

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-678 of 2023

Applicant: Zulfiqar Arain through Mr. Mir Muhammad Narejo,
Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant
Prosecutor General Sindh.

Date of hearing: **07.08.2023**

Date of Order: **07.08.2023**

O R D E R

ZULFIQAR ALI SANGI, J:- Applicant Zulfiqar seeks pre- arrest bail in crime No.74 of 2023 registered at PS Sinjhoru for the offence under sections 462-B, 34 PPC. Earlier his application seeking bail was declined by the Sessions Judge, Sanghar vide his order dated 27.06.2023.

2. It is alleged in the FIR that applicant has been involved by co-accused namely, Muhammad Yameen, Muhammad Ali and Fida Hussain who were apprehended on spot that he is purchasing the alleged theft crude oil from them.

3. Learned counsel for the applicant has contended that the applicant/accused is innocent and has been falsely implicated in the instant case with *mala fide* intention; that there is no evidence against the applicant which could connect him to have committed the alleged offence; that the applicant has been implicated on the statements of co-accused, which is inadmissible under Article 38 of Qanun-e-Shahdat Order, 1984; that no previous criminal record has been brought on record by the prosecution that the applicant is involved in such type of offence; therefore, learned counsel prayed for confirmation of interim pre-arrest bail already granted to the applicant/accused.

4. Learned Assistant Prosecutor General, Sindh for the State has opposed the confirmation of bail on the ground that applicant has been

specifically nominated by co-accused for purchasing crude oil from them; therefore, he is not entitled for concession of bail.

5. I have heard the learned counsel for the applicant as well as the learned Assistant Prosecutor General, Sindh and have gone through the material available on the record with their able assistance.

6. Admittedly, the applicant was involved on the statement of co-accused namely, Muhammad Yameen, Muhammad Ali and Fida Hussain and during investigation nothing has brought on record by the Investigating Officer, which shows that the applicant is conducting and dealing with the business of theft oil; even no such type of previous criminal history the prosecution has been able to bring on record. No allegation is levelled against the applicant that he had tampered or attempted to tamper or abeted in tampering with a facility, installation or main pipeline for transmission or transportation of petroleum. Even otherwise, the punishment provided for offence under section 462-B PPC is extendable to 14 years but not less than seven years and with fine, which may extended to ten million rupees. It is settled law that for the purpose of deciding bail application lesser punishment is to be considered which in the present case is seven years and the same does not fall within the prohibitory clause of section 497 Cr.P.C.

7. The Honourable Supreme Court in case of ***Muhammad Imran V. The State and others (PLD 2021 SC 903)*** has formulated the grounds for the case to fall within the exception meriting denial of bail as (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view of his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further Honourable Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record. In the case in hand the prosecution has failed to establish any of the

above ground meriting denial of the application of the applicant. It is also settled by the Honourable Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on the record.

8. In such circumstances, the applicant has been able to establish his case for grant of pre-arrest bail as his implication on the statement of co-accused is admissible under Qanun-e-Shahdad, Order, 1984. In view of the above, instant bail application is allowed and the interim pre-arrest bail already granted to the applicant by this Court vide order dated 04.07.2023 is hereby confirmed on the same terms and conditions.

9. The bail application is disposed of in the above terms.

JUDGE

Abdullah Channa/PS