

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 2123 of 2025.

Applicant : Waqar Ahmed through M/s. Saifullah Abbasi and Muhammad Kamran, Advocates.
Complainant : Rameez Haider through Mr. Abdul Rahim Chandio, Advocate.
Respondent : The State through Mr. Mohammad Noonari, D.P.G.
Date of hearing : 09.02.2026.
Date of order : 09.02.2026.

ORDER.

TASNEEM SULTANA, J:- Through this Criminal Bail Application, the applicant Waqar Ahmed seeks pre-arrest bail arising out of No.448/2024 registered at P.S. Aziz Bhatti, Karachi, for the alleged offences under Sections 320, 322 and 337-G PPC. His earlier Criminal Bail Application No. 1596 of 2025 was dismissed by the learned Additional Sessions Judge-XI, Karachi East, vide order dated 21.04.2025; hence, the present application for the same relief.

2. Brief facts of the prosecution case are that on 29.06.2024 at about 09:45 p.m., the complainant received information from his sister that his younger brother Kumail and sister Elia, while travelling on a motorcycle, were hit by a vehicle bearing registration No. LOT-2056, allegedly being driven in a rash and negligent manner. As a result, Elia sustained fatal injuries and died on the spot, whereas Kumail received injuries. Subsequently, the complainant lodged the FIR against the driver of the said vehicle.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated with mala fide intention; that he was not nominated in the FIR and was subsequently implicated during investigation merely in the capacity of owner of the vehicle; that mere ownership does not create criminal liability in the absence of any evidence of negligence attributable to the owner; that the alleged offences do not fall within the prohibitory clause of Section 497, Cr.P.C.; and that the co-accused has already been granted bail by the learned trial Court. On all these submissions, learned counsel submitted that the prosecution case against the applicant calls for further enquiry and prayed for bail.

4. Conversely, learned Deputy Prosecutor General, assisted by learned counsel for the complainant, opposed the application and contended that the applicant, being the owner of the tanker (Heavy Transport Vehicle), allowed the accused driver to operate the same despite having knowledge that the driver possessed only an LTV license and was not authorized to drive such vehicle; therefore, he is not entitled to the concession of bail.

5. Heard. Record perused.

6. The role attributed to the applicant is confined to that of ownership of the vehicle involved in the incident, which, prima facie, does not establish his direct involvement in the commission of the alleged offence. It has emerged during investigation that the accused driver was holding only an LTV license, which did not authorize him to operate a tanker, being a Heavy Transport Vehicle. The allegation against the applicant is that he permitted the said driver to operate the tanker, which resulted in the occurrence due to rash and negligent driving. However, it is yet to be determined, after recording evidence, whether the applicant, being the owner of the 10-wheeler tanker, had knowledge that the driver was not duly licensed to operate such vehicle; thus, the question of vicarious liability of the applicant requires deeper appreciation of evidence at trial. It is also an admitted position that the co-accused driver has already been granted bail by the learned trial Court. In these circumstances, the case of the applicant squarely falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C.

7. At the most, the case of the applicant falls within the ambit of Sections 321 and 322, P.P.C. It would be advantageous to reproduce the relevant provisions of law hereunder:

“321. **Qatl-bis-Sabab.**- Whoever, without any intention to cause death of, or cause harm to, any person, does any unlawful act which becomes a cause for the death of another person, is said to commit Qatl-bis-Sabab.

322. **Punishment for Qatl-bis-Sabab.**- Whoever commits Qatl-bis-Sabab shall be liable to Diyat.”

8. Admittedly, Section 320, P.P.C. is a bailable offence, whereas Section 322, P.P.C., though non-bailable, does not entail any sentence of imprisonment except the payment of Diyat. Therefore, where the liability of an accused is confined to payment of Diyat alone, such an offence, prima facie, does not fall within the prohibitory clause of Section 497, Cr.P.C. It is by now a well-settled principle of law that in cases not falling within the

prohibitory clause, the grant of bail is a rule, while its refusal is an exception. Reliance is placed in the case of **Syed Muhammad Firdaus and others v. The State (2005 SCMR 784)** wherein Hon'ble Supreme Court has held as under:

“In addition to the above, it is to be noted that learned trial court vide order, dated 19th January 2004, summoned him and Dr. Sajid Hussain (petitioner No.2) being accused for the offence under section 319 PPC but surprisingly on 17th December 2004 on the basis of the same material, they were charged for Qatl-bissabab under section 322/34 PPC, which is a non-bailable offence as per schedule of Cr.P.C. It seems that the learned Judge could not decide whether it is a case under section 319 or 322 PPC. Be that as it may, in any case, they shall not be punished ultimately for death or life imprisonment as under section 322 PPC. The sentence is of Diyat; therefore, for this added reason as well, concession of bail cannot be denied to them under the law.”

Similarly in the case of **Kazim Ali v. The State (1998 MLD 1535)**, it was held that where the criminal liability of an accused of an offence is Diyat only the offence does not fall within the prohibitory clause. It is by now a well-settled principle of law that in offences not falling within the prohibitory clause, the grant of bail is a rule and its denial is an exception. Reliance in this regard can be placed on the case of **Tariq Bashir and others v. The State (PLD 1995 Supreme Court 34)**.

9. In view of the above facts and circumstances, the applicant has succeeded in making out a case for the grant of pre-arrest bail. Consequently, the instant bail application is allowed, and the interim pre-arrest bail granted to the applicant vide order dated 22.08.2025 is hereby confirmed on the same terms and conditions. These are the reasons for my short order dated 09.02.2026.

10. The observations made herein are tentative in nature and shall not prejudice the case of either party at the trial.

JUDGE