

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH BAHAWALPUR.
(JUDICIAL DEPARTMENT)

Case No. Crl. Misc. No. 3535-B/2023

Muhammad Hassan

Versus

The State etc.

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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30.10.2023 Sardar Zafar Iqbal Tareen, Advocate for the petitioner.
Mr. Javaid Iqbal Bhaaya, Assistant District Public Prosecutor with Muhammad Ali, ASI.
Mr. Muhammad Ahmad Bhatti, Advocate for the complainant.

Through this petition under Section 497 Cr.P.C., petitioner has sought post arrest bail in case FIR No.441 dated 21.08.2023 registered under Section 462-C PPC at Police Station Pacca Laran, Tehsil Liaquat purr, District Rahim Yar Khan.

2. Heard. Record perused.
3. Petitioner was under the allegation of committing theft of gas by tampering into auxiliary or distribution pipeline of SNGPL (Sui Northern Gas Pipelines Limited) which is an offence under section 462C PPC entailing punishment up to 10 years’ imprisonment. Offences carrying punishment up to 10 years or more are usually regarded as serious offences, therefore, prosecution by all times is at call of duty to collect concrete evidence so as to ensure that broad extent of the criminality has been determined and that they are able to make a fully informed assessment. Before dilating upon the matter for bail in the context of further inquiry and availability of sufficient material against the accused/petitioner, it was expedient to collect information about layout plan of gas pipelines by SNGPL for supply of gas to end users; therefore, on direction, learned Prosecutor after collecting information from office of concerned Company submitted as under;

There are three lines of Sui gas; (i) Transmission Lines (ii) Distribution Supply Lines (iii) Distribution Feeder Lines. Transmission lines usually having diameter of 16 to 42 inch or more start from the gas well and ends at city gates for supply of gas to various cities/industries through Sales Meter Station (SMS). These lines generally contain pressure of gas 500 psi (pound per square inch) or above. Where the transmission line ends, distribution lines start which generally contain high pressure of 50 to 100 psi or above; these lines have generally diameter of 6 to 12 inches or above. However, it is pertinent to mention that Sales Meter Station (SMS) may provide gas to industries only through dedicated SMS wherein said lines have no city/town load. These lines are mostly located at main passages/road or location from where gas is distributed to towns and localities through Town Border Station (TBS). Distribution Feeder Lines start from TBS and gas is provided to consumer i.e., domestic or commercial at low pressure generally from 5 to 15 psi. The diameter of said lines is usually 1 to 4 inches. Before installation of said lines, a map is prepared by drawing section of Sui Gas at regional level. The existence of said lines may be verified through map/DLM (Drawing Location Map).

4. Duty of prosecution to collect concrete evidence is mentioned in para 4.12 of the Code of Conduct for Prosecutors (COCF) issued by the Prosecutor General under section 17 (1) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 hereinafter be called as CPS Act, which is reproduced as under;

“4.12: Prosecutors may only take a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test.

Therefore, when prosecutors do not have sufficient information to take such a decision, the investigation should proceed. However, pursuant to para-6 of COCF, they while applying threshold test on interim report u/s 173 Cr.P.C. can request the Court for postponement of trial as mandated under sub-section (6) of section 9 of CPS Act; which is reproduced;

(6) On receipt of an interim police report under section 173 of the Code, the Prosecutor shall—

(a) examine the reasons assigned for the delay in the completion of investigation and if he considers the

reasons compelling, request the Court for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial; and

- (b) in cases where reasons assigned for delay in the completion of investigation are not compelling, request the Court for commencement of trial on the basis of the evidence available on record.

The role of prosecutors to guide the police for collection of evidence is regulated through the same COCP in following manners;

2.1 Prosecutors must cooperate and coordinate with the police to ensure fair and just prosecutions.

2.2 Coordination and cooperation mean and entails advice and guidance to the police regarding possible lines of enquiry, evidential requirements and pre-charge procedures. It is meant to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However, prosecutors cannot direct the police or other investigators except in accordance with paragraph 4. **(emphasis supplied)**

According to above command prosecutors should look into the evidential requirements and take care of all pre-charge procedures while suggesting possible lines of inquiry so as to build a good prosecution case for its submission before the Court.

