

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

Crl. Bail Application No. 1436 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

17.01.2019

Mr. Habib-ur-Rehman Jiskani, Advocate for applicant.
Mr. Muhammad Anwar, DDPP for the State.

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Omar Sial, J. Nazeeran Mai, the applicant, has sought post-arrest bail in F.I.R. No. 38 of 2018 registered under sections 364-A and 34 P.P.C. at the boat Basin police station. Earlier, her post arrest bail application was dismissed by the learned 12th Additional District and Sessions Judge, Karachi, South on 24-9-2018.

2. Brief facts of the case are that on 25-1-2018 at about 4:30 p.m. one Fida Hussain registered the aforementioned F.I.R. recording therein that on 24-1-2018 his children, a six-year-old boy and an eight year old daughter, named Laraib were taken by their neighbour named Mazhar Malang for a recreational visit to Sea View in Clifton. They did not return that evening. The next day i.e. on 25-1-2018 the complainant received a phone call from a shopkeeper in Liaquatabad who informed him that his son was at his shop and was crying. The complainant went and picked up his son but saw that his daughter Laraib was not present. He therefore registered the F.I.R. against Mazhar Malang and his wife, the applicant.

3. I have heard the learned counsel for the applicant as well as the learned DDPP and have also examined the available record with their able assistance. The complainant did not effect an appearance despite notice. My observations are as follows.

4. The learned counsel for the applicant has primarily argued this bail application on one ground that the applicant has two suckling babies in jail and that it is not in the children's welfare to stay in jail. He also says that there is no evidence against the applicant and that she has no nexus with the crime.

5. On 22-10-2018 this Court had directed the Superintendent of Central Prison, Karachi, to furnish a report regarding whether the applicant is confined in jail with her children and if so, what are their ages. In compliance of the Court's order on 27-10-2018 the Senior Superintendent of the Central Prison for Women filed a report stating that

the applicant's children are indeed confined in jail with her and that their ages are 4 years and 2 years. It also appears that both children are suckling babies at the moment.

6. In **Nusrat vs The State (1996 SCMR 973)**, which was a murder case, it was observed by the Hon'ble Supreme Court:

The suckling child of the petitioner kept in jail is undoubtedly innocent. He is kept in jail with mother obviously for his welfare. The concept of "welfare of minor" is incompatible with jail life. So, instead of detaining the innocent child infant in the jail for the crime allegedly committed by his mother, it would be in the interest of justice as well as welfare of minor if the mother is released from the jail. In famous case of Ghamidiyyah, our Holy Prophet Muhammad (p.b.u.h.) had suspended the sentence on pregnant woman, not only till delivery of the child but also postponed it till suckling period i.e., two years, obviously for the welfare of the child. This shows the paramount importance and significance of the right of a suckling child in Islam and the unprecedented care taken of, and the protection given to a child born or expected to be born, by our Holy Prophet Muhammad (p.b.u.h.). This golden principle of administration of justice enunciated by the Holy Prophet Muhammad (p.b.u.h.) must be strictly observed and followed in our country,

7. In view of the above, and having taken guidance from the Hon'ble Supreme Court, I am of the view that a suckling baby would entitle the Applicant to the concession of bail, as staying in jail would undoubtedly have an adverse impact on the children.

8. Above are the reasons for the short order of 13.12.2018 which was as follows:

"For the reasons to be recorded later on, the applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs.100,000 and P.R. bond in the like amount to the satisfaction of the Nazir of this court."

JUDGE