

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2401 of 2021

Applicant : Muhammad Sharif s/o Soomar, through
Mr. Muhammad Latif Baloch, advocate

Respondent : The State, through Mr. Talib Ali Memon,
Additional Prosecutor General, Sindh

Complainant : Mst. Ayesha Naz present in person

Date of hearing : 26.01.2022
Date of order : 29.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Muhammad Sharif S/o Soomar seeks post-arrest bail in Crime No.352/2021, registered at P.S. Mouchko, Karachi under sections 337-G, 337-A (i), 334, P.P.C. His earlier application for the grant of same relief bearing No.6517/2021 was heard and dismissed by the learned Additional Sessions Judge-I, West-Karachi, vide order dated 17.12.2021.

2. Briefly stated, the facts of the prosecution case are that, on 27.08.2021, complainant Ayesha Naz, a police constable, lodged aforesaid F.I.R., alleging therein that, on 01.06.2020, she was going on her duty to Women Police Station with her cousin Ali Hassan on his motorcycle. At about 1330 hrs., they reached Mauripur Scheme No.42, near Muslim Kanta, Mochko, Karachi, where a Water Tanker bearing registration No.TUC-478, being driven by an unknown driver rashly and negligently, hit their motorcycle from front side causing them injuries. During treatment, both legs of the complainant were amputated. Initially, the F.I.R. was lodged under sections 337-G, 427, P.P.C., subsequently, after investigation prosecution added sections 337-A (i) and 334, P.P.C. in Charge Sheet.

3. Learned counsel for the applicant has contended that the applicant is innocent and he has falsely been implicated in this case with mala fide intention

and ulterior motive; that the offences under Section 337-G and 337-A(i), P.P.C. are bailable, while Section 334, P.P.C. has been misapplied by the police in the case; that there is an unexplained delay of 14 months in lodging of F.I.R.; that the F.I.R has been lodged against the unknown truck driver; that the driver of the truck, namely, Allah Bakhsh s/o Ali Muhammad has already expired and buried in Karachi on 17.01.2021, while the present applicant was conductor and cleaner of the truck; hence, the applicant is entitled to bail.

4. Learned Addl. P. G. has opposed grant of bail to applicant, *inter alia*, on the ground that sufficient material is available to connect the applicant with the commission of alleged offence.

5. Heard the learned counsel for the parties and perused the material available on record.

6. In order to appreciate the contentions of learned counsel for the applicant and Addl. P.G. Sindh, I deem it appropriate to reproduce sections 332, 333, 334 & 337-G, P.P.C., as under:

332. Hurt: (1) *Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.*

(2) *The following are the kinds of hurt:*

(a) *Itlaf-i-udw*

(b) *Itlaf-i-salahiyyat-i-udw*

(c) *shajjah*

(d) *jurh and*

(e) *all kinds of other hurts.*

333. Itlaf-i-udw: *Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf-i-udw.*

334. Punishment for Itlaf-udw: *Whoever by doing any act with the intention of thereby causing hurt to any person, or with the*

knowledge that he is likely thereby to cause hurt to any person causes Itlaf-i-udw of any person, shall, in consultation with the authorized medical officer, be punished with qisas, and if the qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

337G. Punishment for hurt by rash or negligent driving:

Whoever causes hurt by rash or negligent driving shall be liable to arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.

(Emphasis supplied)

7. It appears from the perusal of the above provisions that section 332, P.P.C. provides definitions of "hurt" with its five kinds and section 333 (ibid) stipulates *itlaf-i-udw*. Section 334 (ibid) prescribed punishment for the offence of *itlaf-i-udw* with *qisas*, and if the *qisas* is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender is liable to *arsh* and may also be punished with imprisonment of either description for a term which may extend to ten years as *ta'zir*. While, section 337-G, P.P.C. enjoins the imposition of *arsh* or *daman* specified for the kind of "hurt" caused and punishment with imprisonment of either description for a term which may extend to five years as *ta'zir*. However, the distinguishing factor for imposing punishments for "hurt" under sections 334 and/or 337-G, P.P.C. is the manner of doing any act causing "hurt" to any person. Under section 334, P.P.C., act done with intention or knowledge of causing "hurt" to a person is punishable with *qisas/arsh* or imprisonment upto ten years as *ta'zir*, while, under section 337-G, P.P.C, "hurt" caused by rash or negligent driving is punishable with imprisonment upto five years as *ta'zir*, besides, payment of *arsh* or *daman*.

8. In the instant case, the allegation against the applicant is that he caused hurt by rash and negligent driving and for that act maximum punishment with imprisonment of five years has been provided under section 337-G, P.P.C, irrespective of kind of hurt caused, with *arsh* or *daman* specified for the kind of hurt caused, and under the Schedule of Offences, the alleged offence is bailable.

9. For the forgoing facts and reasons, the guilt of the applicant under section 334, P.P.C requires further enquiry as envisaged under sub-section (2) of Section 497, Cr. P.C. entitling him for the grant of bail. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail subject to furnishing by him solvent surety in the sum of Rs.200,000/- (*Rupees Two Hundred Thousand only*) and PR bond in the like amount to the satisfaction of the trial Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

The instant Cr. Bail Application stands disposed of.

JUDGE

Abrar