

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

**JUDICIAL DEPARTMENT**

**Cr.M/BA NO. 1023-P/2017**

**JUDGMENT**

Date of hearing. 2.6.2017

Petitioner: (Shehnaz) by Mr. Umer Zafran, Advocate.

Respondents (The State) by Mian Arshad Jan, AAG.

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**WAQAR AHMAD SETH, J.-** Accused-petitioner, Shehnaz

W/o Inayatullah, seeks bail in case FIR No. 1174 dated 24.9.2016 under Section 302 PPC registered at Police Station Bhana Mari, Peshawar. She has been refused bail by the learned Additional Sessions Judge-VI, Peshawar vide order dated 5.5.2017; hence, the instant petition for the same purpose.

2. The order sheet dated 25.5.2017 of Deputy Registrar of this Court is revealed that notice was issued to respondent No.2, which has been returned with the report that he is residing in Chitral, however, he was served through his Cell Phone No. 0345-1114882 but none turned up; hence, the case was placed before the Court for today.

3. Arguments of learned counsel for the petitioner as well as learned Additional Advocate General were heard and record of the case was perused.

4. Perusal of the record would reveal that initially, Latifullah, complainant lodged a report vide Naqal Mad No. 57 dated 19.9.2016 regarding the murder of his sister/cousin Mst. Amara, who was murdered by giving her poison, and no body was charged. After receiving post mortem report, on 26.9.2016, the complainant recorded his statement under Section 164 Cr.P.C. and charged the present accused-petitioner along with her husband Inayatullah for the commission of offence, which fact was further supported by Iqrar-ud-Din, brother of deceased, in his statement recorded under Section 164 Cr.P.C. on 1.10.2016. No doubt, the accused-petitioner is charged for the murder of Mst. Amara but there is suckling baby with the accused-petitioner, who is behind the bars for more than one and a half months and three other children outside the jail and at this stage, the welfare of the minors will be taken into account. It is an admitted fact that the punishment provided for the offence is death etc, which falls within the prohibitory clause of

Section 497(1) Cr.P.C. and the accused-petitioner cannot be released on bail but there is suckling baby inside the jail, who is undoubtedly innocent and is kept in jail with the mother/accused-petitioner for his welfare and three other children outside the jail. The concept of 'welfare of minor' is incompatible with jail life. So, instead of detaining the innocent child infant in the jail for the crime allegedly committed by his mother/accused-petitioner, it would be in the interest of justice as well as welfare of the children if the mother is released from jail. In the famous case of Ghamidiyyah, our Holy Prophet Muhammad (P.B.U.H) had suspended the sentence of pregnant woman, not only till delivery of the child but also postponed it till suckling period i.e. two years, obviously for the welfare of the child. This shows the paramount important and significance of the right of a suckling baby in Islam and the unprecedented care taken of, and the protection given to a child or expected to be born, by our Holy Prophet Muhammad (P.B.U.H). This golden principle of administration of justice enunciated by the Holy Prophet Muhammad (P.B.U.H) must be strictly observed and followed in our country.

5. The above said basic principle has been followed by the Hon'ble Apex Court in the case of *Mst. Nusrat vs. The State* (1996 SCMR 973) and the Hon'ble Lahore High Court in the case of *Sadiq Waqas vs. The State and another* (2012 PCr.LJ 841). Since the petitioner having suckling baby inside the jail and three other children outside the jail, therefore, she should not be kept in jail and the superior Courts had been pleased to grant bail in such situation.

6. In view of the above, this bail application is accepted and the accused-petitioner is admitted to bail provided she furnishes bail bond in the sum of Rs. 400,000/- (Rs. Four lacs) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

**Announced.**  
2.6.2017

**J U D G E**