

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

Criminal Bail Application No. 1462 of 2023

Date	Order with signature of Judge
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For hearing of bail application

11.8.2023

Mr. Muhammad Rais Awan advocate for the applicant
Mr. Siraj Ali Khan, APG

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.267/2023, registered under Section 322 PPC lodged at Police Station Gulberg Karachi. The earlier bail plea of the applicant has been declined by the learned Additional Session Judge-VII/MCTC-02 Karachi vide order dated 23.06.2023 in Criminal Bail Application No.1139/2023.

2. The accusation against the applicant is that on 04.06.2023 he caused the death of Sanaullah in a road accident due to his rash and negligent driving. Such report of the incident was lodged on 04.06.2023 with Gulberg Police Station District Central on the same day by SI Sohail Ahmed and F.I.R No.267/2023 was registered under Section 320 PPC.

3. Learned counsel for the applicant has contended that he is innocent and has been falsely involved in the FIR; he emphasized that hurt by rash and negligent driving and for that act maximum punishment with imprisonment of five years has been provided, 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 offense under Section 320 PPC is bailable; that offense under Section 322 PPC is not applicable in the case; that his vehicle did not hit the deceased in front, however, he touched his motorbike with rickshaw and failed on the roadside, thus the applicant is not liable for his alleged negligence; that the private party did not come forward to lodge FIR against the applicant, however, SI Sohail Ahmed lodged a report with P.S Gulberg on 04.6.2023 under Section 320 PPC and subsequently he included Section 322 PPC in the charge-sheet with malafide intention. He next argued that the applicant has a valid license and was driving smoothly, however, did not hit the motorcycle of the deceased. He next contended that there was no evidence that the vehicle was being driven rashly and negligently; that the offense under Section 322 PPC does not come in the prohibitory clause of Section

497(2) Cr. P.C as only *diyat* amount has been provided. He next argued that Section 320 is bailable, however, due to the inclusion of Section 322 he has been kept behind the bar since 04.06.2023. It is contended that the vehicle was not examined by the expert during the investigation to ascertain the speed of the vehicle. He prayed for allowing the bail application.

4. Learned APG has opposed the bail plea of the applicant on the ground that the applicant is nominated in the FIR and had no valid license to drive a trailer rashly and negligently; that the offense under Section 322 PPC is non-bailable; that the applicant committed the offense of rash and negligent driving by hitting to the motorcycle of deceased Sanaullah who passed away due to road accident; that the offenses of the accident are increasing day by day, particularly at hands of driver who run transport without a license or valid or effective license because of which people lose their precious lives. In the present case also 19 years young boy lost his life at the hands of the applicant due to his rash and negligent driving, he prayed for the dismissal of the application.

5. I have heard learned counsel for the parties and perused material available on record.

6. In the instant case the allegation against the applicant/accused is that due to his negligent driving a precious life of a young boy has been lost. Whereas, the justification of the applicant/accused is that he is innocent. The record also reflects that initially Section 320 PPC was applied in the FIR, however, the Investigating Officer of the case added Section 322 PPC subsequently. Before going into any further discussion, it would be advantageous to reproduce Sections 320, 321, and 322 of the Pakistan Penal Code herein under:

"320. Punishment for Qatl-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 extent to ten years.

321. Qatl-bis-Sabab.-- Whoever, without any intention to cause death of, or cause harm to, any person, does any unlawful act which becomes a cause for the death of another person, is said to commit Qatl-bis-Sabab.

322. Punishment for Qatl-bis-Sabab.--Whoever commits qatl-bissabab shall be liable to Diyat."

7. Admittedly, Section 320 P.P.C. is bailable whereas Section 322 P.P.C. though non-bailable yet is not punishable with any period of imprisonment except the payment of *Diyat*. Further Section 322, PPC falls outside the prohibitory clause of Section 497(1), Cr.P.C. Thus, where the criminal liability of an accused of an offense is *Diyat*, in such

circumstances the detention of the applicant pending trial can only be justified if his case falls within the scope of any of the exceptions stated in the cases of Tariq Bashir v. State **PLD 1995 SC 34**, Muhammad Tanveer v. State **PLD 2017 SC 733** and Zafar Iqbal v. Muhammad Anwar **2009 SCMR 1488**, there is, however, nothing on record that may attract any of the said exceptions and justify denial of post-arrest bail to the applicant. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Salman Khan v. The State **2022 SCMR 515**, wherein it is held as under:-

“3. We have heard the parties and examined the record. The petitioner and others members of the Eagle Squad were on their routine duty of maintaining law and order in the city, at the time of incident. There is nothing on record to show that there was a background of any enmity between the parties, or the incident was the result of some provocation, or the petitioner fired at the car that had tinted glasses, with the intention to cause death of the complainant and his cousin. From the contents of the crime report, it appears that an offence of qatl -bis-sabab punishable under section 322, P.P.C. is made out other than qatl-i-khata punishable under section 319, P.P.C. However, qatl-i-amd under section 302 does not appear to be made out in the present facts and circumstances of the case. Section 322, P.P.C. falls outside the prohibitory clause of section 497(1), Cr.P.C. while section 319, P.P.C. is bailable. That being so, the detention of the petitioner pending trial can only be justified if this case falls within the scope of any of the exceptions stated in the cases of Tariq Bashir, Muhammad Tanveer and Zafar Iqbal. There is, however, nothing on record that may attract any of the said exceptions and justify denial of post arrest bail to the petitioner.”

8. The legal principles regarding cases of rash and negligent driving are more or less well-established. The mere fact that a vehicle is driven at a fast speed would not prove rashness and negligence unless, of course, all the attending circumstances are taken into consideration. The criterion, in a nutshell in all such cases, is whether, upon the evidence on record, a person can be said to have been driving with due care and caution or else had been negligent i.e. had omitted to do something which a reasonable man, guided by the considerations which ordinarily regulate the conduct of human affairs would do, or done something which a prudent and reasonable man would not do. In the present case, no doubt, the deceased has lost his life in the episode but the occurrence prima-facie has not been witnessed by an independent person, though it is claimed by the prosecution that the public thrashed out the applicant but no statement from the public has been recorded by the police who might have seen the incident; except police version which needs to be looked into by the trial Court besides the guilt of the applicant is yet to be determined at the trial.

9. This Court is not oblivious to the fact that unfortunately, one young boy has lost his life in the accident of the present case, however, the fate of the bail application is also to be decided within the framework of Section 497 Cr.P.C. and under the guidelines on the subject laid down by

the Supreme Court. Besides the above, the liability of the present 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 the bail stage deeper appreciation of the merit of the case cannot be undertaken and only a tentative assessment of the material available is to be made. The record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is no more required for any investigation nor the prosecution has claimed any exceptional circumstance.

10. For the forgoing facts and reasons, the guilt of the applicant under Section 322, P.P.C. requires further inquiry as envisaged under subsection (2) of Section 497 Cr. P.C. entitling him for the grant of bail.

11. The trial Court has not exercised its discretion judiciously in denying the relief of post-arrest bail to the applicant. This bail application is accepted and the applicant is admitted to bail subject to his furnishing the bail bond in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) with one surety in the like amount to the satisfaction of the trial Court.

12. Needless to mention that the observations made in this order are tentative in nature which shall not in any manner influence the trial Court and that this concession of bail may be canceled, under Section 497(5) Cr. P.C, if the applicant misuses it in any manner, including causing a delay in the expeditious conclusion of the trial.

13. The instant Criminal Bail Application stands disposed of.

JUDGE