

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail No. 1789 of 2023**

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

For hearing of bail application.

30.08.2023

Mr. Ali Mardan Chang advocate for the applicant
Mr. Mukhtiar Ahmed Jawed advocate for the complainant
Mr. Kaleemullah Law Officer, PARCO
Mr. Hussain Bux Baloch Addl. PG

Through the instant bail application, the applicants have approached this Court for a grant of post-arrest bail in FIR No.203/2023 registered for offenses under Section 462-B/462-C/511/ and 34 PPC of P.S Memon Goth, Karachi.

2. On 13.06.2023, the applicants were arrested by the Parco Security officer on the premise that they were attempting to extract oil from the Parco pipeline at KM/66 KMK at Juma Goth, Karachi. PS Memon Goth police approached and arrived at the place of the incident and arrested the applicants as per the memo of arrest. It is alleged by the complainant that police also secured clamps, digging tools, and other materials, which were used to temper with Parco pipeline to steal oil. Their post-arrest bail was declined by the learned Additional Sessions Judge VIII (Malir) Karachi twice, vide orders dated 24.7.2023 and 22.6.2023, on the premise that the offense of theft of oil was/is increasing day by day, which is causing heavy loss to the public exchequer.

3. Mr. Ali Mardan Chang, learned counsel for the applicant has submitted that the applicants/accused are laborers and innocent and have falsely been implicated in this case by police in connivance with Parco officials, who want to show efficiency that they are working for betterment of the PARCO-company and the learned trial just acted what they said and/or argued. He next argued that the place of the incident is a public place, however, no witnesses from the public was/is cited as witness, though it is alleged that the public apprehended the applicants from the place of the incident; and, it is not possible to commit theft of oil from the auxiliary line in the daytime in presence of public; that no oil Tanker/container had been shown at the place of incident and/or was recovered from the possession of the applicants, and if applicants intended to extract oil from the alleged Parco Pipeline, they must have brought the oil Tanker and/or any vehicle with them for the aforesaid purpose; and, without such accessory, the alleged theft of crude oil was/is not possible. He next contended that the alleged recovery of digging material is/was always available with the Parco Office and police is in connivance with them to implicate the applicants thus false

implication of the applicants cannot be ruled out in the present case. Per learned counsel, the offenses under Section 462-B/462-C/511/ and 34 PPC do not fall within the prohibitory clause of Section 497 Cr. P.C more particularly when the complainant and police was not sure of the alleged offense whether committed or not as they have invoked Section 511 PPC. Learned counsel emphasized that Section 462(C), P.P.C. provides that any person tampering with the distribution of pipeline shall be punished with a sentence of up to 10 years and not less than 5 years with a fine to the extent of Rupees Three Million. He stressed that while examining the question of bail, the Court has to consider the minimum aspect of the sentence provided in the schedule for the alleged offense thus the offence does not fall within the prohibition contained in section 497(1) Cr. PC; that all PWs cited in Challan are either officers of PARCO and/or police officials, and no independent witness has been cited to substantiate the allegations of theft of oil, besides the complainant is not the eye witness of the incident, he was just informed by security officer about the happening of alleged incident at KM/66 KMK at Juma Goth, Karachi, Memon Goth; that there is no apprehension of tampering with the prosecution evidence, if the applicants are enlarged on post-arrest bail as entire material has already been collected by the Investigating Officer as alleged; that it is incumbent upon the Court to scan the material prudently while considering the question of post-arrest bail in the light of guidelines provided by the Supreme Court, and Court should not deprive the accused being influenced from the sensitivity of offense or capital punishment provided for the alleged offense, in terms of the ratio of the judgment rendered by the Supreme Court in the case of *Zaigham Ashraf v. The State* **2016 SCMR 16**. He lastly prayed for allowing the bail application.

4. Mr. Mukhtiar Ahmed Jawed, learned counsel representing the complainant has opposed the grant of 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 the PARCO pipeline with digging material and they are the culprit being in collusion with each other to commit the heinous crime to cause loss to the PARCO company, owned and controlled by the Government of Pakistan as such are not entitled to the concession of post-arrest bail. He further argued that the post-arrest bail was declined to the applicants by the trial Court twice on the premise that all accused were named in the FIR with specific roles with incriminating material. Per learned counsel, the offenses alleged under Sections 462-B and 462-C PPC are in respect of tampering with petroleum pipelines, etc., and tampering with auxiliary and distribution pipelines of petroleum, punishable for terms extending up to 14 and 10 years respectively. Learned counsel argued that the applicants were apprehended along with incriminating material and the offenses fall within the prohibitory clause of Section 497 Cr. P.C., therefore, the applicants are not entitled to post-arrest bail at

