

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.180 of 2025

Applicant : Tazeem Faheem Hans S/o Faheem Azeem
Hans through Mr. Ahteshamullah Khan,
Advocate

Complainant : Fahad S/o Ghulam Nabi
through Barrister Ahmer Jamil Khan a/w
Mr. Muhammad Junaid Khatri, Advocate/son
of the deceased

Respondent : The State
Through Ms. Rahat Ahsan, Addl. P.G. Sindh

Date of hearing : 04.02.2025

Date of order : 04.02.2025

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.355/2024 for the offence under Sections 320, 427 PPC registered at PS Maripur, after his bail plea has been declined by the learned Addl. Sessions Judge-X, Karachi West vide order dated 14.01.2025.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicant, applicant is innocent and has falsely been implicated in this case; that the sections in which the applicant has been charged are bailable, as such, bail is a right of the applicant; that the police has wrongly inserted Section 322 PPC which is not applicable in this case; that the applicant is in jail and he is no more required for further investigation. Lastly, he prays for grant of bail to the applicant.

4. On the other hand, Learned Addl. P.G. has also opposed for grant of bail. Mr. Ahmer Jamil Khan, Advocate has filed Vakalatnama on behalf of the complainant alongwith certain documents, which is taken on record. He vehemently opposes for

grant of bail to the applicant on the ground that under the influenced of *alcohol* the applicant was driving recklessly and in a rash manner; that Section 322 PPC is also applicable in this case. When he was confronted as to the punishment under Section 322 PPC, he replied only Diyat. He has also filed certain reports showing that the applicant under the influenced of *alcohol* was driving the vehicle at the time of incident and hit the car, resultantly, one lady lost her life. He has also relied upon the cases as follows:

- 2011 SCMR 1227
- 2021 MLD 549
- 2005 PCRLJ 1648
- 2018 PCRLJ Note 19
- Order dated 25.11.2016 passed by this Hon'ble Court in Crl. B.A. No.S-891/2016
- Order passed by this Hon'ble Court in Crl. Bail Application No.1154/2022
- 1987 PCRLJ 379

5. Heard the parties and perused the material available on record.

6. The case of the prosecution is that the complainant reported that on the day of incident, he was travelling back to home from Kharadar Market in his FX-Car when at about 09:50 a.m. he slowed the speed of the car on a jump of Road, a Car Honda Accord hit his car from the back, due to which his mother Mst. Wazeera Bano received serious injuries on her head and at back side, as such, she was being shifted to the hospital, during which she died. So far as the plea raised by learned counsel for the complainant that Section 322 PPC is very much applicable in this case, the punishment is only Diyat; however, Section 320 PPC is very much clear that ***“Whoever commits qatl-i-khata by rash or negligent driving shall, having regard to the facts and circumstances the case, in addition to diyat, be punished with imprisonment of either description for a term which may extend to ten years.”*** Furthermore, learned Addl. P.G. submits that Section 100 of the West Pakistan Motor Vehicle Ordinance, 1965 is also applicable in this case; however, from bare reading of the aforesaid Section, it appears that whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as

to be incapable of exercising of proper control over the vehicle shall be punishable with imprisonment for a term which may extend to six months. Furthermore the allegation against the applicant is that he was driving in a rash and negligent manner and the punishment provided under Section 322 PPC is for Diyat so also imprisonment upto 10 years. Since the applicant is first time offender and previously he was never convicted in any case. He is in jail and is no more required for further investigation. His further detention will not improve the case of prosecution. Reliance is place in an unreported case of the Hon'ble Supreme Court of Pakistan in the case of **Jahzeb Khan vs. The State through A.G. KPK and others** in Criminal Petition No.594/2020; wherein the Hon'ble Supreme Court has held that:

“4..... Petitioner’s continuous detention is not likely to improve upon investigative process, already concluded, thus, he cannot be held behind the bars as a strategy for punishment. A case for petitioner’s release on bail stands made out.”

7. In view of the above stated position, learned counsel for the applicant/accused has succeeded to make out a case for further inquiry as envisaged under section 497 (2) Cr.P.C. Consequently, the instant bail application is allowed. Applicant/accused named above is enlarged on post-arrest bail subject to his furnishing two solvent sureties in the sum of Rs.2,000,000/- (Rupees Twenty Lacs) **each** and PR bond to the satisfaction of the learned trial Court.

8. The case-laws relied by learned counsel for the complainant are distinguishable from the facts and circumstances of the case.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE