

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. D – 91 of 2023

(Peer Syed Fayaz Shah versus The State)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **22.11.2023**

Date of decision : **22.11.2023**

Mr. Qurban Ali Malano assisted by Mr. Israr Ahmed Shah,
Advocates for applicant.

Mr. Nisar Ahmed Bhanbhro, Advocate for complainant.

Mr. Aftab Ahmed Shar, Additional Prosecutor General
along with Abdul Qudoos, DSP/IO, Police Station SITE, Sukkur.

ORDER

Muhammad Iqbal Kalhoro, J. – When on 14.08.2023, at about 02:10 p.m., complainant was informed of death out of illness of her daughter Fatima, aged about 09 years, employed as a domestic help in the house of Asadullah Shah and his wife Bibi Hina Shah, son-in-law and daughter of applicant, she brought her dead body in her house situated in village Ali Muhammad Phariro, Taluka Mehrabpur for burial. She was informed by the house owners that she had died natural death of illness, which had not satisfied her curiosity, as she had found marks of torture on different parts of her body. After burial, complainant came to know of a video clip recorded in the house of co-accused Asadullah Shah, wherein her minor daughter Fatima could be seen writhing in pain and dying. Hence, she appeared at Police Station and registered FIR against them.

2. Later on, she recorded her further statement, as per learned defence Counsel on 21.09.2023, but as per learned Counsel for the complainant on 23.08.2023 after 07 days of FIR, naming applicant as one of the accused whom actually the minor was given for employment, and who, without permission of her parents, had handed her over to her daughter as a domestic help. After the FIR and particularly the video clip of minor seen dying in pain went viral, the police sprung into action. Her body was exhumed, postmortem was conducted, which confirmed her death from violence, and the fact that she was raped as well. Old scars of violence on her private parts were also found. Her DNA samples for the purpose of matching profile with the DNA samples of the accused were collected and sent to the lab at Liaquat University of Medical & Health Sciences

(LUMHS), Jamshoro, but were mishandled and tampered, and then were sent to a lab at University of Karachi for a report. From there the samples were sent to a lab at Punjab Forensic Science Agency, Lahore for DNA profile. Meanwhile, a JIT was constituted, which recorded statements of servants of the house, who also confirmed torture to the minor by the inmates and her death as a result thereof. The fact that the minor was actually given in the guardianship/supervision of applicant as a domestic help was also confirmed. After such preliminary investigation, interim Challan was submitted in the Court, and applicant was shown absconder. Subsequently, after getting protective bail from this Court at Circuit Court, Hyderabad, applicant emerged, but as per Investigating Officer, present in person, he did not cooperate in the investigation, refused to produce his phone and laptop for forensic examination and collecting evidence, and when he was asked to provide record of CCTV footages of his house, he told the police that he had already destroyed the same. Subsequently he was arrested. It was in this backdrop, with faulty investigation, the Challan was submitted in the Court.

3. Learned Counsel for applicant submits that his name is not mentioned in FIR. The dead body was found in the house of her son-in-law. The injuries prescribed by complainant have not been verified by the doctor in the final report; that final report of the deceased shows that she died of cardiac failure. There is no allegation of conspiracy against the applicant. Applicant has been implicated on account of further statement, which has got no value in the eyes of law. It cannot be made a basis of accusation against the applicant. From the further statements of complainant and witnesses, no case against applicant is made out. Investigation is over and applicant is no more required for further investigation. The Doctor and SHO, who had reported in favour of applicant and co-accused, were arrested on the recommendation of JIT, but later on, were released, which makes the case to be one of further inquiry. Even in further statement, applicant has not been made responsible for death of the minor. The DNA reports are still awaited, and the case against applicant is of further enquiry; hence, he is entitled to bail. He has relied upon the cases of Noor Muhammad v. The State and another (2020 SCMR 1049), Haider Ali v. The State and others (2021 SCMR 629) and Salman Zahid v. The State through P.G. Sindh (2023 SCMR 1140).

