

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. S-704 of 2017

Applicant : Mst. Imtiaz Latif @ Niha Gul Naz, daughter of M. Latif, widow of Rizwan through Advocate Mr. S. M. Intikhab Alam.

State : Syed Zahoor Shah, D.P.G with I.O. SIP Shakeel.

Complainant: Nizamuddin through Advocate Mr. Azizullah Khan.

Date of hearing : 14.07.2017.

ORDER

ADNAN-UL-KARIM MEMON,J: The Applicant namely Mst. Imtiaz Latif @ Niha Gul Naz is seeking release on bail in F.I.R. bearing No.52/2017 for offence under section 302 read with section 201 and 202 P.P.C registered at Police Station Shahrah-e- Faisal, Karachi.

2. Facts of the prosecution case are that on 25.01.2017 Complainant namely Nizamuddin, son of Muhammad Yousif Shaikh registered above specified F.I.R. alleging therein that his son namely Muhammad Rizwan contracted court marriage with Applicant and both were residing at Flat No. 604, Al-Rauf Royal City, Block 19, Gulistan-e-Johar, Karachi with one child; that Complainant's son used to visit him at his residence; that on 8.1.2017 Complainant's son took away complainant's motorbike and never came back; that on 9.1.2017 complainant tried to contact his son on his mobile No. 0312-6658110 by placing a call and sending a text message but didn't get any response; feeling curious and worried Complainant left for his son's above specified residence and saw his motorbike parked at the parking area, Complainant reached the flat but found it locked; Complainant

went back to the parking area to take away his motorbike but flat union did not allow him; Complainant upon the Union's resistance showed them the motorbike documents who after seeing the documents allowed him to take away the same; that Complainant inquired about whereabouts of his son from Chowkidar of the Flats who informed him that one 14-15 years old boy came there with one parrot, Complainant again attempted to contact his son on his cell phone but found that phone was switched off; that on 23.1.2017 at about 04:52 pm a call was received from cell No. 0316-6064811 on Complainant's daughter's mobile No. 034631730212 informing to take away the dead body of his son Muhammad Rizwan from his flat with threats of killing all of them in case of approaching police; that on 24.1.2017 Complainant went to P.S. Shahrah-e-Faisal in search of his son and briefed duty officer SIP Aslam Jamali; thereafter Complainant with SIP Aslam Jamali visited the above specified flat found the dead body of his son (Muhammad Rizwan) in plastic bag with blood stains; that postmortem was conducted at Jinnah Hospital, thereafter one Imam of Mosque Muhammad Din informed the Complainant that two persons came to refrain the Imam from offering funeral prayers of deceased with threats. Thereafter, Complainant lodged above specified FIR against Applicant and others.

3. Investigation Officer prepared Mushirnama of place of incident, recovered two knives, blood stained hammer and sealed the same, and other material Also recorded statements of prosecution witnesses, arrested Applicant, got conducted chemical examination of recovered articles and obtained its report. Co-accused namely Adnan Abbasi pleaded guilty before the learned Judicial Magistrate on 18.3.2017. Finally Investigation Officer submitted Charge Sheet on 29.03.2017 before the

learned Judicial Magistrate against the Applicant and others. The Applicant moved Bail Application No.875 of 2017 before the learned Sessions Judge, Karachi, East which was transferred to learned IIIrd Additional Sessions Judge, Karachi, East who dismissed the bail application vide Order dated 02.05.2017.

4. Mr. S.M. Intikhab Alam, learned counsel for the Applicant contended that the Applicant is innocent and victim of circumstances; that the Applicant has no motive to commit murder of her husband; that on 14.3.2017 arrested accused namely Adnan Abbasi has confessed his guilt before the learned Judicial Magistrate on 18.3.2017 by narrating the story in which the Applicant is not nominated; that there is no witness of the alleged incident; that the Applicant is charged with the offence of concealing the evidence that she did not provide information to police regarding murder of her husband in time; that no incriminating material has been recovered from possession of Applicant during the course of investigation; therefore entire case requires further enquiry; that the Applicant is nominated by her father in law because he has remained annoyed and perturbed throughout over the Court marriage of his son (deceased Muhammad Rizwan) with the Applicant. Learned counsel next added that the Applicant is behind the bars with her minor son aged 2 years and 4 months since her arrest four months ago. He next added that the applicant has not played any role in the alleged crime therefore, her false implication in the alleged crime cannot be ruled out; that so far as charge of concealment of evidence is concerned the same offence does not fall within the ambit of section 302 P.P.C therefore the Applicant cannot be saddled with offence of murder. He concluded by stating that the Applicant is entitled to the concession of bail.

