

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 526 of 2023

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Date

Order with signature of Judge

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For hearing of bail application

**05.09.2023**

Mr. Aamir Mansoob Qureshi advocate for the applicant  
Mr. Muhammad Ahmed Advocate for complainant a/w complainant  
Ms. Rubina Qadir, APG

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Applicant Fahim seeks indulgence of this Court against the order dated 24.02.2023 passed by Additional Sessions Judge-VII, MCTC-II (Central) Karachi in Bail Application No. 267/2023, whereby he was denied post-arrest bail in F.I.R No.754/2022, registered under Sections 302 and 322 PPC at Police Station Shahra-e-Noor Jehan, Karachi.

2. The prosecution story as narrated by the complainant in the F.I.R. is that on 03-11-2022, he was informed by his sister Anum that his other sister Komal aged about 24 years had received burn injuries, and she was shifted to Civil Hospital Karachi and was admitted to the Burns Ward. As per the complainant, he was rushed to Civil Hospital, where he was informed that his sister Komal had passed away during treatment. The complainant further alleged that when his sister Komal was in her senses at the relevant time, he called on her on the telephone and disclosed that applicant Faheem had beaten her severely and she received burn injuries on his hands. As per the complainant, after regaining his senses from such shock, the incident was reported to the duty officer ASI Mujahid Ali of Police Station Shahra-e-Noor Jehan, Karachi, who recorded his statement, since, he was not completely aware of the sensitivity of the situation due to which he asked the duty officer not to take any legal action until and unless he gets complete information of the alleged incident, and after the funeral of her sister, he came to know that it was miscommunicated by the applicant-Faheem that his sister caught fire in the kitchen, however, the true story was that she received burn injuries at the hands of the applicant in his house. The complainant also alleged that his brother-in-law Faheem was/is a drug addict to whom the area committee had also called on and issued a warning but he did not mend his ways, since he was unemployed and was unable to bear his house expenses, as such he used to harass his

wife Komal and maltreat her on daily basis and this could be the reason that he set her wife ablaze.

3. At the very outset, Mr. Aamir Mansoob Qureshi learned counsel for the applicant has argued that the applicant has falsely been roped in this case against the facts and circumstances. He further contended that the applicant was only involved to the extent of burning his wife inside his house but no proof in this regard could be placed on record by the complainant. He next argued that the whole story narrated by the complainant from his earlier statement up to the lodging of subject F.I.R is concocted and no independent witness has been associated with the case to connect the applicant with the alleged crime, some of the PWs have narrated different story of the incident under Section 161 Cr. P.C statements, therefore, in such circumstances, the case of the applicant squarely falls within the purview of Section 497(2) Cr.P.C., entitling for further inquiry into his guilt. Learned counsel submitted that there is nothing on record to show that there was a background of any quarrel between the spouses, or the incident was the result of some conspiracy and/or provocation of whatsoever nature, or the applicant had any intention at any point in time to cause the death of her wife. Per learned counsel from the contents of the F.I.R and charge sheet, it appears that an offense of qatl-bis-sabab punishable under Section 322 PPC had been inserted in the charge sheet though non-bailable yet is not punishable with any period of imprisonment except the payment of Diyat. Learned counsel further argued that Section 322, PPC falls outside the prohibitory clause of Section 497(1), Cr. P.C., whereas ingredients of Section 302 do not appear to be made out in the present facts and circumstances of the case, however is yet to be determined by the trial Court whether made out or otherwise. Learned counsel referred to various statements of PWs attached with the memo of bail application as well as charge-sheet, read it extensively, and submitted that from such statements this is a case of no evidence at all and fit case for grant of post-arrest bail at this stage. He next argued that in such circumstances, the detention of the applicant inside jail pending trial can only be justified if this case falls within the scope of any of the exceptions stated in 497(1) Cr.PC, however, to date nothing was/is available on record that could attract any of the said exceptions and justify the denial of post-arrest bail to the applicant in the case of qatl-bis-sabab and /or qatl-e amad. Learned counsel contended that the deceased had burnt herself and committed suicide for the reason best known to her; however, this factum was not disclosed by the complainant either in F.I.R or his further statements. He has argued the allegation against the applicant is that he burnt his wife due to a quarrel between them, however

