

Bail

Hardship - PPC

750

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

1. Cr. Bail A. No.S- 855 of 2019

Muhammad Sohail

Versus

The State

2. Cr. Bail A. No.S- 939 of 2019

Syed Aijaz Ali Shah

Versus

The State

Applicant : Muhammad Sohail in Cr. B.A. No.S- 855 of 2019	Through Agha Ghulam Abbas, Advocate
Applicant : Syed Aijaz Ali Shah in Cr. B.A. No.S- 939 of 2019	Through Syed Shahzad Ali Shah, Advocate
Respondent : The State	Through Mr. Aslam Pervez Khan, Assistant Attorney General for Pakistan
Date of hearing	08.06.2020
Date of order	10.06.2020

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- By this single order I intend to dispose of the aforementioned two criminal bail applications as the same relate to one and the same incident as well as F.I.R.

2. Through captioned bail applications bearing Nos.S-855/2019 and 939 of 2019, applicants Muhammad Sohail and Syed Aijaz Ali Shah seek post-arrest bail in Crime No.08/2016, registered at Police Station FIA, Crime Circle, Hyderabad, under sections 462C, 462E, 109, 161 PPC r/w section 5(2) Prevention of Corruption Act-II, 1947 PPC. Earlier their bail plea(s) were declined by order dated 09.08.2019, passed by the learned Additional Sessions Judge-II, Kotri.

3. Briefly the facts as narrated in the F.I.R. by complainant Imdad Ali Shah are that on 29.03.2016 at 19:05 hours at Police Station FIA Hyderabad the officials

of SSGCL came to know that theft was being committed in Shahbaz CNG Station by tampering the main gas distribution pipeline. The officials of SSGCL alongwith FIA team conducted a raid and found that the theft of natural gas was being committed for considerable time at the said CNG Station. It was revealed that present Applicants alongwith the absconding accused were responsible for such gas theft causing loss of Rupees 15,55,58,313.90 to the public exchequer. It was also revealed one of the official of SSGCL namely Raza Muhammad Shaikh has nexus in such gas theft under some monetary benefit as illegal gratification. Such F.I.R was registered against the present applicants and thier other accomplices.

4. It is added that all accused / applicants were put to trial before Special Judge, Anti-Corruption (Central) Hyderabad and were convicted and sentenced vide judgment dated 28.02.2019. All of them thereafter filed criminal appeals before this Court against the impugned judgment and this Court vide judgment dated 29.04.2019 set aside the said impugned judgment by holding the trial as coram non judice and remanded the case to the Gas Utility Court, Jamshoro for de-novo trial from the stage of charge. As far as the accused who were granted bail either by this Court or the Special Judge Anti-Corruption (Central) Hyderabad were ordered to remain on bail but subject to furnishing fresh surety(ies). Thereafter, both present Applicants/ accused have moved applications for their admission on post-arrest bail, which by means of order dated 09.08.2019, were dismissed.

5. Learned counsel for the applicants have contended that both the applicants are innocent, that they have been behind bars for over 4 years and as such this is a case of hardship and the applicants should be released on bail on this ground, they also contend that their co-accused Abid Gaho, Ghulam Shabbir and Raza Muhammad Shaikh have already been granted bail in this case by this court and thus based on the rule of consistency they should also be granted bail as their role is lesser or no greater than than their role and that they have a good case on merits in that that prosecution could not produce eye-witnesses to prove that applicants were stealing the Gas; that the complainant who is material witness did not identify the applicants and with regard to applicant Muhammed Sohail he is not even named in the FIR. In support of their contentions they have relied on **Adnan Prince V The State through P.G., Punjab and another** (PLD 2017 Supreme Court 147), **Muhammad Akram V The State** (2020 PCr.LJ 31), **Syed Manzar Abbas V National Accountability Bureau, through Director General** (2019 MLD 581), **Shahzad Khan V The State** (2018 PCr.LJ 104), **Muhammad Amin V The State** (2017 YLR 609), **Muhammad Arsalan Ahmed V The**

State (2017 PCr.LJ 434), **Mehtab Ahmed V The State and others** (2015 YLR 1132) and **Behram V The State** (2003 PCr.LJ 73).

