

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
CrI. Bail Application No. 1154 of 2022

Date	Order with signature of Judge
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Arshad Ali s/o Asghar Ali Vs. The State

M/s. Sathi M. Ishaq, Abdul Rauf & S.K. Lodhi, Advocates a/w applicant/accused.

Mr. Altaf Hussain, advocate for complainant a/w complainant.

Mr. Khadim Hussain, Additional Prosecutor General Sindh.

Date of Hg: 30.01.2023

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ARSHAD HUSSAIN KHAN, J: The applicant / accused namely, Arshad Ali son of Asghar Ali after rejection of his earlier application for grant of pre-arrest bail by learned Additional Sessions Judge-XII, East, Karachi, through instant criminal bail application has sought pre-arrest bail in Crime No. 395/2022, registered under Section 320 P.P.C. at police station Awami Colony, Karachi. The Applicant was admitted to interim pre-arrest bail by this Court, vide order dated 07.06.2022, now he seeks confirmation of the same.

2. Briefly, facts of the case as narrated in the F.I.R. lodged by the complainant namely, Muhammad Younus son of Qazi Muhammad Ismail are that on 13.05.2022 at 8.35 p.m. his son namely, Muhammad Shoaib Qazi aged about 24 years left the house to attend the marriage ceremony of his friend and after 30 minutes his sister-in-law over the cell phone informed him that she received call from unknown cell phone, the caller without disclosing his name, informed that Shoaib met with an accident at Indus Chowrangi. Upon which the complainant along with other relatives rushed to Jinnah Hospital, where he saw the dead body of his son lying in emergency ward of the hospital covered with white sheet. Since the dead body was badly damaged as such the postmortem could not be conducted and after burial the complainant lodged the F.I.R. No. 395/2022 against driver and the owner of bus bearing registration No. JA-2690.

3. Learned counsel for the applicant/accused while reiterating the contents of the bail application has contended that the applicant/accused is innocent and has falsely been implicated in the case with ulterior motives. He has contended that there is a delay of

about 6 days in lodging of the FIR, and the penal section applied in the FIR is bailable, whereas, Section 322, P.P.C. was applied to the case by the I.O subsequently, that too without any justification, even otherwise it is not entailing the punishment of imprisonment. It is contended that there is no evidence against the applicant/accused to connect him with the present offence. It is also contended that the name of the applicant/accused is neither mentioned in the FIR nor any specific role has been assigned to the applicant/accused. It is argued that the learned trial court has confirmed the pre-arrest bail granted to the co-accused, vide order dated 05.11.2022, as such present applicant/accused is also entitled to the same concession. It is further urged that the facts narrated creates doubts and the case needs further inquiry and as such the applicant/accused is entitled for confirmation of pre-arrest bail.

4. Learned Additional Prosecutor-General Sindh, assisted by learned counsel for the complainant, while supporting the order of the learned trial court, has vehemently opposed the grant of bail to the applicant by contending that he at the time of incident was having no valid license to drive a bus. He has further contended that it is a case of gross negligence wherein a precious life of an innocent person has been lost, as such, the applicant/accused is not entitled for concession of bail and the present bail application is liable to be dismissed.

5. I have considered the submissions made by learned counsel for the parties and have also gone through the record.

In the instant case the allegation against the applicant/accused is that due to his negligent driving a precious life of a young boy has been lost. Whereas, the justification of the applicant/accused is that he is innocent and further he is owner of the other vehicle (bus) whereas the bus, which hit the son of the complainant was another bus.

Admittedly, there is a delay of 6 days in lodging the FIR and further the name of the present applicant is also not appearing in the FIR. Record also reflects that initially section 320 PPC was applied in the FIR, however, the Investigating Officer of the case added Section 322 PPC subsequently. Before going into any further discussion, it would be advantageous to reproduce Sections 320, 321 and 322 of the Pakistan Penal Code herein under:

"320. Punishment for Qatl-i-khata by rash or negligent driving.—Whoever commits Qatl-i-Khata by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition of Diyat, be punished with imprisonment of either description for a term which may extent to ten years.

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."

6. Admittedly, section 320, P.P.C. isailable whereas section 322, P.P.C. though non-ailable yet is not punishable with any period of imprisonment except the payment of Diyat. The offences punishable with death or life imprisonment or ten years fall within the prohibitory clause as contemplated under Section 497 Cr.P.C. Thus, where the criminal liability of an accused of an offence is Diyat only the offence does not fall within the prohibitory clause. Reliance in this regard can be placed on the case of *Kazim Ali v. The State* [1998 MLD 1535]. It is well settled that where an offence does not fall within the prohibitory clause, the acceptance of bail is the rule and the rejection 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].

7. This Court is not oblivious of the fact that unfortunately one young boy has lost his life in the accident of the present case, however, the fate of bail application is also to be decided within the framework of section 497, Cr.P.C. and in accordance with the guidelines on the subject laid down by the Hon'ble Supreme Court of Pakistan. Besides above, liability of the present applicant or charges levelled against him could only be determined by the trial court after recording and evaluating the evidence. Reference can be made to the case of *Manzoor Hussain and 5 others v. The State* [2011 SCMR 902]. It is also settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. The record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is no more required for any investigation nor the prosecution has claimed any exceptional

circumstance. The accused was admitted to interim pre-arrest bail on 07.06.2022 and since then he is attending the trial court regularly and no complaint with regard to misusing the concession of ad-interim bail has been made by the complainant. It is considered expedient to mention here that nothing as such is available on the record from which, it may indicate that the applicant previously remained involved in any case of rash and negligent driving, thus inescapably it can be concluded for the purposes of bail that no exceptional circumstance is in existence to withhold the benefit under section 497, Cr.P.C.

8. Keeping in view the facts and circumstances of the case, I am of the opinion that the case of the prosecution requires further inquiry as such the interim bail granted to the applicant/accused, vide order dated 07.06.2022, is hereby confirmed subject to his furnishing additional solvent surety in the sum of Rs.200,000/- and PR Bond in the like amount to the satisfaction of learned trial court.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Bail Application stands disposed of. Office is directed to immediately send the copy of this order to the trial court for information and compliance.

JUDGE