ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 2109 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

24th December, 2021

M/s. Salahuddin Khan Gandapur, Pir Darwesh Khan and Safeeruddin, Advocates for applicant.
Mr. Ali Haider Saleem, APG.
Mr. Abdul Wahid, Advocate for complainant.

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Omar Sial, J.: Through this application Mafia has sought post arrest bail in crime number 1612 of 2021 registered under section 302, 109 and 34P.P.C. at the Shah Latif police station in Karachi. Earlier, her application seeking bail was dismissed by the learned 1st. Additional Sessions Judge, Malir on 2-11-2021.

2.   Facts of the case are that the aforementioned F.I.R. was registered on 5.10.2021 on the complaint of Muhammad Zaman Gujjar. Gujjar recorded that he lives with his second wife named Sajida and her son from the first marriage named Hammad. Hammad was raised by the complainant and had married of his own accord a girl named Ayesha who happened to be related to Sajida. One lady named Shazia, her sister Mafia (the applicant) and one other named Zulfiqar were not happy with the marriage and had threatened to kill Ayseha and Hammad. Hammad and Ayesha were invited to the house of the applicant by all the accused. The complainant was told later that Hammad had been shot dead by four persons near a mosque. The complainant was suspicious that the accused had killed Hammad and hence lodged the F.I.R.

3.   I have heard the learned counsels as well as the learned Additional Prosecutor General.

4.   The learned Additional Prosecutor General who was assisted by the investigating officer of the case argued that the involvement of Mafia in the case is apparent from the fact that the applicant was making phone calls to the deceased prior to the incident inquiring from him where he was. Apart from this there is no other evidence against the applicant at this stage.

5.   The learned counsel or the applicant argued that apart from the fact that there is no reasonable evidence against the applicant to keep her incarcerated, he is also seeking bail on the ground that the applicant has a suckling baby.

6.   A report was called from the Women Prison and on 23-12-2019 the Senior Superintendent reported that the applicant is confined in prison with her 10 month old daughter Fatima.

7.   In Nusrat vs The State (1996 SCMR 973) which was a case of murder, it was observed by the Hon'ble Supreme Court:

> The suckling child of the petitioner kept in jail is undoubtedly innocent. He is kept in jail with mother obviously for his welfare. The concept of "welfare of minor" is incompatible with jail life. So, instead of detaining the innocent child infant in the jail for the crime allegedly committed by his mother, it would be in the interest of justice as well as welfare of minor if the mother is released from the jail. In famous case of Ghamidiyyah, our Holy Prophet Muhammad A (p.b.u.h.) had suspended the sentence on pregnant woman, not only till delivery of the child but also postponed it till suckling period i.e., two years, obviously for the welfare of the child. This shows the paramount importance and significance of the right of a suckling child in Islam and the unprecedented care taken of, and the protection given to a child born or expected to be born, by our Holy Prophet Muhammad (p.b.u.h.). This golden principle of administration of justice enunciated by the Holy Prophet Muhammad (p.b.u.h.) must be strictly observed and followed in our country.

8.   In view of the above, and having taken guidance from the Hon'ble Supreme Court, I am of the view that a suckling baby would entitle the applicant to the concession of bail. Further, prima facie the fact that the applicant made phone calls to the deceased asking him where he was is not sufficient evidence to keep the applicant incarcerated. Accordingly, the applicant is admitted to bail subject to her furnishing a solvent surety in the amount of Rs. 100,000 and a P.R. Bond in the like amount to the satisfaction of the trial court.

JUDGE