

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 421/B/2019.

Saima Javed

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.
	07.08.2019.	Mr. Mudassar Rizwan, Advocate for petitioner. Barrister Ayesha Siddique Khan, State Counsel. Mr. Zahid Asif Ch. and Mr. Tahir Jalal Wattoo, Advocates for respondent No.2. Kamal, Inspector, P.S. Tarnol, Islamabad.

Through this CrI. Misc. petition, the petitioner has applied for post-arrest bail in case FIR No.63, dated 22.02.2018, U/S 302/365/392/411/201/34 PPC, P.S. Lohi Bher, Islamabad.

2. Brief facts referred in the instant FIR are that complainant/respondent No.2 Raja Nasir Raza got lodged the instant FIR with the allegations that his cousin Raja Yasir Murtaza, aged about 35/36 years was living in Pakistan Town Phase-I with his family and on 21.02.2018, he left his house on his vehicle No.AEG-854 at about 04:00 a.m but did not return and there is likelihood that he has been kidnapped by unknown persons.

3. Learned counsel for the petitioner contends that petitioner is wife of missing person Raja Yasir Murtaza whose dead body was subsequently recovered from

Rawal Dam and his missing vehicle was also recovered from Rawalpindi; that present petitioner was nominated in this case through supplementary statement dated 01.03.2018 and she was forced to record her statement U/S 164 Cr.P.C. after snatching her minor suckling child and as a result whereof she was allegedly involved through the said confessional statement by the police as well as by the complainant; that petitioner is behind the bars since 11.03.2018 and trial has not yet been concluded, whereby she is claiming post arrest bail on merit as well as on the ground of statutory delay.

4. Conversely, learned counsel for the complainant as well as learned State Counsel contend that petitioner is nominated through supplementary statement and she has recorded her inculpatory statement in which entire incident of murder of Raja Yasir has been explained with the help of co-accused of the petitioner in a planned manner; that the delay in the conclusion of trial is not attributed to the prosecution and the trial Court has already recorded evidence of 06 prosecution witnesses and there is likelihood of conclusion of trial within next 45 days after summer vacations.

5. Arguments heard, record perused.

6. From the tentative assessment of record, it reveals that petitioner has been nominated in criminal case FIR No.63, dated 22.02.2018, U/S 302/365/392/411/201/34 PPC, P.S. Lohi Bher, Islamabad through supplementary statement recorded

on 01.03.2018. The petitioner is wife of deceased Raja Yasir Murtaza who was murdered by co-accused nominated in this case, however, petitioner/wife of deceased got recorded her confessional statement U/S 164 Cr.P.C. in which she has explained the relationship with co-accused Shahid, with whom she has allegedly planned the murder of deceased.

7. Cursory glimpse of record reveals that co-accused Shahid and Waseem visited the house of petitioner in the late night with pre-planned arrangement and they kidnapped Raja Yasir Murtaza on gunpoint and took him on his own vehicle and later on committed murder in a brutal manner. This entire story was narrated by the petitioner/accused before the Magistrate.

8. Challan was submitted in the Court on 06.06.2018, charged was framed on 03.07.2018 and at present six prosecution witnesses have recorded their statements. The record of trial Court reveals that trial is proceeding on fast track. The power of attorney on behalf of petitioner was submitted in the trial Court on 06.09.2018, where-after 58 dates of hearing have been fixed before the trial Court, whereas the Presiding Officer was on leave on 07 dates of hearing, 05 adjournments were granted due to strike of Bar Association and 08 adjournments were granted due to absence of prosecution witnesses. Even otherwise, the case has been fixed for 09 dates of hearing in the month

of July, 2019, for 06 dates of hearing in the month of June, 2019 and for 07 times in the month of May, 2019 before the learned trial Court, which clearly spells out that the trial Court is proceeding with the case in fast track manner.

9. Keeping in view the above background, petitioner is tentatively linked with the hideous crime of murder of her own husband with the help of co-accused and *prima-facie* she is involved in the alleged murder. No malafide or ill will has been established on record against prosecution witnesses for false implication of petitioner in this case and no ground of further inquiry exists in favour of petitioner. The evidentiary value of statement U/S 164 Cr.P.C. will be assessed during the course of trial which is at the verge of conclusion, therefore, any benefit of grant of post arrest bail on merit is not made out.

10. The petitioner is a woman having suckling child in jail, however, in the peculiar circumstances while considering the background of the case, role of petitioner in the commission of murder of deceased clearly amounts to facilitating the commission of offence. The statement of the petitioner is self inculpatory and in such circumstances the bail has been denied. Reliance is placed upon 2012 MLD 1894 (Imran Alias Sunny Vs. State), 2018 MDL 1319 (Umar Zeb Vs. State).

11. Although, the petitioner is claiming post-arrest

bail on the ground of statutory delay but in present circumstances the trial is likely to be concluded within next 45 days as it is going on fast track, even learned counsel for complainant as well as learned State Counsel stated before the Court that they will facilitate for early conclusion of the trial and some adjournments have been taken by the petitioner herself, which is contributory factor in the delay of the trial. In such type of eventuality the principle has been laid down in 2016 SCMR 1538 (Babar Hussain Vs. State), 2011 SCMR 1332 (Rehmat Ullah V/s. The State and another), PLD 1968 SC 353 (Riasat Ali Vs. Ghulam Muhammad).

12. As such benefit of fourth proviso in this case is not made out, therefore, while considering the peculiar circumstances of the case, instant bail petition is hereby dismissed and learned trial Court seized with the matter is directed to conclude the trial within next two months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid