

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

Criminal Misc. No. 1486-B of 2022

**Syed Badar-e-Munir Shah
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.
	13.12.2022	Raja Muhammad Aleem Khan, Zia-ur-Rehman, Asif Ali Tamboli and Mushtaq Khaki, Advocates for petitioner along with petitioner in person. Malik Shaukat Hayyat, Advocate for complainant. Mian Zain Ul Abideen Qureshi, State Counsel. Shabbir Ahmed, Inspector.

ARBAB MUHAMMAD TAHIR J: Through the instant Criminal Misc.. petitioner-accused (*Syed Badar-e-Munir Shah*) prays for pre-arrest bail in FIR No. 411, dated 02.04.2022, Under Section 302/34 PPC, registered at Police Station Lohi Bheer, Islamabad.

2- According to the allegations set-forth in the FIR, on 23.09.2021 at about 11:00 pm the complainant receipt a telephonic call of Zia ul Haq, brother of his son in law, that his daughter namely Aisha Shabbir died due to heart attack. The complainant expressed his suspicion that his daughter had be done to death by his in laws including *Abdul Baki Shah, Syed Badar Munir Shah (petitioner), Mst. Asma Zohra, Abdul Basit, Siraj Munir Shah, Zia ul Haq, Pervaiz Musharaf and Abdul Salam Shah*. The complainant requested for postmortem examination of her deceased daughter and handing over of her dead body for funeral purposes. It was also alleged that the in laws of her deceased daughter wanted to contract second marriage of the husband of his deceased daughter, snatched cell phone from her and also restrained her to meet with her parents.

3. Learned counsel argued that involvement of the petitioner is tainted with malafide on the part of the complainant who involved all family members in a fabricated case as the deceased died due to cardiac arrest: that it was a un-scene occurrence; that the deceased, in her life time,

herself parted her way the parents; that no incriminating material is available on record against the petitioner; that the postmortem report is without any conclusion about the cause of death; that petitioner has joined the investigation; that he is an aged person of about 77 years age, therefore entitled to the concession of pre-arrest bail. Reliance is placed upon case law reported as 2016 SCMR 1617, PLD 2021 SC 7656, PLD 2021 SC 708, 2022 PCr.LJ 1824, PLD 2017 Lahore 337, 2020 YLR 2018 and 2005 SCMR 1524.

4. On the other hand learned State Counsel assisted by learned counsel for the respondents repelled the above submissions by contending that the petitioner is specifically nominated in the FIR; that an innocent girl had been done to death by strangulation by her in laws including the petitioner; that the postmortem report supports the allegation set-forth in the FIR; that investigation is yet to be completed for which corpus of the petitioner is necessary; that the alleged offence is not only heinous but also entails capital punishment, therefore, remedy of extra ordinary concession of pre-arrest bail is not available to the petitioner.

5. Heard, record perused.

6. It is settled principle that pre-arrest bail is an extra ordinary remedy, to be extended by diverting usual course of law for the purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique. The protection is based upon equity and cannot be extended in every criminal case, prima facie, founded upon incriminatory evidence, warranting custody for investigation purposes. Reliance is placed upon case of 'Maqbool Ahmad Mahessar and others v. National Accountability Bureau (NAB) through Chairman and others' (2021 SCMR 1166).

7. Perusal of record reveals that though the complainant in the FIR alleged to have suspicion that his daughter (deceased) was done to death by his in laws including the petitioner yet the fact remains that no incriminating material has yet come on record which, prima facie connects the petitioner with the commission of the alleged offence. The

petitioner has since joined investigation wherein he has taken the plea that at the relevant time, he had been present in sector I-10, Islamabad.

8. In absence of any incriminating material, that earlier the parties had strange relations if seen in conjunction with the fact that the petitioner, who is otherwise an aged and sick person and statedly was not present at the alleged place of occurrence and that is plea of alibi was not proved to be otherwise during the course of investigation nor such any opinion of the I.O is part of record, makes the case of petitioner, one, warrants exercise of extra ordinary discretion of pre-arrest bail.

9. The Hon'ble apex Court in a recent pronouncement in the case of ShahzadaQaiserArfat alias Qaiser v. The State and another" (PLD 2021 Supreme Court 708) has graciously held that:-

"the power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of liberty, dignity, due process and fair trial. Pre-arrest bail is in the nature of a check on the police power to arrest a person. The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing mala fide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences and has not required independent proof of mala fide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the

circumstances which by themselves indicate the mala fide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove mala fide on their part."

(Emphasis added)

10. The Hon'ble Apex Court in the case of **Aqsa Safdar & another v. The State and others (2019 SCMR 1923)**, wherein the bail before arrest of the petitioners was confirmed, while holding that there was no direct evidence present on the record against the petitioners for their involvement in the alleged offence. Malafide on part of the complainant could not be ruled out for false implication of the petitioners.

11. The ratio set in the case of **Shahzada Qaiser Arfat supra** guides to hold that, if there is non-availability of incriminating material against an accused, his implication by the complainant or the persistence of the police to arrest him, would be construed as the circumstances, which by themselves indicate malafide on the part of the complainant or the police and in that eventuality, an accused need not to lead any evidence to substantiate the malice or malafide on part of the complainant or the police.

12. Having examined the case, on tentative assessment of the material placed on record, it is concluded that petitioner has succeeded to make out a case for exercise of extra ordinary discretion of pre-arrest bail for reasons enumerated above. Consequently, instant criminal miscellaneous is allowed. Ad-interim pre-arrest bail already granted to the petitioner vide order dated 22.11.2022 is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

13. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during the trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE