

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1699 of 2017

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| <u>Date</u> | <u>Order with Signature of the Judge</u> |
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For hearing of bail application.

Heard on : 06.03.2018
Decided on : 02.04.2018
For Applicants : Mr. Muhammad Nadeem, Advocate.
For State : Ms. Rahat Ahsan, Addl. P.G. Sindh.

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No.941/2017, by the Sessions Judge, Karachi-Central, vide order dated 31.10.2017, the applicants Muhammad Nabeel Shah, 2) Roma Khan, 3) Binish Khan and 4) Inayatullah Khan Afzal Barni have approached this Court, by filing instant bail application under Section 498 Cr.P.C, for interim pre-arrest bail in case crime No. 203 of 2017, under Sections 337-J, 302/34 PPC registered at P.S. Shahrah-e-Noor Jehan, Karachi.

2. Succinct prosecution story as narrated in the FIR is that on 29.08.2017 at 12.00 hours complainant Muhammad Akram Barni lodged the First Information Report at Police Station Shahrah-e-Noor Jehan, stating therein he is residing at the given address alongwith his family members. On 13.8.2017, he was present in his house when his son Shumail informed him that his sister Sewera had phoned him and told that at about 4.40 p.m, his sister Nida wife of Nabeel Shah, aged about 28 years had taken some poisonous things and Nabeel Shah, his second wife Roma, Roma's sister Beenish and her father Afzal have taken her to Abbasi Shaheed Hospital. On this information, he immediately sent his son to Abbasi Shaheed Hospital, after sometime his son Shumail informed him on phone that he received phone of his sister Sewera that Abbasi Shaheed Hospital had not taken the case therefore they are taking her to Jinnah Hospital. Accordingly his son Shumail also reached Jinnah Hospital and observed that condition of his daughter Nida was serious and she was admitted in surgical ward bed No. 3 for treatment. He further stated that Nabeel Shah, his second wife Roma and sister Beenish and father Afzal were present in hospital. Afzal had introduced himself as father of Nida. On 15.8.2017, at about 1.15 p.m, his daughter Shamim informed on phone that Nida had died. Then he alongwith his son Shumail reached at Jinnah Hospital surgical ward, police conducted the proceedings and he received the dead body without conducting post mortem. He brought dead body at home for funeral ceremony. He kept on enquiring about the death of his daughter Nida and came to know that his daughter Nida's second wife Roma, her sister Beenish, father Afzal and his son in law Nabeel Shah, husband

of his deceased daughter Nida had given some poisonous substance to his deceased daughter Nida, which caused death of his daughter.

3. Learned counsel for the applicants/accused has argued that applicants/accused are innocent and falsely implicated in this case by the complainant with malafide intention; that complainant lodged the FIR after delay of about 17 days without any plausible explanation; that the deceased was alive two days in Hospital, but her no statement was recorded, neither she disclosed as to how and who given medicine to her; that the incident is unwitnessed; complainant and applicant/accused Inayatullah are real brothers; that no specific role of the applicants/accused is mentioned in the FIR; that as per FIR the daughter of complainant namely, Sewera informed that Nida had taken sleeping tablets in heavy doze and deceased Nida has been shifted by the applicants/accused to Abbasi Shaheed Hospital; that as per medical report the deceased Nida taken over doses; that at the time of taking medicine by deceased, only two minors were present in the house; that no post mortem of the deceased was carried out. Finally learned counsel for the applicants/accused has prayed for confirmation of interim pre-arrest bail.

4. Learned Additional Prosecutor General, Sindh has vehemently opposed for confirmation of pre-arrest interim bail on the ground that the applicants/accused are involved in the present crime which is heinous offence. She further argued that the P.Ws in their statements under Section 161 Cr.P.C. stated that the applicant/accused Nabeel was present at his house at the time of incident while P.Ws Mst. Sumera and Mst. Huma in their statements have stated that Nida had disclosed that deceased was given tablets by applicant/accused Nabeel. She prayed for rejection of interim pre-arrest bail.

5. I have considered the arguments advanced by the learned counsel for the applicants/accused and learned Additional Prosecutor General, Sindh and have also gone through the material placed on record. Record shows that the complainant has lodged the FIR of present incident after 15 days of the incident, while statements of the Prosecution Witnesses, namely Sumera (sister of deceased), Mst. Huma and Mohammad Yasir (brother) recorded under Section 161 Cr.P.C, reveals that before the sister and brother named above, the deceased made oral dying declaration. Per P.W. Huma on 13.8.2017 at about 12.00 hours, deceased lady called and informed her that her husband applicant/accused beaten her badly in front of her co-wife, co-wife's father and her sister, and she wanted to go her father's house, at about 3.00 p.m applicant/accused Nabeel informed her that she took medicine due to which she is not well and he is taking her to hospital. It is noticed by the Court that the old strand relations of deceased family with the family of co-wife who are closed

relations as much as fathers of both wives are siblings, yet the family of the deceased kept quiet for considerably long period and then lodged the FIR. It is also on record that the complainant and his family members did not allow the Doctors to conduct post mortem of the deceased. The reasons discussed above requires further inquiry, I, therefore, confirm the order of ad-interim pre-arrest bail dated 03.11.2017 granted in favour of the all four applicants/accused namely Muhammad Nabeel Shah, 2) Roma Khan, 3) Binish Khan and 4) Inayatullah Khan Afzal Barni on the same terms and conditions with directions to join the trial before the learned trial Court.

6. Bail Before Arrest Application is hereby disposed off with the above observations.

7. It needs not to iterate that the observations made hereinabove is tentative in nature, shall not affect the merits of the case.

J U D G E

Faheem Memon/PA