

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1126 of 2025

Applicant : Zafar Iqbal son of Ghulam Khalil,
Through Mr. Saifullah Abbasi, Advocate

Respondent : The State
through Ms. Rahat Ehsan, Addl. PG Sindh

Date of hearing : 20.05.2025

Date of order : 26.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Zafar Iqbal seeks post-arrest bail in a case bearing crime No. 448 of 2024 registered at P.S. Aziz Bhatti, Karachi, for offence under Sections 320, 322, 337-J, PPC. His earlier bail plea was declined by the court of learned XIth Additional Sessions Judge Karachi East vide order dated 08.04.2025.

2. The prosecution case, as narrated in the FIR, is that on 29.06.2024 at about 9:45 p.m., the complainant was informed by his sister that their younger siblings, Kumail and Elia, were hit by a vehicle bearing registration No.LOT-2056 while travelling on a motorcycle. It was alleged that the driver of the vehicle, through rash and negligent driving, collided with the motorcycle, resulting in the death of Elia on the spot and causing multiple injuries to Kumail. Elia's body was brought to Jinnah Hospital while Kumail was taken to a private hospital for treatment. Upon receiving this information, the complainant reached the hospital and later approached the Police Station to lodge the FIR against the unknown driver of the vehicle.

3. Learned counsel contended that the FIR initially named two unknown individuals and that the arrest of the applicant was shown on 22.11.2024 on the pointing out of the complainant. It was submitted that there is no mention of the IMEI number in the memo of recovery of the mobile phone purportedly associated with the incident, and that the applicant was initially picked up by the Rangers, then falsely roped in the present case. It was further urged that the applicant was working as a tanker driver and possessed a valid driving license. Counsel further

contended that the offences under Sections 320, 337-G, 427, and 279 PPC are admittedly bailable. Though Section 322 PPC is non-bailable, it does not prescribe any term of imprisonment other than the payment of *Diyat*. He relied upon 2022 P Cr.LJ 40, to argue that such cases do not fall within the prohibitory clause of Section 497(1), Cr.P.C., and therefore, the grant of bail is the rule and refusal is an exception. He also referred to case law reported as 2021 YLR 1959 (Lahore) and an unreported order of this Court in Criminal Bail Application No. 1154 of 2022, to strengthen the claim that offences entailing *Diyat* alone do not attract the bar of the prohibitory clause and require further probe to determine applicability. Per learned counsel, it is yet to be ascertained whether Section 322 PPC would be ultimately applicable in this case, and if so, whether payment of *Diyat* would correspond to a punishment of imprisonment exceeding seven years so as to attract the prohibitory clause. It is his submission that at the present stage, the matter requires deeper scrutiny, which should be left for trial.

4. Conversely, the learned APG opposed the grant of bail. He submitted that one person had died and another sustained injuries as a result of the accident caused by the applicant, who did not hold a valid license to drive a heavy vehicle such as a 10-wheeler trailer. He requested that instead of granting bail, directions be issued for early conclusion of the trial.

5. After hearing the learned counsel for the parties and examining the material available on record, it is observed that the offences under Sections 320, 337-G PPC are bailable in nature, whereas Section 322 PPC, though non-bailable, does not entail a fixed term of imprisonment and is only punishable with the payment of *Diyat*. It has not been shown by the learned APG whether such payment can be equated to a sentence exceeding seven years so as to attract the prohibition under Section 497(1), Cr.P.C.

6. It is also the applicant's case that he has been falsely implicated in this matter by the local police to show performance and that he was initially taken into custody by the Rangers without formal arrest. Be that as it may, the question whether the alleged act amounts to *Qatl-e-Khata*, *Qatl-bis-sabab*, or any other offence under Chapter XVI, PPC, remains to be

determined at trial. At this stage, the matter squarely falls within the scope of *further inquiry* as envisaged under Section 497(2), Cr.P.C. In this regard, reliance is placed upon the decisions rendered in *Yousaf Khan v. The State* (2000 P Cr.LJ 203) and *Syed Asif Mateen Zaidi and others v. The State* (2008 P Cr.LJ 125).

7. In view of the above discussion and the legal position enunciated in the cited authorities, I am of the considered view that the case of the applicant does not fall within the prohibitory clause of Section 497(1), Cr.P.C., and calls for further inquiry. The applicant is, therefore, entitled to the concession of bail. Accordingly, the bail application is allowed, and the applicant Zafar Iqbal is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand Only) and PR bond in the like amount to the satisfaction of the learned trial Court. It is clarified that the above observations are tentative in nature and shall not influence the trial Court in deciding the case on merits.

JUDGE