6. On the other hand learned AAG has contended that the applicants have applied for bail on numerous occasions all of which bail applications have been dismissed on merits, that the applicants have not applied for bail on hardship grounds, that no fresh ground for bail has been made out by the applicants, that there is more than sufficient material on record to connect both the applicants to the offense and as such the both the applications of the applicants for post arrest bail should be dismissed. In support of his contentions he has placed reliance on **Alamgir Khan V The State and another** (2019 SCMR 1457), **Muhammad Dildar V The State** (2018 MLD 169) and two unreported orders dated **08.03.2019** and **03.10.2019**, passed in **Cr. B.A.Nos.S-842 of 2018** and **872 of 2019**, respectively.

7. I have heard learned counsel for the parties, considered the record and the relevant law including the authorities cited at the bar.

8. In my view a fresh ground has been raised and that is of hardship which can be raised orally or through pleadings provided that material is placed on record to support the contention. I have noticed that the ground of hardship has been raised in both the pleadings and the oral submissions. It is an admitted fact that both the applicants were arrested on 20.04.2016 which is **4 years and 2 months** ago and thus with remission they have probably already served out about 6 years of any sentence which may be handed down to them on conviction and that the maximum sentence on conviction is **up to 10 years**. Vide order dated 29.04.2019 this court remanded the case back for a de novo trial. So far the charge has been framed but no witness has recorded his evidence. I have been informed by learned AAG that there are about 8 PW's who will need to be examined and that the matter is presently not proceeding due to no fault of the applicants neither has it been asserted that the applicants have caused any delay in the conclusion of the trial and it appears that the trial is at the initial stages and will not be concluded in the foreseeable future. Keeping in view this background I am of the view that both the applicants are entitled to post arrest bail on hardship grounds. Even other wise it would appear that other co-accused have already been granted post arrest bail whose role in the case is not less than that of the applicants and as such the applicants would also be entitled to post arrest bail based on the rule of consistency.

9. Thus, both the applicants are granted post arrest bail subject to furnishing solvent surety and PR bond in the like amount to the satisfaction of the trial court in the amount of RS 10 lacs.

10. Both bail applications stand disposed of in the above terms.

*Best Sentence
Provision Upheld - Reliable eyewitness*

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL JAIL APPEAL NO. D-315 OF 2012
CONFIRMATION CASE NO. D-16 OF 2012
Soomar Bheel V/S The State

CRIMINAL JAIL APPEAL NO. D-326 OF 2012
KHAMISO BHEEL V/S THE STATE

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

Composition of Bench

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA
HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO (D.B)

Date of last hearing (heard/reserved): 09-06-2020

Decided on: 16-06-2020

(a) Judgment approved for reporting YES

K.A.

CERTIFICATE

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.

(iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Jail Appeal No.D-315 of 2012

Confirmation Case No.16 of 2012

Criminal Jail Appeal No.D-326 of 2012

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

09.06.2020

Mr. Mian Taj Muhammad Keerio, Advocate for appellant in Criminal Jail Appeal No.D-315 of 2012.

Ms. Nasira Shaikh, Advocate for appellant in Criminal Jail Appeal No.D-326 of 2012.

Mr. Waseem Hussain Jafferri, Advocate for complainant.

Ms. Rameshan Oad, Assistant P.G.

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Learned Counsel for appellants have read out the entire evidence. Learned Counsel for appellant Soomar Bheel in Criminal Jail Appeal No.D-315 of 2012, learned Counsel for appellant Khamiso Bheel in Criminal Jail Appeal No.D-326 of 2012 and learned Assistant Prosecutor General, Sindh have made their submissions. However, learned Counsel for the complainant has adopted the arguments of learned Assistant Prosecutor General, Sindh.

