

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2089 of 2023

Criminal Bail Application No.2072 of 2023

Criminal Bail Application No.2060 of 2023

- Applicant : Tariq Jawed S/o Faqeer Muhammad  
in CrI. B.A. No.2089/2023 Through Syed Amir Ali Shah, Advocate
- Applicant : Mst. Fozia Rani W/o Ziauddin Zia  
in CrI. B.A. No.2072/2023 Through Mr. Mazhar Hussain  
Khokhar, Advocate
- Applicant : Muhammad Naseer @ Naeem Nasir  
in CrI. B.A. No.2060/2023 S/o Abdul Ghafoor  
Through M/s. Muhammad Farhan,  
Shahzada Saleem & Asif Ibrahim,  
Advocates
- Complainant : Muhammad Mobin S/o Aamir  
Through Mr. Muhammad Qasim Niazi,  
Advocate
- Respondent : The State  
Through Mr. Abrar Ali Khichi, Addl.  
P.G. Sindh a/w SIP/I.O. Mumtaz Ali  
PS Landhi
- Date of hearing : 02.10.2023
- Date of order : 02.10.2023

### **ORDER**

**AMJAD ALI SAHITO, J** – By this common order, I intend to dispose of all three bail applications, whereby the applicants named above seek pre-arrest bail in Crime No.449/2023 U/s 322/34 PPC at PS Landhi, after their bail plea has been declined by the learned XII-Additional District & Session Judge, Karachi East vide order dated 12.09.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicant Mst. Fozia Rani, the applicant is innocent and has falsely been implicated in this case; that in fact the operation was conducted by Dr. Shireen but the complainant has *mala fide* implicated the present applicant in this

case, otherwise there is no role against the applicant Mst. Fozia; that the applicant has never conducted any operation as she is only a certified LHV; that in fact at the time of operation, the applicant was available in the upper portion of the house for treatment of her mother; that the applicant is attending the Court and she is no more required for further investigation. He lastly prays for confirmation of bail. Whereas learned counsel for applicant Muhammad Naseer submits that the applicant is a certified O.T. Technician and previously served in a Government hospital, however, after retirement, he has attached with different hospitals; and his only duty is to check whether the machines installed in the operation theatre are properly working or not, as such, he has no link with the commission of offence. He also prays for confirmation of bail. Learned counsel appearing for Tariq Javed submits that the applicant is also a Technician and he has no concern with the commission of the offence; that no role is assigned against the applicant except he was present in the operation theatre. He lastly prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant as well as learned Addl. P.G. vehemently opposed for confirmation of bail to the applicants on the grounds that all three applicants were very much involved in this offence. The applicant Mst. Fozia is running a clinic in the name of Dr. Fozia whereas accused Fozia is only a certified LHV. The accused Tariq is said to be an O.T. Technician but when his O.T. certificate was sent to Sindh Medical Faculty, Karachi for verification, the same was found fake. Further, I.O. present in Court states that he has collected ample evidence which shows that Dr. Shireen was present in Hub Baluchistan on the day of the incident, as such, the claim of the applicants that the operation was conducted by Dr. Shireen has no force.

5. Heard the arguments and perused the material available on record.

6. Admittedly, the accused Fozia being LHV was running a clinic with the name and style "**Dr. Fozia Clinic & Maternity Home**". Whereas, the accused Fozia is neither an MBBS doctor nor a Gynecologist but was running above said clinic with her name. On the day of the incident, the complainant brought his wife Sidra Naz at her clinic where she was admitted for the delivery of the child. However, Dr. Tasneem told the complainant that delivery

would be normal. But thereafter, the patient Sidra was shifted to a maternity home for cesarean delivery. The applicant Fozia allegedly received Rs.35,000/- from the complainant. Thereafter, she disclosed to him that a baby was born and after 15 minutes of the operation, she told the complainant that the baby had drunk shit water so also informed him that the blood of patient Sidra continuously oozing as such she has been referred to Gynaecological Emergency Ward, Jinnah Hospital where the patient Sidra was admitted. However, it is strange to note here that near about 09 bottles of red blood and 08 white cells were given to the patient Sidra but she could not survive and expired in the JPMC.

7. The role assigned against the applicant Fozia is that neither she is a Doctor nor a Gynecologist expert but she has conducted the cesarean operation resulting in the death of patient Sidra. The plea taken by the learned counsel for applicant Fozia is that in fact the surgery was conducted by Dr. Shireen and during her treatment the patient lost her life. The I.O. present in Court states that he has recorded the statement of Dr. Shireen wherein she has clearly denied from conducting the said operation and states that at the time of the incident, she was available at Hub Baluchistan, however, this contention of Dr. Shireen can be verified from the CDR report collected by the I.O. Further, in her 161 Cr.P.C. statement, Dr. Shireen stated that the applicant Fozia pressurized her to admit that she has conducted the said operation but on refusal, the applicant Fozia implicated her, otherwise she has no concern with the offence. Things do not end here as the applicant Fozia also committed an offence under section 419 PPC. Actually, she was simply LHV but was running a clinic and presenting herself as a Doctor. Learned counsel for the applicant also provided a photocopy of the letter obtained from the file of the deceased wherein the patient was referred by Dr. Nazia, not by Dr. Shireen.

8. Reverting to the case of accused Tariq Javed and Muhammad Naseer, both the accused mainly contended that they are O.T. Technicians and they have no link with the commission of the offence. But learned Addl. P.G. submits that when the technician's certificate of accused Tariq was sent to the office of the Director/Controller of Examination, Sindh Medical Faculty,

Karachi for verification, the same was found fake vide its letter dated 22.08.2023. Further, both the accused/O.T. Technicians knew that the accused Fozia was not a doctor nor expert but even then they remained in the operation theatre and proved their expertise and did not show any resistance over the operation being conducted by LHV accused Fozia, as such, they have also shared their common intention in participating the said operation. Further, this is not a case of simple negligence or a case of Qatl-e-shibh and, Qatl-e-bis sabab. The term negligence is used in a legal concept that refers to the failure to exercise reasonable care or caution in a situation where one has to do so. In legal terms, it involves a breach of duty owed to another person or entity, resulting in harm or damage.

9. In the instant case, accused Fozia, being LHV, was running a clinic and was conducting the cesarean operation, knowing that neither she is an MBBS doctor nor a Gynecologist and if any mishap happened, she could not handle it and any person could lose his life. This also happened in the present case in which a young lady lost her life when a wrong cesarean operation was conducted by the accused Foiza. In the present circumstances, I have no hesitation to say that this is the murder of one innocent patient lady Sidra, who lost her life in the hands of these quack doctors, untrained, and non-qualified accused persons. No enmity or ill-will or *mala fide* has been pointed out by the learned counsel for the applicants for false implication in the present case by the complainant or police/I.O. of the case. At the bail stage, only a tentative assessment is to be made. Sufficient material is available on the record which connects the applicants with the commission of the alleged offence.

10. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above,

I would like to mention that the grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on Trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation

11. In view of the above, learned counsel for the applicants have failed to make out a case for a grant of bail in subsection (2) of Section 497 Cr.P.C. Resultantly, all three bail applications are **dismissed**. The interim orders passed on 19.09.2023, 18.09.2023 and 15.09.2023 in Crl. B.A. No.2089/2023, Crl. B.A. No.2072/2023 and Crl. B.A. No.2060/2023 respectively are hereby recalled.

12. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Kamran/PA