

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.492 of 2017

Present

Mr. Justice Aqeel Ahmed Abbasi

Date of hearing : 30.06.2017
Date of order : 30.06.2017
Applicant : Raza Muhammad Shaikh through
M/s. Rasheed A. Razvi & Abbas Rasheed
Razvi, advocates

Versus

Respondent : The State through
Mr. Muhammad Javed K.K. Asstt. Attorney
General
a/w I.O. Muhammad Saleem Malik, FIA,
Hyderabad and Mirza Tanveer Ahmed, FIA.

ORDER

Aqeel Ahmed Abbasi, J. Instant bail application has been placed before this bench as per roster pursuant to an order dated 17.04.2017 passed by the Hon'ble Chief Justice on the application filed under Rule 7 of Sindh High Court Bench Rules, 1987, by the applicant, whereby, the applicant, namely, Raza Muhammad Shaikh son of Muhammad Bux, has impugned the order dated 11.05.2016 passed by the learned Special Judge, Anti-Corruption (Central), Hyderabad, whereby, the bail application filed by the applicant has been declined and has sought his release on bail subject to furnishing surety.

The concise allegations as contained in the FIR lodged by Imdad Ali, Sub-Zonal Manager, are as under:

“Today on 29.3.2016 after receipt of information regarding theft of natural gas being committed at “Shahbaz CNG Station situated near 132 KV Grid Station Sehwan Road Jamshoro by way of directly consuming natural gas from SSGCL distribution line through one clamp. A raid was conducted by FIA alongwith SSGCL team at above mentioned CNG Station. During the course of such raid detected theft of Natural Gas through a clamp installed on SSGCL distribution line for theft of Natural Gas for industrial consumption for use at above mentioned CNG station. SSGCL technical team checked the volume of theft of natural gas and prepared technical report, reporting theft of 80524 MMBtu natural gas causing loss of Rs.18,55,58,313.00 approximately for three years to exchequer. Technical report dated 29.3.2016 is submitted herewith with request to lodge FIR against culprits Bashir Ahmed Laghari, Abid

Hussain Gaho owner/proprietor/beneficiary of Shahbaz CNG Station and their associate Syed Aijaz Shah Manager Shahbaz CNG Station. At the time of raid one employee namely Syed Shabir Shah of said CNG station was also present there who was questioned by FIA team, I therefore being authorized office of SSGCL Hyderabad request for registration of FIR against culprits under the relevant section of law.

*(Imdad Ali Shah)
Sub-Zonal Manager
SSGCL Jamshoro*

It is further alleged that consequent upon raid conducted, report of experts and the written complaint thereon by Imdad Ali Shah Executive No.9046 Sub-Zonal Manager SSGCL Jamshoro Sub-Zone, it is revealed that accused Abid Hussain Gaho, Bashir Ahmed Laghari owner/beneficiary/proprietor of M/S Shahbaz CNG Station situated near 132 KV Grid Station Sehwan Road Jamshoro, accused Syed Aijaz Shah Manager of the said CNG Station and Syed Shabir Shah employee of the said CNG station have been found involved in gas theft for industrial consumption through a clamp installed on SSGCL distribution line causing loss of Rs.18,55,58,313 to exchequer. Thus accused Abid Hussain Gaho, Bashir Ahmed Laghari, Syed Aijaz Shah and Syed Shabir Shah & others committed criminal offence punishable u/s 462-C, 462-E, 109 PPC, hence this case is registered against accused Abid Hussain Gaho, Bashir Ahmed Laghari, Syed Aijaz Shah and Syed Shabir Shah & others.

It has been contended by the learned counsel for the applicant that applicant is innocent, whose name is not mentioned in the FIR, however, he has been falsely implicated in the aforesaid crime by including his name in the final challan submitted before the trial Court at the instance of c-accused, whereas, no specific role has been assigned to the present applicant either in the FIR or even in the challan submitted before the trial Court. It has been further contended by the learned counsel that in the impugned FIR active role of theft of CNG has been attributed to the owners of the CNG Station Shahbaz, whereas, the accused, namely, Aijaz Shah, in the aforesaid FIR, has already been granted bail by this Court vide order dated 20.12.2016, however, the present applicant is behind the bar since his arrest for a period of more than one year. Learned counsel submits that the present applicant has no role whatsoever in the alleged theft of gas at Shahbaz CNG Station nor any material has been produced by the prosecution against the applicant, which may directly implicate the present applicant with the alleged offence. Per learned counsel, the allegations against the present applicant is that he has signed/endorsed the commissioning report of Shahbaz CNG Station, Jamshoro, dated 29.07.2010, meter advice dated

