

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Applications No.1284 of 2017

Nasir Ali Awan s/o Banaras.

Vs.

The State

Date of hearing:	16.10.2017
Date of Order	16.10.2017
Applicant:	Through Mr. Fiaz Ahmed Memon, Advocate
Respondent	Through Mr. Zafar Ahmed Khan, Addl. Prosecutor General and Malik Sadaqat, Special Prosecutor, Sui Southern Gas Co (complainant).

ORDER

Mohammed Karim Khan Agha, J. Through this bail application under section 497 Cr.P.C. the applicant/accused seeks post arrest bail in FIR No. 31/2016, under section 362-C-E, PPC, PS SSGC, Karachi. By order dated 20-05-2017 the trial court had dismissed his earlier application for post arrest bail and hence he has approached this court for post arrest bail.

2. The allegations against the applicant/accused as per contents of the FIR are that on 08.03.2016 at 1645 hours, the complainant who is Assistant Manager in SSGC along with Sui Gas Team Operation Incharge Ghulam Mujtaba, Sr. Engineer Asad Ghousi Executive Officer and other technical staff and security and police party reached at Cafe Nahid Shop No.A-1/14 to A-1/10 Alkaram Square where they saw that in two shops Cafe Nahid tea and Paratha was being prepared wherein the service of Sui Gas line rubber PVC pipe

was available and sui gas is being stolen for use in the hotel. The complainant with the help of technical staff disconnected such illegal line and five pipes of different sizes and three PVC pipes were also secured. At the counter of the hotel a person was sitting who disclosed his name as Nasir Ali Awan son of Banaras Awan (the applicant) and that he is the owner of the hotel who the police apprehended on spot. The complainant took snap shots and prepared inspection notes, hence this FIR.

3. Learned counsel for the applicant/accused contended that the applicant/accused is innocent and has committed no offence; that the complainant has falsely implicated the applicant in collusion with his staff and police due to malafide intention; that since one year there was outstanding Sui Gas dues and the applicant and SSGC officials/staff had already come and removed the gas meter from the shop/hotel of applicant and took away the same and put lock on the connection; that this was a case which did not fall within the prohibitory clause under Section 497 Cr.P.C. entitling the applicant/accused for bail on the rule of further inquiry; that being an absconder did not preclude him from being granted bail and for all the above reasons the applicant was entitled to post arrest bail.

4. On the other hand, Learned counsel for the complainant and Learned A.P.G. for the State have vehemently opposed the bail application on the grounds that the name of the applicant/accused is mentioned in the FIR with his specific

role, therefore, the applicant/accused is not entitled for concession of bail as sufficient material is available on record against him, thus, the learned trial court has rightly declined bail to the applicant/accused vide impugned bail order dated 20.05.2017.

5. I have considered the submissions of learned counsel for the applicant/accused, learned counsel for the complainant and learned Addl. PG for the State.

6. At the outset I observe that in effect the applicant has been charged with the theft of gas which may be considered as a crime against society; I also find that the offense falls within the prohibitory clause; that the applicant is named in the FIR and has been given a specific role ; that he admitted to being a gas defaulter and being disconnected for non payment of his dues hence in order to operate his hotel it appears logical and also appeals to reason that he would use a false gas connection and steal gas; that the site note records the existence of gas pipes which were stealing gas from Sui Gas at which time the applicant who was owner of the hotel was found present at the time of the raid where he was arrested on the spot; that he has not been able to show any malafide, ulterior motive or enmity for the gas officials implicating him in the crime; that the S.161 statement of Ashfaq Ahmed, recovery memo, site inspection notes and photographs directly implicate the applicant in the commission of the above crime; in addition the applicant misused the concession of post arrest bail granted to him by

the trial court vis a vis order dated 11-04-2016 and absconded on 31-10-16 and was declared a proclaimed offender and thereafter approached the trial court for pre arrest bail which was dismissed and the applicant was taken into custody on 28-04-2017 and his post arrest bail was dismissed vide order dated 20-05-2017 largely on account of his absconsion and misuse of the concession of bail. That having taken the above considerations and material on record into account I am of the view that there is prima facie sufficient material to connect the accused to the crime for which he has been charged notwithstanding his absconsion and misuse of the concession of bail which in any event goes against him and thus his application for post arrest bail is dismissed. The concerned trial court is however directed to complete the trial of this case within 6 months from the date of this order a copy of which the office shall immediately transmit to the concerned trial court for compliance.

7. These are the reasons for my short order dated 16.10.2017