

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

Crl. Bail Application No. 2435 of 2022

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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For hearing of bail application.

**03-03-2023**

Mr. Ahmed Ali Dewan, Advocate for applicant.  
Syed Ghaffar Hussain, advocate holds brief for Mr. Ghulam Jilani  
Malik, Advocate a/w complainant.  
Mr. Talib Ali Memon, A.P.G. a/w ASI Sohail Ahmed, I.O. of the case.

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**Omar Sial, J:** Ghazal has sought post arrest bail in crime number 649 of 2022 registered under sections 302, 324 and 34 P.P.C. at the Brigade police station. Earlier, her application seeking bail was dismissed on 14.12.2022 by the learned 5<sup>th</sup> Additional Sessions Judge, Karachi East.

2. A background to the case is that on 04.10.2022, one Humera went to the police station and reported an incident that had occurred earlier the same day. She recorded that her daughter Noor Saba was married to one Tahir and were living close to her house. In the evening that day, Humera heard noise coming from Noor's house and when she went to explore what the source of the noise was she saw that Majid and the applicant (who is Majid's wife) were beating Noor. When Humera and her son Laraib attempted to intervene, Majid brought a knife from the kitchen and stabbed both Humera and Laraib. Laraib succumbed to his injuries subsequently.

3. The learned counsel has argued that the role of stabbing 2 persons has been attributed to Majid and not to his wife Ghazal, who is innocent and has been falsely dragged into this controversy because of malafide. He also argued that the applicant has a suckling baby. Learned counsel for the complainant and the learned APG opposed the grant of bail. I have heard the counsels. My observations and findings are as follows.

4. It appears that the learned trial court was not assisted properly as far as the ground of a suckling baby is concerned and was not shown the requisite evidence in this regard. The learned counsel has put on record a birth certificate of the child of the applicant who according to the birth certificate was born on 25.03.2022 and is thus nearly one year old now. No doubt he is a suckling baby. **Nusrat vs The State (1996 SCMR 973)** was a case of murder. In this 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.”

5. In view of the guidance given by the Hon'ble Supreme Court, I am of the view that a suckling baby would entitle the applicant to the concession of bail.

6. Above are the reasons for the short order dated 28.02.2023.

JUDGE