05.10.2010 and monthly inspection report of the CNG station, however, did not take any action against the aforesaid CNG station for disconnection of the gas supply inspite of disconnection note, whereas, according to learned counsel for the applicant, the applicant has never remained the concerned officer in respect of Shahbaz CNG station situated in Jamshoro, on the contrary, he was posted as ADCE (Measurement), SSGCL, Hyderabad, during the relevant period of time to look-after the inspection and maintenance of CM-S and industrial & CNG customers located at Bandhi, Dadu, Daulatpur, Daur, Hala, Hyderabad (Site Area), Khyber, Matiari, Moro etc. and was not assigned the duties in respect of CNG Stations, located in Jamshoro. Learned counsel for the applicant has further argued that not a single document has been produced by the prosecution, which may suggest or establish that the present applicant has any active role either in the theft of the CNG gas supply or was required to take any action of disconnection of Shahbaz CNG Station, as was not the concerned officer at relevant point of time in respect of Shahbaz CNG Station. Per learned counsel, the purported monthly inspection reports and the e-mails correspondence suggesting disconnection of gas supply of the aforesaid CNG station are neither signed by the present applicant nor the same have been addressed to him, whereas, the officials of the SSGCL, whose names have been mentioned in such reports and e-mail correspondence, have not been impleaded as accused persons in the instant crime. Per learned counsel, the case against present applicant/accused is based on the statement of the co-accused person, whereas, no direct evidence against the present applicant in respect of the allegations as contained in the FIR is available with the prosecution. Per learned counsel, more than a year has already been lapsed, however, the trial has not yet been concluded, and the present applicant is behind the bar since his arrest, who is facing serious hardship on account of delay in conclusion of the trial, which is admittedly not attributed to the applicant. Per learned counsel, since the main accused has already been granted bail, therefore, the present applicant may also be admitted to bail subject to furnishing surety, as this is a case of further inquiry and the bail cannot be withheld as punishment to the present applicant/accused. It has also been contended by the learned counsel for the applicant that even the

jurisdiction assumed by the FIA in the instant case is also without lawful authority, whereas, from perusal of the contents of the allegations as contained in the FIR/challan and the statement of the co-accused person, it appears that FIA has attempted to make out a case of corruption against the applicant, who has allegedly accepted illegal gratification from the co-accused, however, no material whatsoever in this regard has been produced by the prosecution before the trial Court. In support of his contention, learned counsel for the application, has placed reliance in the following case law:-

- i) 2001 CLC 1559 (Nagina Bakery v. Sui Southern Gas Limited and 3 others)*
- ii) PLD 2002 SC 46 (Fida Hussain v. The State)*
- iii) PLD 2005 SC 63 (Pir Mazharul Haq and others v. The State)*
- iv) 2012 SCMR 1685 (Dr. Muhammad Riaz Akhtar v. The State)*
- v) 2014 MLD 1461 (Mehmood Khan v. The State)*
- vi) 2015 YLR 69 (Mirza Karim Baig and others v. The State)*
- vii) 2017 SCMR 79 (Muhammad Shafique and another v. The State and others)*

5. Conversely, Assistant Attorney General duly assisted by the I.O. of the case has opposed the grant of bail to the applicant and has submitted that the present applicant was in league and connivance with the main accused person towards theft of CNG gas supply at Shahbaz CNG station and has accepted illegal gratification for not taking any action on monthly inspection report. The I.O. present in Court, was directed to produce any documentary evidence which may suggest that during the relevant period of time, when the alleged theft of gas supply to the CNG station was committed by the co-accused persons at Shahbaz CNG station Jamshoro, the present applicant, namely, Raza Muhammad Shaikh, was the concerned authorized officer to either inspect the site and to prepare the monthly inspection report, or was specifically given the task to detect the commission of theft of gas/CNG at Shahbaz CNG station Jamshoro and to take action of disconnection during the relevant period of time, in response to which, he could not produce or refer to any incriminating material in this regard, however, has referred to a statement of accused, namely, Ghulam Shabbir Shah,

according to which, an amount of Rs.30,000/- was paid to the present applicant as illegal gratification when he visited Shahbaz CNG station Jamshoro, in March, 2016. It has been further stated by the I.O. present in Court that that from perusal of the bank statement of the present applicant, it has been found that certain amounts have been deposited in his account through easy paisa, the source of which could not be properly explained by the present applicant.

