

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.448 of 2022**

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*Date* *Order with signature of Judge*

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*For hearing of Bail Application.*

**21.07.2022**

Mr. Kiran Jehan, Advocate along with Applicants (on bail).  
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.  
Complainant Saima, present in person.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this application, applicant Noor Muhammad seeks his admission on pre-arrest bail in Crime No.33/2022 of Police Station Zaman Town, Karachi, under Section 337-A/337-L(ii)/337-F(ii) PPC. The bail plea preferred by the applicant before first forum was declined by means of order dated 28.02.2022, hence this bail application.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel for the applicant submits that complainant of this case is his ex-wife as he has divorced her and entered into Nikkah with someone else. Learned counsel further submits that due to bad weather as well as saline area where they used to reside, the kid/minor baby had been infected with allergy, therefore, no injury was caused to her and complainant in order to take revenge from the accused has cooked up instant case. Next submits that the offence with which applicant stands charged, carries maximum punishment up to three years and does not exceed the limits of prohibitory clause of section 497 Cr.P.C; hence, prays for the bail.

On the other hand, learned Deputy P.G, Sindh opposes the bail application on the ground that per medico legal opinion minor baby had sustained injuries on her person, therefore, the applicant is not entitled for the bail. She; however, admits that medico legal officer had not described source of weapon or the nature

of injury and has mentioned only to the effect that muscles of the alleged injured baby were damaged due to injury.

Complainant present in person, also opposes the bail application on the ground that at the time of divorce, she was ousted from her house by the accused and later when she made demand of her baby, second wife of the applicant had refused to hand over her custody and again on her insistence applicant had returned custody of the minor baby to her in an injured condition. She further submits that she herself has got treated baby. She; however, admits that the alleged offence was not committed in her presence even she is not in a position to pinpoint who caused alleged injury(ies) to minor baby. She; however, opposes the bail application.

**Heard arguments and perused record.** Admittedly, applicant and the complainant are ex-husband and wife and the issue between them is of divorce; hence, malafide on the part of prosecution cannot be ruled out. As far as, medico legal opinion is concerned, minor baby has been shown to have been sustained injuries on her person but the medico legal officer did not disclose kind of weapon; however, had disclosed that muscles of the injured baby were damaged due to the injury caused by trauma and the injury No.1 has been declared as *Shajja-i-Ghayr Jaifa Mutelima*. Further medico legal officer has mentioned in the medico legal certificate that no fracture was seen on entire body of the injured. Injured baby is the real daughter of the applicant and though the applicant had divorced complainant yet it cannot be imagined that a real father can cause such an injury to minor baby only because of the grudge with his wife. Sections applied in the FIR as well as declared by the MLO carries punishment of up to seven years thus does not exceed the limits of prohibitory clause of section 497 Cr.P.C. Applicant has joined the trial proceedings which is pending for trial before the Court of 11<sup>th</sup> Judicial Magistrate, Karachi (East).

In the circumstances and in view of dicta laid down by the Honourable Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)*, case against applicants requires further inquiry within the meaning of sub-section 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Noor Muhammad son of Muhammad Amin** on 07.03.2022 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

***JUDGE***

Zulfiqar/P.A