

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Application No.S-89 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>05.10.2017.</u>	<p style="text-align: center;">For hearing.</p> <p>Mr. Rao Faisal Ali, Advocate alongwith applicant. Mr. Shahzado Saleem Nahiyoon, D.P.G for the State. None present for the complainant.</p> <p style="text-align: center;">===</p> <p><u>ABDUL MAALIK GADDI,J-</u> Applicant/accused is present on interim pre-arrest bail granted to her by this Court vide order dated 02.02.2017. Today this bail application is fixed for confirmation or otherwise.</p> <p>2. Precisely, facts of the case are that, on 08.9.2015 at 1720 hours, the complainant Mst. Mirzadi lodged F.I.R. stating therein that marriage of her daughter Mst. Zarina was solemnized with Gul Muhammad Rind; her husband was confined in jail in a criminal case; her neighbourer Iqbal was compelling her to obtain divorce from Gul Muhammad and contract marriage with him, that she refused. On 05.9.2015 at about 1230 hours she received information that her daughter`s husband dead body was lying in a rickshaw behind her house and police had taken away her dead body to Civil Hospital, Mirpurkhas. After receiving such information she, her sons Moula Bux and Hussain Bux, came at Civil Hospital Mirpurkhas where they found dead body of Mst. Zarina was in mortuary. There, her elder daughter Taj Bibi w/o Ghulam Hyder Langhani r/o Siyal Colony Mirpurkhas disclosed that in day time at 1000 hours her neighbourers Iqbal and his sister Mst. Naseem both were seen with sister Mst. Zarina while going towards town, who killed her sister Mst. Zarina and they, leaving the dead body, had escaped away. After legal proceedings and postmortem, the police handed over the dead body, after burial in native village, she lodged F.I.R.</p> <p>3. It is, <i>inter alia</i>, contended by learned counsel for the applicant that except last seen evidence no iota of evidence is available against the applicant; applicant was implicated in this case with malafide intention and</p>

ulterior motive; after investigation, the report under section 173, Cr.P.C. was filed for disposal of case in “C” class, however, cognizance was taken by the Magistrate. He further contended that cause of death as per postmortem report is natural as fetus of four months died in womb and thus her body became poisonous, therefore, in view of above circumstances, learned counsel for applicant prayed for confirmation of interim bail already extended in favour of the present applicant.

4. Learned D.P.G. for the State has not opposed this bail application by stating that there is no evidence of injury on the dead body of deceased and as per postmortem report cause of death was due to perforation of uterus and IUD fetus in abdomen; patient go in septic condition and shock and death.

5. Parties advocates have been heard at length and record perused with their valuable assistance so made available before me.

6. It appears from the record that the incident has been taken place on 5.9.2015, while F.I.R. was registered on 08.9.2016 after delay of about three days, for which, no satisfactory explanation has been furnished. It also appears from the record that after conclusion of investigation, I.O. submitted his report before the concerned Magistrate under “C” class, however, learned Magistrate was not agreed to the report submitted by the I.O. of the case, however, he has taken the cognizance and therefore, present applicant/accused was joined in this case alongwith co-accused Iqbal. Perused the police papers so made available before me. Admittedly, the case of present applicant/accused is that of last seen evidence as witnesses claim that they saw the present applicant/accused and co-accused alongwith deceased were last seen going towards city and later dead body was found in a rickshaw. The case, based on *last seen* alone cannot stand unless is supported backed by other circumstances leading to an *irresistible* conclusion thereby fitting the noose into neck of accused. The rickshaw wherein dead body was found is not alleged to be owned by the present applicant/accused, therefore, these open a room of further inquiry.

7. As observed above that after conclusion of investigation, I.O. of the case submitted his report under “C” class placing the name of present applicant/accused alongwith co-accused Iqbal, but the same was not

accepted by the concerned Magistrate, thus, it appears that it is case of two versions, one submitted by complainant and another by I.O. of the case, therefore, this aspect of the case requires further probe within the ambit of sub-section (2) of Section 497, Cr.P.C. and it is yet to be determined by the trial Court at the time of trial that which version is correct. Co-accused Iqbal involved on almost similar allegation has been granted bail by this Court vide order dated 01.11.2016, therefore, following the rule of consistency, this applicant/accused is also entitled for the same treatment, to which, learned D.P.G. has recorded no objection in view of the order passed by this Court dated 01.11.2016.

8. In view of above legal position and no objection recorded by learned D.P.G. I accordingly allow this bail application and confirm the interim pre-arrest bail already extended in favour of the present applicant vide order dated 02.02.2016 on the same terms and conditions with direction to the applicant to appear before the trial Court and face the trial.

9. Before parting with this order, it is made clear that observations made herein above, if any, are tentative in nature and shall not affect the merits of the case.

The bail application stands disposed of in the above terms.

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JUDGE.