as per the statement of the complainant's sister namely Neelum no such fact had been mentioned who was present at the relevant time, and was accompanied by the deceased at the time when she was shifted to the Civil Hospital Karachi. He has further contended that there is not a single piece of evidence to remotely connect the applicant to the alleged crime and there is nothing on record to corroborate the version of the complainant and establish that the present applicant had burnt his wife as such this case of further inquiry. He emphasized that this is a case of simple suicide and now converted into a Culpable Homicide punishable under Section 302 PPC when no evidence could be collected against the present applicant to attract the aforesaid section. He asserted on the ground that the applicant has been behind bars for the last more than seven months and this court as well as the Supreme Court has time and again held that the liberty of a person is a precious right, that cannot be taken away unless there are exceptional grounds to do so. He emphasized that merely based on bald allegations of the complainant and/or his sisters Neelum and Anum, the liberty of the applicant cannot be curtailed, in the absence of incriminating material. On the point of delay in lodging of the FIR, he submitted that delay per-se is good ground for grant of bail. He lastly prayed for allowing the bail application.

4. Mr. Muhammad Ahmed learned counsel for the complainant has contended that deceased Komal was burnt by her husband/applicant accused and her last words were noted by the PWs Neelum, Anum as well as the complainant which has protection under the Qanoon-e-Shahdat Order 1984; that PWs/sisters namely Anam and Neelum both stated in their statements under Section 161 Cr.P.C. that Komal has stated to them in the way to the hospital that she was beaten and burnt by her husband/applicant; that postmortem report/medical certificate dated 03.11.2022 of Burns Centre Civil Hospital, Karachi with death certificate supported to the version of complainant/prosecution; that burnt Shalwar Kameez, hairs, broken bangles, a bottle of typhoon and one lighter, cloths of applicant i.e. trouser and shirt were recovered as incriminating articles which connect the applicant with the alleged crime. He next argued that the delay caused in lodging the F.I.R. was due to non-cooperation by the police, who were reluctant to lodge the FIR, and finally, on Court intervention, the F.I.R. was lodged as such the delay is well explained; the applicant used to torture the deceased/wife and the applicant brutally killed his wife by burning her inside house/room and the applicant failed to inform about the incident and erroneously stated that he lost

consciousness and became unconscious. He prayed for the dismissal of the bail application.

5. Ms. Rubina Qadir, APG has adopted the arguments of the learned counsel for the complainant and submitted that this is not the case of commission of suicide as portrayed by the applicant more particularly in terms of the opinion of MLO who explicitly opined that the death of deceased was occurred due to Cardio Pulmonary Arrest as shown her body was burnt 80%. As per learned APG, this is a simple case of culpable homicide and submitted that the brother of the deceased has made a very specific allegation that the applicant being the husband was unemployed and a drug addict and he subjected his wife to physical and mental torture. The wife of the applicant was burnt to death and no information was given to the police and/or parents of the deceased, it was her sister who took pains to shift the deceased to Civil Hospital Karachi and got her admitted to Burns Ward where she died during treatment. Learned APG has submitted that the FIR lodged under Section 302 PPC and Section 322 PPC was added to the challan by police after investigation; and that sufficient incriminating material was collected by the police to connect the applicant with the alleged crime. She further argued that the maximum punishment for the offense under section 302 PPC is life imprisonment or death which comes in the prohibitory clause of Section 497(1) Cr.P.C. She prayed for the dismissal of the bail application.

