

HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**Cr. Bail Application No.S-181 of 2023**  
[Mehmood versus The State]

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicant	: Through Mr. Arif Hussain Abbasi advocate
Complainant	: In person
The State	: Through Mr. Imran Ali Abbasi Assistant P.G
Date of hearing	: 08.05.2023
Date of decision	: 08.05.2023

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**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Applicant seeks post-arrest bail in Crime No.122 of 2022 registered at P.S SITE Hyderabad for offenses punishable under Sections 320, 279, and 34 PPC. His plea for the same relief has been turned down by the learned trial Court vide Order dated 20.02.2023.

2. Brief facts of the prosecution case, as per FIR, are that Complainant Manzoor Ali lodged the aforesaid FIR on 26.10.2022 alleging therein that on 16.05.2022 at about 2030 hours he along with his brother Ali Nawaz, Muhammad Yousuf, Hammad and Muhammad Saleh (**deceased**), who is the brother-in-law of his elder brother, were standing near Khan Hotel situated at Zeal Pak Market when suddenly three persons came on motorcycle, which was driven by the present applicant and the said motorcycle hit Muhammad Saleh, who succumbed to injuries and died.

3. Mr. Arif Hussain Abbasi learned counsel for applicant argued that the applicant is innocent and has falsely been implicated in the present FIR; that there is delay of about five months in registration of FIR; that fact of the matter is that deceased was hit by some unknown persons and the applicant along with two other persons was sitting at Hotel, who shifted the deceased to Hospital on humanitarian ground; however, Complainant party malafidely implicated him in this FIR after about five months; that two other persons were also implicated in this FIR, who have been let off by the

I.O under Section 169 Cr. P.C; that before this bail application, the applicant had moved Cr. Bail Application No.S-1298 of 2022 wherein he was admitted to interim pre-arrest bail by this Court; however, said bail application was dismissed due to non-appearance of Counsel, and the applicant was taken into custody. He submits that the case of applicant falls within the ambit of further inquiry; therefore, he may be admitted to bail.

4. Learned APG assisted by Complainant, who is present in court vehemently opposed the bail and submitted that applicant was driving the motorcycle without headlights and license, as such he murdered Muhammad Saleh on account of his negligence and that initially police was not registering the FIR, which compelled the Complainant to approach learned Justice of Peace, hence delay is very much explained; that Section 318 defines Qatl-i-Khata as an offense where one causes the death of another either by mistake of an act or by mistake of fact without any intention to cause harm to that person; that Section 320 provides punishment for Qatl-i-Khata by rash or negligent driving. As against this, Qatl-bis-Sabab has been defined by Section 321 as an offense where the one responsible for the death of another had no intention but it was occasioned as a result of his unlawful act. It follows that where the accused does not possess a valid licence he would be acting unlawfully if he drives a vehicle; therefore, if he causes the death of anybody negligently or rashly while driving, the offense would fall within the ambit of Section 320 PPC. The position would, however, be different where he has the license and in that eventuality Section 322 would be attracted; that the offense would fall in the category of Qatl-i-Amd if a person hits another with his vehicle to cause death or drives on a public way rashly or negligently with the knowledge that such driving is so dangerous that it would in all probability cause an accident and it results in death. He prayed for dismissal of bail application.

5. I have heard the arguments of the parties and perused the record with their assistance.

6. Before going into further discussion, it would be advantageous to reproduce Sections 279 & 320 of the Pakistan Penal Code herein under:

“**Section 279 PPC** reads as under:

279. Rash driving or riding on a public way: Whoever drives any vehicle, or rides, on any public way in a manner so rash or

negligent as to endanger human life or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to three thousand rupees, or with both.”

7. Section 279 is attracted where –

- i) a person drives a vehicle or rides on a public way;
- ii) such driving or riding must be rash or negligent, and
- iii) it should endanger human life or is likely to cause hurt or injury to any person.

**"320. Punishment for Oatl-i-khata by rash or negligent driving.**— Whoever commits Qatl-i-Khata by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition of Diyat, be punished with imprisonment of either description for a term which may extend to ten years.”

8. Section 320 is attracted where –

- i) a person causes the death of some other person either by some mistake as contemplated in Section 318 PPC;
- ii) there is no intention to cause the death of the said person or cause him harm, and
- iii) the death is caused by rash or negligent driving

7. The offenses punishable with death or imprisonment for life or ten years fall within the prohibitory clause as contemplated under Section 497 Cr.P.C. It is well settled that where an offense does not fall within the prohibitory clause, the acceptance of bail is a rule and rejection is an exception. Reliance in this regard can be placed on the case of *Tariq Bashir and others v. The State* [PLD 1995 Supreme Court 34].

8. The tentative assessment of record reflects that the alleged incident took place on 06.05.2022 and was reported on 06.10.2022 after 05 months, and the applicant is accused of rash act and criminal negligence while driving motorcycle on the fateful day.

9. Primarily, a rash act is an over-hasty act. It is opposed to a deliberate act. Still, a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences.

10. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is an imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution. The legal principles for determining culpability in cases of rash and negligent driving are more or less well-established.

11. In the present case, the victim of a road accident Muhammad Saleh died during his post-mortem on 19.05.2022 and the Doctor opined that due to fracture of long bones in a road traffic accident. No recovery of alleged Motorcycle involved in the crime. Co-accused have been let off under Section 169 Cr. PC.

12. It is well settled principle of law that accusation against accused shall be specific, fair and clear in all respects to provide an opportunity to to defend himself/herself in due course of trial; and, it is yet to be determined by the Trial Court whether the applicant caused injuries to the victim in a road accident deliberately and intentionally as portrayed by the complainant and whether section 322 PPC is attracted or otherwise as there is much difference between 'qatl-i-khata by rash or negligent driving' and 'Qatl-bis-Sabab'.

13. This Court is not oblivious of the fact that unfortunately, one person has lost life in the present case, however, the fate of bail application is also to be decided within the framework of Section 497, Cr.P.C. and under the guidelines laid down by the Supreme Court of Pakistan. Besides above, the liability of applicant or charges leveled against him could only be determined by the trial court after recording and evaluating the evidence. It is also a settled principle of law that at bail stage deeper appreciation cannot be undertaken and only a tentative assessment of material available is to be made. Record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is neither required for further investigation nor the prosecution has claimed any exceptional circumstance.

14. It is expedient to mention here that nothing is available on record from which, it may is deduced that the applicant previously remained involved in any case of rash and negligent driving, thus inescapably it can be concluded for bail that no exceptional circumstance is in existence to withhold the benefit under Section 497, Cr.P.C.

15. In view of the above, the applicant has made out a case for post-arrest bail. Accordingly, the applicant is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 100,000/- (One Lac Rupees) and PR Bond in the like amount to the satisfaction of the trial court.

16. Needless to mention here that any observation made in this order is tentative and shall not affect the right of either party at trial or influence the trial court in reaching its decision on the merits of the case.

JUDGE

Sajjad Ali Jessar