5. It is misconception that evidential requirement for proving an offence depends upon the principle of evidence but as a matter-of-fact it is embedded in the substantive law through respective penal provision, and how to transform such requirement into admissible format through different kinds of evidence is the subject of law of evidence. Case analysis is the first step to understand the evidential requirement which is triggered on the receipt of FIR by the prosecutors pursuant to section 12 of the CPS Act. Therefore, from the very early-stage prosecutors are required to associate into the process, and in this respect Prosecutor General can issue general guidelines to prosecutors and the investigating officers as per section 10 (1) of the CPS Act which is as under;

10. Powers of Prosecutor: – (1) The Prosecutor General may issue general guidelines to the Prosecutors or officers responsible for investigation for effective and efficient prosecution.

6. In order to prove an offence, the literal and constructive understanding of relevant penal provision is the essence of case analysis which gives way to understand the mode and manner of proving such offence. What could be the possible evidential requirement for proof of an offence under section 462C PPC, it is essential that such section be read in its entirety along with chapter XVII-A of PPC wherein it falls. Here is the section;

462C: Tampering with auxiliary or distribution pipelines of petroleum: (1) Any person who willfully does tampering or attempts to do tampering or abets in tampering with any auxiliary or distribution pipeline of petroleum not being a main transmission and transportation pipeline but includes a distribution system, distribution pipeline or any other related system and equipment, as the case may be, of petroleum is said to commit tampering with auxiliary or distribution pipelines of petroleum.

(2) Any person who commits or abets in tampering with auxiliary of distribution pipeline of petroleum for the purpose of: -

- (a) Theft of petroleum; or
- (b) Disrupting supply of petroleum,

shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than five years and with fine which may extend to three million rupees.

Let's bifurcate the section to understand the evidential requirement; at first it is essential to see the definition of 'petroleum' as given in section 462A PPC as under;

(h) "**Petroleum**" means oil, crude oil, refined oil products, natural gas, LPG, Air Mix LPG, LNG and CNG;

Not only different types of natural gas, it also encompasses oil etc. As per section 462C PPC cited above, the first element is to prove the situation of "willfully tampering"; therefore, what connotes the word "willfully" and what is the tampering, it is to be responded. Definition of tampering is given in section 462A PPC as under;

(j) “**Tampering**” includes interfering or creating hindrance in flow or metering of petroleum by unauthorized entry into metering system or transmission and distribution lines either by breaking the seals or damaging or destructing the same or in any manner interfering with the meter or interfering with its original condition.

Keeping in view the above definition, if the section is read in parts, the following is evidential requirement to prove the tampering;

1. Evidence of interference or hindrance like using any connecting device, clumps, pipe, hose, material or anything for the purpose of getting petroleum or creating hindrance in flow or metering of petroleum.
2. Such interference must be unauthorized and that too in metering system, or transmission and distribution lines.
3. It must be done either by breaking the seal or damaging or destructing such system or lines or in any other manner interfering with original condition of meter or lines.

Whereas word ‘Willfully’ could be defined like referred in case reported as “ROHAN AHMAD and others versus The STATE and another” (2022 P Cr. LJ 259) which is as under;

According to Halsbury's Laws of England, Fourth Edition, Vol.11, para. 1252 ‘willfully’ means deliberately and intentional, not accidentally or inadvertently. Frank R. Prassel in his Criminal law, Justice and Society 1979 Edition, page 150 says that "Intent is probably the most common, at least for the major traditional offences, but some codes call the proof of ‘willful’ ‘voluntary’, ‘malicious’, ‘corrupt’, or ‘purposeful’ product instead. These terms are generally accorded similar legal meanings, subject to limited variation from one jurisdiction to another.

According to Black's Law Dictionary, Fifth Edition, "an act is done willfully and knowingly when the actor intends to do it and knows nature of the act. Further that an act or omission is ‘willfully’ done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. It goes on to say that when used in criminal context it generally means an act done with a bad purpose, without justifiable excuse; stubbornly, obstinately, perversely. The word is also employed to characterize a thing done without ground for believing it is lawful or conduct marked by a careless disregard whether or not one has the right so to act."

Stroud's Judicial Dictionary Vol. 4, third Edition, says "that the legal meaning of willful is purposely without regard to bona fides or collusion and deliberately and intentionally but does not involve obstinacy of an obstructive kind and it means an

intentional disobedience. In the Law Terms and Phrases Judicially Interpreted, by Sardar Muhammad Iqbal Khan Mokal, the term “willfully” amounts to nothing more than this that the person whose action is in question, knows that he is doing and intends to do what he is doing and is free agent. He further says that willful means wantonly, intentional, deliberately and consciously and not accidentally or by inadvertence. Reference is made there to Madras State Waqf Board v. Tajammal Hussain (AIR 1968 Mad. 332) and Kedar Nath v. The State (AIR 1965 All. 233)."