6. I have heard learned counsel for the parties and have perused the material available on record with their assistance.

7. Tentative assessment of the record reflects that the alleged incident has taken place at the house of the accused and as a result, the deceased Komal suffered burn injuries. She was taken to the Civil Hospital Karachi by her sister Neelam and the applicant did not bother to rescue her though he was present in his house as per his interrogation report recorded during the investigation. After being admitted to the hospital in Burns Ward, her alleged final words were noted by her sister Neelum in which she disclosed that earlier her husband started quarreling with her and gave her severe beating, and subsequently set her ablaze. Immediately, thereafter, she informed her brother i.e. complainant on the phone about the said episode. The deceased ultimately died as a result of the burns received by her. The learned counsel for the applicant has given much stress on the point that it was a case of suicide, but it is also an admitted position that the applicant did not report the incident to the police

station if it was a case of suicide. This defense plea or hypothetical question, would not make it a case of further inquiry simply for the reason that it could be answered by the trial Court subsequently after the evaluation of evidence. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738), where it is held that at the bail stage, the court is not to make a deeper examination and appreciation of the evidence collected during the investigation or to conduct anything like a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question of whether or not there exist reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left unrebutted, may lead to the inference of the guilt of the accused.

8. Prima-facie it appears that after registration of the F.I.R. Police recorded statements of witnesses namely Anam, Neelam, and complainant under Section 161 Cr.P.C., who described the ordeal of deceased Komal. The prosecution has also obtained the Post-mortem report/MLO report dated 03.11.2022 of Burns Centre Civil Hospital, Karachi with the death certificate, which supports the version of the complainant. Police also recovered the burnt Shalwar Kameez, hair and broken bangles of the deceased, a bottle of typhoon, and one lighter as well as the clothes of the applicant as incriminating articles to connect the applicant with the alleged crime. Prima facie this is sufficient evidence to discard the point of view so put forward by the learned counsel for the applicant for the simple reason that in bail matters, only tentative assessment is to be made and deeper appreciation of evidence is not to be discussed to avoid prejudice the case of either party at trial.

9. The first ground raised by the learned counsel for the applicant is that the role for causing burn injuries to the deceased Komal has not been assigned to the applicant/accused and this is a fit case of further inquiry. This ground is not helpful to the applicant for the reason that the name of the applicant is mentioned in the F.I.R. with a specific role; and, nothing was/is available on record to show that the complainant party had any motive or reason to falsely implicate the applicant/accused in the case. The proposition advanced by learned counsel, in the form of a rule of evidence, cannot be accepted as one of general application. The appreciation of

evidence and the drawing of conclusions therefrom in relation; to all the circumstances is the function exclusively of the trial Court. It cannot be anticipated by this Court dealing with an ancillary matter, e.g., the grant of bail, pending trial. Even otherwise the law on the subject proposition has already been settled by the the Supreme Court in the case of SARWARI V.THE STATE (1991 SCMR 289).

10. The second ground of the applicant is that the prosecution has applied section 322 PPC in the charge sheet and no punishment of any period, except the payment of Diyat, has been provided under Section 322, P.P.C., and no express provision of law exists to show that punishment of Diyat attracts the prohibitory clause of Section 497 Cr.P.C as such the case of the applicant requires further inquiry. The Supreme Court in a recent judgment has held that the perception of further inquiry is a question that must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt concerning the involvement of the accused in the crime.

11. To appreciate the aforesaid proposition further, in my tentative view, in such like cases it is for the learned trial Court to hold at the trial whether the evidence adduced by the prosecution would bring the case of the accused within the ambit of Section 322, P.P.C., or otherwise; therefore no findings could be offered at the bail stage and it cannot be said that the case of the applicant falls within the ambit of further inquiry until and unless evidence is recorded on the subject proposition. Therefore, *prima facie* the offenses with which the applicant / accused is charged are non-bailable. Bail in such like situation is not the *right* of the accused but is a *discretion* that the Court has to exercise keeping in view all the facts, including the manner of commission of the offence. On the aforesaid proposition, I am fortified by the view taken by the Supreme Court in the case of Majid Naeem v. The State, (2011 SCMR 1227) in which Supreme Court was pleased to place the case of the the accused under Section 322 PPC and dismissed his bail application. Because of the ratio of the judgment discussed supra, I am of the tentative view that *prima facie*, because of the nature of the allegation leveled against the applicant and the evidence so far collected during the investigation, the applicant is not entitled to a grant of bail.

