

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-174 of 2024

(Malook Vs. The State)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 07.08.2024

Mr. Satram Sonani, Advocate for the applicant

Mr. Dhani Bux Mari, Assistant Prosecutor General Sindh

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ORDER

Adnan-ul-Karim Memon, J. Through the instant bail application, the applicant has approached for a grant of pre-arrest bail in terms of Section 498-Cr.P.C in FIR No. 57/2024 registered for offenses under Section 462-I (a) PPC, 39 of Electricity Act 1910 of P.S Naukot, District Mirpurkhas.

2. His pre-arrest bail was declined by the trial Court vide order dated 27.07.2024 on the ground that no extraordinary circumstances were pointed out to allow the applicant such extraordinary relief of pre-arrest bail.

3. The accusation against the applicants is that on July 23, 2024, the complainant, a HESCO official, was conducting a routine inspection for illegal connections. During the inspection, they discovered a direct, illegal electricity connection to the applicant's house, bypassing the HESCO meter. The HESCO team disconnected the illegal connection, secured the wires, and prepared a report. Subsequently, an FIR was registered against the applicant at the police station for offenses under Section 462-I (a) PPC, 39 of the Electricity Act 1910.

4. Learned counsel appearing on behalf of the applicant/accused argued that the applicant is entirely innocent of the theft of electricity charges. The accusation is a false one, motivated by malice and ulterior motives on the part of the police and HESCO officials. The motive for the false accusation is likely the outstanding arrears which he has paid and the remaining amount will be paid in installments as agreed by the HESCO officials. He argued that the offense does not fall within the prohibitory clause of Section 497 (1) Cr. PC. Lastly, the learned counsel prayed for confirmation of interim pre-arrest bail already granted to the applicant.

5. The prosecution asserts that there is direct evidence of the applicant's involvement in electricity theft, including the recovery of a PVC wire used for the illegal connection. The prosecution highlights that the applicant has unpaid electricity bills, suggesting a motive for the theft. The prosecution claims that the applicant has failed to demonstrate any personal animosity between himself and the complainant or HESCO officials to support the allegation of false implication. The prosecution argues that the

applicant has not provided sufficient grounds to warrant pre-arrest bail, as there is a strong prima facie case against him.

6. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding a bail application this Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against the accused, nature, and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Supreme Court rendered in the case of *Shahzad Ahmed Vs. The State* [2010 SCMR 1221]. Keeping in view the above principle, the learned counsel for the parties has been heard and the record has been perused.

7. The defense argues that the prosecution has failed to establish the charges under Section 39-A of the Electricity Act and Section 379 PPC as this is the issue of paying arrears of electricity charges. If this is the stance of the applicant, which is prima facie supported as the complainant has disclosed such factum in the FIR in such circumstances and due to the absence of independent witnesses, to oversee the raid proceedings, the case requires further investigation as mandated by Section 497(2) of the CrPC.

8. The offense charged does not fall within the prohibitory clause. There is a shake in the prosecution story, therefore, a question of further inquiry arises and further, in the light of the above circumstances, the involvement of the applicant in this case with malafide intention of the complainant also cannot be ruled out. Therefore, while relying upon the case “*KHAIR MUHAMMAD and another Versus THE STATE through P.G. Punjab and another*” (2021 SCMR 130), wherein while granting pre-arrest bail the Hon’ble Supreme Court with reference to “*Meeran Bux v. The State and another*” (PLD 1989 SC 347) has held that “the scope of the pre-arrest bail has been widened and as such while granting pre-arrest bail even the merits of the case can be touched upon”, further the law laid down by the supreme court 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. For the aforesaid reasons, this criminal bail application filed by applicant, seeking pre-arrest bail under Section 498, Cr.P.C. in FIR No.57/2024 registered for offenses

under Section 462-I(a) PPC, 39 of Electricity Act 1910 of P.S Naukot, District Mirpurkhas is accepted and ad interim bail already granted to the applicant vide order dated 31.07.2024 is hereby confirmed on the same terms and conditions.

10. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to examine the complainant positively within one month. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order within time.

JUDGE

"Ali Sher"