

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CR. BAIL NO. 184 / 2020
Abdul Muhammad S/O Abdul Mutalib

Date

Order with signature of Judge

For hearing of bail application.

21.05.2020.

Mr. Muhammad Akbar Advocate for Applicant.
Mr. Malik Sadaqat Khan Special Prosecutor SSGC.
Applicant Abdul Muhammad present in Court.

Through this bail application, the Applicant seeks pre-arrest bail under Section 498 Cr.P.C in respect of FIR No. 71/2019 registered under Sections 15/24 of Gas Theft Control & Recovery Act, 2016 registered at P.S. SSGC Karachi West. The pre-arrest bail application of the Applicant stands dismissed by the learned Trial Court vide orders dated 06.02.2020. I have heard the Counsel for the Applicant, and the Special Prosecutor SSGC. My observations are as under: -

- i) As per the FIR, it has been reported that the Applicant / Accused is running a hotel and was found involved in theft of Gas through direct connection from Auxiliary Line through Rubber Pipes and the premises was raided and all such equipments were seized. The learned Counsel for the Applicant has argued that the date of incidence is 20.11.2019 at 2000 hours, whereas, the FIR has been lodged on 22.02.2019 at 11:30 hours; hence, there is delay which entitles the Applicant for concession of bail. However, merely for this fact the Applicant is not entitled for concession of bail if otherwise, a case of alleged theft is made out.

- ii) He has then argued that pursuant to order dated 7.3.2020 passed by this Court the Applicant has deposited Rs. 2,50,000/- with SSGC and this entitles him for concession of bail as the amount has been paid. To this, I may observe that the order dated 17.3.2020 does not specify the amount in question as according to the SSGC the amount is more than Rs. 8,40,000/- whereas, the Applicant has only deposited Rs. 2,50,000/-. Today learned Special Prosecutor SSGC has made a statement that if entire amount would have deposited then he had instructions not to oppose the grant of bail. However, the Applicant has not fulfilled such commitment, therefore, this part deposit cannot be considered by this Court as it is a matter of mutual understanding between the Applicant and the Complainant.
- iii) The applicant's Counsel has also argued that the Applicant is a tenant in the premises and the FIR ought to have been registered against the landlord as there was a verbal agreement with the Landlord to the effect that he is responsible for payment of Gas bill; however, perusal of the challan filed in this case reflects that during investigation even the landlord was approached who informed and furnished the Rent Agreement by stating that there was no Gas connection in the premises and he has no knowledge or concern with the theft of Gas; therefore, this argument is not supported by the record and the investigation so carried out.
- iv) It further reflects from perusal of the challan that during interrogation the Applicant himself has stated that he took the premises on rent and there was only an electric connection with no Gas meters and he was using Gas through a direct connection. It is also an admitted fact that applicant/accused willingly and knowingly putting the government on heavy losses; the act so committed by

the applicant/accused does not warrant any leniency for confirmation of bail¹.

- v) The prosecution case brims with connecting evidence against the petitioners and there exists no material at this stage to believe that they have been falsely involved in this case due to malice or ulterior motives of the complainant or they have not committed the offence alleged². The applicant has been rightly booked in the present case as such there is no mala fide or enmity shown against the complainant or Investigation Officer of the case; therefore under these circumstances I am not inclined to grant bail to the applicant³.
- vi) For the present, the petitioner is connected with the crime which falls within the prohibitory clause of section 497 of Cr.P.C. and he has provided no justification for alleged theft of gas and in absence of any obvious mala fides with the prosecution, the petitioner do not deserve to the extra ordinary benefit of pre-arrest bail⁴.
- vii) From the record, it has transpired that the Applicant has admittedly been involved in theft of Gas without any lawful justification and therefore, even if the amount in question is to be deposited, the criminal intent and act would not go away in absence of any other justifiable ground.
- viii) The Honourable Supreme Court in the case reported as ***Alamgir Khan V. The State and another*** **(2019 SCMR 1457)** has been pleased to refuse bail in a case of theft of Gas in somewhat identical facts when there is no malice or otherwise any allegation against the prosecution. Similar view has been taken by the Hon'ble Supreme

¹ Muhammad Dildar v The State (2018 M L D 169)

² Malik Javed v The State (2015 P Cr. L J 1315)

³ Muhammad Abdullah v The State (2018 P Cr. L J 1547)

⁴ Mian Tariq Aziz v The State (2015 P Cr. L J 1066)

Court in the case reported as ***Sanaullah v The State***
(2016 SCMR 1527) Criminal Petition No. 36-K/2019
(Zohaib and another V. The State through P.G. Sindh)
vide order dated 9.4.2019.

In view of hereinabove facts and circumstances of the case, I am of the view that the Applicant has not been able to attribute any malafides or harassment at the hands of Prosecution and in the above facts, is not entitled for the concession of pre-arrest bail under Section 498 Cr.P.C and therefore, the ad-interim pre-arrest bail granted vide order dated 12.02.2020 stands recalled and this bail application stands dismissed.

J U D G E

Arshad/