

LIAQUAT and another---Appellants

Versus

THE STATE---Respondent

1999 P Cr. L J 1004

[Federal Shariat Court]

Before Abdul Waheed Siddiqui, J

Criminal Appeal No.32/K of 1998, decided on 16th December, 1998.

ORDER

This is an application under section 426, Cr.P.C. read with Rule 27 of the Federal Shariat Court (Procedure) Rules, 1981 moved second time in respect of convict appellant Mst. Shahida alias Hameeda wife of Muhammad Yaqoob Umrani resident of Karma Bagh Larkana. Earlier an application of the identical nature numbering Criminal Miscellaneous No.28/K of 1998 was dismissed through an order, dated 3-9-1998. In the said order it was observed that if necessary records are brought regarding the birth of a viable child, and it is proved that there is a danger for health of child who is a suckling child, a fresh application can be moved on the basis of documents or new developments under the established principles of law.

Mst. Shahida alias Hameeda has given birth to a child on 4-10-1998 in the jail and name allotted to the baby child is Nazia. Such certificate has been produced which is signed and sealed by Superintendent Special Prison for Women, Larkana. This Certificate has been issued under No.UTP/1813 of 1998, dated 19-10-1998. Learned counsel for the appellant had already appeared before the Honourable Chief Justice of this Court at Karachi on 26-11-1998, in respect of this application. The Honourable Chief Justice ordered that this application may be placed before me at Islamabad on the request of the counsel concerned. The learned counsel has argued the conditions of the jails throughout the country are detrimental to the health of the newly born children. These jails do not contain necessary facilities for upbringing of the newly-born children in conformity with the established standards of health and child psychology in the civilised world. Aayat No. 15 of Surat Bani Israel of the Holy Qur'an reads in part as under:--

Meaning thereby that no one shall suffer for the misdeeds of others. The newly born baby child is not a convicted person. Her remaining in the jail shall be negation of the fundamental rights of liberty conferred upon her from the very date of birth by the Constitution of Islamic Republic of Pakistan. She is a suckling child. Her separation from

the lap of her convicted mother might prove detrimental to her physical as well as psychic health. In view of these circumstances, I am inclined to suspend the execution of the sentence of the applicant/appellant pending appeal and grant bail in the sum of Rs.25,000 with one surety and a P.R. Bond in the like amount to the satisfaction of the tri. Court.

H.B.T./42/FSC

Application accepted.