

ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. CrI Misc 78-B-2012.

Saba Altaf

**. Titled**

$$V_S$$

## The State & Another

- (a) Judgment approved for reporting Yes/ No
- (b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made. Yes/ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

### NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

Crl. Misc. No.78-B/2012

Saba Altaf  
Vs.  
The State & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03)	15-02-2012	

Mirza Muhammad Nazakat Baig,  
Advocate for the petitioner.  
Raja Rizwan Abbasi, Advocate for  
complainant.  
Mr. Javed Iqbal Butt, Standing Counsel  
with Owais Muhammad, SI.

Through the present bail petition,  
the petitioner seeks post arrest bail, after  
refusal of bail by the learned Additional  
Sessions Judge, Islamabad.

2. Facts in FIR No.342 dated  
11.12.2010 u/s 302 PPC registered at  
Bahara Kahu, Islamabad lodged by  
Zubair Iqbal narrated the incident  
allegedly occurred without date and time  
of incident.

3. As per the story narrated in FIR by  
the complainant that he is a student of  
BBS in Barani University, Rawalpindi. His  
maternal uncle Qaisar Iqbal, who is the  
Field Manager in Daman Engineering  
Company, with whom, he tried to contact  
on mobile phone. On failure of contact,  
he contacted his other uncle Attaullah  
Khan, who informed him about the  
residence of Qaisar Iqbal at St. No.1, Plot  
No.3, Bani Gala, Islamabad and asked  
him to check. The complainant with Asad



Ali Shah and Muhammad Ajmal Khattak, reached at the pointed place at 9:30 a.m., found the gate and living rooms locked. By breaking the locks, they entered and found dead body of Qaisar Iqbal, whose both hands and left foot were tied with electric wire and muffler, also having ligature marks of electric wire on neck. On checking articles, his mobile phone, laptop and cash in the wallet, were missing. He informed 15 madadgar through phone and then lodged FIR.

4. After usual investigation, the present accused along with co-accused were sent up to face the trial.

5. It is argued on behalf of learned counsel for the petitioner that only an allegation of abetment is levelled against the petitioner for which, he relied upon **2009 P. Cr. LJ 109** (Mst. Arifa Vs. The State). It is also argued that the petitioner has been tried to be involved in this case by showing recovery of laptop from the house of the petitioner, when she was in jail. He argued that laptop said to have been recovered on the disclosure of co-accused Amraiz alias Dogar. He argued that if there would have been something available as shown, it could have been recovered at the time of arrest of the petitioner, failing thereof, it leads towards an aspect that such foistation is made to strengthen the false allegation of

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abetment. He also argued that Chowkidar, who concocted the false story of altercation between the deceased, Aftab Hussain Dogar and the present petitioner on 09.12.2010, which is in fact the motive of commission of said offence, same was also further tried to be strengthen by PW Saifullah, cousin of deceased, disclosing the extrajudicial confession of the present petitioner, which he disclosed in a meeting with him regarding conduct of the deceased and the same will not be good for him. He argued that such piece of evidence is inadmissible, as such, not to be relied upon. He argued that petitioner is languishing in jail since 18.12.2010 i.e. the date of her arrest with milk suckling baby and her case has not been proceeded. Therefore, he submit request for grant of bail.

6. Learned counsel for the complainant argued that petitioner was arrested on 18.12.2010, when her earlier bail petition was dismissed for non-prosecution. Therefore, in view of case law reported in **PLD 1986 SC 173, 1996 P. Cr.LJ 370 & 1997 MLD 2522**, successive bail cannot be preferred, when earlier has been dismissed.

He also argued that tentative assessment at bail stage is permissible, not the deeper appreciation and the arguments advanced by the learned counsel for the petitioner, lead towards

deeper appreciation, as such the petitioner is not entitled for grant of bail.

He also argued that star accused is the real brother of present petitioner, accused Altaf and Amraiz alias Dogar are friends of the star accused. Recovery of laptop, since made, even at the pointation of accused Amraiz alias Dogar, but yet from the house of petitioner, though she was in jail at the relevant time, but same is immaterial, as recovery of laptop leads positively towards involvement of the petitioner. Chowkidar has disclosed the motive on the basis whereof investigation moved further resulting in detection of offence. He also argued that charge has been framed on 18.07.2011 as such, trial has commenced, hence carceration not to be attributed to the prosecution, as both sides are equally responsible. He relied upon **PLD 2003 SC 525**, which discusses the commencement of trial in the court, disentitles the accused.

7. Learned Standing Counsel adopted the arguments advanced by learned counsel for the complainant.

8. Arguments heard at length and record perused with the active assistance of respective counsels.

9. From the record, it appears that neither the date nor the time of incident has been mentioned in FIR, which infers a view that before reaching of

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complainant at the house of his maternal uncle i.e. the deceased, he was totally ignorant about his death. But it is very strange that Chowkidar, who afterwards disclosed another aspect thereby involving the petitioner, has left the house without providing any information either to the complainant party or to the police about the incident.

10. Recovery of laptop, as alleged at the time of incident, was in fact made, when the petitioner was behind the bars and it is yet a question shrouded in mystery that why such recovery could not be effected, when the petitioner herself was arrested by the police. Even such a linkage has not been established by the prosecution, as to who kept such laptop at her house.

11. So far the concern of statement of Saifullah, which too, has been recorded belatedly for which, no slight indication has been given by the prosecution about such delay and he being cousin of deceased, kept silent for a lengthy period. Moreover, through statement, he tried to establish the motive by which, the present petitioner is involved to the extent of abetment, but yet his statement has not been supported by any independent corroboration nor this evidence could be proved as a valid piece of evidence in view of Article 71 of Qanoon-e-Shahadat.

*Done*

12. So far the concern of successive bail, I am of the humble view that cited case law verdicts about earlier decisions and connected bail to be decided by the same court or the earlier, if supposed decided on merits, cannot be re-agitated again, unless a new ground occurs, but the instant bail petition, earlier due to dismissal for non-prosecution, stands on the same grounds.

13. Moreover, the authority referred about commencement of trial, cannot be equated with the present case in which, the lady petitioner with milk suckling baby, is languishing in jail with the allegation of abetment, which too, is under clouds of doubt.

14. So far the authority concerned respecting bail declined to the abettor, when his driver committed offence of murder, but in the instant case, principal accused is the brother of lady petitioner for whom, there is no evidence available on record throughout the prosecution case that when such conspiracy was hatched and chalked out, as such, same is immaterial to establish the allegation of abetment. Extrajudicial confession as disclosed by Saifullah, which too, was belatedly recorded, comes within clouds of doubt. As such, I am of the view that evidence collected against the lady petitioner is not of much weight, hence scope of further inquiry into her guilt exists in field.

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15. Therefore, keeping in view the case of the petitioner, which comes within the ambit of Section 497 (2) Cr.P.C., being a case of further inquiry, the present petitioner deserves for grant of bail. The instant bail petition is allowed and the present petitioner is ordered to be enlarged on bail, subject to furnishing local surety in the sum of Rs.2,00,000/- with PR bonds in the like amount to the satisfaction of learned trial court.

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

Zawar

*(Signature)*

Announced in Open Court on 21-02-2012

JUDGE

*Approved for reporting*  
*Dargwa*

*Blue slip attached*

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