Willfully as *mens rea* thus means voluntarily, maliciously, and purposefully doing an act which is forbidden by law.

7. Tampering would be proved by ocular account in respect of point of interference in distribution line etc. size of hole or point from where gas was being stolen, recovery of pipe, hose etc. showing corresponding size of such articles. Snaps/videos of an exercise of digging out the earth for search of such material. Likewise, evidence of safe custody and dispatch of articles to concerned Lab for testing in order to obtain evidence of residues of petroleum in recovered pipe etc., so that it could be proved as being used for flow of petroleum, and of course the Lab report in this respect.

Once the tampering is proved, next step in section 462C PPC is to prove that such pilferage of petroleum was for the purpose of theft or disruption of supply. If it was for theft, then prosecution must take lead to show the place where actually the petroleum is being used for any purpose. If it was being used in residential house for kitchen purposes, then the appliance connected therewith must be taken into possession, and to prove for its use in commercial or industrial activities, proof in any form like sealing of property and securing of evidence by video graphing the action or its snapping as the case may be.

However, if tampering was intended for ‘disrupting supply of petroleum’, it connotes of causing any mischief, terrorist or sabotage activity; therefore, evidence of broader purpose of accused and his link with any group or organization interested in such subversive activities, is essential. The broader motives of the accused could be to

satisfy their personal grudge against the company, like passing of supply pipeline nearby their lands creating devaluation or danger to their life and property.

Likewise, documentary evidence for dropping of gas pressure at particular area, as tracked/reported in the main monitoring system of the company due to theft or disrupting supply of petroleum, is necessary, because as per section 462A (k) PPC, a standard pressure in the pipelines is always measured as not less than three hundred psig (per square inch gauge) and regulation of such pressure may be prescribed from time to time.

In both situations, either to prove theft or disrupting the supply of petroleum, a drawing location map (DLM) prepared by SNGPL is necessary to be obtained for tendering into evidence in order to show the existence of such auxiliary or distribution pipeline near or around the place of occurrence.

8. Tampering is not an easy job, it cannot be done by a layman, rather it is expected that some expert might have put his efforts through technical skills to materialize it. Thus, the prosecution is obliged to get that very expert tracked and consequent recovery of tools or implements used for such activity, but if the accused had himself indulged or did it by his own, the recovery of such tools from him is also essential. It must be remembered that it is very important piece of evidence, otherwise mere using of petroleum unauthorizedly would not be an offence under section 462C PPC because in that case it is expected that somebody else had committed the tampering for the purpose of supply of petroleum to simpletons for unlawful gains.

The above cited can be the least evidence, collection whereof is essential to prove the offence under section 462C PPC or like offences under Chapter XVII-A of PPC, therefore, prosecution is reminded of its duty to collect such type of evidence before sending the case to the Court.

9. I have observed that in this case, no evidence is available on the record and thus sufficient material is lacking to connect the petitioner with the commission of offence. The Supreme Court of Pakistan in a case reported as “MUHAMMAD NAWAZ alias KARO Versus The STATE” (2023 SCMR 734), with reference to Section 497 Cr.P.C., has held as under:-

“This court has time and again held that liberty of a person is a precious right, which cannot be taken away unless there are exceptional grounds to do so. Merely on the basis of bald allegations, the liberty of a person cannot be curtailed.”

Petitioner is behind the bars since 23.08.2023 and no more required for further investigation; keeping him behind the bars for indefinite period would not serve any useful purpose to the prosecution. All these facts, *prima-facie*, call the case of present petitioner for further inquiry falling under the ambit of sub-section (2) of Section 497 Cr.P.C. as enunciated in cases reported as “JAHANZEB AND OTHERS versus STATE through A.G. Khyber Pakhtunkhwa Peshawar and another” (2021 SCMR 63), “MUHAMMAD SHAFIQUE and another versus The STATE and others” (2017 SCMR 79), “SALMAN ZAHID Versus The STATE through P.G. Sindh” (2023 SCMR 1140), “GUL MUHAMMAD Versus The STATE” (2023 SCMR 857), “MUHAMMAD AMIN versus The STATE” (2017 YLR 609) and “MUHAMMAD ARSLAN AHMED versus The STATE” {2017 P Cr. L J 434 (Sindh)}.

10. In view of what has been discussed above, the petition in hand is **allowed** and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of **Rs.100,000/-** with one surety in the like amount to the satisfaction of the trial Court.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

This order was pronounced on 30.10.2023 and after dictation and preparation, has been signed on 08.11.2023.

*M. Azhar**

Approved for reporting:

JUDGE