

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1649 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

27.01.2021

Mr. Muhammad Ijaz, Advocate along with Applicant (on bail).
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.
Mr. Liaquat Ali Khaskheli, Advocate along with Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Shah Fahad seeks his admission on pre-arrest bail in Crime No.264/2020 of Police Station Awami Colony Korangi, Karachi, under Section 320/427 PPC read with Section 322/468/471/114 PPC. The bail plea preferred by him before first forum was declined by means of order dated 30.09.2020, hence this bail application.

The allegation against applicant is that he is/was owner of the vehicle in question, which he sold out to one Muhammad Imran through agreement dated 31.07.2019 on installment basis. New owner viz. Muhammad Imran employed to one Fakhar Zaman as his driver, who on the fateful day viz. 15.05.2020 due to negligence and rash driving, caused an accident, which resulted in death of Moiz, niece of complainant Khalilur-Rehman; hence, applicant has been arrayed as accused by the I.O in this case being its owner.

Learned counsel submits that name of the applicant does not find place in the FIR and he has been arrayed as accused on the ground he being its (former) owner; however, at the time of alleged incident neither he was driving vehicle nor was accompanied with driver Fakhar Zaman; hence, case against applicant requires further inquiry, therefore, seeks grant of application as well as confirmation of the bail.

On the other hand, learned Deputy P.G, Sindh opposes the bail application on the ground that he is owner of the vehicle, therefore, by

virtue of provisions of Motor Vehicle Ordinance, 1965, is liable to be prosecuted under Section 3, 4 & 5 of the Ordinance.

Learned counsel for the complainant by adopting arguments advanced by learned Deputy P.G, Sindh, also opposes the bail application and submits that applicant has violated sections 3, 4 & 5 of the Motor Vehicle Ordinance; hence, he has rightly been prosecuted, therefore, he does not deserve leniency in shape of pre-arrest bail. In support of his contention, he places reliance upon case of *ATTA MUHAMMAD Versus The State (2005 P.Cr.L.J 1648)*.

Heard arguments and perused record. Admittedly, the name of the applicant does not appear in the FIR and during investigation I.O has arrayed him as accused in this case on the ground he being owner of the vehicle. Moreover, the incident as is evident is said to have taken place on 15.05.2020; however, the FIR was lodged on 20.05.2020 i.e. after delay of about 5 days and no plausible explanation has been furnished by the prosecution for such an inordinate delay. At the time of alleged incident, neither the applicant was driving vehicle in question nor was accompanied with driver Fakhar Zaman and mere fact that driver Fakhar Zaman was having fake driving license, therefore, applicant could be held responsible, is no ground to withhold the concession of bail to him particularly when vehicle in question was already sold out by him to one Muhammad Imran and said Muhammad Imran was not examined by I.O during investigation. The sections applied in FIR 427 as well as 320 PPC are bailable; whereas, section 322 PPC, if prosecution may prove its charge against accused, carries imposition of Diyat amount. As far as involvement of present applicant in terms of section 3, 4 & 5 of the Motor Vehicle Ordinance is concerned, same are yet to be proved by the prosecution after recording evidence of its witnesses and the trial Court being competent has to determine accusation against him. At this juncture, prima facie a case for further inquiry within the meaning of sub-section 2 to Section 497 Cr.P.C is made out. Consequently, instant Criminal Bail Application is hereby allowed; interim bail granted earlier to applicant **Shah Fahad son of Fida Muhammad Shah** on 29.10.2020 is hereby confirmed on same terms and conditions.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may

misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned, over fax, for compliance.

JUDGE

Zulfiqar/P.A