

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Bail Application No.S-235 of 2024
(*Sajjad Ali Lakho v. The State*)

Crl. Bail Application No.S-261 of 2024
(*Syed Sarfraz Shah v. The State*)

Date of hearing	Order with signature of Judge.
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Mr. Achar Khan Gabol, Advocate along with applicant Sajjad Ahmed Lakho in Crl. B.A.No.S-235 of 2024.

M/s Syed Muhammad Ali Shah Rizvi (power filed today) and Ghulam Shabbir Soomro, Advocates along with applicant Syed Sarfraz Shah in Crl. B.A.No.S-261 of 2024.

Mr. Dareshani Ali Haider 'Ada', D.A.G a/w Inspector Legal Nafees-ud-Din and SHO, Noor Muhammad Bhayo of P.S, Railway Rohri.

Date of Hearing & Order: **10-05-2024**

ORDER

MUHAMMAD IQBAL KALHORO, I.- An FIR was registered by Qurban Ali, a Gangmate Pakistan Railways regarding theft of railway crossing lines and railway lines on 31.03.2024 against unknown accused naming, however, Piyar Ali and Sajjad Ali, both railway employees, for delinquency thereby facilitating such theft.

2. Argument of learned counsel in defense is that applicant Sajjad Ali is a Gatekeeper with no role to look after or watch over railway crossing lines etc. Hence, his case requires further enquiry. More so, Cabinman Piyar Ali whose duty was to watch over the relevant spot from where theft was committed, has been granted post arrest bail by the trial Court.

3. Learned counsel for applicant Syed Sarfraz Shah submits that his name does not appear in FIR and on the basis of disclosure by co-accused has been arraigned in the case.

4. Learned Deputy Attorney General has, however, opposed bail on the ground that both applicants have not joined investigation; it has been discovered that Gatekeeper Sajjad Ali had pointed out the spot where stolen material was available and then stolen and applicant Syed Sarfraz Shah is a Junk Dealer, who has purchased stolen property. Since they have not joined investigation, recovery has not been effected from their possession. I.O of the case is present and has reiterated the same facts.

5. I have considered submissions of parties and perused material available on record. Serious allegations of theft of railway crossing lines and railway lines are alleged in FIR. Gatekeeper Sajjad Ali's duty was at the same place from where theft was committed. He is stated to have facilitated theft of government property to the detriment of public. The rule of consistency is not applicable because co-accused have been granted post arrest bail by the trial Court. Only after their arrest; the police was able to effect recovery of only railway lines from them. The principles regulating applications for post arrest bail and pre-arrest bail are quite different. While granting pre-arrest bail element of mala fide intention and ulterior motive is to be taken into account along with merits.

6. The I.O has stated that recovery of railway crossing lines which are more expensive to that of railway lines already recovered is yet to be effected from possession of applicants. And as per their investigation, it is in possession of applicant Syed Sarfraz Shah, who is a Junk Dealer. It is urged by the I.O that in case his interim pre-arrest bail is confirmed, he will not join investigation and no recovery would be effected. Since they have not joined investigation, the entire case is likely to be jeopardized and become weak.

7. I have no reason to disagree with them. The concept of pre-arrest bail is to protect the innocent persons who have been falsely implicated in the case out of mala fide intentions and ulterior motives by the police or complainant. In this case, the Railway Police or the complainant who himself is Railway employee has no ill-will against

the applicants, one of whom in fact is an employee of Pakistan Railways. More so, since applicants have not joined investigation, a pre-requisite to earn right to bail, I am of the view that they are not entitled to concession of bail. Since, learned DAG and I.O, both have requested to hand over custody of applicants for the purpose of investigation and recovery, finding them not entitled to extraordinary concession of pre-arrest bail, they both are taken into custody and handed over to the I.O of the case, who shall produce them before the concerned Magistrate today for the purpose of remand. After investigation and police record, the applicants would, however, be at liberty to move post-arrest bail application(s) before the trial Court, which shall be considered on its own merits without being influenced by this order.

8. The upshot of the above discussion is that both applications are **dismissed** in the above terms. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits. *Office to place a signed copy of this order in captioned in connected matter.*

JUDGE