

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2134 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

07-02-2023

Mr. Abdul Rauf, Advocate a/w applicant.

Mr. Muntazir Mehdi, Addl.P.G.

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Omar Sial, J: Taimoor Zaman (the applicant) married Mah Noor on 23.12.2018 and the couple had 2 children. It appears that constant domestic violence led to an incident on 05.07.2022 when Taimoor allegedly threw heated cooking oil in a frying pan on Mah Noor's face and severely burnt her. Taimoor and his family members declined to take Mah Noor to the hospital and thus she was prompted to call her father and brother for help. Mah Noor was treated at the Jinnah and Civil Hospitals and the requisite medical certificates were issued to her. The police however declined to register an F.I.R. till the final medical report was issued. That report was issued on 18.07.2022. Once again, Mah Noor's request to lodge an F.I.R. was received on deaf ears by the police. It is alleged by Mah Noor that on 25.09.2022, Taimoor Zaman, accompanied by some others came to Mah Noor's parents' house (where she was living with her children) and attempted to take the 2 children with him by force. The chaos and commotion which resultantly occurred attracted the neighborhood people and apparently Taimoor failed in his attempt. The F.I.R. in the matter was finally registered on 19.10.2022 (F.I.R. No. 1091 of 2022 registered under sections 147, 148, 149, 452, 506-B and 337-L(i) P.P.C.) at the Zaman Town police station.

2. Taimoor Zaman approached the learned 7th Additional Sessions Judge, Karachi East seeking pre-arrest bail. Interim pre-arrest bail was granted to him on 24.10.2022, however, the same was not confirmed after

hearing all the parties on 31.10.2022. Taimoor did not surrender but instead approached this Court seeking pre-arrest bail.

3. Learned counsel has limited his arguments on the ground that the narration of Mah Noor of the hot oil throwing incident as recorded in the F.I.R. is different to that which she recorded in a petition seeking maintenance which had been filed before a learned Family Judge by her; that the F.I.R. is substantially delayed and that in fact if Mah Noor was so aggrieved by the behavior of her husband, why did she then continue to remain with him as his wife for such a long period. To the contrary, the learned Addl.P.G. was of the view that the medical evidence shows clearly that Mah Noor was burnt and that in such a situation no leniency can be shown to the applicant. He whole heartedly supported the impugned order. None appeared on behalf of the complainant in spite of being at notice. I have heard the counsel and tentatively assessed the material on record. My observations and findings are as follows.

4. Whether or not what Mah Noor said in her petition before the learned Family Judge can be used as evidence in this case is a question which in itself is debatable, in order to give the applicant a fair chance at this bail stage, I have taken a cursory look at the petition. Suffice to say that what the learned counsel has submitted is not correct. The account given in the petition as to what transpired is more detailed in the F.I.R., yet, I find it consistent with what Mah Noor has alleged in the F.I.R. Taimoor Zaman, present himself, did not deny the occurrence however said that he had not thrown oil on his wife but that in a fit of rage he had banged his hand against a frying pan on the stove which had resulted in the oil splashing over Mah Noor. He termed it as an accident. In my opinion, the allegation of sustained and continuous domestic violence that has been made by Mah Noor must first be proved to be wrong before Taimoor can be given any concession on account of the incident being an accident. The pattern of behavior towards her by her intimate partner for 4 years, prima facie, appears to be a classic and well established pattern of domestic violence and abuse.

5. The F.I.R. is indeed delayed. The reasons for the delay have been explained by the learned Addl.P.G. To me it appears that it was nothing but the helplessness of the survivor exacerbated by financial distress and a family that chose to compel their daughter to continue to find ways of a peaceful life with an alleged abuser of a husband, which has primarily led to the delay in the F.I.R. It also seems prima facie and sadly that a woman claiming to have been burned by her husband was not a matter that the police thought was serious enough for a prompt reaction. The true facts however will be unearthed at trial. At this stage I am not inclined to give any benefit to the applicant on the ground of delay in registering the F.I.R.

6. All I can say about the last argument raised by the learned counsel i.e. as to why did Mah Noor continue in a relationship with Taimoor if she was abused, is that it is an argument devoid of any weight as it does not take into consideration our socio-economic ground realities as well as pressures and cruelties that most women in our society have to sustain on misconstrued and manipulated interpretations of tradition and culture. It is high time that we look at such cases not as an instance of a woman being a “co-accused” but as a woman who is a helpless victim of abuse. An understanding of the subtle dynamics of domestic violence is necessary.

7. I am aware that the punishment for the alleged offences having been committed by Taimoor Zaman may fall within the non-prohibitory clause. Keeping the principles enunciated by the Honorable Supreme Court in the case of Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), I am however of the view that because of the observations made in the preceding paragraph, this is a case in which exceptional grounds exist to deny the applicant bail for an offence the punishment of which falls within the non-prohibitory clause.

8. Towards the end of the hearing the learned counsel submitted that the parties are about to reconcile. The parties are at liberty to do what they want however any proposed settlement is not a ground which has swayed me to show any leniency.

9. The interim pre-arrest bail granted to the applicant earlier was therefore recalled vide short order dated 02.02.2023 and the bail application dismissed.

JUDGE