

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 12.11.2024
Pronounced on. 22.11.2024**

Bail App No. 196/2023

Shenaz Begum th. Abdul MazeedAppellant(s)/Petitioner(s)

Through: Mr. Aseem Sawhney, Advocate

Vs

UT of J&K and Anr. Respondent(s)

Through: Mr. Sumeet Bhatia, GA.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The applicant is facing trial in challan, titled, "UT of J&K Vs. Shenaz Begum" for commission of offence under section 302 IPC before the court of learned Addl. Sessions Judge, Udhampur (hereinafter referred as "the trial court"), wherein the allegations levelled against her are that she committed the murder of her three months old son. It needs to be noted that in the order dated 26.07.2022, whereby the applicant has been charged for commission of offence under sections 302/201 IPC and in the order dated 10.08.2012, whereby the bail application filed by the applicant was rejected by the learned trial court, the age of the victim has been mentioned as 3 years. In this application also, the age of deceased child has been mentioned as 3 years, whereas in the postmortem examination report dated 09.12.2021, the age of the victim has been stated to be 3 months.
2. The applicant is seeking bail on the ground of unsoundness of mind. It is stated that pursuant to the order passed by the learned Munsiff/JMIC,

Chenani, a Medical Board was constituted by the Superintendent, Psychiatric Disease Hospital, Jammu and the Medical Board submitted report dated 28.12.2021 that the applicant is suffering from 'Schizophrenia' and was incapable of facing the trial before the court of law because she was of unsound mind. Later, the applicant was further examined by the Medical Board and in its report dated 18.03.2023, the Medical Board has stated that applicant is a case of "schizophrenia" and currently she is fit to face trial in the court of law.

3. It is stated that the applicant is an unfortunate woman, who under the seizure of unsoundness of mind is not only facing ordeal of losing her child but also the trial for commission of offence of murder of her own child. It is settled law that *mens rea* is an important factor in any criminal act, therefore, it is quite unnatural and improbable for a mother to kill her own three months old son without any reason, logic, preparation or motive. Further in terms of Section 84 IPC, immunity has been granted to the person of unsound mind in respect of an act, which is wrong or contrary to the law. It is further stated that for the last three years, she has been in custody and out of 26 witnesses, 14 witnesses have already been examined and several eyewitnesses have not supported the case of the prosecution. It is further contended that in view of proviso to Sub Section (1) of section 437 Cr.P.C, the applicant deserves to be enlarged on bail, as she is a sick woman.
4. The respondents have filed the response, stating therein that on 8th December, 2021 at about 15:30 hours, the complainant, Mohd Muzaffar submitted a written complaint in Urdu language with Police Station,

Chanani that on 08.12.2021, he alongwith his family members was busy in agriculture work in the field and suddenly his sister came out of her house and made a hue and cry. He and his family members ran towards the house and asked her about the incident, whereupon he was told that applicant had killed her son with an axe in the cattle shed of the house and the deadbody was lying on spot. On receipt of this information, FIR No. 157/2021 under Section 302 IPC was registered with Police Station, Chenani. During investigation, the applicant/accused admitted the commission of offence and stated that she had concealed her blood-stained clothes under a wooden stair inside her house and she also cleaned the blood lying on the scene of crime. Accordingly, offence under Section 201 IPC was also added. During investigation, it was found that the accused was married to one Rafiq about 11/12 years ago but due to her aggressive behaviour she was divorced by him and after some time she was married to Bahar Ahmad in the year 2012. She stayed at her in-laws house for three to four years and during that period, she gave birth to one daughter and thereafter she went to her parental house along with her husband and started living there. She gave birth to two more daughters and one son from Bahar Ahmed. On the day of occurrence i.e. 08.12.2021, the applicant killed her three months old son with an axe.

