Criminal Bail Application No.2746 of 2023.

Date	Order with signature of Judge

For hearing of bail application.

30.01.2024.

Mr. S.M. Nehal Hashmi, Advocate for the applicant.
Mr. Saleem Ahmed Shar, Assistant Prosecutor General.
Mr. Muhammad Qasim Niazi, Advocate for the complainant.

MOHAMMAD KARIM KHAN AGHA, J:- The Applicant Muhammad Naseer @ Naeem Nasir S/o. Abdul Ghafoor is facing trial before the IIIrd Additional Sessions Judge Karachi East in respect of FIR No.449/2023 U/s. 322/34 PPC registered at P.S. Landhi, Karachi. The applicant applied for pre-arrest bail before this Court along with two other co-accused which was declined vide order dated 02.10.2023. He has now approached this Court once again for pre-arrest bail as apparently he has a fresh ground.

2.   The brief facts of the case as per FIR are that a child was delivered at Tasleem Clinic and Maternity Home. Subsequently the mother of that child became seriously unwell and shifted to JPMC for further treatment where after receiving medical treatment at JPMC Mst. Sidra Naz passed away. The FIR was lodged primarily on account of negligence which led to the death to Mst. Sidra Naz at Tasleem Clinic and Maternity Home involved in the delivery of that child including the applicant.

3.   The fresh ground which the applicant has moved is that the original bail declining order by this Court was made after only filing of

the FIR and since then the challan has been filed and during this period the charge is about to be framed. He also contends that at that time he did not have the relevant certificate to prove that he was a qualified technician which has now been placed on record.

4.   I have heard learned counsel for the applicant, learned counsel for the complainant and learned Assistant Prosecutor General Sindh and perused the record.

5.   It appears that the operation to give birth to the child was carried out by Dr. Fozia and Dr. Tariq Javed who were in fact not doctors and no evidence has been placed on record that they were qualified doctors. The applicant in this case has a different role as he did not deliver the child instead as proven by the certificates placed on record, he was a qualified technician who was called by the doctors dealing with the birth of the child. He was a qualified technician and according to the learned counsel for the applicant it was he who suggested that the lady who gave birth to the child and was suffering from serious complications be shifted to JPMC for treatment where she died. The first point to note is that the applicant's position is on different footings is that he was not involved in delivering the child and was called afterwards in order to assist in treating the deceased. It appears from record that he was not an unqualified doctor like other co-accused rather he was a highly experienced technician who was called to assist them.

6.   Under these circumstances the question of whether there was any criminal negligence caused by the applicant Muhammad Naseer @ Naeem Nasir S/o. Abdul Ghafoor comes within the ambit of further inquiry. The

charge is about to be framed and as such the applicant is no longer needed for investigation. The offence he has to face is in respect of section 322 which does not carry any sentence of imprisonment but only the payment of Diat. For the reasons discussed above the interim pre-arrest bail earlier granted to the applicant Muhammad Naseer @ Naeem Nasir S/o. Abdul Ghafoor is confirmed on the same terms and conditions. It is made clear that this order is only after a tentative assessment of the evidence available on record and would have no bearing on the outcome of the trial of the applicant which shall be decided by the concerned trial Court based on the evidence placed before it. The trial court is directed to complete the trial within 04 months of the date of this order. A copy of this order shall be sent to the IIIrd Additional Sessions Judge Karachi East for compliance.

7.   This pre-arrest bail application is disposed of in the above terms.

JUDGE

M. Arif