I have heard the learned counsel for the applicant and the learned Assistant Attorney General duly assisted by the I.O. and perused the record with their assistance. The I.O. present was directed to produce any documentary evidence which may suggest that during the relevant period of time when the alleged theft of gas supply to the CNG station was committed by the accused person at Shahbaz CNG station Jamshoro, the present applicant, namely, Raza Muhammad Shaikh, was the concerned authorized officer to either inspect the site and prepare the monthly inspection report, or as to whether he was specifically given the task to detect the theft of gas/CNG at Shahbaz CNG Station Jamshoro and to take action accordingly, during the relevant period of time. However, in response to such query, he could not submit any document nor could refer to any material to show that present applicant was the concerned officer of SSGCL in respect of Shahbaz CNG Station situated at Jamshoro. Admittedly, the name of present applicant is not mentioned in the FIR nor any specific role has been assigned to the applicant in respect of allegation of theft of gas/CNG, whereas, his name has been included in the final challan submitted by the I.O. on the basis of statement of co-accused, namely, Ghulam Shabbir Shah, while he was in custody. Record further reveals that the prosecution has not been able to produce any direct evidence against the present applicant, which could establish without reasonable doubt that the applicant has been instrumental in the alleged offence of theft of CNG/gas, or has connived with the co-accused person. Nothing has been produced, which could establish that during relevant period of alleged offence, the present applicant was the concerned officer of SSGCL to either visit and prepare monthly inspection report of Shahbaz CNG station, situated at Jamshoro or he was the concerned officer,

duly authorized by the Competent Authority to take action of disconnection in respect of Shahbaz CNG Station, Jamshoro. It has also come on record that the inspection reports, which have been relied upon by the prosecution contained the joint signatures of other officials of SSGCL, who have not been impleaded as accused in the instant crime for which, no explanation has been given. The trial has not yet concluded inspite of considerable lapse of time, whereas, the present applicant is behind the bar since his arrest. It is pertinent to note that the main accused person, namely, Aijaz Shah, has already been granted bail vide order dated 20.12.2016 in Cr. Bail Application No.S-759 of 2016. I am of the opinion that the applicant, namely, Raza Muhammad Shaikh has made out a case of further inquiry, whereas, according to I.O., the applicant is no more required for further investigation. It is settled principle that bail cannot be withheld as punishment, whereas, it is yet to be determined as to whether the applicant has acted in connivance with the main accused persons in the commissioning of theft of CNG/gas as alleged in the instant FIR/challan. Moreover, inspite a lapse of about more than one year since his arrest and during trial, no direct evidence or material has been produced by the prosecution before the trial Court, which could establish without reasonable doubt the allegations of theft of CNG or misuse of authority, or corruption by the applicant, or to dis-entitle the present applicant from seeking bail by extending benefit of doubt in terms of Section 497 Cr.P.C. The applicant is not previously convicted nor is involved in similar nature of offence, whereas, prosecution has already collected the relevant record as, after completion of investigation, final challan has already been submitted before the Court, and he is no more required for further investigation, hence there is no probability that applicant, if released on bail, would temper the prosecution evidence. The alleged offence is not punishable with death, whereas, offence under Section 462-E, PPC is punishable upto 10 years and not less than 5 years and fine. It is settled law that if two sentences are provided for any offence in schedule then the Courts are required to consider the minimum quantum of sentence in respect of alleged offence for the purposes of bail. Reference in this regard can be made in the following cases:-

- i) *PLD 2002 SC 46 (Fida Hussain v. The State)*
- ii) *PLD 2005 SC 63 (Pir Mazharul Haq and others v. The State)*
- iii) *2012 SCMR 1685 (Dr. Muhammad Riaz Akhtar v. The State)*
- iv) *2017 SCMR 79 (Muhammad Shafique and another v. The State and others)*

7. In view of hereinabove facts and circumstances of the case, I am of the opinion that the applicant/accused has made out a case of further inquiry. Accordingly, the bail was granted to the present applicant, namely, Raza Muhammad Shaikh subject to his furnishing solvent surety in the sum of Rs.10,00,000/- (*Rupees One Million Only*) and P.R. Bond in the like amount to the satisfaction of learned trial Court vide short order dated 30.06.2017, and above are the reasons for such short order.

J U D G E