

**ORDER SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 90-B of 2021**

**Naseem Bibi**

**Versus**

**Gull Faraz and another.**

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
<b>(04)</b>	<b>18.02.2021</b>	<b>Mr. Sahibzada Saad Ul Amin, Advocate for the petitioner / accused. Mr. Ikramullah, Advocate for the complainant. Mr. Majid Rasheed Khan, State Counsel. Asif Khan, S.I.</b>

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 534/20, dated 12.12.2020, offence under section 302 P.P.C, registered at police station Ramna, Islamabad.

02. Brief facts of the prosecution case in hand are that the complainant, Gul Faraz, husband of the petitioner / accused reported to police station Ramna on 12.12.2020, that he was married to Mst. Naseem Bibi in the year 2008 and out of this wedlock seven children were born. One son namely Muzammel Abbas was handed over to Zamin Abbas (brother of complainant) at the time of his birth. After passing of five years, the petitioner / accused brought her son back from Zamin Abbas and used to torture her minor son occasionally, consequently, due to severe physical torture son of the complainant and petitioner (Muzammel Abbas) has died, hence the instant FIR.

03. Learned counsel for the petitioner / accused contends that there is no evidence of Qatl-e-Amd against the petitioner; the petitioner / accused is

pregnant of 07 months; the investigation has been completed; the petitioner is no more required in the case and being female pregnant accused she is entitled for grant of bail. Learned counsel for the petitioner / accused has relied upon the cases reported as “2012 PCr.LJ 841 and 2011 PLD 1015”.

04. Conversely, learned counsel for the complainant has contended that the petitioner / accused has committed a heinous crime; the petitioner / accused is nominated in the FIR; specific role of subjecting her son to physical torture has been attributed, iron rod has also been recovered from kitchen of the petitioner’s house on her pointation; the offence falls under the prohibitory clause of section 497 of Cr.P.C, hence the petitioner / accused is not entitled for the grant of bail. Learned counsel for the complainant has relied upon cases titled as Mst. Naila Younas V. The State (2020 MLD 1036), Gul Hassan V. The State (2020 YLR 1919), Muhammad Iqbal V. The State and another (2020 PCr.LJ Note 34), Mazal Khan V. The State (2020 MLD 755), Sham and 2 others V. The State (2019 YLR Note 82), Amir Hamza V. The State and others (2019 YLR Note 57).

05. Arguments heard, record perused.

06. It is mentioned in report dated 17.12.2020 of Pakistan Institute of Medical Sciences (PIMS) that the petitioner / accused was having the pregnancy of 06-months which is now 8<sup>th</sup> month. There is no motive available with the prosecution against the petitioner for committing Qatl-e-Amd, regarding the

commission of offence with the intention of causing death by the petitioner / real mother of the minor son / deceased. Police has also not collected any evidence.

07. Mere heinousness of the offence is not sufficient to take away the discretion of the Court to grant bail which is never refused as punishment and there is no legal or moral compulsion to keep a person in jail. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by mistaken relief of bail but no satisfactory reparation can be offered to the accused for her unjustified incarceration if she is acquitted ultimately. Reliance is placed upon case titled as “**Manzoor and 4 others V. The State (PLD 1972 SC 81)**”.

08. Admittedly the petitioner has pregnancy of 08-months. In famous case of Ghamidiyya, our Holy Prophet Muhammad (S.A.W) had suspended the sentence on pregnant woman, not only till delivery of her child but also postponed it till suckling period i.e. two years, obviously for the welfare of her kid, which indicates towards paramount importance and significance of the right of a suckling child in Islam and the unprecedented care taken of, and the protection given to a child born or expected to be born, by the Holy Prophet Muhammad (S.A.W). It has been held by the Hon'ble Supreme Court in case titled “**Mst. Nusrat v. The State (1996 SCMR 973)**”, that the aforesaid golden principle of administration of justice enunciated by the Holy

Prophet Muhammad (PBUH), must be strictly observed and followed in the country and the august apex Court, respectfully following the same golden principle, allowed bail to petitioner in the cited case. The Apex Court in the last Paragraph of the judgment added that the principles of justice enunciated by the Muslim Jurists/Imams/Qazis are more illuminating and full of wisdom than principles enunciated by the Western Jurists and scholars. For the true and safe administration of justice in civil and criminal cases, the Courts in Pakistan must seek guidance from decisions given and the principles of dispensation of justice enunciated by our Holy Prophet Hazrat Muhammad (PBUH), the four caliphs (Razi Allah Ta'ala un Hum), Imams and eminent Qazis. These decisions and principles should be given overriding effect over the Western principles of justice.

09. Deriving wisdom from the judgment of the Apex Court, I without touching the merits of the case in detail, lest it may prejudice the case of either side, allow this petition and release the petitioner on bail, on the sole ground of 08-months pregnancy, provided she furnishes bail bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with one surety in the like amount to the satisfaction of learned trial Court. The petitioner may deposit surety in cash.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Bilal

*Approved for reporting.*