5. Mr. Azizullah Khan, learned counsel for Complainant has contended that the Applicant was present at the spot when deceased was murdered. He next contended that the Applicant during scuffle between the deceased and co-accused did not resist; that Applicant did not make any hue and cry; that Applicant did not report the matter to the police; that Investigation Officer traced the Accused through their mobile data record who were hiding to prevent arrest; that co-accused Adnan Abbasi and the Applicant were arrested on 14.3.2017 from main gate of Al-Rauf Royal City Apartments while taking away household articles; that the prosecution has collected incriminating material against the Applicant during the course of investigation; that the Applicant has committed heinous offence of murder which is punishable with death therefore she is not entitled to concession of bail at this stage. He next contended that the life of Complainant is ruined as his only son has been murdered at the hands of Applicant and co-accused; that the case of the Applicant falls within the prohibition contained in Section 497(1) Cr.P.C. He lastly contended that case of the applicant does not require further inquiry.

6. Sayed Zahoor Shah, learned D.P.G has opposed grant of bail to the Applicant while adopting the arguments of learned counsel for the Complainant.

7. I have heard learned counsel for Applicant, learned D.P.G for the State, learned counsel for the Complainant and perused the material available on record as well as case law cited at the Bar.

8. I am conscious of the fact that while deciding a bail application this court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating

material against accused, nature and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of Honorable Supreme Court rendered in the case of Shahzad Ahmed Vs. The State (2010 SCMR 1221).

9. Tentative assessment of the record reflects the following aspects of the case:

- (i) Applicant has 3 children from her previous husband namely Babar Hussain. Thereafter, Applicant contracted second marriage with deceased Muhammad Rizwan against the wishes of his parents.
- (ii) Applicant is alleged to have not reported the murder of Muhammad Rizwan to police in time thus, is charged with the offence of concealment of evidence punishable under Sections 201 and 202 P.P.C.
- (iii) Confession statement by co-accused Adnan Abbasi excluding the Applicant from murder of Muhammad Rizwan is inculpatory in nature.
- (iv) During the course of investigation police did not recover any incriminating material from possession of Applicant which could connect her with the allege crime.
- (v) Applicant is in Jail since 14.3.2017 with her minor son.

10. Investigation Officer present in Court states that the Applicant was present at the spot where murder of her husband took place. But, she concealed the fact of murder from the police and fled away from the place of incident. Therefore, she is charged for offences under sections 302, 201 and 202 P.P.C. He further states that during the course of investigation no evidence has come on record which could

reflect or indicate active participation of the Applicant in commission of murder of her husband.

11. Learned Prosecutor has also stated the view as that of the Investigation Officer supra.

12. I have noted that Applicant is charged with sections 302 read with section 201 and 202 P. P. C. A plain reading of section 201 reveal that three ingredients are essential to constitute the said offence (i) Knowledge (ii) Commission and (iii) Intention and the prosecution has yet to prove the same before the learned trial court at the time of trial with regard culpability of applicant with murder of her husband Muhammad Rizwan, besides that the offences under section 201, and 202 P.P.C. Which do not fall within the prohibition contained under Section 497(1) Cr.P.C. Secondly, in view of tentative assessment of the record discussed supra the case of Applicant requires further inquiry as provided under section 497 (2) Cr.P.C. The Applicant has made out a case of bail at this stage. Accordingly, Applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs. 200,000/- (Rupees two lacs only) and PR bond in the like amount to the satisfaction of Trial Court.

13. The above findings are tentative in nature which shall not prejudice the case of either party during the course of trial.

14. These are the reasons of short order dated 14.7.2017.

J U D G E