

Crl. Bail Application No. S- 592 of 2023.

Applicant : Abdul Fatah Soomro,
through Mr. Muhammad Afzal Jagirani, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Complainant : Through Mr. Asif Hussain Chandio, Advocate.

1st Crl. Bail Application No. S- 638 of 2023.

Applicant : Wahid Bux @ Abdul Wahid Buriro, through
Mr. Muhammad Afzal Jagirani, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Date of hearing : 07.12.2023.
Date of Order : 07.12.2023.

ORDER

Muhammad Saleem Jessar, J.- Both these bail applications are interconnected having been filed in one and same FIR bearing Crime No.82/2023, registered at P.S Warah, for offence under Sections 462-I, PPC.

2. After having been declined the concession of pre-arrest bail by the trial Court/2nd Additional Sessions Judge, Kamber by common order dated 27.9.2023, the applicants have approached this Court with same plea.

3. According to the case of prosecution, the electricity connections of present applicants were already disconnected on account of their being defaulters of SEPCO and on 11.09.2023, during checking by complainant/SDO SEPCO Warah Sub-Division, they were allegedly found committing theft of electricity through direct(Kunda) connections.

4. Learned Counsel for the applicants submits that the applicants are innocent and have been falsely implicated in this case. He further submits that no any Kunda connection was found at the houses of applicants, but they have been

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implicated in instant case by showing them as defaulters, which in fact is the detection illegally imposed upon the applicants by the SEPCO Officials without any justification. He further submits that though the alleged incident is shown to have occurred in thickly populated area, yet no independent person from the locality has been cited as witness. He next contends that the alleged offence carrying punishment upto 03 years, which does not exceed the limits of Prohibition contained in Section 497, Cr.P.C. He submits that the case against the applicants/accused required further enquiry.

5. Learned Addl. P.G. for the State, does not oppose the bail applications, on the ground that the alleged offence does not fall within prohibitory clause of Section 497, Cr.P.C.

6. Learned Counsel for the complainant opposes the bail applications, on the ground that the applicants are not only defaulters of SEPCO, but they were found committing theft of electricity, thereby causing loss to the exchequer; hence they are not entitled to bail.

7. Heard learned Counsel for the parties and perused the material available on record.

8. Admittedly, the incident took place in daytime i.e. at 10.00 a.m. in Soomra Mohalla of Warah town, where availability of other persons of the locality cannot be denied, yet no person from the vicinity has been cited as witness of the alleged occurrence. Section 462-I, PPC carries punishment upto 03 years and fine; as such, the offence does not exceed the limits of prohibition contained in Section 497, Cr.P.C and in such eventuality the superior Courts have extended grace by admitting the petitioners on bail by holding that where the offence does not fall under the prohibitory clause, grant of bail in such cases becomes a rule and refusal will be an exception. The case is reported to have been challaned and after grant of ad-interim pre-arrest bail the applicants are not shown or alleged to have misused such concession. The case against the applicants, in absence of any private person cited as witness of the alleged incident, requires further enquiry 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 Apex 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 offences are

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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, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

9. In such circumstances and in view of above discussion as well as the dictum laid down by the Apex Court in the reported case of *Muhammad Tanveer (supra)*, I am convinced that the applicants have made out their *prima facie* case for grant of pre-arrest bail.

10. In the light of above discussion, both these bail applications are allowed. Interim pre-arrest bail granted earlier to applicants is confirmed on same terms and conditions.



J. S. KHEHAR