the investigation followed, and the applicant apprehending his arrest surrendered himself before the concerned Court for seeking pre-arrest bail, where, initially he was granted interim pre-arrest bail but later on its confirmation was declinedvide order dated 17.03.2022, on the analogy that he is involved in the said crime, which carries a punishment of 14 years.

3. Mr.Asif Hussain M. Nawaz Chandio, learned Counsel for the applicant,contended that the applicant is innocent and has falsely been implicated in the present case due to police enmity; that the story as narrated in the aforesaid crime seems to be concocted, managed, and engineered; that there is the inordinate delay of about 6 hours in the lodgment of FIR for which no plausible explanation has been furnished, which caused serious doubt about the genuineness of accusation of gas theft against the applicant. Learned counsel emphasized that the complainant party had violated the rules and regulations as provided by the Gas (Theft Control and Recovery) Act, 2016,and no recovery was effected from his possession, which factum has been admitted in the F.I.R, therefore, the applicant could not be held responsible for the alleged theft as portrayed by the complainant in his statement, as such, sections 15, 17 & 24 of the Gas (Theft Control and Recovery) Act, 2016 are not attracted

to the facts of the present case. He stressed the point that no private person from the locality was associated to witness the alleged occurrence as well as recovery of alleged items, therefore, there is a sheer violation of section 103 Cr.P.C. Per learned counsel that the complainant has not complied with the provisions of Section 6 of the said Act, as according to the procedure laid down therein, the complainant has to file a complaint under Section 200 Cr.P.C, but the same has not been followed, therefore, entire proceedings in terms of instant FIR are null and void, and thus, the entire case seems to be doubtful and the benefit of the same at the bail stage could be awarded to the applicant. Per learned counsel that the statute provides two alternate sentences in this case and in such circumstances, the lesser sentence should be considered by the Court for the purpose of granting pre-arrest bail, which according to him, in this case, is not more than five years, thus according to him he is entitled to confirmation of pre-arrest bail already granted to the applicant; that the prosecution story is clouded with mystery thus no fruitful result will come out if the applicant is sent behind the bar in the crime which he has not committed at all and it is yet to be proved before the competent Court of law; that the offense Section 462-C, applied by the prosecution deals with the alleged theft of petroleum products and not Gas, however, the same do not carry maximum punishment up to 14 years, and 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, thus the applicant is entitled to the concession of pre-arrest bail in terms of Section 497(2) Cr.P.C. In support of his contention, he relied upon the case of *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 further argued 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, Mr. Aitbar Ali Bullo, learned D.P.G assisted by MrMuhammad Ramzan Chandio, Law Officer of SSGC Larkana, 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 GAS which was extracted from SSGC pipeline and he is the actual culprit and committed the crime and he being beneficiary is not entitled to the concession of extraordinary relief. He also argued that the case registered for the offense under sections 15, 17, and 24 are also applicable for the reason that; the alleged theft was being committed for commercial purposes and the said Act has been enacted to curb the theft of natural resources. He further argued that the offense carries a maximum punishment upto ten years and as per Section 23 of the Act, the applicability of Section 103 Cr.P.C is not mandatory, and therefore, the applicant is not entitled to release on bail. In support of his contention, he

relied upon the case of Mian Haroon Riaz Lucky and another v. The State and others **(2021 §CMR 56)**, Alamgir Khan v. the State, and another **(2019 §CMR 1457)**, and *Raz Muhammad V. The State* **(2017 PCRLJ note 47)**. He lastly submitted that since the applicant sought time to fulfill his obligation about the loss caused to the respondent company, this proposition as put forward by the learned counsel is not sustainable at the bail stage for the simple reason that Section 462-C, PPC is not a provision that is intended by the legislature to be used for the recovery of loss allegedly sustained rather, it is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under the said section.

5. The prosecution case against the present applicant is that complainant Fazal Muhammad, the Deputy Manager Sui Southern Gas Company Limited, Larkana, lodged the FIR stating therein that on 27.02.2022 at 1800 hours he received information about the theft of gas being committed by one Farhan Illahi in a shop situated beside Jamia Masjid Shahi Bazar Thul. On such information, complainant along with staff left office and proceeded towards the pointed place and reached the spot where he found that accused Farhan Ali Mahar by installing a direct clip in main Sui gas Line and through rubber was running 50 KW Generator in his shop and generating electricity and supplying the same to other shops and while seeing them he fled away. The complainant party disconnected the same, recovered the said generator along with plastic, rubber pipes, and clips, and brought the same to the Police Station, where the FIR of the incident was lodged to the above effect.

6. After having heard the learned counsel for the parties and after tentatively going through the record, prima-facie, the prosecution could not point out the place from where the alleged extraction of the gas was being carried out; besides no statement of public of the area concerned has not been recorded to corroborate the statement of Pws, even the complaint has not stated in his 161 Cr.P.C statement to the effect whether the subject shop was/is under the ownership of the applicant, where from he allegedly extracted the Gas, for which the trial Court is required to look into all affairs as pointed out by the parties, after recording the evidence of the complainant.

7. The record reflects that the applicant has already surrendered before the trial Court and facing the charge; besides that, the applicant has not abused the concession of pre-arrest bail to invoke the penal provision; and the material collected under Mashirnama is in the custody of the Police and there is no likelihood of the applicant to tamper with the same. Additionally, the alleged incident took place in the town/area in broad daylight, but no person from the public has been cited as a witness to the recovery proceedings. In this case, the applicant has pleaded his imminent arrest, in the subject F.I.R, at the hands of

the Police, to cause humiliation. If this is the position of the case, prima facie, such exceptions have not been pointed out by the Prosecution to deny the extraordinary relief as provided under Section 498-A Cr.P.C., thus at this stage applicant is entitled to the benefits of the ratio of the judgment rendered by the Honorable Supreme Court in the case of Waseemullah v. The State (2016 SCMR 1282).

8. For the foregoing reasons, the interim pre-arrest bail of the applicant already granted vide order dated 24.3.2022, is hereby confirmed in the same terms

9. The observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, if the applicant during proceedings before the trial Court, misuses the concession of pre-arrest bail, then the trial Court would be competent to cancel his bail without making any reference to this Court. Besides the trial Court is directed to record evidence of the complainant within one month positively.

10. Bail application stands disposed of in the above terms.

**JUDGE**