

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-563 of 2025

Applicant : Nisar Ahmed Khan S/o Habib ur Rehman,  
Through Mr. Musharraf Azhar, Advocate

The State : Through Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 27.02.2026  
Date of order : 06.03.2026

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.**— The applicant, Nisar Ahmed Khan, seeks confirmation of interim pre-arrest bail in respect of FIR No.331 of 2024, for offences under Sections 320, 279 and 427 Pakistan Penal Code, 1860, registered at Police Station Baberloi, District Khairpur. His earlier request having been declined by the learned Additional Sessions Judge-I, Khairpur, vide order dated 17.06.2025.

2. Succinctly stated, the prosecution case, as set out in the FIR lodged by the complainant Jahangir Dharejo, is that on 19.12.2024 the complainant along with his family was proceeding to attend a marriage ceremony at Al-Amin Marriage Lawn, Rohri, when near Hescol Petrol Pump, National Highway, a road traffic accident took place. It is alleged that a Mazda vehicle bearing registration No.JW-2686, driven by the present applicant, and an oil tanker bearing registration No.J-1620 were being driven in a rash and negligent manner, whereupon the oil tanker struck the Mazda from behind, causing the Mazda to overturn and fall upon the complainant's Khyber car, resulting in the death of five persons, namely, Rubina, Saira, Rukhsar, minor Muhammad Arhan and taxi driver Muhammad Nawaz alias Bablo, besides damage to the vehicle. On these allegations, the aforementioned FIR was registered under Sections 320, 279 and 427 PPC, ostensibly on behalf of the State, thereby implicating the applicant in the commission of the alleged offences.

3. Learned counsel for the applicant contends, *inter alia*, that the applicant has been roped in merely on account of a tragic accident without any culpable *mens rea* or demonstrable rashness attributable to him; that the collision was occasioned by the reckless and negligent driving of the oil tanker which hit the applicant's vehicle from the rear, a circumstance which, by its very nature, militates against the allegation of rashness on the part of the driver of the front vehicle; that the applicant holds a valid driving license, has throughout cooperated with the investigating agency and himself sustained loss in the occurrence; that the FIR appears to be the product of understandable emotional upheaval rather than a dispassionate appraisal of the attending circumstances; that the offences under Sections 320, 279 and 427 PPC are *ex facie* bailable, attracting the mandate of Section 496 Cr.P.C, and refusal to confirm pre-arrest bail in such context amounts to a misdirection in law in view of the principles enunciated by the august Supreme Court in *Tariq Bashir & 5 others v. The State* (PLD 1995 SC 34) and *Imtiaz Ahmed and another v. The State* (PLD 1997 SC 545), wherein it has been held that in bailable offences grant of bail is an indefeasible right and not a matter of grace or indulgence. Learned counsel further submits that the applicant has no criminal antecedents, has already joined the investigation, undertakes to remain available to the trial Court and the investigating agency as and when required and undertakes not to tamper with the prosecution evidence or influence any witness, thus entitling him to confirmation of interim pre-arrest bail.

4. Conversely, learned DPG for the State has opposed the application on the premise that the applicant stands specifically nominated in the FIR with the allegation that his rash and negligent driving of the Mazda, in concert with the negligent driving of the oil tanker, resulted in the death of five persons, including adult and infant members of the

complainant's family and the taxi driver, thereby attracting Sections 320, 279 and 427 PPC. It is argued that the FIR, when read in conjunction with the post-mortem reports, furnishes *prima facie* material indicative of culpable conduct; that although the offences are, in strict classification, bailable, the relief of pre-arrest bail is an extraordinary and exceptional protection, to be sparingly invoked and that too only where mala fides, ulterior motive or misuse of process of law by the complainant or the investigating agency is demonstrably established, as delineated by the Honourable Supreme Court and that pre-arrest bail is not to be extended in a routine manner. It is, thus, urged that in view of the gravity of the occurrence, the number of fatalities and the tentative material collected so far, the applicant is not entitled to the discretionary relief of pre-arrest bail.

5. I have heard learned counsel for the applicant and learned DPG for the State and have examined the available record with their assistance. The allegations against the applicant emanate from a road traffic mishap wherein two heavy vehicles are said to have collided, culminating in the overturning of one vehicle over the complainant's car and the consequent demise of five individuals. At this nascent stage of proceedings, the record does not disclose any definitive, let alone conclusive, material singularly fastening blame upon the applicant by establishing any specific overt act of rash or negligent driving on his part as the *causa causans* of the fatalities; rather, the manner of the occurrence, as presently emerging, *prima facie* suggests a chain of events still requiring thorough forensic and investigative determination. The FIR, read holistically, reflects an element of emotional reaction to a grievous tragedy, and the applicant's precise role, on the tentative material so far collected, appears to be a matter falling within the purview of further inquiry in terms of Section 497(2) Cr.P.C rather than warranting his incarceration at this stage.

6. At the very threshold, it must be underscored that the offences under Sections 320, 279 and 427 PPC are, by statutory designation, bailable in nature and, therefore, do not attract the prohibitory clause contemplated by Section 497(1) Cr.P.C. The august Supreme Court has consistently held that in matters of bailable offences, the accused acquires an indefeasible right to be admitted to bail and the Court is left with no discretion to refuse such relief once the offence is found to be bailable, subject only to the furnishing of requisite surety, as expounded in *Tariq Bashir & 5 others as well as Imtiaz Ahmed & another (supra)*. The overarching principle that bail is the rule and jail an exception, being an incident of the constitutional guarantee of liberty, has been repeatedly reaffirmed, and the denial of bail, even in non-bailable offences, is to be justified only on cogent, compelling and legally sustainable grounds. In the context of pre-arrest bail, the Supreme Court has indeed described such relief as extraordinary in character and essentially aimed at preventing abuse of process or harassment of an accused person, but where the underlying offences are bailable and the material collected gives rise to reasonable doubt or calls for further inquiry, the rigors applicable to non-bailable, prohibitory-clause cases cannot be mechanically imported to curtail a right which the statute itself treats as indefeasible.

7. In the present case, the tragic nature of the incident and the multiplicity of deaths, though deeply regrettable, cannot, by themselves, override the statutory classification of the offences or eclipse the presumption of innocence which the applicant continues to enjoy. The tentative appraisal of the record does not disclose such incriminating material as would, at this stage, justify depriving the applicant of his liberty, particularly when he has already joined the investigation, is not shown to be a previous convict or habitual offender, and there is no substantiated allegation of his having attempted to abscond or to interfere with the course

of justice. In the circumstances, and keeping in view the principles enunciated by the apex Court with regard to the treatment of bailable offences and the sparing use of custodial measures, the applicant's case squarely merits considerations.

8. For the foregoing reasons, the interim pre-arrest bail earlier granted to the applicant, Nisar Ahmed Khan, is confirmed on the same terms and conditions already stipulated therein, with directions to join investigation/trial. It is, however, expressly observed that all findings and observations recorded herein are purely tentative, confined to the decision of the present bail application, and shall not prejudice or fetter the learned Trial Court in any manner, which shall decide the case independently, strictly in accordance with the evidence adduced before it and the law applicable thereto.

**J U D G E**