

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

Criminal Bail Application No. S-619 of 2021

Mr. Tauheed Hussain, advocate for the applicant.
Mr. M.A. Javed, advocate for the complainant.
Ms. Rameshan Oad, A.P.G.

Date of hearing: **6-9-2021**
Date of decision: **6-9-2021**

ORDER

Khadim Hussain Tunio, J.– Oshaque Ali son of Qamar Din Rind, the applicant-accused, seeks post-arrest bail in case pertaining from FIR No.37/2021, registered under Sections 462-B, 462-C, 379, 511 and 34 PPC at Police Station Nooriabad. Earlier, the applicant-accused had sought the same relief before the learned IInd Additional Sessions Judge Kotri which was dismissed vide impugned order dated 09-07-2021.

2. The allegation against the applicant-accused is that during the night of 26-06-2021, at about 2050 hours, the applicant-accused along with rest, by tampering with a broken oil pipeline, committed theft of petrol with an iron clip and transported the same through a truck/dumper.

3. Learned counsel for the applicant has argued that the applicant is a respectable citizen and he is innocent; that the story, as narrated in the FIR, is false and fabricated; that nothing incriminating was recovered from the applicant at the time of his arrest; that no specific role has been attributed to the applicant; that the applicant was proceeding to Karachi from his village when he was apprehended by the police during snap checking and they seized the cash amount carried by him; that all the witnesses are interested; that the case of the applicant is one of further inquiry.

4. On the other hand, learned counsel for the complainant contended that the applicant has been specifically named in the instant FIR which has been lodged promptly; that no enmity whatsoever has been alleged by the applicant against the complainant or the police; that the applicant was caught red-handed while committing the alleged offence; that applicant is a habitual offender. He, therefore, prayed for dismissal of the instant Criminal Bail Application. Learned A.P.G argued in the same line as argued by the counsel for complainant.

5. Heard the learned counsel for the respective parties and learned D.A.G, so also perused the material available on record with their assistance.

6. Admittedly, the applicant-accused is named in the FIR which was undeniably lodged with due promptitude. On the date of the incident *i.e.* 26.06.2021, the complainant along with the police was patrolling in the area of the broken pipeline which was notified to the complainant when he received information that 8 to 10 persons were available at the said pipeline along with a truck and were stealing petrol. During the commotion, present applicant-accused was arrested whereas the rest succeeded in escaping. Sufficient material is available on the record to connect the applicant-accused with the said offence and all the prosecution witnesses have supported the version of the complainant in their 161 Cr.P.C statements. The applicant-accused has failed to allege and prove any enmity or any *malafide* against the complainant or the police with him which rules out the question of false implication in the case. It has been brought on the record that the applicant-accused is involved in cases of similar nature and also has an FIR bearing No. 07/2021 lodged against him with Police Station Memon Goth, Karachi. The applicant-accused was caught red-handed by the police while committing the offence. The punishment of the offence

alleged against the applicant-accused may extend up to fourteen years. The Hon'ble Apex Court, in *Criminal Petition No. 146 of 2020 (The State v. Ghulam Hussain and others)* and *Criminal Petition No. 1400 of 2020 (Muhammad Ejaz v. Abid Hussain and another)* was pleased to recall bail granted to applicants facing similar allegations.

7. In view of the peculiar facts and circumstances of the case, as well as the dictum laid down in the paragraph supra, I am of the opinion that the applicant has miserably failed to make out his case for the grant of post-arrest bail. Resultantly, instant criminal bail applicant was dismissed vide short order dated **6-9-2021**. These are the reasons for the same.

8. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case.

J U D G E

Ali Haider