

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.1385-P/2015

Date of hearing: _____

Petitioner (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.-

Petitioner Mst. Shakeela, seeks her release on bail in case FIR NO.463 dated 07.05.2015, registered under section 365-A PPC, Police Station Chamkani, Peshawar, wherein she alongwith her husband absconding co-accused Mirza Khan and other absconding co-accused, are charged for abduction of 19 years old student, namely, Sartaj.

2. For her release on bail, besides other grounds, pertaining to merits of the case, the petitioner has also agitated the ground of having

09 months old suckling baby in her lap. Arrest card of the petitioner justify her plea, however, it was contended during the course of arguments by learned counsel for the petitioner that other two kids/ sons of the petitioner, have also been deposited in the Jail with the petitioner on her application and requested that in the interest of innocent minor kids of the petitioner, their mother/the petitioner be released on bail. This Court in order to reach a right conclusion, directed learned AAG for the State to requisition the petitioner from concerned Jail and be produce before the Court, in compliance whereof, she was produced in custody by lady constable Naheed. Besides a female suckling baby, I noticed two other kids with her. On query, she disclosed that female baby in her lap, namely, Raheen is 09 months old, while the other two kids, namely, Ihsanullah aged 04 years and Inam aged 03 years, are her sons, who have

been deposited in the Jail on her request. She stated at the bar that her husband is absconding in the instant and there was no body to look after her kids, therefore, they have been deposited with her in the Jail.

3. Learned counsel for the petitioner contended that petitioner being a female and having minor kids including a suckling baby, on this ground alone is entitled to be released on bail.

4. Conversely, learned AAG assisted by learned counsel for the complainant contended that besides recovery of the abductee from the house of the petitioner, her confessional statement prima facie connected her with the commission of offence, therefore, she cannot claim bail under proviso to S.497 Cr.P.C. on the ground of her sex, as S.21-D Anti Terrorism Act, 1997, has specifically ousted the provisions of sections 439, 491, 496, 497, 498, 498-A and

561-A of the Code, in cases triable by the Anti Terrorism Court. They sought dismissal of the application.

5. Arguments heard and record perused.

6. Admittedly, petitioner has 09 months old suckling girl in her lap and two minor kids deposited with her in the jail, later on. The suckling baby the petitioner as well as her other children kept in jail, are undoubtedly innocent. They are kept in jail with their mother/ petitioner obviously for their welfare as their father is also accused in the case and is absconding. The concept of welfare of minor is incompatible with jail life. Thus, instead of detaining the innocent infant and other children of the petitioner in the jail for the crime allegedly committed by their mother, it would be in the interest of justice as well as welfare of the minor, if the mother is released from the Jail. 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 posted it till suckling period i.e. two years, obviously for the welfare of her kid, which indicate 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 Vs 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 decision 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.

7. Driving wisdom from the judgment of the Apex Court, I without touching the merits of the case, lest it may prejudice the case of either side, allow this petition and release the petitioner on the sole ground of she being the mother of a suckling baby, provided she furnishes bail bonds in the sum of Rs.3,00,000/- with two local,

reliable and resourceful sureties each in the like
amount to the satisfaction of learned Illaqa
Judicial Magistrate/MOD, concerned.

Announced
11.09.2015

J U D G E

