

PRESENTED ON  
11-12-2024

Deputy Registrar

7057

IN THE HONORABLE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. /2024

2901

Nadeem Khan S/o Waris Khan

Muslim, Adult, Resident of Karachi,

Presently confined in Landhi Jail,

Karachi.....Applicant/ Accused

VERSUS

The State.....Respondent

FIR No.1446/2024

U/S 320, r/w 322 PPC

P.S Sachal

BAIL APPLICATION U/S 497 Cr.P.C.  
R/W SECTION 439 CRIMINAL PROCEDURE CODE

## THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 2901 of 2024


Applicant : Nadeem Khan  
through M/s. Riaz Ahmed Bhatti  
& Allah Ditta, advocates.

Respondent : The State  
Mr. Qamaruddin Nohri,  
Deputy Prosecutor General

Complainant : Zahid Ali  
through Mr. Abdul Fateh Jalbani,  
advocate.

Date of hearing : 17<sup>th</sup> March, 2025

Date of Order : 17<sup>th</sup> 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.1446 of 2024, registered at P.S. Sachal, Karachi, under Sections 320 read with 322, P.P.C. The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No.4310 of 2024, which was subsequently dismissed by the Court of the learned VIth Additional Sessions Judge, Malir, Karachi, vide Order dated 21-09-2024. The second bail application No.5631/2024 was also dismissed vide Order dated: 25-11-2024.

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

*"The FIR lodged by Complainant Zahid Ali at PS Sachal on 02.09.2024 states that his cousin, Wajahat Ali, a Bykea rider, met with a fatal accident on 02-09-2024 at*



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*approximately 3:45 PM near Waqar Market Madras Chowk, Scheme No. 33, Karachi. Wajahat, riding his motorcycle (No. KOB-6033), was allegedly struck by a Coaster vehicle (No. JE-7939) driven negligently by Nadeem Khan. Wajahat sustained severe injuries and was taken to Abbasi Shaheed Hospital, where he succumbed to his injuries and passed away. Zahid Ali, upon learning of the incident, rushed to the hospital and confirmed his cousin's death, leading to the lodging of the FIR against Nadeem Khan under the relevant legal sections for negligent driving resulting in Wajahat's death".*

3. The learned counsel for the Applicant argued that the applicant/accused is innocent and has been falsely implicated in the case. He contended that the offence falls under Section 322 PPC (Qatl-bis-sabab), which is punishable solely by "Diyat" (compensation) and does not fall within the prohibitory clause of Section 497(i) Cr.P.C, making bail a rule as established by the Supreme Court in its rulings (2022 SCMR 515). It was further argued that the deceased was driving with an expired learner's license and was not wearing a helmet, raising serious questions about his competence and contributory negligence. Additionally, it was contended that passenger vehicles, such as the one involved, fall under the ambit of an LTV license as defined in the Motor Vehicle Ordinance. The counsel also highlighted that the applicant has been in custody since his arrest, the final challan has been submitted, and no further investigation is required. He asserted that the prosecution's case lacks credibility and probability, emphasizing that the accused is presumed innocent until proven guilty. In conclusion, the learned counsel prayed for the grant of bail to the applicant, relying on precedents such as *The State vs. Qiam*





*Ali Shah* (1992 SCMR 2192) and *Salman Khan vs. The State* (order dated 13-01-2022).

4. The learned counsel for the Complainant has argued that Applicant/accused was driving negligently, causing the death of the complainant's cousin, Wajahat Ali. It is further contended that the offence, though under Section 322 PPC, involves serious consequences, and the applicant's release on bail could jeopardize the trial process. The complainant's counsel argues that the applicant's negligence directly led to the fatal accident, and the court should consider the gravity of the offence and the impact on the victim's family. The expired license of the deceased does not absolve the applicant of his responsibility for negligent driving. It is further argued that the Applicant was driving the heavy vehicle without HTV licence issued by the competent authority. Lastly, the learned counsel for the Complainant prayed for dismissal of bail application.



5. The learned Deputy Prosecutor General (DPG) has opposed the bail application by arguing that the applicant's negligence while driving the Coaster vehicle caused the death of Wajahat Ali, making the offence serious and non-bailable under the circumstances. It is further contended that the prosecution has sufficient evidence to establish the applicant's culpability, and releasing him on bail could hinder the judicial process. The DPG emphasizes that the offence, though punishable by "Diyat," involves a loss of life due to reckless driving without HTV license, warranting strict judicial scrutiny. The applicant's custody is necessary to ensure his presence during trial and to uphold the integrity of the investigation. Lastly, the learned DPG has prayed for dismissal of bail application.



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6. After carefully considering the arguments presented by the learned counsel for the Applicant, the learned counsel for the Complainant, and the learned Deputy Prosecutor General (DPG) for the State, I have conducted a preliminary assessment of the material available on record to the extent permissible under the law. The contention of the learned counsel for the Applicant, which asserts that "*the deceased was riding the motorcycle with an expired learner's license and without wearing a helmet,*" holds no legal weight. While riding without a helmet constitutes an offense under the Motor Vehicles Ordinance, 1965, attracting fines, and an expired learner's license renders the rider non-compliant with the law, these infractions do not justify another driver intentionally or negligently colliding with the deceased. Furthermore, the Motor Vehicles Ordinance, 1965, provides specific definitions for various types of transport vehicles. Under Section 2(18) of the Ordinance, a "light transport vehicle" is defined as *any public service vehicle other than a motor cab or any goods vehicle other than a heavy transport vehicle or a delivery van*. In contrast, Section 2(13) defines a "heavy transport vehicle" as *a transport vehicle with a registered axle weight exceeding 10,600 pounds avoirdupois or a registered laden weight exceeding 14,500 pounds avoirdupois*. Additionally, Section 2(31) defines a "public service vehicle" as *any motor vehicle used or adapted for the carriage of passengers for hire or reward, including a motor cab, contract carriage, and stage carriage*. From these definitions, it is evident that light transport vehicles, heavy transport vehicles, and public service vehicles are distinct categories under the Motor Vehicles Ordinance, 1965, with separate licensing requirements. The core issue is not whether the accused was driving a "light transport vehicle", "heavy transport vehicle", or "public service vehicle"; rather, the primary question is whether the accused's acts fall within the ambit of Sections 320 or 322 of the Pakistan Penal Code





(P.P.C.). The crucial determination is whether the accused committed "qatl-i-khata" (homicide by mistake) due to rash or negligent driving, which is punishable under Section 320, P.P.C.. Additionally, for the applicability of Section 322, P.P.C. concerning "Qatl-bis-Sabab", it must be established that the accused, without any intention to cause death or harm to any person, committed an unlawful act that ultimately resulted in the death of another individual. In such a scenario, the act would be classified as "qatl-bis-sabab" under the law.

7. 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: *"An examination of the provisions of section 322, P.P.C. would show that no punishment of any period has been provided except the payment of Diyat. It is yet to be determined as to whether the punishment of payment of Diyat amount would bring the case of applicants within the prohibitory clause of section 497, Cr.P.C. Apart from the above two other provisions of law for which the applicants have been charged are bailable and no definite finding can be recorded at this stage as it will amount to deeper appreciation of the record which may harm the pending proceedings"*.





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8. 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.

9. Considering the aforementioned reasons, the present bail application submitted on behalf of the applicant/accused is hereby allowed. Consequently, the Applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) to satisfaction of the learned Trial Court and P.R. bond in the like amount. 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.



  
JUDGE