Reserved for judgment.


JUDGE


JUDGE

755

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD.

Cr. J/Appeal No. B - 315 of 2012.

Seemar S/o Ajiyo Bheel

now confined in central

prison Hyderabad

. . . . Appellant.

Vs.

The State

. . . Respondent.

CONT'D.F.NO. 2.

Telephone No. 9210377-78 / 13

OFFICE OF THE SUPERINTENDENT CENTRAL PRISON HYDERABAD

No. JB/- 24014

756
dated: 24/10/2012

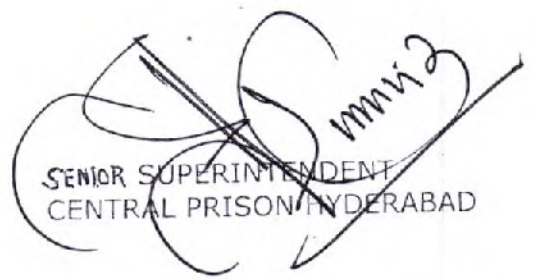
To,

The Additional Registrar,
Honourable High Court of Sindh,
Circuit Court, Hyderabad.

Az
25/11/12
P.R. (Res.)

SUBJECT: JAIL CRIMINAL APPEAL.

I have the honour to enclosed herewith Jail Appeal preferred by condemned prisoner Soomar s/o Ajiyo Bheel alongwith judgment copy in Sessions Case No. 636/2008, Crime No. 293/2008 U/S 302,34 PPC, P.S Tando Jam being self contained for kind perusal.


SENIOR SUPERINTENDENT
CENTRAL PRISON HYDERABAD

No. 8930
25/10/12

0/a
f/a

کہتا ہوں کہ مورخ 20-10-12 کو عدالت

نے کیس کا فیصلہ سناتے ہوئے

سنایا اور 4/8: 302 (b) میں سزائے موت کا حکم

کا حکم فرمایا، نہ دینے پر 06 ماہ مزید
جیل کاٹنے کا حکم فرمایا۔

جناب امی

اہل حقیقت یہ ہے

کہ میرے ساتھ ظلم ہوا ہے میں

بے گناہ ہوں، میرے ساتھ نا انصافی

ہوئی ہے، انصاف کیا جائے۔

جناب امی

میں مندرجہ ہمارے ہوں

ماتھے لکھا گیا ہے، نہ دینے کو

قتل کیا ہے اور نہ ہی میری کسی سے

دشمنی تھی، صرف وہیوں نے

نے پتا ہر سترہ صاف کر کے لپٹے
 چکھے بے گناہ شکار کیا گیا ہے۔

جبکہ میں اپنی زمین پر کاشت کرتا
 ہوں، صرف دن کسی نا جائیز پائیس میں
 نہیں مانتا تھا، جبکہ چکھے سزا
 دی گئی ہے۔

جناب رعای

کیس میں رکھا گیا ہے کہ
 چکھے سے نہ دینے کی وجہ سے قتل
 کیا ہے یہ سب من گھڑت پائیس ہیں
 کوئی ثبوت نہیں ہے، صرف ایک کیس
 بنانے کے لئے اس سے من گھڑت پروف
 دے کر سزا دلوا دی گئی ہے۔

جناب رعای

اصل معہم آزاد ہیں

آج تک اگر فٹا ما نہ ہو سکیں ہیں
کیونکہ ان کے سپورٹرز وہ ہیں
اور میں خریدتا ہوں۔

جناب ریگی

اپنا جناب کی عدالت عالیہ
میں درخواست کے ذریعے اپیل کر رہا ہوں
کہ میری دس اپیل کو منظور فرماتے ہوئے
میری سزا اور قصاص ختم کر کے
آزاد کرنے کا حکم فرمائیں۔

میں تو افسس۔

عد در در سزا موت کا
سرمار میری

سو ہاں وہ اچھو چھیل

Seen Before me.
24/10/11
Assistant
Magistrate

سینٹرل جیل حیدرآباد

HIGHCOURT OF SINDH CIRCUIT COURT HYDERABAD.

