

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 320 of 2024

(Shahzaib v The State)

Date of hearing	Order with signature of Judge
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Hearing of bail application

1. For orders on office objections at Flag-A
2. For hearing of bail application

Date of hearing and Order:- 02.08.2024

Mr. Imtiaz Ali Abbasi, Advocate for applicant.

Mr. Dareshani Ali Haider 'Ada', Assistant Attorney General along with
Sub-Inspector Ahsan Mirani, IO of Crime No.13/2024, FIA Sukkur.

ORDER

Adnan-ul-Karim Memon, J The applicant Shahzaib Gul is seeking post-arrest bail under Section 497, Cr.P.C. in F.I.R No.13 of 2024, for offences under Sections 462-I, 34, 109, PPC, registered at Police Station FIA Crime Circle, Sukkur. His earlier bail plea has been declined by the trial court vide order dated 13.5.2024 on the premise that the applicant is nominated in the F.I.R. with the allegations of theft of Electricity without an Electric Meter.

2. The brief facts of the prosecution case are that the complainant namely Israr Bachkani, Sub Divisional Officer (SDO), Operations SEPCO Sub Division, Khairpur, lodged FIR No: 13/2024 on 20-04-2024 at Police Station FIA Crime Circle Sukkur, with the narration that on his site visit, he found illegal/direct connection of Furniture House in the name and title of Shahzaib Furniture House which was directly connected from the transformer through a PVC cable and being used by the owner/Proprietor of the Furniture house near Mumtaz colony Opposite SOS Children Village Khairpur. Thus was involved in the theft of electricity through PVC directly connected to the distribution transformer and caused a huge loss to the national exchequer to the tune of Rs.69,5,520/- approximately.

3. learned counsel for the applicant submitted that the incident took place in the year 2023 and was reported to F.I.A on 20.4.2024 after a considerable of time, where availability of other persons of the locality cannot be denied, yet no independent person from the vicinity had been cited as witness of the alleged occurrence. Further Section 462-I, PPC carries a punishment of up to 03 years and a fine; as such, the offense does not exceed the limits of the prohibition contained

in Section 497, Cr. P.C. and in such eventuality, the superior Courts have extended grace by admitting the accused on bail by holding that where the offense does not fall under the prohibitory clause, grant of bail in such cases becomes a rule and refusal will be an exception. As per the applicant, the case has been challaned and the case against the applicant, in the absence of any independent witness of the alleged incident, requires further inquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. He prayed for allowing the instant bail application.

4. Learned Assistant Attorney General submits that the applicant is involved in a theft case and was caught red-handed and the incriminating material i.e. 01 Heater, wood Cutting machine with 03 H.P Motor (without Nameplate), 01 Grinding Machine, 01 Sharpening (Sarand) Machine, 01 PVC Wire and 01 wood Planner Machine was recovered from the premises by raiding team and same were seized accordingly. The seizure of the incriminating material was prepared on the spot which was signed by the witnesses. He prayed for the dismissal of the bail application.

5. I have heard the learned Counsel for the parties and perused the record with their assistance.

6. The accusation against the applicant is of theft of Electricity which falls within the ambit of Section 462(i) PPC and the punishment of such offense is up to three years. Besides complainant alleged that the alleged offense occurred in the years 2023-2024, however, he lodged an FIR on 20.04.2024 and it is still unresolved as to when and what time the alleged offense occurred as the complainant moved an application to the Additional Director FIA Crime Circle Sukkur against the applicant regarding theft of Electricity which application is even undated. It is further stated that the team conducted the raid on 20.04.2024 and arrested the applicant then why did the FIA disclose that the date of occurrence was 2023-2024.

7. Prima facie the FIA has failed to show that the applicant was the consumer of SEPCO and even failed to show the offense under Section 39-A of the Electricity Act and 379 PPC and now the applicant is only claiming that since the offense occurred in the year 2023 and reported 2024, in such circumstances, they are only charging the applicant with Section 462(I) PPC without corresponding offense under the Electricity Act just to attract the jurisdiction of the FIA.

8. Additionally the case against the applicant, in the absence of any independent witness of the alleged incident, requires further inquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. In the case

of Muhammad Tanveer v. The State (PLD 2017 Supreme Court 733) the Supreme Court while extending the grace, granted bail and it will be appropriate to reproduce para-6 of the order, which reads as under:-

“6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offenses are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously and, thus, cannot be lightly ignored as precious time of the Court is wasted in the disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down a guiding principle for the Courts of the country where law points require interpretation.”

9. In such circumstances as well as the dictum laid down by the Supreme Court in the reported case of *Muhammad Tanveer (supra)*, I am convinced that the applicant has made out *prima facie* case for grant of post-arrest bail at this stage.

10. For the aforesaid reasons, this criminal bail application filed by applicant Shahzaib Gul S/o Ali Gul, seeking post-arrest bail under Section 497, Cr.P.C. in Crime No.13 of 2024, for offenses under Sections 462-I, 34, 109, PPC, registered at Police Station FIA Crime Circle, Sukkur is **allowed**, and the applicant is admitted to post-arrest bail in the aforesaid crime subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (Rupees One lac only) and PR bond in the like amount to the satisfaction of the trial Court.

11. The observation recorded hereinabove is tentative which shall not prejudice the case of either party.

12. These are the reasons for my short order dated 02.08.2024, whereby the applicant was granted post-arrest bail in the subject crime.

J U D G E

Abdul Basit