this stage. Learned counsel further argued that the offense is heinous has grave repercussions and sufficient material is available on the record to connect the applicants with the commission of the crime and the bail declining orders are well reasoned, proceed on correct principles of law on the subject, and does not call for interference by this Court. In support of his contentions, he relied upon the unreported orders dated 21.09.2020 passed by this Court in Bail Application No.1737 of 2021, order dated 03.08.2023 in Bail Application No.415 of 2023, order dated 05.04.2023 in Bail Application No.291 of 2023 and order dated 27.07.2023 in Bail Application No.1655 of 2023. He lastly prayed for the dismissal of the bail application.

5. Mr. Hussain Bux Baloch, learned Additional PG has adopted the version of the complainant and vehemently opposed the bail application and argued that the applicants were arrested red-handed on the spot by the security officer of PARCO and the public, as such there was/is no malafide on the part of police to book them in the aforesaid crime. Learned APG contended that the name of the applicants transpires in the FIR, which was promptly lodged; that incriminating material was recovered from the place of the incident and further submitted that all these things are against the applicants which connect them with the said crime, therefore the applicants are not entitled to grant of post-arrest bail.

6. I have heard the learned counsel for the parties and have perused the material available on record.

7. Prima-facie, this is a case of an attempt to commit theft of crude oil and this could be the reason that the prosecution has made the recourse to Section 511 PPC along with enabling provisions of PPC, which caters to such like situation, according to which whoever attempts to commit an offense punishable by the Pakistan Penal Code with imprisonment for life or imprisonment, or to cause such an offense to be committed, and in such attempt does any act towards the commission of the offense, shall, where no express provision is made by the Pakistan Penal Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offense, for a term which may extend to one-half of the longest term of imprisonment provided for that offense or with such fine as is provided for the offense, or with both. Prima facie, the longest term of imprisonment provided for the offenses under Sections 462-B and 462-C PPC is extending up to 14 and 10 years respectively. One-half of 10/14 years comes to 5/7 years, which also does not fall within the prohibition contained in Section 497(1) Cr. PC.

8. Prima facie, in the FIR, the applicants are only charged for an attempt to commit theft of oil. The complainant is not an eyewitness of the occurrence. Similarly, no one from the public/people, who allegedly attracted to the spot and apprehended the applicants, has come forward to substantiate the version of the

complainant. The entire prosecution case depends on the sole evidence of the security officer of PARCO who alleged against the applicants that they attempted to commit theft of oil by tampering with the main Petroleum Pipeline of PARCO at KM/66 KMK at Juma Goth with tools allegedly recovered from the place of incident. These allegations need to be thrashed out by the trial Court after recording his statement for the reason that nothing has been brought on record by the prosecution which may suggest that the applicants are the members of the ring which associates habitually committing theft of oil from PARCO petroleum pipelines, which appears to be a significant aspect of the case needs to be thrashed out. Prima facie, there is no independent witness to the incident, who might have supported the version of a security officer, though it is alleged in the crime report that the applicants were apprehended by the public in such circumstances at this stage in the case against the applicants requires further probe, which is only possible if the evidence of the complainant is recorded. The Sections 462-B and 462-C allegedly applied by the police are yet to be determined by the trial Court whether attracted or otherwise for the reason that no alleged extracted oil has been recovered and even no recovery of the alleged oil container/tanker has been cited and/or recovered from the possession of the applicant and/or place of incident. Prima facie, in the absence of the above material nothing could be said for and against; that the alleged offenses against the applicants even otherwise do not fall within the prohibitory clause of Section 497(2) Cr. PC, in terms of Section 511 PPC applied by the prosecution; even otherwise, the offenses mentioned in the FIR are yet to be thrashed out by the trial Court, besides, the applicants have no previous criminal record. In such circumstances, the grant of bail in such cases is a rule while rejection is the exception; besides, no exceptional ground is available that may justify withholding concession of bail to the applicants, in terms of the decision of the Supreme Court in the case of *Shahzad v. The State* **2023 SCMR 679**.

9. For the aforesaid reasons, the bail application of the applicants namely Muhammad Faisal, Ghulam Nazik, Liaquat Ali, and Ghulam Murtaza is accepted and they are admitted to post-arrest bail in FIR No.203/2023 registered for offenses under Section 462-B/462-C/511/ and 34 PPC of P.S Memon Goth, Karachi, subject to their furnishing a solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) each and PR bond in the like amount to the satisfaction of the trial Court.

10. The observations made hereinabove are tentative and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE