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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

1st Criminal Bail Appln. No. S- 743 of 2023

Applicant Hadi Bux Gopang

VERSUS

The State

SINDH HIGH COURT

Composition of Bench Before **Mr. Justice Muhammad Saleem Jessar**

Single/D.B.

Dates of Hearing: 11.03.2024

Decided on: 11.03.2024

(a) Judgment approved for
Reporting

~~YES~~ NO 11/03/2024

C E R T I F I C A T E

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ 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 be the top of the first page

Of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is Approved for reporting.

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

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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
1st Cr. Bail Appln. No.S- 743 of 2023.

Date of hearing	Order with signature of Judge.
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Applicant : Hadi Bux Gopang, through Mr. Javed Ali Gopang, Advocate along with Applicant (on bail).

The State : Through Mr. Ali Anwar Kandhro, Addl. P.G.

Complainant : Through Mr. Asif Hussain Chandio, Advocate. (Muhammad Asad Yar).

Mr. Oshaq Ali Sangi, Asst. Attorney General.

Date of hearing : 11.03.2024.

Date of Order : 11.03.2024.

O R D E R.

Muhammad Saleem Jessar, J.- Applicant Hadi Bux son of Ghous Bux Gopang, seeks his admission on pre-arrest bail in Crime No.179/2023, registered at Police Station A-Section Thul, District Jacobabad, u/s 462-I, PPC, after rejection of his plea by the learned Sessions Judge/Special Judge, Electricity Utilities Court, Jacobabad, vide order dated 07.12.2023.

2. According to the case of prosecution, on 21.11.2023, at about 10.00 a.m., complainant Muhammad Asad Yar, SDO SEPCO Sub-Division, Thul, during routine checking of electricity lines found the applicant/accused committing theft of electricity at his house by installing direct 'Kunda' connection in ABC Pole. After disconnecting such illegal 'kunda' connection, the complainant lodged such FIR.

3. Learned Counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in this case by the SEPCO officials with malafide intention and ulterior motives, on account of his failure to grease the palm of complainant. He next submits that the alleged arrears are in fact an amount imposed against the applicant as illegal detection, for which the prosecution has still to establish the same. He further submits that co-accused Arz Muhammad Channo, whose case is altogether identical to that of the present applicant, has been granted pre-arrest bail by the trial Court/Sessions Judge, Jacobabad, on the ground of having entered into a settlement with the SEPCO Authorities regarding making payment of the arrears in instalments; whereas the applicant has been refused the concession of pre-arrest bail



without any cogent ground. In his support, he submits true copy of bail order dated 12.12.2023 (vide Cr. Bail Application No.1120/2023), taken on record.

4. Learned Addl. P.G. as well as learned Assistant Attorney General, do not oppose the bail application, mainly on the ground that co-accused Arz Muhammad Channo, whose case is identical to that of the applicant, has been granted same concession of pre-arrest bail, as such, the applicant also deserves same treatment.

5. Learned Counsel appearing for the complainant opposes the bail application, on the ground that co-accused Arz Muhammad has been extended concession of pre-arrest bail, as he voluntarily opted to make payment of the dues outstanding against him, whereas such is not the case of applicant.

6. Heard arguments and perused the record.

7. Per FIR, the allegation against the applicant and co-accused Arz Muhammad is that they by installing direct 'Kunda' connections in the ABC Cable of SEPCO were committing theft of electricity in their respective house, though they were already defaulters of the SEPCO. Co-accused Arz Muhammad Channo has been extended extraordinary concession of pre-arrest bail by the learned trial Court, mainly on the ground that he has entered into a settlement with SEPCO Authorities for clearing the arrears in instalments. It is well-settled by now that if an accused person charged with an offence is extended concession of bail, the other accused persons booked in the same crime with similar role/allegation become entitled for same concession on the principle of consistency and equal treatment. It is not understandable that out of the two accused, when one has been extended concession of pre-arrest bail, how such concession could be refused to the other. In case the applicant may be remanded to custody today, then tomorrow again he will be released on bail on the rule of consistency. Hence, no legal or technical purpose will be served by putting him in jail. Reliance can be placed upon the case of **Muhammad Ramzan v. Zafar Ullah and another (1986 SCMR 1380)**. Furthermore, though the alleged offence is shown to be of broad daylight and that too in the heart of Thul Town, but even then the witnesses, who are subordinates to the complainant being employees of SEPCO Sub-Division Thul, have only been cited and no independent person has been joined in the proceedings. The punishment of alleged offence does not exceed the limits of prohibition contained under Section 497, Cr.P.C and in such eventuality the superior Courts have always 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 applicant is not shown or alleged to have misused such concession. 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 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."

8. For the forgoing reasons, in my view, the applicant has made out his case for grant of pre-arrest bail. Consequently, instant bail application is hereby allowed. Resultantly, interim bail already granted to the applicant vide order dated 15.12.2023 is hereby confirmed on same terms and conditions.

JUDGE

Application in D/o matter

Qazi Tahir/*

1- For orders on m.A No. 1973/25 (101A)
 2- For orders on m.A No. 1974/25 (561)
