

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No. 961 of 2018

Date

Order with signature of Judge

For hearing of bail application:

10.10.2018

Mr. Habib-ur-Rehman, Advocate for applicant.

Mr. Zahoor Shah, DPG for State.

-X-X-X-X-

Omar Sial, J.: The applicant Sajida Saeed has sought post arrest bail in crime number 38 of 2015 registered under sections 302 and 34 P.P.C. at the Shah Latif police station in Karachi. Earlier, her post arrest bail application was dismissed on 22-6-2018 by the learned 4th Additional Sessions Judge, Malir at Karachi.

2. Brief facts of the case are that on 21-1-2015 one Hafeezullah Khan Lashari registered the aforementioned F.I.R. stating therein that his brother Ahsanullah had married the applicant as his second wife. The couple had a quarrel a few days ago which was settled by the relatives. On 20-1-2015 while the complainant was at work, he received a call that his brother Ahsanullah had been burnt by acid and was being taken to the Civil Hospital. Ahsanullah subsequently died due to his burns. The only evidence according to the learned DPG against the applicant is the statement of the nephew of the complainant who said that he had gone to see Ahsanullah and saw that the applicant along with two other males were all throwing acid on Ahsanullah. Upon seeing the nephew, all the three persons went away from the scene.

3. I have heard the learned counsel for the applicant as well as the learned DPG and have also examined the record with their able assistance. The complainant remained absent despite notice. My observations are as follows.

4. The only piece of evidence against the applicant is the statement of the nephew. No other evidence is on record till this stage. The story narrated by the nephew in itself requires further enquiry. Ulterior motives on the part of the complainant party cannot be conclusively ruled out at this stage because it appears that the bone of contention had been matters of inheritance after the second marriage of Ahsanullah to the applicant. A conclusive determination in this regard can only be made by the learned trial court after evidence is led.

5. On 12-9-2018 this Court had directed the Senior Superintendent, Central Prisons for Women to furnish a report on whether the children of the applicant were also confined in prison. Through a letter dated 18-9-2018, the Superintendent reported that the applicant is confined in prison along with her two sons aged 3 and 4 years. Further, it appears that due to poverty, the children are still feeding on their mother's milk. In my opinion staying in prison at this tender age will adversely impact the welfare of the two minors. The first proviso to section 497 Cr.P.C provides as exception for inter alia, women. Further, the Hon'ble Supreme Court has observed in *Nusrat vs. The State* (1996 SCMR 973) as follows:

"The suckling child of the petitioner kept in jail is undoubtedly innocent. He is kept in jail with mother obviously for his welfare. The concept of "welfare of minor" is incompatible with jail life. So, instead of detaining the innocent child infant in the jail for the crime allegedly committed by his mother, it would be in the interest of justice as well as welfare of minor if the mother is released from the jail. In famous case of Ghamidyyah, our Holy Prophet Muhammad (p.b.u.h) had suspended the sentence on pregnant woman, not only till delivery of the child but also postponed it till suckling period i.e. two years, obviously for the welfare of the child. This shows the paramount importance and significance of the right of a suckling child in Islam and the unprecedented care taken of, and the protection given to a child born or expected to be born, by our Holy Prophet Muhammad (p.b.u.h). This golden principle of administration of justice enunciated by the Holy Prophet Muhammad (p.b.u.h) must be strictly observed and followed in our country."

6. In view of the above, and having taken guidance from the Hon'ble Supreme Court, I am of the view that suckling babies would entitle the applicant to the concession of bail. It appears to me that the learned trial court was not assisted properly, in that, the abovementioned case was not brought to its attention. Accordingly, the applicant is admitted to bail subject to her furnishing a solvent surety in the amount of Rs. 20,000 and a P.R. bond in the like amount subject to the satisfaction of the trial court.

JUDGE