12. The third ground raised by the learned counsel for the applicant is that the case against the applicant does not fall within the prohibitory clause of Section 497(1) Cr. P.C., suffice it to say that section 302 PPC falls within the prohibition contained in section 497(1) Cr. P.C., So far as the issue of further inquiry is concerned, the Supreme Court in several cases interpreted subsection (2) of section 497, Cr.P.C. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the police or by the Court in respect of the merits of the case. Hence, the case in hand not being covered by subsection (2) of section 497 Cr. P.C, the applicant is not entitled to bail thereunder as of right. On the aforesaid proposition, I am guided by the decision Supreme Court in the case of Iqbal Hussain v. Abdul Satar and another (PLD 1990 SC 758).

13. The fourth ground of delay in lodging of the F.I.R was raised by the learned counsel for the applicant, perusal of the record reveals that, no doubt, there is a delay in lodging of the report but the same has been explained and in such like matters, the delay is no ground for creating any doubt regarding the occurrence of the incident as in the present case, the applicant has shown his presence at the time of occurrence, and such delay if any cannot be made a ground for bail when otherwise there is sufficient material available on the record which prima facie connecting the accused with the commission of the offense. On the aforesaid proposition, I am fortified with the decision of the Supreme Court in the case of Mehmood Ahmad Vs. The State (1995 SCMR 127). The submission made on behalf of the applicant that there are no witnesses to corroborate the alleged offense, therefore, has no force, since the complainant and Pws Nellum and Anum have made a direct allegation of causing the death of their sister against the applicant / accused, their statement prima-facie connect him with the commission of the offense alleged against him. It is well-settled that the accused in such a heinous offense is not entitled to the concession of bail.

14. On the point of the statement of the deceased before her death to the PW Neelam, Anum, and the complainant, prima facie that such statements can be made before a private person; and, there is no legal requirement that the declaration must be read over or it must be signed by its maker, however, it should be influence free, and, prove such declaration the person by whom it was recorded should be examined and such declaration becomes a substantive piece of evidence when it is proved before the Court of law that it was made by the deceased; besides

corroboration of a dying declaration is not a rule of law, but the requirement of prudence, therefore at this stage judicial propriety demands that PWs Mst. Neelam, Anum, and the complainant before whom such a statement was made by the deceased be examined by the trial Court on priority basis so the truth may come out.

15. As per the police file the applicant was arrested on 12.01.2023 and police challaned the case under Sections 302 and 322 PPC. MLO has also pointed out that the deceased Mst. Komal aged about 24 years was admitted to the burns center, Civil Hospital Karachi on 03.11.2022 and was diagnosed with 69.75 / FB+II i.e. 80% burns, and the cause of death was diagnosed as cardiac pulmonary arrest.

16. It appears from the Interrogation Report of the applicant that he allegedly admitted his presence in the house where the victim was burnt, however, the applicant failed to save her and /or take her to the hospital, and even failed to participate in the funeral proceeding of the deceased wife rather he took another plea that he became unconscious and was admitted in hospital, which prima facie shows his intention, however without prejudice to the rights of the applicant, the aforesaid factum could be taken care of by the trial court after recording evidence of the parties on the subject points.

17. The offense for which the applicant is allegedly involved is punishable by death or imprisonment for life and hence falls within the prohibitory clause of Section 497 (1) Cr.P.C. Therefore at this stage the applicant has failed to make out a case of further inquiry as provided in Section 497 (2) Cr.P.C., for the reasons discussed in the preceding paragraphs.

18. In view of the above, at this stage, I am not inclined to grant bail to the present applicant in such circumstances of the case at hand. Consequently, the present bail application is dismissed. The trial Court is also directed to ensure that the trial of this case is taken up on a priority basis and the same is concluded within three months and if the charge is not framed, the same shall be framed positively on the next date of hearing.

19. It is hereby clarified that the assessment made and the findings contained herein are tentative which shall not prejudice the case of any of the parties, and the trial court shall decide the case strictly on merits.

JUDGE