

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1400 of 2023

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Date	Order with signature of Judge
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For hearing of bail application

**13.7.2023**

M/s Nasrullah Korai and Shoukat Ali Bhanbhro, advocates for the applicant

Mr. M.A. Javed advocate for M/s PARCO

Ms. Amna Ansari, Additional PG

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Through this bail applicant Gul Bahar Shah son of Bachal Shah seeks post-arrest bail in FIR No.160/2023, registered with Police Station Bin Qasim Malir Karachi under Sections 462-B, 462-F, 462-C/322/201, 202/34 PPC. His post-arrest bail plea was rejected by the trial Court vide order dated 19.6.2023 on the premise that sufficient material in the shape of a memo of arrest and recovery, postmortem reports of Abdul Ghani and Zahid Khan were available to connect him with the commission of alleged offenses, with which he has been charged.

2. It is, inter alia, contended that the applicant is innocent and he has been falsely implicated in the alleged crime by the police in connivance with the personnel of the respondent / PARCO. He further submitted that no specific role has been assigned to the applicant and the only allegations against him were that he attempted to commit alleged theft of oil from the pipeline of PARCO and was transporting the dead bodies of the co-accused who were allegedly buried while digging the tunnel to extract the oil from the pipelines of PARCO. He further submitted that nothing has been recovered from the exclusive possession of the applicant. The learned counsel pleaded that the death of the deceased due to alleged suffocation as portrayed by the complainant remains shrouded in mystery whereas the applicant was made a scapegoat by the police due to extraneous reasons. He next argued that there is no eyewitness of the alleged incident and the complainant lodged the FIR at the behest of PARCO personnel on hearsay evidence. He next argued that the co-accused namely Dilawar and Rana Adnan have already been granted bail by the learned trial Court on 31.5.2023 and 19.6.2023 as such the applicant is also entitled to the concession of post-arrest bail under the rule of consistency. He next submitted that applicant was neither arrested on the spot nor was found extracting the oil from the PARCO pipeline. He further submitted that the PARCO pipeline has not been tempered and PARCO officials are not witnesses of the incident as such the ASI has no power and authority to book the applicant at the behest of PARCO officials based on hearsay evidence as the police was not the witness of

the incident. Learned counsel referred to the contents of the FIR and submitted that the applicant has been shown to have been arrested near Al-Khidmat Hospital, but no official or any witness has been cited about the arrest and recovery of two dead bodies of co-accused. He further submitted that so far as the alleged car is concerned, it is not registered in the name of the applicant and no forensic lab test of the said car was conducted from which the alleged dead bodies were secured. Learned counsel submitted that the applicant has nothing to do with the alleged Plot No. E-29, from where the alleged tunnel was dug to extract oil from the PARCO line. He next submitted that sections applied in the FIR are not attracted in the case and the applicant cannot be arrested on his alleged incriminating statement as portrayed by the police under the law. He lastly prayed for allowing the instant bail application.

3. On the contrary, learned counsel representing the PARCO has opposed the bail application on the premise that the applicant was arrested when he was shifting the dead bodies of two co-accused who were also involved in the tempering with PARCO pipeline and theft of oil. He next argued that the vehicle and dead bodies were recovered from the possession of the applicant and he failed to give an account of the dead bodies. Learned counsel attempted to distinguish the case of the co-accused on the premise that neither the co-accused were arrested with the dead bodies nor there was anything recovered from their possession. On the contrary, the applicant has been caught red-handed with dead bodies which were lying in his vehicle No.BL-3617; therefore, the rule of consistency does not apply to the case of the applicant. He lastly prayed for the dismissal of the bail application.

4. Learned Additional PG has endorsed the point of view of the learned counsel representing the PARCO and further argued that there was nothing on record whereby it can be assumed that the accused person was falsely implicated in the commission of the offence by leaving the real culprits. The learned counsel finally submitted that the Court below while passing the impugned bail order rightly appreciated the record and rejected the request of the applicant. He lastly prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

