

P L D 2012 Islamabad 38

Before Shaukat Aziz Siddiqui, J

BASHIR MASIH---Petitioner

versus

THE STATE and others---Respondents

Criminal Miscellaneous No.762-B of 2011, decided on 3rd February, 2012.

(a) Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), S. 379---Anti-Terrorism Act (XXVII of 1997), Ss. 6(2) & 7---Theft, acts of terrorism---Bail, refusal of---Theft of gas---Illegal connection with main supply pipeline---Accused had allegedly made illegal connection with the main gas pipeline and was supplying gas to households in the area in return of a fixed monthly bill---Bail application of accused had been dismissed twice by Trial Court---On application of the accused's mother, re-inquiry of the case was conducted, after which three sections of P.P.C were deleted from F.I.R. and only S.379, P.P.C remained---Accused applied for bail again, after said deletion of sections but his bail application was refused---Validity---Damaging supply line of a national resource/asset in connivance with officials of the Government department, thereby causing huge loss, was not an ordinary offence, rather it was serious in nature and grievous in consequence---Case against accused was a delicate and sensitive matter and came within the definition of a terrorist act, attracting the provisions of S.7 of Anti-Terrorism Act 1997---Bail petition of accused was dismissed.

(b) Penal Code (XLV of 1860)---

----S. 379---Anti-Terrorism Act (XXVII of 1997), S. 7---Theft---Illegal connection with main supply pipeline---Terrorist activity---Scope---Damaging the supply line of a national

resource/asset and thereby causing huge loss, in connivance with officials of the government department, was not an ordinary offence, rather it was serious in nature and grievous in consequence, which brought it within the definition of a terrorist act, attracting the provisions of S.7 of Anti-Terrorism Act 1997.

(c) Anti-Terrorism Act (XXVII of 1997)---

---Ss. 6(2)---Penal Code (XLV of 1860), S. 379---Theft---Illegal connection with main supply pipeline---Word "disrupt" occurring in S.6(2)(i), Anti-Terrorism Act, 1997 is synonymous to word 'disorder', 'distract', interfere with' 'upset', 'abstract', 'distort', 'damage', 'sunder' etc.

Ghulam Shabbir Mangat and Waseem Ahmed Abbasi for Petitioner.

Rehman-ud-Din Khan, Standing Counsel and Muhammad Illyas, S.P. (City) for the State.

Jamal Mehmood Butt for Respondents/Complainant.

Date of hearing: 3rd February, 2012.

JUDGMENT

SHAUKAT **AZIZ** **SIDDIQUI,** **J.--Petitioner**
Bashir Masih S/o Ghulam Masih seeks post arrest bail in case F.I.R No.477, dated.23-9-
2011, offence under section 506, 186/34(deleted) 379, P.P.C. registered at Police Station, Kohsar,
Islamabad.

2. The brief facts as narrated in the F.I.R. that on 22-9-2011 at 2-30, the complainant along with other team members (task force) attempted to check a suspicious gas meter within the area of Sector F-7/4, Islamabad at House No.C-103 but accused persons Mushtaq Masih, Ishaq Masih, Shaukat Masih and Bashir Masih (present petitioner) resisted and gave threats of killing. The complainant's party insisted on checking and succeeded to check the site. After digging it transpired that accused persons have made illegal connection with main pipeline and made it direct. In this way they committed theft of Gas. It has further been

mentioned that the accused persons were supplying gas to 219 houses and were getting Rs.700/- per house monthly bill. The accused persons fled away from the site. That this locality was doubtful for the last three years but the theft was untraceable. It has been mentioned in the F.I.R. that the accused persons have committed theft of approximately 20,000 HM3, valuing Rs.1,20,00000/-.

3. Before seeking the indulgence of this court, petitioner approached, the learned A.S.J. (Syed Wajahat Hassan) Islamabad for grant of bail which was dismissed, then he moved the petition for bail after arrest before the court of Mr. Naeem Shoukat, Judicial Magistrate, Islamabad and the same was also dismissed. Thereafter second petition for bail after arrest was dismissed by the court of Syed Wajahat Hassan, A.S.J., Islamabad. Meanwhile, on the application of petitioner's mother re-inquiry of the case was conducted by S.H.O., Police Station Kohsar, Islamabad who after conducting the inquiry deleted sections 186/34 & 506, P.P.C. and after deletion of these sections, the petitioner moved bail after arrest on the fresh grounds which has also been dismissed by Mr. Naeem Shaukat, Judicial Magistrate, Section 30 vide order dated 14-12-2011 and also of Syed Wajahat Hassan, A.S.J., Islamabad vide order dated 19-12-2011.

4. The learned counsel for the petitioner submits that punishment for offence under section 379, P.P.C. is up to 3 years which does not fall within the prohibitory clause of section 497(1), Cr.P.C. There is delay of 10 hours in lodging F.I.R. and alleged recovery has been foisted upon the petitioner after a month of occurrence, therefore, the prosecution story is highly doubtful and improbable and the case of petitioner calls for further inquiry and probe as envisaged under section 497(2), Cr.P.C.

5. On the other hand the learned standing counsel assisted by the learned counsel for the complainant submits that petitioner is specifically nominated in the F.I.R., he committed most heinous offence in connivance with his co-accused and in such like cases bail is not granted even if the alleged offence does not fall within the prohibitory clause of section 497(1) Cr.P.C.

I have heard the learned counsel for the parties and perused the record.

6. The allegations levelled in the F.I.R. are serious and prima facie constitute an offence under section 7 of Anti Terrorism Act, as defined under section 6(2)(I) of Anti Terrorism Act, which reads as under:--

"is designed to seriously interfere with or seriously disrupt a communications system or public utility service;"

The word, disrupt is synonymous to word disorder, distract, interfere with, up-set, abstract, distort, damage, sunder etc.

7. To damage the supply line of a national resource/asset and thereby causing huge loss, obviously in connivance with the officials of the department is not an ordinary offence, rather serious in nature and grievous in consequence. This court vide order dated 10-1-2012, directed the I.-G, Islamabad for appointment of some gazetted police officer not below the rank of S.P. to investigate the matter and proceed against those who are involved in the commission of offence and those who abated, facilitated and found napping in protecting the national asset. Mr. Muhammad Ilyas, S.P. (City) appointed as Investigating Officer, who took the investigation into his own hand and exposed the culprits of the department but they became fugitive from law and have been declared proclaimed offenders. The case in hand is not like the ordinary case, rather it is very delicate and sensitive and as observed come within the definition of terrorist act, attracting the provision of section 7 of Anti Terrorism Act, 1997, therefore, instant bail petition is dismissed.

The S.P. City is directed to make sincere efforts to affect the arrest of accused persons, belonging to SNGPL who joined hands with the present petitioner and for personal benefits caused huge loss to the public exchequer and natural resource of the country.

M.W.A./B-34/Isl.

Bail refused.