5. Mr. Aseem Sawhney, learned counsel for the applicant has submitted that the Medical Board in its report dated 28.12.2021 had clearly stated that the applicant is suffering from schizophrenia and is incapable to face trial in the court of law, though in the subsequent reports, it is stated that

she is fit to face the trial, but the fact remains that applicant is admittedly suffering from schizophrenia. He has laid much stress that mere fact that the applicant killed her three months old son, is sufficient to establish that if she killed her son, her act was done when she was incapable of understanding the nature of the act because of unsoundness of mind.

6. Mr. Sumit Bhatia, learned counsel for the respondent has argued that the unsoundness of the mind is the defence available to the applicant during the trial and cannot be considered while deciding the bail application. He further argued that the allegations against the applicant are also with regard to destruction of evidence, as the applicant washed the blood after killing the minor child.
7. Heard learned counsel for the parties and perused the record.
8. The record depicts that the chargesheet was laid before the learned JMIC, Chenani on 03.03.2022 and the charge sheet was committed to the Principal Sessions Judge on 11.03.2022, Udhampur and thereafter, the same was transferred to the learned trial court for disposal under law. There is report of the Medical Board dated 28.12.2021 on record, wherein it is stated that the applicant is suffering from schizophrenia and she is incapable of facing trial in the court of law because of unsoundness of mind. The said report was submitted to JMIC, Chenani. The learned trial court vide its order dated 25.05.2022 again directed the medical examination of the applicant and the Medical Board submitted another report dated 02.06.2022 that the applicant is suffering from schizophrenia and can understand the nature of proceedings to be conducted during trial and she has an understanding of day today

routine. There is yet another report dated 18.03.2023 of the Medical Board that the applicant is a case of schizophrenia and currently she is fit to face trial in the court of law.

9. From the above-mentioned facts, it is established that the applicant is suffering from Schizophrenia. The Division Bench of the Gauhati High Court in the case of **Bangla Bagti vs. the State of Assam, (2012) 1 GLR 115**, has quoted the articles and texts in relation to 'schizophrenia' in paragraphs 38, 39 & 40, the same are extracted as under:

“38. What is schizophrenia and what are its symptoms have been outlined by the National Center for BioTechnology Information, U.S. National Library of Medicine 8600 Rockville Pike, Bethesda MD. 20894 USA as follows:

"Schizophrenia.

Last reviewed: February 7,2010.

Schizophrenia is a mental disorder that makes it difficult to tell the difference between real and unreal experiences, to think logically, to have normal emotional responses, and to behave normally in social situations.

Causes, incidence, and risk factors.

Schizophrenia is a complex illness. Even experts in the field are not sure what causes it.

Genetic factors appear to play a role. People who have family members with schizophrenia may be more likely to get the illness themselves.

Some researchers believe that environmental events may trigger schizophrenia in people who are already genetically at risk for the disorder. For example, infection during development in the mother's womb or stressful psychological experiences may increase the risk for developing schizophrenia later in life. Social and family support appears to improve the illness.

Schizophrenia affects about 1 % of people worldwide. It occurs equally among men and women, but in women it tends to begin later and be milder. For this reason, males tend to account for more than half of patients in services with high numbers of young adults. Although schizophrenia usually begins in young adulthood, there are cases in which the disorder begins later (over age 45).

Childhood-onset schizophrenia begins after age 5 and, in most cases, after normal development. Childhood schizophrenia is rare and can be difficult to tell apart from other developmental disorders of childhood, such as autism.

Symptoms.

Schizophrenia may have a variety of symptoms. Usually the illness develops slowly over months or years. Like other chronic illness, schizophrenia cycles between periods of fewer symptoms and periods of more symptoms.

At first, you may feel tense, or have trouble sleeping or concentrating. You can become isolated and withdrawn, and have trouble making or keeping friends.

As the illness continues, psychotic symptoms develop:

-Appearance or mood that shows no emotion (flat affect)

-Bizarre movements that show less of a reaction to the environment (catatonic behavior)

-False beliefs or thoughts that are not based in reality (delusions).

-Hearing, seeing, or feeling things that are not there (hallucinations)

-Problems with thinking often occur:

-Problems paying attention

Thoughts "jump" between unrelated topics (disordered thinking)

Symptoms can be different depending on the type of schizophrenia:

Paranoid types often feel anxious, are more often angry or argumentative, and falsely believe that others are trying to harm them or their loved ones.

