

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE JAMAL KHAN MANDOKHAIL  
MR. JUSTICE MUHAMMAD ALI MAZHAR  
MR. JUSTICE SYED HASAN AZHAR RIZVI

**CRIMINAL PETITION NO.167-K OF 2022**

(On appeal against the order dated 27.10.2022 passed by the High Court of Sindh, Circuit Court, Larkana in Criminal Bail Application No. S-232 of 2022)

Fahad Hussain and another

....Petitioners

**VERSUS**

The State through Prosecutor General Sindh

..Respondent

For the Petitioner: Mr. Muhammad Sachal R. Awan, ASC

For the Complainant: In-person

For the Respondent: Mr. Hussain Bux Baloch,  
Additional Prosecutor General, Sindh

Date of Hearing: 28.12.2022

**Judgment**

**MUHAMMAD ALI MAZHAR, J.** – By dint of this Criminal Petition, the petitioners have called in question the order dated 27.10.2022 passed by the High Court of Sindh, Circuit Court, Larkana in Criminal Bail Application No. S-232 of 2022 whereby the petitioners' application for pre-arrest bail was dismissed and ad-interim bail order was recalled in FIR No. 23 of 2022 dated 11.04.2022, lodged under Sections 302 and 34, PPC at Police Station Kakar, District Dadu.

2. The pith and substance of case as divulged from the contents of FIR, are that the complainant's sister, Mst. Nirma ("**deceased**"), was married to Fahad Hussain ("**petitioner No.1**") about sixteen or seventeen months prior to the incident. It was further alleged that the attitude of his brother in-law, the petitioner No.1, was not good and he had illicit relationships with other women, which perturbed

the deceased who tried to prevent the petitioner No.1 from such activities which annoyed him and led to him extending threats to the deceased that he will kill her. The complainant also alleged that the deceased complained to her father-in-law but he did not take any action and asked her to remain silent. On 10.4.2022 at about 8.00 p.m., the deceased called the complainant and informed him that the petitioner No.1, along with the other accused Muhammad Khan and Mst.Hazooran were threatening to murder her, therefore, the complainant, his mother, Mst. Noor Khatoon, and his brother, Shahid Ali, left Kotri for village Ali Bux Junejo and on 11.04.2022 at about 4.30 A.M, they reached the house of his sister, the deceased, and heard cries coming from her room. When they entered the room, they saw that the accused petitioner No.1 was strangulating her with a *Reshmi Dupata*, (silk scarf) while the accused Mst.Hazooran had caught hold of the hands of the deceased and accused Muhammad Khan had caught hold of her legs. Upon seeing this, the complainant, his brother and his mother raised cries, causing the other villagers to come and consequently, the accused persons vacated the house and went away. The complainant party found marks of violence on her chest, arms and leg and discovered that Mst.Nirma had died. It was further alleged that the matter was conveyed to Kakar Police who came and took the dead body but, due to the non-availability of a lady doctor, no post-mortem was conducted, thereafter, the complainant brought the dead body to the village and buried the same and went to lodge an FIR which was initially not registered, however, after making some protest, the FIR was registered.

3. The learned counsel for the petitioners argued that the prosecution story is unbelievable. It was further averred that the FIR was lodged after a delay of 9 days without any plausible explanation. He further argued that the deceased committed suicide in the absence of her husband, the petitioner No.1, and that when the suicide was committed, the deceased's brother, namely Shahid Ali, was present in the house of the petitioner No.1, and it was the deceased's brother who removed the dead body and then informed the petitioner No.1 who was at the shop. He further argued that even while answering a media reporter, the brother of the deceased disclosed that his sister had committed suicide. He

further argued that the complainant party did not allow the doctors to conduct a post-mortem and they remained silent. He further argued that no efforts were made by the complainant party to overpower the accused persons if they were committing the deceased's murder in the presence of the complainant party at the alleged scene of crime. He concluded that the case requires further inquiry and the petitioners are entitled to the confirmation of ad-interim bail as they have been implicated with *mala fide* intention in order to humiliate and disgrace them on the instigation of the complainant.

4. The Additional Prosecutor General, Sindh argued that, keeping in view the final conclusion drawn by the Special Medical Board in the Post-mortem Report of the exhumed body of the deceased the cause of death could not be determined, so at this stage it could not be resolved whether it was a case of murder or suicide.

