

IN THE HIGH COURT OF SINDH AT KARACHI

CP No. D-4296 of 2024

(Nazeer Ahmed v Province of Sindh & others)

Date	Order with signature of Judge
------	-------------------------------

Before:-

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 31.10.2024

Mr. Muhammad Bilal Rashid advocate for the Petitioners.
Mr. Salahuddin Khan Gandapur advocate for respondent No.9
M/s. Ibad-ul-Hasnain and Ms. Farah advocate, Amicus Curie.
Mr. Jan Muhammad Khuhro, AAG.
Mr. Ali Hyder Saleem APG.
Mr. Irshad Shaikh, AAG.
Dr. Summaya Syed, Police Surgeon Karachi

ORDER

Adnan-ul-Karim Memon, J: Petitioner Nazeer Ahmed seeks justice for his daughter, Hameeda, who died mysteriously after alleged domestic abuse, inter alia on the ground that a flawed post-mortem and mishandled investigation hindered the justice. The petitioner seeks a thorough investigation, a medical board, to ascertain the cause of death of the deceased action against officials, and prosecution of culprits.

2. The lawyer for the petitioner argued that the government had formed a committee to improve medico-legal procedures, but the medico-legal officer failed to follow these procedures in this case. He wants a medical board to determine the cause of death and seek justice for the deceased girl. He lastly prayed for the exhumation of the dead body of the deceased to ascertain the cause of her death.

3. This court ordered the Chief Secretary to form a committee with the Home Secretary to ensure the Act's implementation, frame rules within six weeks, and approve appointments of police surgeons and MLOs based on court guidelines reported in PLD 2023 Islamabad 195 and federal SOPs. Primarily, The Sindh Medico Legal Act, of 2023, while a progressive step, requires implementation through rule-making and appointments. A coordinating committee, led by the Chief Secretary, is directed to ensure compliance with the Act, frame rules within six weeks, and

approve SNEs for police surgeons and MLOs. Legal experts, including Mr. Muhammad Bilal Rashid, advocate to assist the rule-making body. Let the aforesaid exercise be completed within three weeks positively without fail.

4. Mr. Salahuddin Khan Gandapur advocate for respondent No.9 has no objection if the dead body of deceased Mst. Hameeda is exhumed for the aforesaid purpose.

5. Ms. Farah Khan Yousufzai and Mr. Ibad-ul-Hasnain (*amicus curiae*) assisted the court and their efforts are appreciated. Both state that the code of practice and performance, standards for public pathology in different countries be considered while framing the rules. They further submit that there is guidance for conducting post-mortem examinations including second post-mortem examination. They also pointed out forensic autopsy performance standards as well as supplemental guide forensic pathology and autopsy protocol and submitted that these are important guidance that needs to be looked into by the rule-making committee for their guidance. They also prayed that the body of the deceased lady be exhumed so that a special medical board be able to conduct the examination of the body to ascertain the actual cause of death.

6. We have heard the learned counsel for the parties present in court as well as *amicus curiae* and perused the record with their assistance.

7. The case of the petitioner is that his daughter, Hameeda, a 20-year-old woman, was allegedly murdered by her husband and in-laws after enduring domestic abuse, such FIR No: 347 of 2024, of the incident was lodged at Police Station Orangi Town against the private respondents. The medico-legal officer conducted a flawed post-mortem examination, failing to document injuries, mention the pregnancy, and perform necessary internal examinations. Despite evidence of asphyxia, the officer's preliminary opinion and final report were misleading. The petitioner filed complaints with the relevant authorities but received no satisfactory response. The investigation has been mishandled, and the accused are absconding. The petitioner seeks a thorough investigation, a medical board to determine the cause of death, and justice for the deceased. The petitioner complained to the relevant authority

about the medico-legal officer's misconduct under Section 26 of the Sindh Medico-legal Act, 2023. The petitioner requested a medical board to determine the cause of death but there's no update on the complaint. Due to the negligence of respondents 1 and 2, a final charge sheet has been filed against them for destruction/suppression of evidence under Section 201/338-A read with 302/34 of Pakistan Penal Code, 1860. The victim was murdered in her home, and the only witnesses were/are the suspects. Medical and forensic evidence is crucial to the case.

8. The postmortem Report states that the time between injury and death was "instantaneous," but no specific injuries were noted. The time between death and the postmortem examination lacks scientific evidence. Normal Saline (N/S) was used as a preservative, which is not suitable for chemical analysis. The MLO has neglected the prescribed procedure, despite clear guidelines in Police Rules, 1934, Rule No 25.47, the MLO failed to examine the FIR and inquest report. Due to these significant omissions, the Post-mortem report had been referred to a Special Medical Board.

9. The Special Medical Board opined that the postmortem was incomplete and poorly documented. The cause of death could not be determined based on the available information. The death is labeled as "Suspicious" based on circumstantial evidence and pictures and exhumation was recommended for a conclusive determination of the cause of death.

10. To apply for exhumation of the dead body under Section 176(2) of the Code a Magistrate's satisfaction that exhumation is necessary to determine the cause of death. This discretion should be exercised cautiously, even if the request comes from a stranger, as long as reasonable circumstances or suspicion exists. The purpose is to initiate criminal proceedings if necessary. Close relatives may be involved in homicides, so their objections alone should not be a barrier to disinterment if other circumstances warrant it. The case of *Muhammad Ramzan and others v. The State and another* (1987 SCMR 272) supports disinterment even after a year to determine the cause of death.

11. Primarily, the father has the right to know his loved one's true cause of death. As the Supreme Court upheld in Ameer Afzal Baig v. Ahsan Ullah Baig, disinterment orders based on suspicion are valid. Even after burial, the right to investigate the cause of death exists. The law allows such requests, even from strangers to ensure proper investigation and to satisfy concerns about potential foul play.

12. The contention that exhumation at this stage will serve no useful purpose pales into significance for the sole reason that there is no time limit for the disinterment of the body. Modi in his Medical Jurisprudence and Toxicology in Chapter IV opines:-

“In India and in England, no time limit is fixed for the disinterment of a body. In France, this period is limited to ten years and it is thirty years in Germany.”

13. From the above, it is inferred that a special medical board can be constituted to determine the cause of death for Mst. Hameeda. This is common practice in complex or suspicious death cases. The board would examine the exhumed body, conduct tests, and prepare a report detailing their findings.

14. In view of the above facts and circumstances, the captioned petition is disposed of with direction to the Sessions Judge of Lakki Marwat to appoint a Judicial Magistrate to oversee the exhumation of Mst. Hameeda's body. A Special Medical Board will determine the cause of death and submit its findings to the concerned Magistrate. The aforesaid exercise shall be conducted within two weeks. Let a copy of this order be communicated to the Registrar Peshawar High Court Peshawar for onward communication for compliance. Parties to approach the concerned Sessions Judge, Lakki Marwat for such exercise.

JUDGE

JUDGE