Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Crl. Misc. No.2439/B/2023

Abdul Sattar Vs The State and another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
	16.10.2023	Mr Muhammad Sharif Bhatti and Syed Zeeshan Haider, Advocates, with the Petitioner. Rao Muhammad Riaz Ahmad Khan, Deputy Prosecutor General with Khalid/SI. M/s Muhammad Jamil Chaudhry and Sohail Aslam Misson, Advocates, for the Complainant. Hasnain Ahmad Anwar and Umair Ali Khan, Research Officers, LHCRC.

Tariq Saleem Sheikh, J. – According to the prosecution, Saliha Munawar, Maida Iqbal, Faiza Zafar and Ayesha Nawaz studied at Government Sadiq College (Women University). They stayed at the Petitioner's private hostel in Riaz Colony, Bahawalpur. The hostel had a water tank on the roof which was constantly leaking. The students repeatedly asked the Petitioner to get it repaired but he turned a deaf ear to them. In due course of time, water damaged the building, which was already in poor condition. On 29.04.2023, the roof caved in, killing Saliha Munawar and Maida Iqbal and injuring Faiza Zafar and Ayesha Nawaz. The Complainant, the father of one of the deceased girls, lodged FIR No.418/2023 dated 29.04.2023 under section 302 of the Pakistan Penal Code 1860 ("PPC") at Police Station Civil Lines, District Bahawalpur, regarding the incident. During the investigation, the police substituted section 302 PPC with section 322 PPC. The Petitioner seeks pre-arrest bail in that case through this application.

2. Mr Muhammad Sharif Bhatti, Advocate, contends that the Petitioner is not to blame for the occurrence. It was an Act of God. In any event, he is charged with an offence under section 322 PPC which does not carry a prison sentence. If the prosecution succeeds at the trial, he might only be liable for *Diyat*, which can be paid in instalments over five

years from the final judgement under Section 331 PPC. In the circumstances, the Petitioner may be granted pre-arrest bail.

3. Rao Muhammad Riaz Ahmed Khan, Deputy Prosecutor General, has opposed this application. He contends that the offence under section 322 PPC is cognizable and non-bailable. The Petitioner cannot, therefore, claim pre-arrest bail as of right.

4. The Complainant's counsel, Mr Muhammad Jamil Chaudhry, Advocate, contends that the Petitioner is running a private hostel without the approval of the regulatory authorities. Two girls died, and two were injured because he failed to repair the water tank. He is fully responsible for the occurrence and is not eligible for the concession of pre-arrest bail, an extraordinary relief meant only for innocent people.

5. I have heard the learned counsel and examined the record. FIR No.418/2023 was originally registered under section 302 PPC, but during the investigation, the police altered the offence to section 322 PPC. The Petitioner is accused of *Qatl-bis-sabab*, which is defined in section 321 PPC as follows:

> **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*.
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> *Illustration:* A unlawfully digs a pit in the thoroughfare, but without any intention to cause the death of, or harm to, any person, B, while passing from there, falls in it and is killed. A has committed *Qatl-bis-sabab*.

Section 322 PPC specifies punishment for *Qatl-bis-sabab* and states that the offence is punishable with *Diyat*.

6. Analysis of section 321 PPC would show that this provision applies when a person (a) commits an unlawful act, (b) without any intention to cause the death of, or cause harm to any person, and (c) the said act becomes a cause for the death of another person. Clearly, *mens rea* is not the condition precedent to attract this section. The legislature has made *actus reus* culpable. The Pakistan Penal Code does not define "unlawful act", so we must have recourse to the dictionary meaning. According to Black's Law Dictionary, it connotes

"conduct that is not authorized by law; a violation of a civil or criminal law".[1]

7. Generally, the common law punished those who caused a prohibited result by a positive act. *Lord Macaulay's Works* summarize the position of the common law as follows:

