

IN THE PESHAWAR HIGH COURT

BANNU BENCH

[JUDICIAL DEPARTMENT]

Cr. Misc. (BA) No. 162-B /2021

Gul Shah Peeri

Versus

The State and another

PRESENT: -

For petitioner: - Mr. Malik Rehman Khattak,
Advocate.

For the State: - Mr. Shahid Hamid Qureshi, AAG.

For the complainant: - M/s. Anwar ul Haq & Qaidullah,
Advocates.

Date of hearing: **09.04.2021**

MUHAMMAD NAEEM ANWAR, J.- Gul Shah Peeri,

the petitioner herein, seeks her post arrest bail in a case FIR No.61, dated 17.03.2021, under sections 302/109 PPC, registered at Police Station Teri, District Karak. The allegations against her, in brief, are that she had abetted co-accused Muhammad Naseer son of Akhri Gul to commit the murder of Zeetullah on 02.03.2021. Earlier, she approached to the lower forum for the same relief; however, her application for bail was dismissed by learned Additional Sessions Judge, Banda Daud Shah, District Karak, hence, instant bail application.

02. Facts of the case, as reflected from the record, are that Muhammad Ishaq had contracted two marriages with Mst. Khatmana and Gul Shah Peeri (the accused-petitioner). Deceased Zaitullah was the son of Muhammad Ishaq from Mst. Khatmana. Co-accused Muhammad Nasir is the son of

Akhri Gul, the brother of Muhammad Ishaq. On 02-03-2021, one Spin Zad Gul son of Sucha Gul in the causality of Civil Hospital, Teri, lodged a report to the local Police that he was present in his house, situated at Urmer, when received information that his nephew Zeetullah has attempted to commit suicide by firing at him. He rushed to the place of occurrence, where he found Zaitullah in injured condition. He was put in a Suzuki while on the way to Hospital Terri; the injured succumbed to his injuries. The complainant stated in his report that father of the deceased was in Dubai in connection with his livelihood while mental condition of the deceased was stated to be deranged. So, in the backdrop, inquiry under section 174(3)Cr.P.C was started. During inquiry, on 17-03-2021, the complainant, Mst Khatmana and Muhammad Asif recorded their statements under section 164 of Cr. P.C, wherein they stated that the deceased was done to death by Muhammad Nasir at the instigation of the accused-petitioner Shah Peeri. Motive for the commission of offence was stated to be the preventing of co-accused Muhammad Naseer from frequent visit by the deceased to the house of accused-petitioner.

03. Learned counsel for the petitioner contended that the accused-petitioner has falsely been roped in the instant case for the only reason that she is the step mother of the deceased. He contended that it was an unseen occurrence and the accused-petitioner was charged for the commission of offence

not only after 16 days of the occurrence but also without disclosing any source of satisfaction. According to him, the deceased was not only mentally disabled but the fact of suicide has also been disclosed by the complainant in his first report, thus, being two versions case, it is of further inquiry. The petitioner is behind the bars along with her suckling baby since her arrest and the welfare of the minor is also incompatible to the jail life and on this score too, the petitioner is entitled to the concession of bail, he lastly added. In support of his arguments, he placed reliance on the case law reported as **2017 P Cr. LJ Note 50, 2012 P Cr. LJ 841, PLD 2018 Peshawar 138, 2011 YLR 2975 and 2020 P Cr LJ Note 90.**

sk.
Conversely, Learned AAG assisted by learned counsel for the complainant contended that, though, the petitioner has been charged after 15/16 days of occurrence, but it is visible from the record that father of deceased was in Dubai and after his arrival, after due satisfaction of the complainant, mother of the deceased and brother have recorded their statements. They contended that the medical as well as other material so far collected by the investigating agency also belied the stand of suicide. In support of their submissions, they relied on **PLD 1997 SC 545, Unreported judgment in Cr. Misc. (BA) No. 210-B of 2014 dated 03-09-2014.**

04. I have considered the submissions of learned counsel for the parties and gone through record of the case.

5. Admittedly, the petitioner is charged for abetment under section 109 PPC and that too without source of information or satisfaction. The petitioner was arrested in the case and remained in police custody but she did not confess her guilt. She belongs to the fair sex and is behind the bars along with her suckling daughter, aged about 14 months, since her arrest. The concept of 'welfare of minor' is surely incompatible with jail life, so, on this score also, she is entitled to the concession of bail because instead of detaining the innocent infant in the jail for indefinite period for the crime allegedly committed by her mother (the accused-petitioner), particularly, when husband of the petitioner is in Dubai in connection with his livelihood, so, in this state of affairs, there would be no one to look after the baby outside the jail premises. In the famous case of Ghamidiyyah, our Holy Prophet Muhammad (P.B.U.H) was pleased to suspend the sentence of a pregnant woman not only till the delivery of child but also postponed it till the period of 'Riza' i.e., lactation period". This principle was followed by the Hon'ble Supreme Court in case titled Mst. Nusrat vs. The State (1996 SCMR 973), wherein it has been observed that instead of detaining the innocent child/infant in the Jail for the crime allegedly committed by his mother, it would be in the interest of justice as well as welfare of minor that the mother be released from Jail. Hon' able the Lahore High Court in the case of Sadiq Waqas vs. The State and another (2012

PCr.LJ 841) as well as this court in case titled Mst. Shhnaz
Versus the State and another, decided on 02.06.2017, in
Cr.Misc.(BA) No. 1023-P/2017 also followed the above
 principle. .


06. Therefore, without touching other aspects of the case
 lest it prejudice the case of either side, while deriving guidance
 from case law, *supra*, the petition for the grant of bail is
 allowed, resultantly, the petitioner is directed to be released
 on bail subject to furnishing bail bond in the sum of Rs:
 2,00,000/- (two lac) with two sureties, each in the like
 amount, to the satisfaction of learned Illaqa Judicial
 Magistrate/Duty Judicial Magistrate.

Above are the detailed reasons of my short order of
 even date.

Announced.
09.04.2021.


 JUDGE

(S. B) Hon'ble Mr. Justice Muhammad Naeem Anwar


 SCANNED
 20 APR 2021
 Khalid Khan