

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Bail Application No.S- 1358of 2024
[Saddam Hussain v. The State]

Applicant : Saddam Hussain
through Mian Taj Muhammad Keerio, Advocate

Complainant : Ali Nawaz through Syed Shafiq Ahmed Shah, Advocate

The State : Through Ms. Sobia Bhatti, A.P.G.

Date of hearing & Decision : **07.03.2025**

O R D E R

MIRAN MUHAMMAD SHAH, J :-Through this Criminal Bail Application, Applicant Saddam Hussain seeks post arrest in Crime No. 106 of 2024 registered at Police Station Chamber district Tando Allahyar under Section 320, 279, 337/G & 427 PPC. Earlier the Applicant moved bail application before learned 1st Additional Sessions Judge, Tando Allahyar which was declined vide order dated 09.12.2024.

2. Brief facts of the prosecution case as per FIR are that on 26.10.2024 at about 2230 hours complainant and Waqar Hussain were going on motorcycle to Chambar, when they reached at Almani Bungalow, one car crossed them with high speed which was also going towards Chambar side, they heard the sound of accident and they immediately reached at the place of incident and saw two motorcycles were lying on the road and two persons were also lying injured on the road to whom they saw and identified being Aijaz Ali s/o Meer Muhammad Leghari and his brother Khan Muhammad S/o Meer Muhammad Leghari; that the complainant went towards the car which hit the motorcycles and saw that it was white colour Toyota Corolla car having No.BFZ-227 and from the driving seat one person namely Sadam Rind son of Dilbar Rind r/o village Miandad Rind alighted; the complainant tried to apprehend him but he escaped in the cotton crops; therefore, the complainant returned back to the place of incident. Meanwhile the neighbours namely Shan Ali Laghari, Muhammad Zafar Laghari, Dharmoon Kolhi and others also reached there. They saw on the torch lights that on the western side of the road in the Devi trees two persons were also

lying injured to whom they removed from the Devi trees and identified them each one police constable Muneer Hussain Dal aged about 35 years who was going to check post on the orders of DSP being his guard and the other person was his elder brother Iqbal S/o Gul Muhammad Dal aged about 38 years who were also having so many injuries on their person. It is further stated that in the said Devi trees police uniform and long boot were also lying in one plastic shopper. The complainant informed police station Chambar who arrived there and took the injured to civil hospital Chambar where PC Muneer Hussain and Aijaz Ali died while the remaining injured were given first aid and then referred to Hyderabad for further treatment. Thereafter police completed further proceedings of the deceased persons and handed over the dead bodies to their relatives for final rituals and after performing the funeral complainant came to police station and lodged the FIR. After registration of FIR the applicant / accused was arrested by the police on 29.10.2024 who is in custody.

3. Mian Taj Muhammad Keerio, learned counsel for the applicant argued that there are no reasonable grounds to believe that the applicant / accused is guilty of the offence charged with; that there is inordinate delay of about two days in lodging the FIR without any plausible explanation; therefore, the possibility of due deliberation and consultation cannot be ruled out; that in the FIR no source of information has been disclosed on the basis of which the complainant party knew the name of applicant/accused and given the same in the FIR; that according to FIR when complainant saw the accused/applicant, identified him at the spot than why did the complainant not lodge the FIR on the same day; therefore, in such circumstances the case of accused/applicant requires further enquiry; that no independent person of the locality has been cited as witness of the alleged incident who had seen the applicant / accused while driving the car in rash and negligent manner, that the applicant was not arrested at the spot; that the offences alleged are bailable and Section 322 PPC has been added later on in the case is not attracted and has been malafidely added to make the case of accused/applicant not bailable otherwise all the offences alleged are bailable and the applicant is entitled to the concession of bail; that the applicant is in custody and no more required for further investigation. He lastly prayed for bail. In support of his contention, learned counsel relied upon the case laws reported as PLD 2022 Sindh 440, 2020 SCMR 315, 2017 P.Cr.L.J Note 5, and 2000 P.Cr.L.J 203.

4. On the other hand Syed Shafiq Ahmed Shah, advocate for complainant has argued that the delay is properly explained in the FIR; that three persons were

died in the accident and one was seriously injured; that the applicant was identified by complainant at the spot who within his sight ran away towards cotton crop; that the applicant was driving the car without any valid license, hence Section 322 PPC fully attracts; that there is no enmity of complainant party to falsely implicate the applicant in the commission of offence; that after accident the applicant fled from the scene of offence and was then arrested on 29.10.2024 alongwith bottles of wine which shows that he is addict of Alcohol and has committed the offence in drunken condition;. Learned Counsel lastly prayed for dismissal of instant Bail application as there is sufficient evidence connecting the applicant with the commission of offence. In support of his contention learned Counsel relied upon the case law reported in 2023 SCMR 421, 2011 SCMR 1227, 2005 P.Cr.L.J 1648, 2023 YLR Note 69, 2021 YLR Note 52, 2017 P.Cr.L.J Note 125, 2012 YLR 1884.