6. A tentative assessment of the record reflect the following aspect of the case:-

- i) The alleged incident took place on 30.04.2023 and was reported on the same day by ASI Muhammad Shafique of PS Bin Qasim, District Malir with the narration that he stopped one vehicle bearing No. BL-3617 and arrested the applicant and Muhammad Ameen and recovered two dead bodies from the said vehicle and arrested the applicant for offenses under Section 462-B, 462-C, 322, 201, 202 and 34 PPC, by his disclosure.
- ii) On the pointation of the applicant, police searched the place of the incident wherein they found one tunnel to extract oil from the PARCO pipeline.
- iii) The question is whether the applicant committed theft of oil from the PARCO pipeline and transported the dead bodies of the co-accused.
- iv) The question was whether the applicant had put the dead bodies in the vehicle and shifted the vehicle from the place of occurrence to the place out of sight and on his pointation dead bodies lying in the vehicle were recovered. The law is settled by now that if the prosecution asserts a motive on the aforesaid point has to prove before the trial Court at the bail stage such aspect cannot be seen, these factual aspects could be determined by the trial Court after recording the evidence.
- v) Prima facie, there is no eye witness of the alleged incident and the applicant has been booked on his incriminating statement and whether based on the incriminating evidence accused can be booked in a crime. This aspect shall also be looked into by the trial Court.
- vi) It is a settled principle of law where an incriminating piece of evidence is not put to the accused under the law, the Court cannot rely upon such testimony. The law on the aforesaid proposition is settled by the Supreme Court in the cases of Muhammad Shah v State 2010 SCMR 1009 and Imtiaz alias Taj v. State 2018 SCMR 344.

7. Prima-facie, the entire prosecution case depends on the sole evidence of the complainant police official who alleged against the applicant that he attempted to commit theft of oil by tampering with the main Petroleum Pipe Line of PARCO. 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 applicant is a member of the ring which associates

habitually committing theft of oil from Parco Pipe Lines, which appears to be significant aspect. The identity of the applicant by the police personnel to the effect that he transported two dead bodies who allegedly died due to suffocation while digging the tunnel to extract oil from Parco Pipelines and upon his disclosure of the alleged crime is appearing to be prima facie a weak piece of evidence so collected by police for the reason that PARCO management did not come forward to lodge complaint against the applicant either they were the eye witness of the alleged crime. There is no independent witness to the incident. The sections 462-B and 462-C allegedly applied by the policed 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 alleged instruments used in such extraction have been recovered from the possession of the applicant. Prima facie in the absence of the above material, the alleged offense against the applicant even otherwise is not falling within the prohibitory clause of Section 497(2), Cr. P.C.

8. The grant of bail in such cases is a rule while rejection is the exception. No exceptional ground is available, which may justify withholding concession of bail to the applicant.

9. Bail has already been granted to co-accused Dilawar and Rana Adnan and in that eventuality, the applicant has become entitled to the concession of bail on the principle of rule of consistency. Even otherwise, the offenses mentioned in the FIR are yet to be thrashed out by the trial Court; besides, the applicant has no previous criminal record. In these circumstances, it is rightly contended by the learned counsel for the applicant that the applicant is entitled to a grant of post-arrest bail on the principle of consistency. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *Shahzad Vs The State* **2023 SCMR 679**.

10. In view of the above, it is also essential to note that a Court that deals with an application for a grant of bail in an offense not falling within the prohibitory clause of Section 497(1) Cr. P.C must apply its judicious mind to the facts and circumstances of the case and the conduct of the accused person and decline to exercise the discretion of granting bail to him in such offense only when it finds any of the above noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned

above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle.

11. The Supreme Court has already cautioned the learned courts below in Muhammad Tanveer v State **PLD 2017 SC 733**, in the following terms:-

*“ Once this Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of Section 497, Cr. P.C shall be a rule and refusal shall be an exception, then the courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding [under Article 189] on all Courts throughout the country including the Special Tribunals and Special Courts.”*

12. In the present case, the learned trial Court has failed to adhere to the principle of law enunciated by the Supreme Court, as discussed supra. In the light of the principles set for the by the Supreme Court in post-arrest bail matters, as discussed supra, the impugned order passed by the learned trial Court is thus not sustainable under the law and liable to be reversed on the aforesaid proposition. I am fortified with the decisions of the Supreme Court rendered in the cases of Tariq Bashir Subhan Khan v. The State 2002 SCMR 1797 & Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488.

13. I have custiously scanned and ruminated the katerial placed on record and in my tentative assessment, the there arfe sufficient gounds for further inquiry in terms of Section 497(2) Cr. P.C therefore, on 13.07.2023, for the reasons to be recorded later, the bail application of the applicant Gul Bahar Shah was accepted and he was admitted to post-arrest bail in Crime No.160/2023 of Police Station Bin Qasim, District Malir Karachi registered for offenses under Sections 462-B, 462-F, 462-C/322/201, 202/34 PPC subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and PR bond in the like amount to the satisfaction of the trial Court.

14. 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, if the evidence comes on record against the applicant, the learned trial Court would be at liberty to cancel his bail application without referring the matter to this Court on its own merits without prejudice to the above

observations of this Court , which is tentative so far as this bail application is concerned.

15. These are the reasons for my short order dated 13.07.2023, whereby the bail of the applicant was accepted.

JUDGE

Zahid/\*



