

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr.B.A No.975 of 2015

Date Order with signature(s) of Judge(s)

For hearing _____

11.12.2015.

Mr. Naeem Akhtar Khan Tanoli, advocate for the applicant.
Mr. Ghulam Yasir, advocate for the Complainant.
Ms. Akhtar Rehana, A.P.G.

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Applicants are facing trial in crime No.239/2014 registered at P.S Sachal, Malir under Section 302/34 PPC for causing death of Sumaira D/o Syed Muhammad Aslam, who was wife of Muhammad Shahzad @ Asif, daughter-in-law of Mst. Razia and sister-in-law of Muhammad Umair Liaquat @ Vicky. Their earlier bail before arrest application filed before District & Sessions Judge, Malir had been declined by order dated 25.7.2015.

I have heard learned counsel for the applicant, complainant as well as Additional P.G. My observations are as follows:-

- i. The time of incident of death of victim Sumaira is 0200 hours in the house of accused persons comprising hardly off 120 sq.yds. The ground of delay in lodging the FIR is immaterial in the given facts of the case, since the police has refused to register FIR at initial stage and the FIR was registered after the order of Justice of Peace on the application under Section 22-A Cr.P.C.
- ii. It is alleged that accidentally her dupata has picked up fire while preparing meal for her 1½ year old daughter in the kitchen at about 2 a.m but there was no explanation by at least two male

accused, Muhamamd Shahzad and Muhamamd Umair that what stopped them from rescuing the victim who was hardly 5 feet away from their bedroom. In a house of 120 sq.yds kitchen is not supposed to be at a long distance from bedrooms, so they cannot hear the hue and cry of a burning woman.

- iii. The independent witness Ejaz, who happened to be neighbourer of accused has pointed out in his statement under Section 161 that all the three accused were watching the victim and she was lying naked on the floor when he reached the scene of incident on hearing hue and cry of deceased.
- iv. Patient summary on her arrival at the hospital reflects that she had already received 94% fire burn +I.I and her body was burnt including hands, fingers, legs, anterior trunk, posterior trunk, face, neck and she was three month pregnant, when admitted to Female ICU at 3:41 a.m in a very critical condition.
- v. Another independent witness a journalist who covered the story from the hospital is also on record. In his statement under Section 161 Cr.P.C he stated that whenever the victim was able to speak she only cry for safety of her 1½ years daughter from the applicants/accused as they have burned them.
- vi. The chemical examiner report suggests that kerosene oil has also been used to burn the victim though apparently, as stated by the counsel for the applicant at bar, the facility of sui gas is available in the kitchen of the house of accused/applicants, which is a place of incident.
- vii. The police paper further suggests that there are no mark of burning of any other thing available in the kitchen. Not only

wooden, cabinet draws, there is no mark of any serious loss to the property except loss of life of victim and three month baby in her womb as a result of fire.

In view of the facts and statement of independent witnesses pointing towards accused by name and absence of any allegation of malafide on the bail application or harassment by the police prosecution bail before arrest is not made out. In this context the counsel for complainant has rightly relied on **2011 SCMR 170** (Malik Aqeel ..Vs.. The State) to refuse the bail before arrest. However, keeping in view the first proviso to Section 497 Cr.P.C since the applicant accused Mst. Razia, who appears to be above 60 years of age her pre-arrest bail is confirmed on the same terms and conditions. However, sufficient material is available to connect the two other applicants' is in view of the observation made hereinabove as well as their failure to provide in time medical aid to the victim as she was taken to the hospital after she has already suffered 94% +I.I their bail application is dismissed.

JUDGE

SM