5. Ms. Sobia Bhatti learned APG argued that the applicant is not entitled for concession of bail for the reason that his name is mentioned in FIR, he is not having any valid driving license, he without providing assistance to the injured fled from the place of incident; that the applicant was driving the car in rash and negligent manner hence the provision of Section 322 PPC is applied. She lastly prayed for dismissal of this bail application.

6. I have heard learned counsel for the parties as well as learned APG and gone through the record.

7. Admittedly there is a delay of two days' in lodgment of FIR despite applicant / accused was allegedly identified on spot. The Complainant has failed to disclose his source of information based on which he has named the applicant / accused. That no independent witness has been cited despite the area being a public throughfare and a double road. Most of the sections applied are bailable. Since the case has not been challaned and applicant / accused is behind bars for last six months whose case is fit for further inquiry, cannot be kept behind bars as punishment as held by Honourable Superior Courts.

In such circumstances, the applicant was admitted to post-arrest bail vide short order dated 7.3.2025 subject to his furnishing solvent surety in the sum of Rs. 50,000/- (Fifty Thousand only) and PR bond in the like amount to the satisfaction of Trial Court.

JUDGE

, with following observations:

7. After having heard the learned counsel for the parties and perusal of record it transpires that the delay in lodging the FIR has properly been explained by stating that in the incident three persons had died and one person was seriously injured who was also referred to the Hyderabad for treatment as such under the circumstances it is quite natural that the parents of the deceased took the dead bodies to their houses and performed their funeral ceremonies and the injured was taken to the Hospital at Hyderabad for saving his life as such after becoming free from the above necessary proceedings the complainant appeared at the police station and lodged the FIR. The scanning of police file further shows that the accused/applicant was seen and identified by the complainant at the spot who within the sight of complainant who ran away towards cotton crop standing beside the road. The record further shows that there is no enmity of the complainant party to falsely implicate the accused/applicant in the case. The record shows that during the investigation the accused/applicant has not produced the driving license which shows that he was driving the car without any valid license which fully attracts that the accused/applicant has not only committed the offences of rash and negligent driving but has also committed the offence punishable under section 322 PPC. The record further reflects that the role of accused/applicant in the case also appears to be very negligent not only driving the car rashly and negligently but also he ruthlessly leaving the injured without providing them any help and assistance ran away from the place of incident. In the case law reported as *Kaleemullah Vs. The State* and another (2013 YLR 1837) the Honourable Peshawar High Court has held as follows:

“As per record, though in the initial report the petitioner was not charged by the complainant, but he later recorded his supplementary statement on 17.01.2013 and nominated the petitioner for the commission of the offence. The occurrence is supported by the eye witnesses employed at toll plaza. The petitioner also recorded his statement under section 161 Cr.P.C., and admitted that he was cleaner of the truck and was driving the same at the time of occurrence. Driving a truck by the petitioner without having a license to drive was an unlawful act which had caused the death of an innocent person. Even he made good his escape from the scene after the commission of the offence and was apprehended later on. The offence under section 322 PPC being non bailable, the petitioner cannot claim bail as of right. It needs no reiteration that discretion in bail matters has to be exercised judiciously. Of late, vehicles driven by persons without any valid license has become a menacing phenomenon to reckon with. It is on account of such reckless individuals that accidents have become a routine affair with loss of precious human lives. Such incidents are reported both in the print and electronic media with its gory details. It is high time that the licenses are properly checked and scrutinized by the traffic police and the delinquents be taken to task so as to ward off tragedies on the roads.

Taking a tentative assessment of the available record, the accused/petitioner is prime facie involved in the commission of the offence and is not entitled to the concession of bail.”

8. In the present case in hand the similar situation, rather more serious situation is brought on record that in the incident three innocent persons have been died due to the offence committed by the accused/applicant by driving the car without valid license and also he fled away from the place of incident and was arrested later on with the bottles of Alcohol which reflects that at the time of incident he was also in drunk condition and has committed the offence which fully attracts the offence punishable under section 322 PPC alongwith the other offences shown in the FIR and has committed a non-cognizable offence and is not entitled for concession of bail. So far as the case laws relied upon by the

learned counsel for the accused/applicant are not fully appropriate to the facts and circumstances of the present case in hand and are also distinguishable.