CR. J.A. NO. B-326 OF 2013.

Khamiso Bheel s/o Heero Bheel
presently confined in Central Prison.
Hyderabad. . . .

. . . . Appellant.

Versus.

The State. . . .

. . . . Respondent.

Telephone No. 9210377-78

OFFICE OF THE SUPERINTENDENT CENTRAL PRISON HYDERABAD

No. JB/- 24711

dated: 03-11-11

NO. 9121
-06/11/12

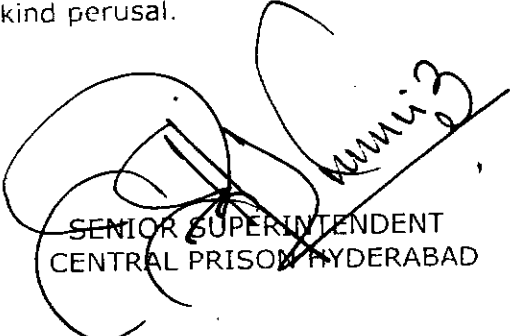
To,

The Additional Registrar,
Honourable High Court of Sindh,
Circuit Court, Hyderabad.

SUBJECT: JAIL CRIMINAL APPEAL.

I have the honour to enclosed herewith Jail Appeal preferred by convict Khamiso Bheel s/o Heero Bheel alongwith judgment copy in Sessions Case No. 636/2008, Crime No. 293/2008 U/S 302,34 PPC, P.S Tando Jam being self contained for kind perusal.

S
6/11/2011
Khamiso Bheel


SENIOR SUPERINTENDENT
CENTRAL PRISON HYDERABAD

لبنه من جناب الیڈسٹر جنرل حبیب الرحمن
گڈن ٹو فو سڈرہ سکرٹس گورنمنٹ
حصہ دہراد

صرفت - جناب الیڈسٹر جنرل حبیب الرحمن
پرنسپل گورنمنٹ کالج
حصہ دہراد

عنوان:

بہتر تعلیم

Sessions Case no: 636/08
Crime no: 293/08.
P.S: Tando Jam.
U.P: 302.34.P.P.C.

خارجہ ججمنٹ آف سیشن جج سید اے بی
ججمنٹ مرقوم ہے۔

جناب ریگن
میں مرقومہ ایک قوری مرقومہ

کرتا بیوں لہ مونیخ 20-10-2012 کو کمر لیں

نے ممبران سناتے ہوئے 3000 روپے
 میں 25 سال سزا اور 1,00,000 روپے
 لاکھ روپے قصاص نہ دینے پر مزید
 03 ماہ جیل کاٹنے کا حکم فرمایا۔

حیاتِ رنجی

اصل صفت یہ ہے
 کہ میں بے گناہ بیوں میرے ساتھ
 نا انصافی ہوئی ہے میں باطل پرورد
 بیوں انصاف دیا جائے

حیاتِ رنجی

پولیس نے وہ بیوں
 کے بند پر رکھے جیسا ہے

اول حجرت اور آزد کردیتے اور
ہم جسے گناہوں کو پھیرایا دیا گیا ہے

حیراب و عقی

ہاں حیراب کی عورت
عالمیہ میں اسرا اور خودست فریدی
اپیل کرتا ہوں کہ عیدی اسرا اپیل
کی منظور فرماتے ہوئے عیدی
سزا اور جرمانہ ختم کئے
آزد کرتے گا وگرنہ عدالت قراش

عین توڑش
مددگار پیکر قوری

خمسو ولد حسین
بیل سنٹرل جیل

Handwritten signature or stamp