

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT**

Cr.Misc. (BA) No. 322-A/2018

JUDGMENT

Date of hearing.....**04.05.2018**.....

Petitioner (Mst. Nazima Bibi) By Ms. Rabia Gul Awan, Advocate.

Respondents. (State) By Raja Muhammad Zubair, AAG & (Complainant) By Mr. Muhammad Javed Khan Turk, Advocate.

SYED MUHAMMAD ATTIOUE SHAH, J.- Through the instant petition, the accused-petitioner (Mst. Nazima Bibi), after having been denied the concession of bail by the learned Additional Sessions Judge-V Abbottabad vide order dated 31.03.2017, has prayed for post arrest bail in case FIR No. 248 dated 28.10.2017 registered against her under Sections 302 / 109 PPC at Police Station Bagnotar (Abbottabad).

2. Allegations against the accused-petitioner are that she had committed the murder of her step daughter Mst. Urooj Bibi by slitting her neck and strangulation.

3. I have heard learned counsel for the parties as well as the learned Additional Advocate General and gone through the available record.

4. As the FIR unfolds, it was on 28.10.2017 at 21:30 hours when the complainant (father of the deceased) reported to local

police of Police Station Bagnotar that he left the house for labour work in the morning time as usual and when returned back at 17:00 hours, he saw number of people around his house and, upon reaching, found the dead body of his daughter Mst. Urooj Bibi, lying on a cot, who was having violence marks on different parts of her body with slitting neck; and, upon enquiry, came to know that his daughter had been killed by his wife, who is step mother of the deceased, hence, the FIR *ibid*.

5. Without embarking upon merits of the case that either the accused-petitioner has committed the crime or not, lest it may not prejudice the interest of either party at the trial and her guilt or innocence can be well determined by the learned trial court after recording evidence, suffice it to say that since the accused-petitioner has given birth to a male child in the Jail premises and the law of the land is that the child shall not be suffered for an offence, which he had not committed; and while keeping in view the leading judgment delivered by the Hon'ble Apex Court in the case reported as **1996 SCMR 973** wherein it was held that jail life is incompatible with environment necessary for the welfare of a suckling baby, coupled with the judgment of learned Lahore High Court, Lahore reported as **1998 MLD 1350 Lahore** wherein bail was granted on the ground that welfare of a suckling child should not be made to suffer in Jail and again while referring another judgment of Lahore High Court Lahore reported as **PLD 2005 Lahore 352**

where too the lady accused, charged for murder of her two minor children, was released on bail on the ground that she was having a suckling baby, therefore, the accused-petitioner deserves to be released on bail on this score alone that she is also having a suckling baby with her in the Jail premises. Furthermore, the grant of bail does not amount to acquittal of the accused, as the custody of accused is shifted from judicial lock-up to the hands of sureties, who are made responsible to produce the accused before the Court as and when required.

6. Accordingly, this petition for bail is allowed and the petitioner is directed to be released on bail provided she furnishes bail bonds in the sum of rupees one lac (Rs.1,00,000/) with two sureties each in the like amount to the satisfaction of Illaqa / Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

Any observations recorded in this order, being purely tentative in nature, shall in no way prejudice the proceedings before the learned trial court where the case be decided strictly on its own merits after recording evidence.

These are the detailed reasons for short order of the even date.

Announced:
04.05.2018.

/Saif*/

J U D G E