

IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.649/2021

Applicant : Niaz Ali Jokhio,
through Ch. Muhammad Saeed-uz-zaman,
advocate.

Respondent : The state,
through Syed Meeran Ali Shah, Addl. P.G.

Date of hearing : 07.05.2021.

Date of order : 07.05.2021.

ORDER

SALAHUDDIN PANHWAR, J. Precisely facts of the case are that on enquiry Niaz Ali Jokhio stated that twelve years back he married with one Humaira Bibi and from the wedlock, Muhammad Haris was born who is now aged about 8 years; from the beginning Humaira was suffering from epilepsy and her treatment was going on; due to her ailment he used to leave his wife at the house of her in-laws and after birth of the child due to ailment he was not going near his wife; he used to leave his wife to her in-laws and used to pick when coming back home, that a few days ago when he brought his wife back home from her in-laws, his wife was having difficulty in walking and used to sit from time to time; that when he reached back at house her cloths were found to be in wet condition, on checking it was found that there were injuries in between both legs till back bone and upon enquiry she disclosed that her brother used to bring girls in the house and on refusal her mother and brothers Fayyaz and Arbaz severely tortured her and set on fire; that it was stated by Niaz Ali that due to weather condition he could not take her to hospital and

on the next day at 0800 hours when she was awoken up, she did not wake up and succumbed to the injuries, hence he lodged FIR.

2. I have heard learned counsel for respective parties.

3. Learned counsel for applicant contended that accused is husband of deceased Mst. Humaira and he lodged FIR against the mother and brothers of the deceased for their alleged torture but police falsely implicated him; that deceased was a patient of epilepsy; that deceased herself told him that her brothers Fayyaz and Arbaz were womanized persons and her mother Salma is supporting them and on her resistance they tortured her; that his in-laws did not allow postmortem; that there is no ocular evidence against him and he was also kept in column No.2 by police; that his case is one of further enquiry.

4. In contra, learned Additional P.G. opposed grant of bail to applicant with contentions that deceased was in company with accused on the night of death; that accused did not take her to hospital; postmortem report shows that the time between death and injuries are only 4 to 6 hours which clearly proves that deceased had died when she was with applicant; that accused did not inform anyone and marks on deceased's body were of burns found by the ladies who gave her *ghusl* and statement of Mst.Salma Afroze and Aasia are evidence of the fact that the genitals and lower body of deceased were found burnt due to petrol or acid.

5. *Prima facie*, the applicant / accused himself came up with a story that when he took the deceased from the house of his in-laws, she did not make any complaint till the accused himself saw injuries of burning. He (accused), however, did not take deceased for

any treatment and she in the morning was found dead. Such conduct of a husband does not appeal to common sense that he, knowing such injuries on person of the deceased, yet preferred to remain silent without making any attempt to assure *least* first-aid to the deceased and even not bothered to tell such facts to anybody. The un-natural death of the deceased within compound / house of accused as well in his presence *legally* requires the accused to give explanation thereof and failure thereof creates a strong circumstantial evidence against him. The unnatural death of deceased is undisputed and her cause of death is thermal body burns leading to cardio respiratory failure. The story, so raised by the accused, is also not supported by the medical evidence which clearly reveals that the time between death and injuries were only 04 to 06 hours. Needless to add that during such span of time, admittedly the deceased was in company of the accused. The independent witnesses had also deposed against the accused that he has also destroyed the evidence in shape of wearing cloths of the deceased from which one could have ascertained the chemical or material used for burning. The medico-legal officer had not given any finding that the injuries on the body of deceased were of any maltreatment or result of any sepsis. Even otherwise, sepsis develops after a considerable time when any infection is not treated and it is not possible that in morning brothers maltreated their sister and she developed sepsis in less than 24 hours. The story, so raised by the accused, if compared with all above circumstances couple with medical evidence is sufficient to *prima facie* link him with commission of the crime, therefore, the learned trial court was quite justified in holding that the accused failed to bring his case within meaning of Section 497(ii) Cr.PC. The accused, being charged of an offence of capital

punishment, can't claim his release on bail unless he (accused), *prima facie*, brings his case within meaning of Section 497(2) Cr.PC, therefore, by short order dated 07.05.2021 the bail plea of the accused / applicant was declined. These are the reasons of short order.

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