

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 1887 of 2023 Criminal Bail Application No. 1888 of 2023

For hearing of Bail Application.

Applicant/ Accused : Asghar son of Rehman Gul [*in both Bail Applications*] through Mr. Sikandar Ali Shar, Advocate.

State/ Complainant : Asad Ghouri, Executive Officer and Abdul Sattar Shaikh, Assistant Manager, SSGC, through Malik Sadaqat Khan, Special Prosecutor SSGC.

Date of hearing : 05-10-2023

Date of order : 05-10-2023

*FIR No. 04/2016
FIR No. 43/2016
Both u/s: 462-A(h), 462-C, 462-E, 34 PPC
P.S. SSGC, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/ Accused seeks post-arrest bail in the aforesaid crimes after such application has been declined by the Sessions Judge, Malir, Karachi by order dated 15-08-2023.

2. As per FIR No. 04/2016 lodged on 11-01-2016, the investigation team of the SSGC alongwith the police reached sector 20-B, Shah Latif Town, Malir, Karachi, to discover that a service pipeline of the SSGC had been tampered with to steal gas by creating an unauthorized connection into the service pipeline to supply gas to houses in the vicinity through rubber pipes; that the unauthorized apparatus was dismantled and seized; that on inquiries made from the vicinity as to the persons involved in such supply, the investigation team learnt the names of three persons, including the applicant/accused (Asghar), who were allegedly involved in giving unauthorized gas connections as aforesaid on receipt of remuneration.

3. Similarly, as per FIR No. 43/2016 lodged on 22-03-2016, the investigation team of the SSGC alongwith the police reached Block-C,

Abdullah Goth to discover that a service pipeline of the SSGC had been tampered with to steal gas by creating an unauthorized connection into the service pipeline to supply gas to houses in the vicinity through rubber pipes; that the unauthorized apparatus was dismantled and seized; that on inquiries made from the vicinity as to the persons involved in such supply, the investigation team apprehended from the same vicinity one Ghulam Mustafa who on interrogation implicated the applicant/accused (Asghar) as an accomplice in the giving of unauthorized gas connections as aforesaid on receipt of remuneration.

4. Both FIRs were lodged for offences under the PPC inasmuch as the Gas (Theft Control and Recovery) Act, 2016 had not been enacted at the time. The accused (Asghar) was arrested in both cases on 07-04-2016.

5. Heard learned counsel, the Special Prosecutor SSGC and perused the record.

6. The accused (Asghar) was not apprehended from the scene of the crime. In FIR No. 04/2016 he was nominated only with the first name 'Asghar' allegedly on information gathered from the residents of the vicinity, none of whom have given any statement under section 161 Cr.P.C. to implicate him as one of persons who provided illegal gas connections. In FIR No. 43/2016 he was not nominated in the FIR, but was subsequently implicated on the statement of the co-accused recorded in police custody. No incriminating item has been recovered from him.

7. To oppose bail, the Special Prosecutor SSGC has primarily relied on the fact that after the accused had been earlier granted bail by the Sessions Court, he remained absent from the trial and thus is not entitled to any discretion. On the other hand, learned counsel for the accused draws attention to medical reports on the record and submits that though the accused was attending the trial court for the longest time without any progress, but during such time he suffered

serious injury in a road accident and remained confined to hospital and then to home, and when he was fit enough to walk he himself surrendered to the trial court but was arrested. Be that as it may, even in cases where an accused remains a proclaimed offender but has a good case for bail on the merits, it was held by the Supreme Court in *Muhammad Shafi v. The State* (2016 SCMR 1593) that in a case calling for further inquiry into the guilt of an accused person, bail is granted to him as of right and not by way of grace or concession, and “...while it may be true that sometimes bail is refused to an accused person upon his having remained a Proclaimed Offender but at the same time it is equally true that such refusal of bail proceeds primarily upon a consideration of propriety. It goes without saying that whenever a question of propriety is confronted with a question of right, the latter must prevail.” Also, in *Mitho Pitafi v. The State* (2009 SCMR 299), where the courts below had refused bail on the ground that the applicant had remained a fugitive from law, the Supreme Court of Pakistan while granting him bail held that “It is well-settled principle of law that bail can be granted if an accused has good case for bail on merit and mere absconsion would not come in way while granting the bail.”

8. For reasons discussed in para 6 above, the case against the accused is clearly one of further enquiry into his guilt, falling within the ambit of sub-section (2) of section 497 CrPC. Therefore, the accused Asghar s/o Rehman Gul is granted bail in FIR No. 04/2016 and FIR No. 43/2016 subject to furnishing solvent surety in the sum of **Rs. 200,000/- [Rupees Two Hundred Thousand only]** in each case alongwith P.R. Bond in like amount to the satisfaction of the Nazir of this Court. Office shall place a copy of this order in the other bail application.

Needless to state that observations above are tentative and shall be construed to prejudice the case of either side at trial.

JUDGE

SHABAN*