

IN THE HIGH COURT OF SINDH AT KARACHI**Crl. Bail Application No. 2267 of 2023**

Applicants : Usman Umar and Uzair Javed
through Mr. Raj Ali Wahid Kunwar, Advocate

Respondent : The State
through Mr. Abrar Ali Khichi, Addl.P.G.
alongwith S.I. Imtiaz Ahmed, I.O.

Complainant : Azhar Ali Khan (in person)

Date of hearing : 26rd October, 2023

Date of order : 31st October, 2023

ORDER

Omar Sial, J: Usman and Uzair, both sons of Javed Umar, have sought post-arrest bail in crime number 342 of 2023 registered under sections 430 P.P.C. and 14(A)(1)(B) of the Karachi Water and Sewerage Board Act, 2015 at the Al-Falah police station. Earlier on 05.10.2023 the learned 3rd Additional Sessions Judge, Karachi East, dismissed a bail application filed by the applicants.

2. Azhar Ali Khan an employee of the Karachi Water and Sewerage Board (KWSB), went to a specified location along with the local police on information that an illegal water hydrant was working there. When the team arrived there they saw a water tanker being filled outside a constructed enclosure with the help of the pipe that originated from inside the enclosed structure. Four persons were sitting in the tanker. They were identified as Abdul Razzaq, Arif Ali and the two applicants. The police learned that the hydrant was owned by Yasir Baloch, who was absent at that time.

3. I have heard the learned counsel for the applicants and the learned Additional Prosecutor General.

4. The learned counsel for the applicants has argued that the applicants have been booked in this case under the provisions of a law which was not in existence at the time the F.I.R. was lodged. Prima facie the learned counsel appears to be correct, yet, as this is a bail application, it will not be appropriate to give any conclusive observation on this issue. There also appears to be an issue as to whether the correct remedy under the applicable law was to file a complaint or register an F.I.R. Learned counsel submits that the applicants intend to pursue these issues according to the correct provisions of the law. Nonetheless, this bail application has been decided based on the law under which the applicants were booked.

5. It is evident from the F.I.R. that the illegal hydrant was owned and operated by Yasir Baloch. The four persons, including the applicants, were found sitting in the tanker, which was being filled from the hydrant. Although common sense entails that they, too, should have been aware that the hydrant from which the tanker was being filled was a dubious one, whether or not they were aware will have to be decided after evidence at trial.

6. An offence under section 430 P.P.C. is bailable whereas the one under the Act of 2015 although not bailable falls within the non-prohibitory clause of section 497. Keeping in view the principles enunciated in Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), I do not find any exceptional or extraordinary grounds in the present case to deny the two applicants bail.

7. Given the above, the applicants are admitted to post-arrest bail subject to their furnishing solvent sureties in the sum of Rs. 100,000 each and P.R. Bonds in the like amount to the satisfaction of the learned trial court.

JUDGE

