

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.70 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

02.02.2021

Mr. Mukesh Kumar Khatri, Advocate a/w Applicant (on bail).
Mr. Hussain Bux Baloch, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Mst. Mahjabeen Zehra seeks her admission on pre-arrest bail in Crime No.437/2020 of Police Station Malir City, Karachi, under Section 380/34 PPC. The bail plea preferred by the applicant before first forum was declined by means of order dated 09.01.2021, hence this bail application.

The crux of the prosecution case as unfolded by complainant Manzoor Hussain in his FIR dated 16.11.2020 are that he left house along with his wife on 13.09.2020 and went to Nawabshah at the house of his daughter to participate in marriage gathering; however, they remained over there for about two months and then came back to the residence where they found that golden ornaments including biscuits as mentioned in FIR were missing, therefore, they got instant case registered against culprits.

After due investigation, case has been challaned, which is now pending for trial before the Court of Judicial Magistrate, Malir Karachi.

Learned counsel for the applicant submits that FIR is delayed for about two months and no direct evidence is available against the applicant, therefore, case against her requires further inquiry. He further submits that no one has witnessed anybody including applicant while committing the offence.

On the other hand, learned Addl. P.G, Sindh appearing for the State submits that though no direct evidence is available against applicant; however, it being extraordinary relief, cannot be granted frequently, therefore, opposes the bail application.

Heard arguments and perused the record. Since the date of offence as shown in FIR is from 13.09.2020 to 05.11.2020, no specific date or particular time has been shown for commission of the offence. The incident is un-witnessed and no one has seen anybody including applicant while committing the offence. The punishment provided by the law for section 380 PPC is seven years and case is being tried by the Judicial Magistrate where after recording evidence of the parties if prosecution may prove its charge against applicant even then punishment of more than three years cannot be visualized. After furnishing surety before this Court, applicant has joined the trial proceedings and has not misused the concession extended to her. She being lady, her case requires further inquiry within the meaning of sub-section 2 to section 497 Cr.P.C.

In the circumstances and in view of dicta laid down by the Honourable Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)*, instant bail application is hereby allowed; interim bail granted earlier to applicant **Mst. Mahjabeen Zehra D/O Syed Mumtaz Hussain** on 15.01.2021 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicant present before the Court is directed to continue her appearance before the trial Court without negligence and in case she may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against her as well to her surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned, through MIT-II, for compliance.

JUDGE