

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S - 16 of 2023

Applicant : Mst. Asma Shaikh,
through Mr. Imdad Ali Malik, Advocate

Complainant : Abdul Faheem,
through Mr. Ubedullah Malano, Advocate

Respondent : The State, through Mr. Zulfiqar Ali Jatoy, Additional
Prosecutor General

Date of hearing: 05.06.2023

Date of decision: 05.06.2023

ORDER

OMAR SIAL, J: Asma Shaikh has sought post arrest bail in crime number 142 of 2022 registered under sections 302, 380, 120-B and 34 P.P.C. at the Pano Aqil police station. Earlier, her application seeking bail was dismissed by the learned Sessions Judge, Sukkur on 27.10.2022.

2. A background to the case is that the aforementioned F.I.R. was registered on 06.10.2022 on the complaint of one Abdul Faheem Indhar who reported an incident which had occurred 2 days earlier. He recorded that his brother named Abdul Qayoom had forbidden Ali Raza Indhar to come to his house as Ali Raza and the applicant, who is Abdul Qayoom's wife, were having an extra-marital affair. This had enraged Ali Raza. On 04.10.2022 while the complainant along with 2 of his brothers were sitting at home, they heard Abdul Qayoom screaming. They looked from over the wall and saw that the applicant pushing Abdul Qayoom to the ground and then when he fell down, she grasped him by the legs whereas, yet another person by the name of Najaf Ali held him by his

arms while Ali Raza hit him on various parts of his body. Abdul Qayoom died on 05.10.2022.

3. I have heard the learned counsels for the applicant and the complainant and the learned APG. My observations and findings are as follows.

4. Upon a tentative assessment, I fail to see why 3 full grown adults would stand and watch while their brother was being pushed, then being restrained, then being hit by a stone for what seems a long time, without making any effort to intervene and save Abdul Qayoom. The complainant, present in person in court, completely failed to give any logical or reasonable explanation for his and his brothers' inaction. His justification was that they stood on a charpoy and looked over the wall while the whole scene unfolded before them. There is no evidence on record to show an extra-marital affair nor does it appeal to logic at the moment that a woman would have the physical strength to restrain a person by holding his legs. The 2 day delay in lodging the F.I.R. thus becomes relevant and at the moment throwing the net wide after consultations and deliberations cannot be ruled out.

5. Another aspect of the case is that the applicant is a woman who has 5 children aged 1, 3, 5, 7 and 9. One if not two of the children are suckling babies. 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 A (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,

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

7. The applicant is admitted to post arrest bail subject to her furnishing a solvent surety in the sum of Rs. 50,000 (Fifty thousand) and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE

ARBROHI