

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 960-B/ 2020
Sumera Bibi
Versus
The State etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

17.09.2020	Ms. Bushra Saleem, Advocate for petitioner, Syed Shahbaz Shah, State Counsel, Hafiz Munawar Iqbal and Syed Pervaiz Zahoor, Advocates for complainant, Rana Tasneem ASI/CIA with record.
------------	---

This is post-arrest bail petition by accused-petitioner (*Sumera Bibi*) in F.I.R No. 334, dated 07.10.2019, under Section 381, 411, 337-J & 109 PPC, Police Station Lohi Bhair, Islamabad.

2. Briefly, the allegations set-forth in the F.I.R, are that on 05.10.2019, at about 08:15 am, within the area of Jinnah Garden, Lohi Bhair, Islamabad, petitioner, who was employed as a maid, committed theft in the house of the complainant and took away cash Rs.100,000/-, prize bonds valuing Rs.300,000/- besides gold ornaments worth Rs.12,00,000/-, after administering intoxicant to the inmates that includes parents, wife and daughter of the complainant.

3. Learned counsel for the petitioner contends that there is delay in lodging the F.I.R; that co-accused Sana has been discharged by the police; that challan has been submitted in the court; that petitioner is no more required for further investigation; that mere involvement in other cases of like nature without conviction

cannot be considered an impediment when the case otherwise calls for further inquiry and that she has a suckling baby of about six months old, which, otherwise, entitles her to the concession of bail.

4. On the other hand, learned counsel for the complainant argued that petitioner is a habitual offender; she is an active member of dacoits gang; involved in eleven other cases of like nature; that evidence in the shape of CCTV footage, MLR and recovery of gold bangles, finger ring, bracelet and prize bonds which were duly identified by the complainant, *prima facie*, connects her with the commission of alleged offence; that during the occurrence petitioner also administered intoxicant to father of the complainant, aged about 70 years, therefore, she is not entitled to the concession of bail as in case of her release there is apprehension of repetition of offence.

5. Learned State counsel reaffirmed that the challan has been submitted in the Court on 17.12.2019 and that the petitioner has a child of about six months age. The I.O. confirmed that the petitioner has given birth to a child in jail who is now aged about six months.

6. Arguments heard, record perused.

7. The last submission of the learned counsel qua release of the petitioner on bail due to having suckling baby, warrants instantaneous response, therefore, without dilating upon other merits of the case, lest it may cause prejudice to the case of either side. The question before the Court is that a minor child is in jail, who has not committed any offence. This Court beseeches

guidance on the subject from the judgment i.e. **Mst.Nusrat V. The State** (1996 SCMR 973), wherein the Hon'ble Supreme Court of Pakistan has graciously held that *"a suckling child of the petitioner cannot be kept in jail. The concept of welfare of minor is incompatible in jail life. The detention of an infant child in jail for the crime committed by his/her mother would not be in the interest of justice as well as in the welfare of the minor."*

The Hon'ble Apex Court has graciously relied upon famous case of "**Ghamidiyyah**", where The Holy Prophet (Peace Be Upon Him) suspended the sentence of pregnant woman not only till delivery of child but also postponed it till suckling period i.e. two years. While granting concession of bail to the lady petitioner, the Hon'ble Apex Court laid emphasis that *"the golden principle of administration of justice enunciated by The Holy Prophet (Peace Be Upon Him) must be strictly observed and followed in our country."*

8. Thereafter, relying upon the judgment (*Supra*), the Hon'ble Lahore High Court in case of **Mst. Nasreen V. The State** (1998 MLD 1350) had granted concession of post arrest bail to a lady accused of murder case on the ground that the *"welfare of the suckling child so demands that the child should not be made to suffer in jail for the murder, allegedly committed by his mother."*

9. The same view was reiterated subsequently by the Hon'ble Lahore High Court in the case of **Nasim Bibi V. The State** (2019 MLD 1157), where too, lady, accused of a murder

case was granted the concession of post arrest bail due to having suckling baby.

10. Another precedent on the subject is the case of Mst. Nazima Bibi V. The State and another (PLD 2018 Peshawar 138) wherein the Hon'ble Peshawar High Court in a murder case extended concession of bail alone on this score that the accused/petitioner had given birth to a male child in the jail premises. It was held that the law of the land is that the child should not suffer for an offence which he had not committed and while keeping in view the leading judgment of the Hon'ble Apex Court in Mst. Nusrat case (*supra*) the lady accused was allowed bail.

11. The Hon'ble Peshawar High Court in case of Mst. Haseena V. The State (2019 MLD 176) by following the wisdom from the precedent of "Ghamidiyyah", allowed post arrest bail to a lady, accused of having in her possession huge quantity of heroin i.e. 3.330 Kg, although amounts offence against society i.e. public at large and entails death punishment.

12. It is common in our society that parents are beneficial and useful for their children and law of the land also imposes certain responsibilities upon the parents in respect of maintenance of the children but oftenly, it also happens that the kids become a survivor for their parents, although very often but it happens some way.

The case in hand is a good example wherein a minor child has become a source of convenience, comfort, rescue, blessing and reward for an accused mother. A suckling baby, although, is not in a position to help out his

accused mother by physical means but only his entity/existence has become a blessing for the mother. She should be thankful to her suckling baby in her lap who has become a gift for her release.

13. The child has become a source for the release of her mother, while the entity of the suckling child has become a factor for the court to extend the concession of bail to the petitioner (mother). Now it is up to the mother, how she treats this relief/opportunity, however the Court expects that she should always remain thankful to her suckling baby and should refrain herself from indulging in nefarious activities.

14. The release of the accused/petitioner does not mean that she has been exonerated of the offence, because the ultimate outcome of the case is the decision on merits by the court of competent jurisdiction. Furthermore, the grant of bail does not amount to acquittal of accused as only the custody of accused is shifted from judicial lock up to the hands of the surety, who made responsible to produce the accused before the Court as and when required.

15. This Court is conscious of the fact that the petitioner is subject of an '*offence against society*' which cannot be taken lightly particularly when the offender appears to be a repeater but at the same time the welfare of a suckling child is also to be kept in view as the child, being subject of the society, should not be made to suffer in jail for an offence, allegedly committed by his/her mother. The society has to provide congenial atmosphere to its infants for becoming good citizens. If early years of a child,

when his/her mental growth retains immense importance, are spent in jail environment, that would not only be harmful for himself/herself but for the society at large as well because ultimately he has to become subject of society where he has to perform his role. Thus it is inevitable for the survival of the child that the mother be released on bail so the child can prosper in a healthy environment at home which, otherwise, could not be provided in the jail enclosures.

16. In view of above, the instant bail petition is accepted, petitioner (Sumera Bibi) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- (*Rupees One Lakh*) with one surety in the like amount to the satisfaction of the learned Trial Court.

17. Needless to mention that above is only tentative assessment for the purpose of instant bail petition only and shall not effect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

APPROVED FOR REPORTING