

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.601 of 2021

Applicant : (i) Muhammad Aslam S/o Nazir Ahmed
(ii) Arshad S/o Muhammad Aslam
Through Mr. Abdul Hameed Khan,
Advocate

Complainant : Matloob Ali Khan S/o Mehmood Ali
Through Mr. Hussain Bux Saryo &
Mr. Israr Ahmed Abro, Advocates

Respondent : The State
Through Mr. Talib Ali Memon,
Assistant Prosecutor General, Sindh.

Date of hearing : 05.08.2021

Date of order : 05.08.2021

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.206/2021 registered under Sections 320, 427 PPC read with Sections 322, 114, 34 PPC at PS Gulshan-e-Iqbal, after their bail plea has been declined by X-Additional Sessions Judge, Karachi East vide order 31.03.2021.

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. Learned counsel for the applicants/accused has mainly contended that applicants/accused are innocent and have falsely been implicated in this case; that the vehicle of applicants/accused was standing at 6 number in the queue where the incident occurred; that the tanker was full with water and it was in slow speed as such no question of hitting the motorcycle arises. He lastly prays for confirmation of bail. He has produced driving licensed of accused wherein category of motorcycle, LTV and HTV is written.

4. On the other hand, learned counsel for the complainant as well as learned APG have vehemently opposed for confirmation of bail on the ground that due to rash and negligent driving, two persons lost their precious lives. Learned counsel for the complainant has also relied upon the cases of (1) Javeed v. The State (2018 MLD 1146) and (2) Kaleem Ullah v. The State and another (2013 YLR 1837).

5. I have heard the learned counsel for the parties and perused the material available on record. It appears that due to rash driving of accused, two persons namely Syed Amir Hussain aged about 27 years and Jahania Lodhi aged about 18/19 years lost their lives whereas, accused made good his escaped from the place of incident. From the facts of the case, it appears that the accused have committed the offence falls within Section 320 PPC which says 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. Further, during investigation the water tanker was inspected but due to bad fitness, its registration was cancelled. It has further come on record that accused Arshad had only learning license of HTV LTV and he cannot drive heavy vehicle at public places, therefore, Section 322 PPC was added in the charge sheet. Prima facie sufficient material is available on record to connect the applicant/accused with the commission of alleged offence. No ill-will or enmity has been suggested against the complainant or the prosecution to believe that the applicants/accused have falsely been implicated in this case.

6. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of

‘Rana Abdul Khaliq v. The STATE and others’ [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

7. In view of the above, learned counsel for the applicants/accused has failed to make out a case for further inquiry as envisaged under subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicants/accused vide order dated 08.04.2021 is hereby recalled and the bail application is **dismissed**.

8. 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 applicants on merits.

JUDGE

Kamran/PA