

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Application No. S-153 of 2021  
Cr. Bail Application No. S-161 of 2021

Date	Order with signature of Hon'ble Judge
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1. For orders on office objection as flag A.
2. For hearing of main case.

05.7.2021.

Mr. Habibullah G. Ghouri, advocate for the applicants  
Mr. Ahmed Raza Sundrani, advocate for the complainant  
Mr. Ali Anwar Kandhro, Addl. P.G.

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**ZAFAR AHMED RAJPUT-J.**:-By this common order, I intend to dispose of above-mentioned both criminal bail applications as the same have arisen out of same F.I.R. bearing Crime No. 60 of 2021, registered under sections 452-B, 462-F and 427, P.P.C. at P.S A-Section, Kandhkot.

2. Through Cr. Bail Application No. S-153 of 2021, applicants/accused Gulsher Bangwar and Khatoor Bangwar seek pre-arrest bail in said crime. They were admitted to interim pre-arrest bail by this Court, vide order dated 12.4.2021, now they seek confirmation of the same. While, by means of Cr. Bail Application No. S-161 of 2021, applicant/accused Muhammad Panah Sabzoi seeks post-arrest bail. Earlier their applications for grant of bail bearing Nos. 266 of 2021 and 104 of 2021, respectively, were heard and dismissed by the learned Sessions judge, Kashmore @ Kandhkot, vide orders dated 09.4.2021.

3. Briefly stated facts of the prosecution case are that, on 14.3.2021, complainant Nadir Ali, Admin Officer PARCO Pumping Station-3, Shikarpur lodged the afore-mentioned F.I.R., alleging therein that on the said date he was present at said station when at about 12.30 a.m. he received information through mobile phone from Ramz Ali, Security Supervisor, that during checking of Parco pipeline he, along with Mir Khan and Faiz Muhammad, Line Walkers, reached KM-44 in the land of Gulsher Bangwar near Askar Petrol Pump where, on headlight of the vehicle, they saw accused (1) Gulsher (2) Khatoor (3) Abdul Shakoor Contractor (4) Rasheed (5) Muhammad Panah (6) Aadil @ Babu and



(7) Fareed, who had fixed a clip in Parco pipeline for committing theft of oil but on seeing them coming there, said accused fled away. They saw two plastic cans of white color each containing 30 liters crude oil lying there. After receiving such information, the complainant reached the spot and suspected that Zahoor Ahmed, line walker, and Ravi Kumar, owner of Askar Petrol Pump, were also involved in the offence and, after informing his high officers, he lodged the report to the above effect.

4. Learned counsel or the applicants/accused contends that the applicants/accused are innocent and have falsely been implicated in this case; that the complainant is not himself an eye-witness of the incident and he has lodged the F.I.R. on hearsay evidence, which carries no weight in the eyes of law; that the identification of the applicants/accused in the light of the vehicle is extremely doubtful; that the alleged land is lying abundant without any cultivation for last at least 10 years; that since the alleged offence carries lesser punishment of seven years, the same does not fall within prohibitory clause of section 497 Cr.P.C. for the purpose of grant of bail to the applicants; that since co-accused Ravi Kumar has already been admitted to bail by the learned Sessions Judge, Kashmore @ Kandhkot, vide order dated 09.4.2021, present applicants are also entitled for the grant of bail on the rule of consistency.

5. On the other hand, learned counsel appearing for the complainant as well as Addl. P.G oppose the grant of bail to applicants vehemently on the ground that they are nominated in the F.I.R. by names; that the applicants were found present at the spot by the prosecution witnesses committing alleged offence; that the offence of committing theft of oil from main oil transmission pipeline of PARCP is not an ordinary offence. In support of their contentions, they have relied upon the case of *Raza Muhammad v. The State* (2017 P.Cr.L.J Note-47).

6. Heard the learned counsel for the parties and perused the material available on record.



7. It is an admitted position that applicant Muhammad Panah is in judicial custody since 25.3.2021. Police has submitted challan against the applicants; hence, they are no more required for further investigation. The complainant is not an eye-witness of the incident. As per F.I.R. certain articles i.e. two iron clips, two plastic cans each containing 30 liters crude oil and one rubber pipe about 150 feet were found lying at the spot; however, it is not mentioned as to how these articles were brought at the spot and how the accused persons succeeded to make their escape good as the entire F.I.R. which, though finds mentioned of footprints of seven persons, is silent about the marks of any vehicle at the spot. Co-accused Ravi Kumar, who is stated to be the owner of the Askar Petrol Pump, has already been admitted to bail by the learned Sessions Court, hence on the rule of consistency the present applicants are also entitled to the concession of bail. The offence of tempering with petroleum pipeline and damaging or destruction the transmission or transportation lines, etc. are punishable under sections 462(b) & 462(f), P.P.C., for rigorous imprisonment which may extend to fourteen years but shall not be less than seven years. In such like cases, where Statute provides alternate punishments, the bail has to be granted to applicant/accused on the principle that when a Statute provides two punishments then at the bail stage, the lesser one is considered. Whether the trial Court, after conclusion of the trial inflict sentence to the extent of fourteen years or seven years, it is sole discretion of the trial Court and the same cannot be ascertained at this stage of the bail. This fact alone makes the case of applicants as one of further inquiry as to which punishment is to be inflicted. Reliance in this regard may be placed in the case of *Shehroze and another v. The State* (2006 YLR 3167), *Ahmed Nawaz Solangi v. The State* (2014 YLR 1723), *Zahid Hussain Chandio v. The State* (2016 MLD 1103) and *Mustafa Ali v. The State* (2014 P.Cr.L.J 1464).

8. I, therefore, allow above-mentioned both bail applications. Consequently, interim pre-arrest bail granted to the applicants Gulsher Bangwar and Khatoor Banwar in Cr. Bail Application No. S-153 of 2021, vide order dated



12.4.2021, is here confirmed on same terms and conditions, while applicant/ accused Muhammad Panah Sabzoi is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/= and P.R bond in the like amount to the satisfaction of Additional registrar of this Court.

9. Needless to mention here that above observations are tentative in nature and meant only for the disposal of these bail applications, which shall not influence the trial Court while deciding the case of the applicants on merits. In case the applicants misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel their bail after serving requisite notice.

Both criminal bail applications stand disposed of.



**JUDGE**

*shabir*