

they have brought at Jinnah Hospital, Karachi. Then he immediately reached there and found their dead bodies. On inquiry, it came to know that Truck No. TAM-862 drive by driver Shafa Ullah Niazi son of Habib Ullah Niazi in negligent manner hit his brother's motorcycle No. LAB-9480 originally belong to his cousin Dr. Basheer Ahmed Bhatti from back side at Shah Faisal Colony No. 2 $\frac{3}{4}$ as both were coming from Factory. Police of PS Shah Faisal Colony, Karachi arrested the driver applicant / accused.

3. The learned counsel for the applicant / accused has argued that before the present bail application, the applicant / accused has moved a bail application before the learned trial Court but it was dismissed, vide order dated 13.3.2020 although the main section of the alleged offence is bailable but the learned trial Court did not consider it and rejected the plea of the applicant / accused for bail on the basis of its observation that the applicant /accused has no valid driving license for driving Truck and due to his negligence and rash driving he caused death of two innocent persons. The learned counsel for the applicant / accused has argued that applicant / accused is innocent and has falsely been implicated in this case. He further argued that the delay of about 6 hours in lodging of FIR has not been considered by the learned trial Court while dismissing the bail application of the applicant / accused. It is further argued that police added Section 322 PPC with malafide intention and ulterior motives as the same is although non-bailable but the sentence provided there under is only Diyat. Per learned counsel for the applicant / accused there is no independent and eye witness of the alleged incident even the

complainant is not an eye witness of the incident, therefore, the matter requires further inquiry and the applicant / accused is entitled for grant of bail. The learned counsel for the applicant / accused in support of his contention has relied upon 2000 P.Cr.L.J 203 (Karachi), 2005 YLR 1970 (Karachi) and 2018 YLR Note 283 (Sukkur Bench).

4. On the other hand, learned Addl. Prosecutor General, Sindh and learned counsel for the complainant have vehemently opposed the grant of bail to the applicant / accused on the ground that the applicant / accused was arrested on spot in injured condition beaten by the public. The learned DPG has further argued that the P.Ws are police officials, who were present at the site and they are eye witnesses of the incident. She further argued that the owner of the Truck was arrested but now he is on bail. It is pointed out by the learned State Counsel that number plate fixed on back side of the Truck was un-verified and the applicant / accused / driver admitted before police that he has no driving license and no Fitness Certificate of the vehicle was in his possession. The learned counsel for the complainant has relied upon the case law (Re-Atta Muhammad v. The State) reported in 2005 P.Cr.L.J 1648 (Karachi).

5. After hearing arguments, I have gone through the available record and also given due consideration to the arguments delivered by the learned counsel for the applicant / accused, learned Addl. P.G. and the learned counsel for the complainant. No doubt section 320 & 427 PPC are bailable under which the challan has been submitted by the I.O in Court. However, offence under Section 322 PPC though is not

bailable yet is not punishable with any period of imprisonment, besides the payment of Diyat, hence is not fall within the ambit of prohibitory clause of Section 497(1) Cr.P.C. In instant matter the allegation of the prosecution is that the applicant / accused has committed Qatl-bis-Sabab as defying in Section 321 of PPC. Per prosecution the applicant / accused did not have Driving License when he was arrested after unfortunate incident as such he has committed offence fall under Section 322 PPC, but per learned counsel for the applicant / accused he has produced his license before the Court and the I.O has sent it for verification to the concerned authority / office of Deputy Inspector General of Police, Traffic, Peshawar, KPD and still he has not received any report as to whether it is fake or genuine. The I.O has further stated that he is waiting for Motor Vehicle Inspector's Report. In any view, still it is not come on record that the applicant / accused has committed offence under Section 322 PPC or not and what is the report of Motor Vehicle Inspector therefore, how he be confined in Jail under such offence which is still not clear that whether it has been committed or not. In the case relied upon by the learned counsel for the complainant i.e. 2005 P.Cr.LJ 1648 (Karachi) the accused had possessed expired driving license at the time of accident while under Section 3 of the Motor Vehicle Ordinance 1965 a driver of any Motor Vehicle or Public Service, Vehicle should hold an affective license authorizing him to drive such vehicle, therefore, in my view the facts of this case are distinguishable. I therefore, allow the present bail application subject to furnishing solvent surety in the

sum of Rs. 5,00,000/- (Five Hundred Thousand only) and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

6. It needs not to emphasize that observations made above are tentative in nature and the learned Trial Court shall not influence by such observations.

Fahim/PA

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