5. Heard the arguments. According to the FIR, the incident occurred on 11.04.2022 at 4:30 a.m., while the FIR was lodged by the complainant on 20.04.2022, though the complainant attributed the cause of delay to the police that after some protest the FIR was lodged but no details of the alleged protest are mentioned. The complainant has narrated in the FIR that when he along with his mother, Mst. Noor Khatoon, and brother, Shahid Ali, reached the house of the deceased, they heard a hue and cry from her room and when they entered the room, the petitioner No. 1 was asphyxiating her, while Mst. Hazooran was sitting over the deceased holding her hands and Muhammad Khan was holding her feet to immobilize her. Upon seeing this the complainant and his brother and mother raised cries which attracted villagers due to which the accused persons left the house but no name of any villager is mentioned in the FIR who came at the scene of crime. Nothing is mentioned in the FIR that despite presence of the complainant and his brother along with the mother at the crime scene, whether any efforts were made by them to overpower the culprits in order to save the life of the deceased. According to the complainant, the post-mortem could not be conducted due to the non-availability of a lady doctor, hence the deceased was buried without conducting a post-mortem. On the contrary, according to the interim report filed under Section 173 Cr.P.C dated 20.4.2022,

the parents of the deceased shown the incident as suicide. It is further mentioned that letter for postmortem was issued but the complainant and his brothers did not allow the doctor to conduct postmortem and thereafter, the parents of the deceased forcibly took the dead body from hospital and buried it without postmortem. It is further stated in the report that the complainant has not produced eye witness of the case to record their statement hence investigation was not concluded. According to the Scrutiny Memo of the Assistant District Public Prosecutor, Dadu dated 15.08.2022 appended to the police papers, the dead body of the deceased was exhumed in compliance of the order dated 30.04.2022 passed by the learned IInd Judicial Magistrate, K.N. Shah, on 02.06.2022 in the presence of mashirs (witnesses) and the post-mortem was conducted on the same day. Following the post-mortem, the Special Medical Board constituted for the post-mortem tendered a provisional conclusion wherein they rendered unanimous opinion that at this belated stage the soft tissues of the neck and other sites were decomposed and only hard tissues were found intact. It was further opined that no anatomical cause of death attributable to violence over neck and other parts of body could be ascertained, however, it was mentioned that final report will be communicated after receiving the Chemical Examiner's Report. After receiving the Chemical Examiner's Report dated 04.07.2022, the Special Medical Board unanimously concluded that the cause of death of the exhumed dead body of the deceased remained undetermined.

6. The perception and discernment of the expression "further inquiry" is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. The *raison d'être* of setting the law into motion in criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case

beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

7. In the case of Aamir Bashir and another Vs. The State and others (2017 SCMR 2060), this Court held that besides making out a prima-facie case for the grant of pre-arrest bail, the accused petitioner has to show some *mala fide* on the part of the complainant and the investigating agency, motivated by caprice and ulterior motive to humiliate and disgrace the accused person in case of arrest, however, at bail stage, except in very rare cases, it is difficult for an accused person to furnish tangible proof about the element of *mala fide* or foul play on the part of the complainant or the arresting agencies, therefore the Court has to look at the material available on record and draw inferences therefrom about the *mala fide* or ulterior motive on account of which the intended arrest of the accused is motivated. The Court also reiterated the guiding principles laid down in the case of Khalid Javed Gillan v. The State (PLD 1978 SC 256), that while deciding bail petitions only a tentative assessment of the material and facts available on record is to be made and deeper appreciation of the same shall be avoided and that any fact which may not be sufficient to cast doubt of absolute nature on the prosecution case, but equally sufficient to be considered for grant of bail, cannot be lightly ignored.

8. We have cautiously scanned and ruminated the material placed on record and reached to a tentative assessment that whether it is a case of suicide or murder, this can only be resolved and

determined by the trial court after full-fledged trial of the case but keeping in view the present set of circumstances, the case of the petitioners requires further inquiry.

9. As a result thereof, this criminal petition is converted into an appeal and allowed. The ad-interim pre-arrest bail already granted by this Court on 20.12.2022 is hereby confirmed on the same terms. It is emphasized that the observations made by us are tentative in nature and shall not prejudice the case of either party before the Trial Court. The petitioners are directed to join the investigation and regularly appear in the Trial Court. In case they misuse the concession of bail, the learned Trial Court will be at liberty to cancel the bail.

Judge

Judge

Judge

Karachi,  
28<sup>th</sup> December, 2022  
Khalid.  
Approved for reporting