

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Bail Application No.S-100 of 2018

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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*Date of Hearing* : 18.05.2018.

*Date of Order* : 18.05.2018.

*Mr. Raichand Harijan, Advocate for applicant.*

*Mr. Wahid Bux Aajiz Leghari, Advocate for complainant.*

*Mr. Shahzado Saleem Nahiyoon, D.P.G*

**ORDER**

**SHAMSUDDIN ABBASI, J:-**

Applicant Ashok S/o Shankar

Kolhi seeks post arrest bail in Crime No.126 of 2017, registered at P.S Husri District Hyderabad, for offences under Sections 302, 201 PPC.

2. Briefly, the facts as narrated in the FIR are that, complainant Madhu Kolhi has two sons and five daughters. His second daughter namely Aneeta, aged about 26 years, was married with Ashok (the present applicant) about seven years ago and out of this wedlock they have two issues (son and daughter). Ashok often used to maltreat his daughter in intoxicant condition and such complaint was made to his parents. On 23.09.2017 at about 1230 hours when complainant was available at cart in Tando Muhammad Khan, he received information that his daughter Aneeta has become unconscious and she has been shifted to Civil Hospital, Hyderabad, where she has been admitted in ICU ward. Complainant alongwith his relatives Bhoro and Arjun reached there and found his daughter in ICU ward. On inquiry, Ashok disclosed that her wife attempted to commit suicide and he brought her at hospital, where on 24.09.2017 at about 07:30 a.m. she died. Thereafter, complainant brought the dead body at Tando Muhammad Khan and after

funeral ceremony he came back to his house. The complainant after inquiring the incident came to know that accused Ashok has committed murder of his daughter by throttling. Thereafter, the complainant moved application before the competent Court of Law for registration of FIR and after obtaining the Court order, he lodged instant FIR against the present applicant / accused.

3. After usual investigation police recommended this case for disposal in "B" Class but learned Magistrate did not agree with the report and directed the I.O to submit challan. After registration of FIR, applicant approached to the learned Sessions Judge, Hyderabad and filed bail before arrest application, which was turned down vide order dated 31.10.2017 and he was taken into custody. Thereafter, the applicant applied for bail after arrest, the same was also declined vide order dated 07.02.2018.

4. Learned Counsel for the applicant contended that the offence was un-witnessed. He further contended that there was delay of about 20 days in lodging of FIR as the incident has taken place on 23.09.2017, whereas the FIR has been lodged on 12.10.2017. He further contended that applicant was husband of deceased Mst. Aneeta who committed suicide and applicant himself shifted her to the hospital for treatment and also informed to the complainant about the incident. He further contended that no postmortem was conducted in this incident. After registration of FIR exhumation was conducted on 16.11.2017 in which medical board was constituted and the board was of the opinion that cause of death of deceased Aneeta was undetermined. He further contended that finally this case was recommended for disposal in "B" Class but the learned Magistrate did not agree with such report and directed the I.O to submit challan against the applicant. He further contended that applicant has been *malafidely* implicated in this case and the

complainant has fabricated this story. Learned Counsel for the applicant further contended that nothing incriminating article has been recovered from the applicant. He further contended that case of the applicant calls for further inquiry in terms of Section 497(2) Cr.P.C and finally he prayed for grant of bail to the applicant.

5.           Conversely, the learned Counsel for the complainant submits that bail plea of the applicant has rightly been turned down by the learned trial Court and the order passed by the learned trial Court is well explained and is based upon good reasons. He contended that delay in lodging of FIR has been well explained as the police has refused to register the FIR of the complainant, therefore, he approached to the learned Sessions Judge, Hyderabad, and filed application under Section 22-A&B Cr.P.C. He further contended that it is a fact that postmortem has not been conducted in this case but the doctor has issued certificate in which he has shown the injury on survival. He further contended that plea of suicide taken by the accused has not been proved and all the prosecution witnesses have supported the case of the complainant, in spite of that the police has destroyed this case and recommended the same under "B" class and the learned Magistrate has rightly taken cognizance of the offence. He further contended that the accused is involved in heinous offence and he is not entitled for concession of bail.

6.           Learned D.P.G has stated that it is admitted that applicant has himself brought the deceased to the hospital for medical treatment and he has also informed to the complainant regarding suicide attempt of the deceased. He further stated that no postmortem has been conducted and exhumation report has also declared the cause of death as undetermined, therefore, he raised no objection to the grant of bail.

7. Heard learned Counsel for the parties and examined the material available on the record.

8. From the perusal of FIR, it appears that this incident was un-witnessed. The complainant himself has stated that on the day of incident he received information that his daughter has gone unconscious and she had been shifted to Civil Hospital for treatment. It is admitted fact that Mst. Aneeta died on 24.03.2017 at about 07:30 a.m. and remained alive for two days but neither the complainant informed the police. The complainant further stated in the FIR that after burial of deceased Mst. Aneeta, he came to know that present applicant / accused Ashok and one unidentified person had throttled Mst. Aneeta. It is also matter of record that after registration of FIR, exhumation of dead body was conducted on 16.11.2017. From the perusal of exhumation report of deceased Mst. Aneeta, it reveals that “cervical vertebra seen intact showing no any fracture, pelvic bony frame found intact”. However, specimens from viscera were collected for chemical analysis to detect the aspect of poisoning wherefrom negative report was received by medical board, therefore, medical board was unanimously held that the cause of death was undetermined. During the investigation, I.O of the case came to the conclusion that no such incident had taken place, therefore, he recommended for disposal of the case under “B” Class but the learned Magistrate did not agree with the report and directed the Police to submit challan against the applicant / accused. Though the opinion of the police is not binding on the court yet it can be considered for grant or refusal of bail if the same is based on some valid reasons. It is pertinent to mention that applicant has two babies from Mst. Aneeta and I feel no hesitation to hold that on one hand the children have lost their mother and on the other hand they are surviving without shelter of their father.

9. Keeping in view the above stated circumstances, I am of the considered opinion that when the incident was un-witnessed and the medical report did not show the cause of death and the Police also recommended this case for disposal in “B” Class, for these reasons, *prima facie* the case of the present applicant / accused calls for further inquiry in terms of Section 497(2) Cr.P.C. Therefore, the applicant / accused is admitted to bail in the sum of Rs.200,000/- and P.R Bond in the like amount to the satisfaction of the learned trial Court.

10. These are the reasons for my short order dated 18.05.2018, whereby applicant / accused was admitted to bail.

11. It is pertinent to mention here that the observations made hereinabove are of tentative nature and shall have no effect upon the trial Court to decide the matter on merits.

*JUDGE*

Shahid