

THE HIGH COURT OF SINDH AT KARACHI

CrI. Bail Application No.433 of 2025

Applicant : Hazrat Nawaz
through Mr. Rashid Hussain,
advocate a/w applicant,

Respondent : The State
through Mr. Mumtaz Ali Shah
Assistant Prosecutor General
a/w complainant

Date of short order : 3rd March, 2025

Date of reasons : 4th March, 2025

ORDER

Jan Ali Junejo, J.-- The present Criminal Bail Application has been filed on behalf of the Applicant/Accused, who is seeking pre-arrest bail in connection with a case stemming from FIR No.573 of 2024, registered at P.S. Site-A, Karachi, under Sections 320/322/114, P.P.C. The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No.410 of 2024, which was subsequently dismissed by the Court of the learned Xth Additional Sessions Judge, Karachi-West, vide Order dated 30-01-2025.

2. The facts relevant to the present criminal bail application are as follows:

“The statement of the Complainant Muslim Khan, son of Shams-ur-Rehman, resident of House No. 1977-KESC, Block B, Abidabad, Baldia Town, Karachi was recorded under Section 154, Cr.P.C. He stated that on 10-12-2024 at 14:00 hours, he received information that his real son, Mehran (aged 15/16 years), had met with an accident and was admitted to Civil Hospital. Upon reaching the hospital, he saw his son Mehran (aged 15/16 years) lying

dead in the ICU. Upon further inquiry, he learned that his son was working as a conductor on a Qingqi rickshaw. On 10-12-2024 at around 12:00 hours, near Generation School, Siemens Chowrangi, Mehran fell from the Qingqi and got injured. He was brought to Civil Hospital, where he passed away during medical treatment. The Complainant claims that the Qingqi rickshaw No.AAB-8771, Route 1-W, was being driven recklessly by driver Muhammad Abbas Khan, son of Umar Sahib, which led to his son's fatal fall. He requests legal action against the driver".

3. The learned counsel for the Applicant has argued that the Applicant has no direct nexus with the prime accused, Muhammad Abbas Khan, nor did he authorize him to drive the vehicle, making the application of Section 114 PPC erroneous as mere ownership does not establish criminal liability. He further contended that the Applicant was falsely implicated after not being named in the initial FIR, with no direct or substantial evidence linking him to the offense. He asserted that the prosecution's case lacks legal coherence and is driven by malafide intent to harass and extort money. He maintained that wrongful arrest would violate the Applicant's fundamental rights under Articles 9, 10-A, and 14 of the Constitution of Pakistan, as he is a law-abiding citizen with no risk of absconding or tampering with evidence. He criticized the lower Court's rejection of bail for failing to properly assess the legal and factual aspects of the case. He emphasized that the Investigation Officer is unjustifiably harassing the Applicant through raids and attempts at arrest without legal grounds. He pleaded that, since the offense does not fall under the prohibitory clause of Section 497 Cr.P.C., the case warrants further inquiry, making the Applicant eligible for pre-arrest bail to prevent undue hardship and miscarriage of justice. Thus, it

is prayed that this Court may be pleased to grant bail to the Applicant in the interest of justice.

4. The learned Assistant Prosecutor General does not object to the granting of bail and acknowledges the same, considering the complainant's no-objection.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused as well as the learned Assistant Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. After a comprehensive examination of the case record, it is evident that the Complainant, Muslim Khan, has sworn an affidavit of no objection, explicitly affirming that he has no objection regarding the grant of bail to the Applicant. The Complainant has also personally appeared before this Court and confirmed the contents of the affidavit during the bail hearing. Since the offences under Sections 320 and 322 of the Pakistan Penal Code (P.P.C.) are compoundable, the Applicant is entitled to bail based on the Complainant's no-objection. In support of this, reference may be made to the case of *Muhammad Nawaz alias Najja v. The State (1991 SCMR 111)*, wherein the Hon'ble Supreme Court granted bail in a matter involving compoundable offences, holding that: *"The P.Ws. have been questioned by us and they supported the averments made in their affidavits to the effect that the present petitioner Muhammad Nawaz alias Najja is not implicated in the occurrence. Mr. A.S. Hashmi, learned counsel for the State, was unable to oppose the prayer for bail, in view of the above statements. This petition is converted into an appeal. The petitioner is allowed bail in the sum of Rs.30,000 with the two sureties in the like amount to the satisfaction of the A.C. Narowal"*.

6. Furthermore, according to Schedule II (Tabular Statement of Offences) appended to the Code of Criminal Procedure, 1898, an offense under Section 320 of the Pakistan Penal Code (P.P.C.) is categorized as bailable. A thorough analysis of Section 322 of the Pakistan Penal Code (P.P.C.) reveals that it does not prescribe any specific term of imprisonment as punishment, apart from the payment of *Diyat* (compensation). It remains to be determined whether the obligation to pay *Diyat* falls within the prohibitory clause of Section 497 of the Code of Criminal Procedure (Cr.P.C.). In similar circumstances, this Court, in the case of *Abdul Shakoor and 3 others v. The State* (2012 P.Cr.L.J. 1102), granted bail on this basis. Furthermore, this Court held that: *“Although, I agree with the learned counsel for the applicant that when the main witnesses in the case come forward and swear affidavits not supporting their earlier version recorded by the police under section 161, Cr.P.C., the accused in such case should be released on bail because there would be no likelihood of the accused being convicted in the case but some proof must first be produced before the Court in regard to authenticity of such affidavits”*.

7. Given these circumstances, I am of the considered view that, based on the prosecution’s material in its present form, the case falls within the scope of further inquiry as envisaged under Section 497(2) of the Code of Criminal Procedure (Cr.P.C.). In light of the foregoing discussion, I am convinced that the Applicant has successfully established a prima facie case for the grant of bail.

8. Considering the aforementioned reasons, and in light of the complainant’s no-objection, the present bail application submitted on behalf of the applicant/accused is hereby allowed. Consequently, the ad-interim pre-arrest bail granted to the applicant through the Order dated 18.02.2025 is hereby

confirmed. It is further emphasized that the observations made in this order are solely for the purpose of deciding this bail application and shall not influence the merits of the case during the trial proceedings.

9. Above are the reasons for the short order dated 03.03.2025, whereby interim pre-arrest bail granted earlier to the applicant vide order dated 18.02.2025 was confirmed on the same terms and conditions.

JUDGE