

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

Cr. Bail Application No.S-202 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

26.08.2022.

Applicants are present on ad-interim pre-arrest bail.
 Mr. Hameedullah Dahri, Advocate for applicants.
 Mr. Muhammad Hashim Leghari, Advocate for complainant.
 Mr. Shawak Rathore, Deputy Prosecutor General.

O R D E R

MUHAMMAD IQBAL KALHORO, J- Complainant in FIR has alleged that his sister Mst. Kainat had contracted marriage with co-accused Imdad Ali, an army man, out of her own freewill and consent. But then the relations between them started deteriorating on account of absence of Imdad Ali, always being on his duty, which information was communicated by her to her relatives. When complainant and his brother Ali Gul and Rahib went to village Dhani Bux on 09.09.2021, they heard cries of Mst. Kainat and rushed to her house. They saw applicants holding her from various parts and co-accused Imdad Ali setting her alight. Complainant party tried to take her to hospital but accused threatened them, hence they returned to home.

2. Investigation shows that husband of deceased had taken her to hospital at Karachi where she died on 12.09.2021 after four days of the incident. The matter was reported by her husband to the police on 16.09.2021 stating that she on account of explosion of gas cylinder caught fire and died. The proceedings under Section 174 CrPC started and finalized with the opinion that it was an accident case. However, complainant through an order u/s. 22-A&B CrPC approached Police of P.S Jhol disclosing aforesaid facts and his being the eye witness, which prompted a full-fledge investigation, culminated in submission of a report under Section 173 CrPC containing a report of International Center for Chemical Biological Sciences, University of Karachi as well, which has confirmed that the lady had not died from fire of gas cylinder but from fire which she had caught either from

petrol or gasoline. Applicants and co-accused have been arraigned in this case on the basis of finding in the said report that they did not try to rescue the deceased when she over strained relations with her husband self-immolated. Therefore Challan, among others, has been submitted for an offence U/s. 322 PPC against them.

3. The case of the applicants is that they are innocent and have been falsely implicated in this case on account of bad relations between them and complainant party due to freewill marriage of the deceased with accused Imdad Ali. There is no evidence that applicants had set the lady on fire, there is a delay of more than two months in registration of FIR, although the complainant claims to have seen the incident. Learned Counsel for applicants in support of his submissions has relied upon the cases of Syed DARBAR ALI SHAH and others v. The STATE (2015 SCMR 879), AQSA SAFDAR and another v. the STATE and others (2019 SCMR 1923) and KHAIR MUHAMMAD and another v. The STATE through P.G. Punjab and another (2021 SCMR 130).

4. On the other hand, complainant's Counsel has rebutted the said arguments stating that report of the laboratory is very clear that she died after catching fire from petroleum or gasoline and not from the gas cylinder as stated by the accused.

5. I have considered submissions of the parties and perused material available on record including the case law. Complainant has not said specifically in FIR that applicants sprinkled petrol etc. on the lady and set her ablaze. He is silent regarding substance used by the accused for this purpose and has simply said that before him she was put to fire. Lab report however suggests use of such substance and therefore *prima facie* contradicts presence of the complainant at the spot. Further, the investigation report shows that the lady was not happy with her husband because of his being always away from her and wanted to live with him at the place of his posting. But he had refused to oblige her and that prompted her to self-immolation. These particulars are *prima facie* different to what has been alleged against applicants in FIR. The observation in the report that applicants did not try to save the deceased, which IO has considered as an offence u/s 322 PPC, primarily punishable for only Diyat, however is not correct in

that it is a matter of record that she was taken to Karachi hospital for treatment and died there.

6. Statement of Medico Legal Officer who had attended the deceased after she got burn injuries has also been referred in defense. He has stated that before him she had admitted to have caught fire from gas cylinder. Ostensibly, version of the deceased before her death, the one made by complainant, and the lab report are at odds with each other. Then the IO has arrayed the applicants in this case as accused only for their failure to save the lady and not for any assault on her. This outlook of the case accentuated further by the unexplained long delay in registration of FIR, conduct of the complainant to return to his village in the face of an emergency, makes the case to be of further inquiry, and in the circumstances mala fide on the part of complainant cannot be ruled out. Therefore, the application is allowed and ad-interim pre-arrest bail already granted to the applicants by an order dated 03.03.2022 is hereby confirmed on same terms and conditions.

7. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE

Shahid