4. On the other hand, learned Counsel for complainant and learned Additional Prosecutor General both have opposed this application. They submit that the applicant is the main accused because he was handed over custody of minor as an employee, she was severely tortured in his

daughter's house and murdered; that on her private parts old scars of violence were found, which point out to her abuse in the house of applicant. Applicant in a press conference widely aired on electronic media had admitted to have come to know of murder of minor and then shifting her dead body to her parents' house without any legal formalities. They have relied upon the cases of Razzaq Ahmed v. The State (2002 SCMR 1876), Muhammad Arshad v. The State and another (2004 SCMR 222), Zakir Jaffer and another v. The State and another (2002 P Cr. L J 1242), Ali Raza Azam alias Sana v. The State (2022 YLR Note 117), Legal Aid Foundation for Victims of Rape and Sexual Assault (LRSA) through Authorized person and 2 others v. Federal Government through Secretary, Interior Division and others (PLD 2023 Islamabad 195), Sidra Abbas v. The State and another (2020 SCMR 2089) and Irfan Ali Sher v. The State (PLD 2020 Supreme Court 295).

5. We have considered submissions of the parties and perused material available on record including case law cited at bar. The complainant is not the eyewitness, and has apparently no ill-will against applicant and his family members including co-accused to falsely implicate them in a brutal murder of her minor child. The minor died in the house of co-accused, who happen to be his daughter and son-in-law to whom applicant, without permission of her parents, had given her as a domestic help, which itself, looking at the tender age of deceased, is a heinous offence and such relevant sections have been included in the Challan which make the applicant as one of the accused. The police from very inception was lukewarm in carrying out investigation of the case for an apparent reason: complainant party is extremely poor, whereas, the accused are influential family of the area wielding control over entire district machinery. The complainant was informed by the family of applicant that her daughter had died of a natural death as she was ill. But the investigation, undertaken only after the video clip showing the minor dying in pain went viral, confirmed that hers was not a natural death, but was a result of violence. There were found at least nine (09) injuries on the body of the deceased. It was also confirmed that she had been sexually abused before her death. The marks of violence on her private parts were confirmed to be old ones of the time she statedly was living in the house of applicant.

6. Complainant's Counsel and learned Additional Prosecutor General in arguments have informed that she had come to live with daughter of applicant only 08 to 10 days before the incident, where she was tortured to death, and before that she was living in the house of applicant. Therefore the marks of violence on her private parts are suggestive of her

sexual abuse in the house of applicant. This argument, carrying weight, does not seem to be denied, and is further conceded by IO. It is, *prima facie*, apparent that this case was mishandled by the police from the very onset, and the directions given by the superior Courts from time to time including in the case of “Kainat Soomro” that samples of DNA shall be preserved in a particular manner etc. have not been followed. Yet whatever could be gathered in hasty investigation embodying the DNA profile of the minor, it shows that mixed male DNA profiles were found in semen stain retrieved from clothes of the deceased of the minor victim, which is *prima facie* indicative of the fact that she was sexually abused by not a one person but many, and therefore, active participation of applicant in committing heinous crime, leading to her traumatic death, cannot be ruled out.

7. This has also come on record that when applicant was informed of death of minor in the house of her daughter, he tried to gloss over it and forced the complainant party to take her dead body to her house without disclosing the same to anyone. She complied and went home without questioning her minor’s unnatural death at such a young age. It was only after the video clip of her painful death went viral, the complainant mustered courage to appear before the police and register the FIR. Despite non-cooperation of the relevant district machinery and inability of the police to preserve medical evidence intact and to get the lab reports done properly, there are circumstances as discussed above which show active involvement of the applicant in the commission of offence, which carries capital punishment. The Challan of the case has been recently submitted in the Court on 08.11.2023 and the case is poised for a trial.

8. We are of the view that unless some material witnesses are examined by the trial Court, no opinion in favour of applicant can be formed at this stage. We, therefore, while **dismissing** the application, give direction to the trial Court to examine the material witnesses within a period of three (03) months. After which, in any case, the applicant would be at liberty to move a fresh bail application before the trial Court, which shall decide the same in accordance with law, independent of the previous orders including the present one.

The bail application stands **disposed of** in the above terms.

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