Disorganized types have problems thinking and expressing their ideas clearly, often exhibit childlike behaviour, and frequently show little emotion.

Catatonic types may be in a constant state of unrest, or they may not move or be underactive. Their muscles and posture may be rigid. They may grimace or have other odd facial expressions, and they may be less responsive to others.

Undifferentiated types may have symptoms of more than one other type of schizophrenia.

Residual types experience some symptoms, but not as many as those who are in a full-blown episode of schizophrenia. People with any type of schizophrenia may have difficulty keeping friends and working. They may also have problems with anxiety, depression, and suicidal thoughts or behaviors."

39. According to the Butterworth's Medical Dictionary the meaning of the term schizophrenia means:

"Schizophrenia (ski.zo.fre.ne.ah). A mental disorder characterized by a special type of disintegration of the personality: thought processes are directed by apparently random personal associations rather than logically to a goal, there is incongruity between the content of thought and the corresponding emotion, and an impaired relation to reality. Delusions, hallucinations and Catania may be predominant features. [Gkschizen to split, phren mind.]

40. Schizophrenia, also sometimes called split personality disorder, is a chronic, severe, debilitating mental illness. It is one of the psychotic mental disorders and is characterized by symptoms of thought, behavior, and social problems. The thought problems associated with schizophrenia are described as psychosis, in that the person's thinking is completely out of touch with reality at

times. For example, the sufferer may hear voices or see people that are in no way present or feel like bugs are crawling on their skin when there are none. The individual with this disorder may also have disorganized speech, disorganized behaviour, physically rigid or lax behavior (catatonia), significantly decreased self-esteem or feelings, as well as delusions, which are ideas about themselves or others that have no basis in reality (for example, experience the paranoia of thinking others are plotting against them when they are not)”

10. The allegations against the applicant are in respect of commission of murder of her own son of three months of age and that too without any reason. Normally, a person of sound mind would not act in the manner, the applicant had acted by killing her three months old son with axe. Had there been any allegation in respect of the motive on the part of applicant or past altercation between the applicant and her husband or any other relative, resulting into murder of her son by the applicant, the position would have been different. The applicant is suffering from mental health ailment and is under treatment. In terms of proviso to Sub Section (1) of Section 437 Cr.P.C, accused can be granted bail, if he/she is under the age of 16 years or is a woman or is sick or infirm. In the present case, the applicant is a woman and suffering from schizophrenia. No doubt the plea of unsoundness of mind is a defence available to the applicant during trial but the fact which cannot be negated is that the applicant is suffering from schizophrenia and no purpose shall be served by keeping the applicant in judicial custody, when all the material witnesses have been examined. This Court would not like to appreciate the evidence brought on record by the prosecution, but it would be apt to take note of the fact that the complainant, who happens to be the brother of the applicant, has turned hostile.

11. Keeping in view the peculiar facts and circumstances of the case, this Court is of the considered view that the applicant does not deserve to be kept in jail. Accordingly, the application is allowed and the applicant is directed to be released on bail on the following terms and conditions:

- (i) That the father of the applicant, who has filed the present bail application on behalf of the applicant, shall stand as surety for an amount of Rs. 50,000/- before the learned trial court and personal bond of like amount shall also be filed by the applicant.
- (ii) That the father of the applicant shall ensure the presence of the applicant before the learned trial court on each date of hearing unless directed otherwise by the learned trial court.
- (iii) That the applicant shall be examined by the Medical Board to be constituted by the Superintendent, Psychiatric Disease Hospital, Jammu every month in respect of her behaviour and in case it is found that the mental health of the applicant requires medical intervention by keeping her in hospital/Mental Asylum, the trial court shall pass appropriate orders in that regard including the order for keeping the applicant in Mental Asylum/hospital.

12. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu:

22.11.2024

Karam Chand/Secy.

Whether the order is speaking:
Whether the order is reportable:

Yes/no
Yes/no