

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

Crl. Bail Application No. 1542 of 2020

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Date order with signature of Judge

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For hearing of bail application.

**7<sup>th</sup> December, 2020**

M/s. Aamir Mansoob Qureshi & Iftikhar Ahmed Shah, Advocates a/w applicants.  
Mr. Abbas Rasheed Razvi, Advocate a/w Mr. Nabeel Ahmed Khan, Advocate for complainant.

Mr. Talib Ali Memon, APG a/w SIP Sharafat Ali, I.O. of the case.

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**Omar Sial, J.:** On 18-8-2020 at 11:07 p.m., a 24 year old lady, Maha Ali Shah, who was a doctor by profession, shot and killed herself in the bathroom of her bedroom. Initially, the family neither gave permission for a post mortem nor was it inclined to lodge any complaint with the police.

2. On 26-8-2020, however, F.I.R. No. 433 of 2020 was registered on a statement recorded by, Syed Asif Ali Shah, the father of the young lady. Shah narrated that he was told by his other two children, Syed Nadir Ali Shah and Syeda Fatima Ali Shah, that for the last 4 years, Maha was in a relationship with Junaid Khan (one of the applicants in these proceedings) but that Junaid was physically and emotionally abusive towards her and that Maha on several occasions had wanted an out from that relationship, but was unable to get it. Junaid was also blamed for Maha's use of prohibited substances. Allegedly the relationship between the two worsened when Maha developed an interest in one Tabish Qureshi. Shah further recorded in his section 154 Cr.P.C. statement that Maha had another friend by the name of Irfan Qureshi. Maha had confided to Irfan about her relationship with Junaid. Taking advantage of her vulnerability, Irfan had made unwelcome advances on Maha after both were under the influence of prohibited substances. Irfan's unwelcome and unsolicited attention that night had immensely upset the young lady who told her siblings that Junaid Khan, Waqar Hasan Rizvi (the two applicants in these proceedings) and Dr. Irfan Qureshi had made her life miserable and that if she were to kill herself, these three individuals will be liable. The F.I.R. was registered under sections 354,

337-J, 506 and 34 P.P.C. against the three nominated accused. Subsequently, section 322 P.P.C. was also added to the charge. Irfan Qureshi was discharged under section 63 Cr.P.C. The order of the learned magistrate in this regard was not challenged by any party.

3. I have heard the learned counsel for the applicants as well as the learned counsel for the complainant and the learned APG. My observations are as follows.

4. It is not the prosecution's case that Maha died due to a pre-meditated and intentional murder. Her having committed suicide is an admitted position. An offence under section 354 as well as 506 P.P.C. are both bailable offences. As regards the offence under section 337-J P.P.C., the Industrial Analytical Center at the University of Karachi, to whom blood samples collected from the scene of incident were sent, has opined on 8-9-2020 that no narcotic or poisonous substances were detected in the blood samples. The offence under section 322 P.P.C. (*qatl bis sabab*) is punishable by the payment of diyat.

5. Mr. Abbas Rizvi, learned counsel for the complainant, though he argued his position very well, was hindered by a seemingly weak investigation and the admitted facts of the case. He has, however, stressed on the requirement of *malafide* for the grant of pre-arrest bail. He is correct in his argument that the presence of *malafide* is an essential requirement for the grant of bail. I have given this issue considerable thought. The F.I.R. in the case is considerably delayed and the section 173 Cr.P.C report reflects that the police was told by the family that it would chalk out its future strategy after consultations.

6. There is communication in the shape of whatsapp messages which prima facie reflect an unhappy and obsessive relationship between the lady and the applicant Junaid Khan. It appears that in a quest to enjoy life in the manner they felt appropriate, the couple with their own free will went into uncharted territories, which may have contributed to the extremely unfortunate conclusion. The admissibility of such evidence, will have to be determined at trial. However, at this preliminary stage, it cannot be conclusively concluded that an unhappy and unhealthy relationship between the couple was the cause of the death of the young lady or that it was the factor that led to it.

7. The death of a child, and that too in such a horrible manner, would no doubt be torturous for the family. My apprehension is that in its quest to find solace and answers, the family of the deceased may have focused on just one aspect of Maha's life as the cause of her suicide. Upon a tentative assessment of the investigation, it appears that there could be other factors that led her to this extreme step. It is out of respect for the dignity and the self respect of the families concerned, that I have not deliberated more on this aspect. It is only after trial that the truth will emerge. At this stage, however, in light of (i) the refusal of the complainant to initially lodge an F.I.R. (ii) declining to permit a postmortem (iii) stating that the future course of action will be determined after consultation and (iv) an apparent revulsion, hostility and abhorrence of the young lady's family towards the applicants, based on Whatsapp messages; tinges of malafide on the part of the complainant cannot conclusively be ruled out at this preliminary stage.

8. For the reasons above, the interim pre-arrest bail granted to the applicants is confirmed subject to their furnishing two solvent sureties each in the amount of Rs. 200,000 each and P.R. Bonds in the like amount to the satisfaction of the Nazir of this Court.

JUDGE