

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-170 of 2016.

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing.

01.11.2016.

M/s. Aziz Ahmed Laghari and Rao Faisal Ali, Advocates for applicant.

Syed Meeral Shah Bukhari, Deputy Prosecutor General.

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Through instant bail application, applicant seeks post-arrest bail in Crime No.76/2015, registered at Police Station Gharibabad, under sections 302 and 34 PPC.

2. Precisely, facts of the case are that, on 08.09.2015 at 1720 hours the complainant Mst. Mirzadi lodged F.I.R, stating therein that marriage of her daughter Mst. Zarina was solemnized with Gul Muhammad Rind; her husband was confined in jail in a criminal case; her neighbourer Iqbal was compelling her to obtain divorce from Gul Muhammad and contract marriage with him, that she refused. On 05.09.2015 at about 1230 hours she received information that her daughter's dead body was lying in a rickshaw behind her house and police had taken away her dead body to Civil Hospital Mirpurkhas. After receiving such information she, her sons Moula Bux and Hussain Bux, came at Civil Hospital Mirpurkhas where they found dead body of Mst. Zarina was in *mortuary*. There, her elder daughter Taj Bibi W/o Ghulam Hyder Langhani R/o Siyal Colony Mirpurkhas disclosed that in day time at 1000 hours her neighbourer Iqbal and his sister Mst. Naseem both were seen with sister Mst. Zarina while going towards town, who killed her sister Mst. Zarina and they, leaving the dead body, had escaped away. After legal

proceedings and postmortem, the police handed over the dead body , after burial in native village, she lodged F.I.R.

3. At the outset, learned counsel for the applicant, *inter alia*, contends that except last seen evidence no iota of evidence is available against the applicant; applicant was implicated in this case with malafide intention and ulterior motive; after investigation, the report under section 173 Cr.P.C. was filed for disposal of case in “C” class; however, cognizance was taken by the Magistrate. It is further contended by the learned counsel for the applicant that cause of death as per postmortem report is natural as fetus of four months died in womb and thus her body became poisonous.

4. Learned D.P.G. also contends that there is no evidence of injury on the dead body of deceased and as per postmortem report cause of death was due to perforation of uterus and IUD fetus in abdomen; patient go in septic condition and shock and death.

5. Heard counsel and perused record. Admittedly, the case against applicant is that of last-seen evidence as witnesses claim that they saw applicant and his sister Mst. Naseem alongwith deceased were *last* seen going towards city and *later* dead body was found in a rickshaw. The case, based on *last seen*, alone cannot stand unless is supported backed by other circumstances leading to an *irresistible* conclusion thereby fitting the noose into neck of accused. The Rickshaw wherein dead body was found is not alleged to be owned by applicant/accused; nor claimed to be parked / stationed in a secret place or *least* in house of applicant / accused hence these open a room of further probe. Further, as per medical opinion, the cause of death is natural (***due to perforation of uterus and IUD fetus in abdomen; patient go in septic condition and shock and death***) which also causes a dent into

allegation of '*murder*' because a 'murder' shall require the death to be *unnatural*. Investigation was carried out which resulted in recommendation of case for its disposal under "C" class i.e '*insufficient evidence*' which *however* was not agreed by learned Magistrate and cognizance has been taken. Although, *ipsi dixit* of police is not binding upon any Court, however, such report can be considered alongwith other material at bail stage to reach at tentative conclusion for grant of bail or otherwise.

6. All the attending circumstances and material *prima facie* make the case against the applicant / accused opened to further probe thereby entitling the applicant / accused to be released on bail as *right*. Accordingly, he is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) and P.R. Bond in the like amount to the satisfaction of trial Court.

Bail application stands disposed of.

JUDGE

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