

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 247 of 2018

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Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 08.03.2018.

Decided on : 21.03.2018.

For Applicant : Mr. Shahid Qadeer, Advocate.

For State : Ms. Rahat Ahsan, Addl. P.G.

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**Mrs. Kausar Sultana Hussain, J.**:- This Criminal Bail Application No. 247 of 2018 in F.I.R No. 569 of 2017, under Sections 320, 337-G, 279, 427/34 PPC, registered at Police Station Preedy, Karachi, has been filed before this Court for seeking release of applicant/accused on bail.

2. Concisely, the facts segregated in the FIR are that on 24<sup>th</sup> November 2017, SIP Mohammad Aslam conducted proceedings under Section 174 Cr.PC in respect of demise of Baby Sakina, aged about four (04) years in Civil Hospital, Karachi. He also recorded statement of the complainant Huzaifa son of Hatim under Section 154 Cr.PC, who disclosed therein that on 24.11.2017, he was going on his motorcycle bearing Registration No. KIM-4112, Unique 70 of black colour to drop his daughter Sakina at Mama Baby Care School, when he reached near Mama Parsi School, M.A. Jinnah Road, at about 08.00 hours, two buses of 4-Q route bearing Registration Nos. JB-1548 and JB-0334 were competing each other and racing. Drivers of said two over speeding buses rashly and negligently, while overtaking each other hit the motorcycle of the complainant from its back side, as a result of which complainant and his daughter fell down. Bus bearing Registration No. JB-1548 trampled his daughter (deceased) by its rear tyre, resultantly, she passed away on the spot. Complainant also sustained injuries. Driver of the

said bus fled away from the scene and buses were set on fire by the people gathered there, hence this FIR was lodged by the complainant for taking legal action.

3. During the course of hearing instant bail application, it is inter-alia contended by the learned counsel for the applicant/accused that the applicant/accused is innocent and has falsely been implicated in this case with malafide intention and ulterior motives by the complainant. He contended that no specific role has been assigned to the applicant/accused in the FIR, neither applicant/accused is owner of the said bus bearing Registration No. JB-1548, nor driver of said bus involved in the said road accident. Per learned defence counsel, applicant/accused is the owner of bus bearing Registration No. JB-0334 and was not present at the time of accident. In support of his version, the learned defence counsel has enclosed C.C.T.V footages as annexures "C to C-2". The learned defence counsel in order to prove his claim of ownership of the bus bearing Registration No. JB-0334 has also furnished photo copy of sale agreement receipts and transfer letter as annexures "D to D-2". According to the learned defence counsel the present crime is not punishable with ten (10) years R.I or more, hence it does not fall within the ambit of prohibitory clause of Section 497 Cr.PC. In this regard he relied upon "PLD 1995 SC 34". Per learned defence counsel, the matter requires further inquiry, whereas the applicant/accused is law abiding citizen and permanent resident of Karachi and it is a prime facie good case for release on bail.

4. Conversely learned Additional Prosecutor General, Sindh has opposed the grant of bail, as according to her, not only applicant/accused was involved in this crime but also he was driving the said bus on fateful day of incident as per C.C.T.V.

footages of the prosecution. Admittedly, he did not produce his driving license before this Court. Per learned Additional Prosecutor General, applicant/accused is very much involved in this crime, therefore, she opposed the grant of bail.

5. I have heard the arguments advanced by the learned defence counsel for the applicant/accused, the learned Additional Prosecutor General and citations as well as perused the record under their valued assistance.

6. Heard the arguments from both sides, perusal the record and have also watched the C.C.T.V footages caught on Video, which shows that two buses on M.A. Jinnah Road were racing with each other in high speed and it seems that while racing, the drivers of said buses kept focused on their respective victory, therefore naturally they were unable to give full attention and concentration on the road traffic situation, which caused mishap. No doubt that the driver's attitude and mental situation is also one of the cause of road accident. The applicant/accused stated in his statement recorded during interrogation that he was driving the bus bearing Registration No. JB-0334 of 4-Q route, at the time of accident, therefore, the plea raised by the learned defence counsel that the applicant/accused was not present at the time of incident is itself contradictory with the statement of the applicant/accused. The C.C.T.V footages shows that bus bearing Registration No. JB-1548 hit the motorcycle and the complainant's daughter trampled under the rear wheel of the said bus, however, the bus of the applicant/accused was also being driven in high speed, yet driving of vehicle in speed cannot be considered as a rash and negligent act until the facts of rash and negligent driving are substantiated and proved. The act of the applicant/accused is not at par with the act of the driver of bus registration No. JB-1548. Further,

the applicant/accused is in jail since his arrest and no more required for investigation.

7. Keeping in view the above facts and circumstances of the case, prima facie, the applicant/accused has succeeded to make out case for further inquiry.

8. Accordingly the applicant/accused Muhammad Anees son of Muhammad Aslam is admitted on bail, subject to furnishing solvent surety in the sum of Rs. 100,000/- (One Hundred Thousands only) and P.R. Bond in the like amount to the satisfaction of the trial Court concerned.

9. It needs not to iterate that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

JUDGE

Faheem/PA