

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-872 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

03.10.2019.

Mr. Ali Ahmed Palh, Advocate for the Applicant.

Applicant is present on interim pre-arrest bail.

Mr. Muhammad Asif, Special Prosecutor (SSGCL)

Ms. Sana Memon, A.P.G, Sindh alongwith ASI Muhammad Ali of P.S Pinyari.

ORDER

Zulfiqar Ali Sangi, J.-Through instant application, Applicant Mirza Ali Adil

Baig seeks pre-arrest bail in Crime No.119 of 2019, registered at Police Station Pinyari Hyderabad, under section 15, 17 & 24 Gas (Theft & Recovery Act, 2016). Initially, pre-arrest bail application moved by the Applicant was declined by learned Sessions Judge, Hyderabad vide order dated 31.08.2019.

2. The facts of the prosecution case, in brief, are that on 20.8.2019, Ali Gohar, Deputy Manager (SS&CGTO), SSGCL Hyderabad together with Rafiq Ahmed, Deputy Manager (CGTO), Qamaruddin Mangi, Deputy Manager (Maintenance) and Abdul Qayoom, Engineer (Maintenance) left their Qasimabad office to check and remove illegal sui-gas connections during which they went to Machhar Colony where they detected clip and plastic pipeline affixed in the main service-line and found that through the said pipeline sui-gas was being supplied to a plastic factory and thereby the gas was being illegally taken and stolen. The said factory was learnt to be owned and run by Adil son of Muhammad Nawaz (the applicant). They removed the said connection and took in possession plastic pipeline, clip and valve and returned to their office and apprised of it to the Incharge, SS&CGTO who vide letter dated 20.8.2019 directed that a report be lodged with Police which was lodged at Police Station Pinyari on the same day at about 6:00 p.m.

3. Learned counsel for the applicant contended that the applicant was falsely roped in the case by the SSGCL officials on account of previous hostility with him. He further contended that the applicant was a bone-fide meter holder of the gas connection and to support it, referred to the copy of a bill in his name for the month of July, 2019 duly paid by him in respect of premises No.4352/G Tando Thoro Phuleli Par, Hyderabad annexed with the application and referring to the provisions of the Gas(Theft Control and Recovery) Act, 2016 and claimed that the offence was non-cognizable and since alternative punishment was provided for the offences and requested for confirmation of interim pre-arrest bail earlier granted to the Applicant by this Court.

4. Learned Special Prosecutor (SSGCL) submitted that the gas officials had no enmity with the applicant. He emphatically stated that the applicant/accused was found taking sui-gas illegally for commercial purposes and running a huge pipe factory and the relevant appliances were recovered from there. He during the course of arguments produced copies of the shots taken from the site showing machinery of pipe-factory and argued that the offence of stealing natural resources was a serious one which affected the whole society and referring to the case of Muhammad Dildar vs State (2018 MLD 169) and prayed for rejection of bail.

5. Learned APG for the State also opposed the grant of bail and pointed-out some photographs and stated that theft of gas was detected in presence of the Applicant himself.

6. I have heard the arguments of parties counsel and perused the record.

7. The offence of theft of the natural resources in the present situation is alarming in the society where our country is facing several difficult situations regarding the natural resources. In the similar circumstances, bail was declined by this Court in an unreported case of **Ali Akbar** (Cr. B.A. No.S-842 of 2018) vide order dated 08.03.2019. The relevant paragraph is reproduced as under:-

“ I have heard the parties and perused the material available on record with the assistance of learned Additional

Prosecutor General. In the FIR allegations of committing theft of gas have been leveled against the Applicants which has been registered by an official of Sui Southern Gas Company who has no motive to falsely implicate the Applicants. The relevant articles i.e. rubber pipes, clips etc. through which the theft of gas was being committed by the Applicants were recovered from the spot. Learned A.P.G. has informed that the photographs of the place of incident were taken which clearly show that the natural resource the nation was being stolen recklessly. The offence with which the Applicants have been booked fall under prohibitory clause of section 497 Cr.P.C. Needless to mention that grant of pre-arrest bail is extra ordinary relief which is granted to the accused only when he is able to show any ulterior motive or malafide on the part of the complainant which in the present case has not been alleged. In the facts and circumstances I am of the view that applicants are not entitled to extra ordinary relief of pre-arrest bail.”

In another case reported as **Muhammad Dildar v. The State** (2018 MLD 169), in similar circumstances, bail plea was declined by this Court. Even the Honourable Supreme Court of Pakistan refused bail after arrest in cases where natural gas (resource) was used unauthorizedly. Reliance can also be placed on the case of **Alamgir Khan v. The State** (2019 SCMR 1457).

8. At the outset, it observed that the above Applicant is seeking pre-arrest bail, therefore, before considering the case of Applicant for pre-arrest bail, I may observe that the conditions for grant of pre-arrest and post arrest bail are quite different as set out in the case of **Rana Mohammed Arshad v. Muhammad Rafique** (PLD 2009 SC 427). The said conditions are as under:

- a. grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- b. pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- c. bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified in subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- d. not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;
- e. such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

- f. in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.

At para 15 of the aforesaid judgment it was also held as under:

"It had also been repeatedly held by the Superior Courts (reference be made to Zia-ul-Hassan's case supra) that no Court would have any power to grant pre-arrest bail unless all the conditions specified for allowing bail before arrest especially the condition regarding Mala fides were proved."

9. No *mala fide* on the part of officials of Gas Company is pointed out by the learned counsel. It is now settled law that pre arrest bail is an extraordinary relief and is only available in cases where there has been mala fide on the part of complainant or the investigating agency. In this regard reference may be made to the case of **Rana Mohammed Arshad v. Muhammad Rafique** (PLD 2009 SC 427) and **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064).

10. In view of what has been discussed above, this bail application is dismissed and interim pre-arrest bail earlier granted to the Applicant vide order dated 03.09.2019 is recalled.

11. Needless to mention that the observations made hereinabove are tentative in nature and will not cause any prejudice to either party at trial.

JUDGE