

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

Criminal Misc. No. 937-B/ 2020
Nazim Hussain
Versus
The State

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

03.09.2020	Mr. Sajjad Ahmad Bhatti, Advocate for petitioner, Syed Shahbaz Shah, learned State Counsel, Abdul Sattar Baig S.H.O. and Inspector Anees Akbar/I.O. with record.
------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------

Through the instant petition, petitioner (Nazim Hussain) seeks post-arrest bail in FIR No.115, dated 27.04.2020, under Section 302, 148/149 PPC, registered at Police Station Nalore, Islamabad.

2. Briefly, the allegations set-forth in the FIR are that Mst. Ayesha Bibi (deceased) contracted love marriage with one Muhammad Ali and FIR No.59/2020 under Section 365-B/34 PPC was registered on 01.03.2020, wherein she got recorded statement under Section 164 Cr.P.C to the effect that she was not abducted by anyone and contracted marriage with her free consent. The petitioner and others got the marriage dissolved through a divorce deed which was not accepted by the lady; that on 27.04.2020 at about 07:45 pm, when she was confronted with the said divorce deed, she refused to accept the same and rushed out of the house; that she was then chased by the petitioner, co-accused Nasir Hussain, Jahangir, Noor, Talib Hussain and Haji Ahmad; she was intercepted in the fields where co-

accused Nasir Hussain caused her death by firing with .30 bore pistol.

3. Learned counsel for the petitioner contends that it was an unseen occurrence; no overt act is attributed to the petitioner; co-accused Jahangir, Noor Hussain, Talib and Haji Ahmad have been declared innocent by the police; no recovery was effected from the petitioner; investigation is complete and he is no more required for further probe. Learned counsel placed reliance upon case laws reported as PLD 2004 SC 477, 1997 SCMR 445 and 1998 PCr.LJ 11.

4. On the other hand, learned State Counsel argued that the material collected by the prosecution fully implicates the petitioner for the commission of alleged offence, whereby an innocent lady had been murdered as a result of honour killing; offence alleged entails death punishment and that no one has the authority to take law in his own hands in the name of so-called honour, therefore, petitioner is not entitled to the concession of bail. Learned State Counsel refers case laws reported as 2019 PCr.LJ 143 [Karachi] and 2018 PCr.LJ 181 [Peshawar].

5. Arguments heard, record perused.

6. Record reveals that father and wife of the petitioner namely Khadim Hussain and Mst.Abida Bibi in their respective statements under Section 161 Cr.P.C specifically nominated the petitioner to have chased the deceased along with principal accused Nasir Hussain, who intercepted the late in the open

fields and caused her death by firing with .30 bore pistol in the presence of the petitioner.

There is no denial of the fact that the deceased had contracted love marriage with one Muhammad Ali and FIR No.59/2020 regarding the said episode was registered on 01.03.2020 under Sections 365-B/34 PPC, wherein she got recorded statement under Section 164 Cr.P.C to the effect that she was not abducted by anyone and that she contracted marriage with her free will.

7. It also emerges from the record that the petitioner along with others managed to get the marriage dissolved and when allegedly the late was confronted with the divorce deed, she became angry, refused to accept the same and in retaliation rushed out of the house, chased by the petitioner and his brother, principal accused Nasir Hussain, who was having .30 bore pistol. The late was intercepted in the fields, where allegedly in presence of petitioner, principal accused Nasir Hussain caused her death with .30 bore pistol. The role of the petitioner appears to be one of commanding in nature.

8. The material placed on record, *prima facie*, connects the petitioner with the commission of alleged offence which entails death punishment. There is nothing on record or even been argued that the petitioner had falsely been implicated or that he had no objection over the love marriage of the late.

9. The Hon'ble Lahore High Court in *Umer Din V. The State and others* (2017 YLR

Note 378), in an identical situation, rejected the bail application of the father of the victim/deceased girl, even on the ground of delay in conclusion of trial since more than two years of his arrest. It was held that:-

“The post arrest bail on statutory ground is being sought by the father of the victim in an honor killing case. Petitioner stood nominated in the FIR as the one who was present at the time of occurrence. In other words, as per the record, the offence was committed in his presence in his house and he being the head of the family at least remains inactive to avoid the offence. Before his eyes, at least his daughter was being mercilessly killed but he acts with desperation. Any father expected to be more careful and protective for the daughter instead of son.”

10. The Hon'ble Peshawar High Court in **Aziz Ullah V. The State** (2016 P.Cr.LJ 681) refused to grant bail to an accused of Karo Kari (Honour Killing) even on the basis of compromise by observing that according to Section 343 Cr.P.C, in cases of Karo Kari (Honour Killing), Section 302 PPC has not been declared as compoundable.

11. The case laws relied upon by learned counsel for the petitioner do not extend any help to the petitioner due to having distinct facts and circumstances.

12. In view of above tentative assessment, petitioner is not entitled to the concession of post arrest bail, consequently, the instant bail petition is **dismissed**.

13. Needless to mention that this is tentative assessment for the purpose of this

**petition only, which shall not affect/influence
trial of this case in any manner.**

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

Imran