

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 858 of 2024

Date	Order with signature of Judge
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For hearing of bail application.

REASONS DATED 04.05.2024

Mr. Nazar Iqbal, Advocate for the applicant.

Mr. Saleem Akhtar Buriro, APG.

Applicant Sher Khan son of Abdullah Khan is seeking bail after arrest in FIR No. 126/2016 lodged under Section 462-B/462-C/34 PPC at P.S. Sukhan, Karachi.

The allegation against the applicants/accused is that they tampered the pipeline of PARCO.

Per learned counsel the applicants/accused nothing has been recovered from possession of the applicants/accused which connects the applicants/accused with the commission of the alleged offence. Neither the crude oil nor any other incriminating is shown as case property, therefore, the applicants/accused are entitled for concession of bail.

On the other hand learned APG opposed the bail application on the ground that applicant is involved in heinous crime against the State. He further contended that the contents of the F.I.R. are frightening as main pipeline of oil, connecting other cities with rest of the country had been tampered with by the accused, for pilfering oil without ever conceiving its probable hazardous out-fall, as breach in the main pipeline could flood and set-ablaze the entire

area, rendering it an inferno, which could prove disastrous, in terms of massive loss to property and human lives. It shows the heinousness of the crime, therefore, he is not entitled for concession of bail.

I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. Admittedly nothing has been recovered from the applicant/accused. Merely alleging that the applicant/accused was found standing at the place of incident and neither the theft oil from the main line of PARCO nor any equipment through applicant/accused tampered the main line of the PARCO has been recovered from possession of the applicant/accused. It is also noted that though admittedly the raiding party followed the alleged pipes and immediately reached at the place of alleged incident, where accused were present, yet neither oil was recovered nor the raiding party tried to even catch hold at least one of the accused persons at the spot. Even otherwise, the allegations against the present applicants/ accused are general in nature, which require further inquiry, which can only be determined at trial. Nothing on record that applicant/ accused is previous convict or he remain involved in such type of activities in past. It is pertinent to mention here that case has been challaned and applicant is no more required for further investigation. It is also noted that the case is at initial stage though the FIR was lodged in the year 2016 and the applicant is behind the bars since his arrest and if the Trial Court proceeded the trial with such speed then it would not be concluded in near future and under these circumstances keeping the applicant behind the bars for an indefinite period would not serve any purpose. In this regard I have

gone through the case of Himesh Khan v. The National Accountability Bureau (NAB) Lahore and others (2015 SCMR 1092), wherein, the Hon' ble apex Court has held that:

“Speedy trial was the alienable right of every person, therefore, even if the provisions of S. 497, Cr.P.C in ordinary course was not applicable to an accused person facing charges under National Accountability Ordinance, 1999, the broader principle of the same could be pressed into service in hardship cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period.”

It is clear that allegation can only be determined at the conclusion of the trial, where deeper appreciation of evidence will be made out whether the accused is involved in the case or not. The allegations by themselves would not constitute bar for the grant of bail in peculiar circumstances of the case. Object of trial is to make an accused to face the trial and not to punish an under trial prisoner. Furthermore, basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bars. The prosecution has to explore every avenue to prove the guilt of applicant/accused including the element of mens rea. The basic concept of bail is that liberty of an innocent person is not to be curtailed unless and until proved otherwise. Deep appraisal and detailed discussion of evidence is not permissible and court should not cross the barrier of permissible limits of law while making tentative assessment of the evidence at the bail stage. The exercise of this power should, however, be confined to the cases in which a good prima facie ground is made out for the grant of bail in respect of the offence alleged.

This bail application was allowed at the conclusion of the hearing vide short order dated 02.05.2024 whereby applicant Sher

Khan son of Abdullah Khan was granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court. Above are the reasons of short order.

Before parting, I would like to further observe that if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court

JUDGE

Aadil Arab