

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 291 of 2023

Applicant/ Accused : Muhammad Hussain son of Wali Khan through Syed Junaid Alam, Advocate.

Complainant : Aziz-ur-Rehman through Mr. M.A. Javed, Advocate.

The State : Mr. Sadaqat Awan, Special Prosecutor SSGC, Mr. Gul Faraz Khattak, Assistant Attorney General for Pakistan and Syed Muntazir Mehdi, Addl. P.G.

Date of hearing : 05-04-2023

Date of order : 05-04-2023

*FIR No. 1406 of 2022
U/s. 462-B/462-C/379/34 PPC
P.S. Shah Latif Town, Karachi*

ORDER

Adnan Iqbal Chaudhry J.- The Applicant seeks post-arrest bail in the aforesaid crime after the same was declined by Additional Sessions Judge-III, Malir, Karachi, by order dated 25.01.2023.

2. The offences alleged under sections 462-B and 462-C PPC are in respect of 'tampering with petroleum pipelines etc.' and 'tampering with auxiliary and distribution pipelines of petroleum', punishable for terms extending upto 14 and 10 years respectively.

3. Learned Special Prosecutor SSGC submits that the definition of "petroleum" in section 462-A(h) PPC included "natural gas", but after the enactment of the Gas (Theft, Control and Recovery) Act, 2016 the offences under sections 462-B and 462-C PPC came to be overridden by virtue of section 31 of the latter Act; that under SRO

No.293(1)/2017 dated 02.5.2017, issued under section 3 of the Gas (Theft, Control and Recovery) Act, 2016, the District and Sessions Judges in each District are designated as Gas Utility Courts to exercise jurisdiction under said Act; and thus, the Additional Sessions Judge-III, Malir, Karachi did not have jurisdiction to entertain the bail application of the Applicant. Learned Special Prosecutor proposes that the matter can be disposed of by remitting it to the Gas Utility Court for deciding the bail application of the Applicant.

4. In my view, the Gas (Theft, Control and Recovery) Act, 2016 relates to the theft of "gas" as defined in section 2(e) thereof which does not include 'oil', and which is in contrast to the definition of 'petroleum' in section 462-A(h) PPC which includes 'natural gas'. Thus, had the case been of gas theft or tampering with a gas pipeline of the SSGC, then the submission of learned Special Prosecutor would have required some consideration. Here, the case alleges theft of crude oil by tampering with an oil pipeline of the PARCO and does not seem to be covered by the Gas (Theft, Control and Recovery) Act, 2016. Therefore, the Additional Sessions Judge-III, Malir, Karachi had jurisdiction to pass the impugned order.

5. Adverting now to the merits of the bail application. Per the FIR, lodged by the Assistant Security Officer of Pak-Arab Refinery Ltd. [PARCO], the Applicant was apprehended by the police driving an oil-tanker filled with crude oil suspected to be stolen from PARCO's pipeline. Persons escorting the tanker on motorcycles had fled away. The Applicant himself had led the police and PARCO's personnel to the spot of theft, where excavation revealed apparatus connected to PARCO's pipeline to create an outlet for stealing crude oil. The tampering apparatus was seized. The tanker was found carrying 16000 liters of crude oil, estimated at Rs. 26,50,000/-. The Applicant could not produce any documents for the purchase or delivery of the crude oil being transported in the oil-tanker.

6. In the circumstances discussed above where the Applicant was apprehended along with the oil-tanker carrying stolen crude oil, and where the offence alleged falls within the prohibitory clause of section 497 Cr.P.C., the Applicant is not entitled to bail. Application is dismissed.

PA/SADAM

JUDGE