

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

Criminal Bail Application No. 643 of 2018

Date	Order with Signature of the Judge
------	-----------------------------------

For hearing of bail application.

Heard on	:	22.05.2018
Decided on	:	28.05.2018
For Applicant	:	Mr. Muhammad Aslam Bhutta, Advocate.
For State	:	Mr. Gul Mohammad Farooqui, A.D.P.P.

Mrs. Kausar Sultana Hussain, J.:- This Criminal Post Arrest Bail Application No. 643 of 2018 in F.I.R No. 569 of 2017, under Sections 320, 337-G, 279, 427/34 PPC, (section 322 PPC was inserted in Challan), registered at Police Station Preedy, Karachi, has been filed before this Court for seeking release of applicant/accused Muhammad Saleem on bail.

2. Concisely, the facts segregated in the FIR are that on 24th 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 two co-accused namely Muhammad Azam and Muhammad Anees have already been granted bail by the learned trial Court and this Hon'ble Court, vide orders dated 05.01.2018 and 21.3.2018, therefore, the present applicant/accused prays to apply the rule of consistency, as the case is at similar footing. Per learned defence counsel, neither any negligent had been committed by the present applicant/accused, as the same was neither intentionally nor deliberately and the present applicant/accused was neither driving at high speed, while the negligence was committed by the motorcycle rider, but due to a tragic incident, the applicant/accused is being watched as careless driver and whole the burden has been kept upon his shoulder. 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. Per learned counsel neither the name of the accused mentioned in the FIR nor his specific role has been assigned by the complainant in the FIR, however, the contents of the FIR are imaginary, further neither any direct or indirect evidence against the present applicant/accused, which creates doubts and case need further inquiry. He has relied upon "2000 P Cr.L.J. 203, 1998 MLD 1537 Lahore and 2012 MLD 1702 Sindh". 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 A.D.P.P has opposed the grant of bail, as according to him, 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 A.D.P.P, applicant/accused is very much involved in this crime, therefore, he opposed the grant of bail. He also relied upon the case laws reported in "2005 P Cr.L.J 1648 Karachi, 2011 SCMR 1227".

5. I have heard the learned counsel for the applicant/accused, the learned A.D.P.P and also gone through the available record. It is evident from the contents of FIR that while both the drivers/accused persons have in race with each other on a busy thoroughfare, the driver of Bus No. JB-1548 which was being driven by the applicant/accused rashly and negligently hit the motorcycle of the complainant as a result of that the complainant got injured and his minor daughter died as her head was pressed under the wheels of Bus No. JB-1548. C.C.T.V footages of the said tragic incident also reveals the same facts. Moreover, the driver did not possess such driving license (HTV), which could have entitled him to drive the Bus rather he possessed L.T.V (Light Transport Vehicle) driving license. The offence under Section 322 PPC is not bailable and grant of bail is a discretionary relief, which cannot be claimed as of right. The law of consistency is not applicable in the instant case as co-accused Muhammad Anees was granted bail on the ground that he and the bus driven by him were not responsible of the child beneath the tyres of the bus though he was racing with

the present applicant/accused, yet his act as not at per with the act and commission of the applicant/accused.

6. In view of the above discussion, I am of considered view that prima facie, because of nature of allegations levelled against the applicant/accused and the evidence so far collected during investigation the applicant/accused is not entitled for grant of bail hence, I decline the bail application with directions to the learned trial Court to conclude the trial of the case within four months' time from the date of receipt of this order. Case laws relied upon by the A.D.P.P mentioned supra are very much applicable in this matter.

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

JUDGE