> "In general … the penal law must content itself with keeping men from doing positive harm and must leave to public opinion, and the teachers of morality and religion, the offence of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their moral duty to render to others would be preposterous. We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstances which mark them out as peculiarly fit objects of penal legislation."[2]

8. At common law, criminal liability for pure omissions is exceptional. In contemporary society, numerous statutes explicitly classify certain omissions as criminal offences, and in specific situations, a failure to act can be considered blameworthy. Ashworth writes: "Although the paradigm of criminal liability is a prohibition on the culpable doing of a certain act, all systems of criminal law seem to include offences of omission. Some will have been drafted expressly so as to penalise an omission, e.g. 'failing to . . . ,' usually in the context of an undertaking or activity such as running a business or driving a motor vehicle. There may be other offences worded in a way which leaves open the possibility that they may be committed by omission as well as by acts. References to omissions should not, of course, be taken to imply that we may be said to omit to do everything that we do not do each day. The term 'omission' is properly applied only to failure to do things which there is some kind of duty to do, or at least things which it is reasonable to expect a person to do (on the basis of some relationship or role). The scope of such duties is a major question for the legislature when considering criminal law reform and for the courts when developing the common law or interpreting statutes."[3]

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[1] Black's Law Dictionary, Ninth Edition, p. 1678.

[2] *Lord Macaulay's Works* (ed. Lady Trevelyan), Vol. VII, p. 497.

[3] Andrew Ashworth, *The Scope of Criminal Liability for Omissions*, (1989) 105 LQR 424.

9. According to Williams, the "proper" attitude towards criminal liability for pure omissions should be as follows: First, omissions liability should be exceptional and thoroughly justified in each case. Secondly, it must be mandated by clear statutory language. Verbs that primarily refer to active actions and prohibit them should not be interpreted to include omissions unless the statute implies it genuinely and not superficially. Thirdly, the maximum penalties for active misconduct should not be applied automatically to corresponding omissions. Instead, penalties for omissions should be carefully considered for each specific case.[4]

10. Indeed, not all crimes can be committed by omission. Some offences would appear not to be capable of commission by omission. Therefore, the courts consider the following four issues when imposing liability for omissions:[5]

> (i) Is D's conduct properly classified as an omission or an act?
>
> (ii) If the accused's conduct is regarded as an 'omission', whether the particular offence is one for which an omission can ground liability?
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> (iii) If an omission is a basis for liability under the offence, whether D was under a duty to act?
>
> (iv) Where the definition of the crime requires proof that D 'caused' a certain result, can he be said to have caused that result by doing nothing?

11. McCutcheon classifies omission offences into three categories.[6] The first may be called pure omission offences, where the accused does not commit any act. These offences are mostly statutory and usually involve duties of a general public nature (such as the duty to pay tax) or are assigned to specific groups of people (such as parents' duties under child neglect laws). The second category consists of hybrid offences that contain elements of both act and omission, such as driving without insurance and operating machinery without prescribed safety features. The third category includes offences where the accused's failure to perform a duty directly results in the prohibited outcome. For example, in ***R v. Dytham,*** [1979] QB 722, a police officer was found

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[4] Glanville Williams, *Criminal Omissions – The Conventional View*, (1991) 107 LQR 86.

[5] Dormerod Book.indb - file:///C:/Users/IST/Downloads/1350118213.pdf

[6] J. Paul McCutcheon, *Omissions and Criminal Liability*, Irish Jurist, 1993/1995, New Series, Vol 28/30 (1993/1995), pp. 56-78. https://www.jstor.org/stable/44026384

guilty of willful misconduct in public office for failing to intervene while a member of the public was violently attacked.

12. Albeit an infraction might be committed by omission, this does not imply that everyone is under a duty to act. The courts have identified several categories in which a duty to act arises. There may be some overlap, but we can classify recognized duties according to their recognized sources as follows: (a) duties arising from statute (i.e. where it expressly states that failure to perform a particular duty imposed by it constitutes an offence), (b) duties arising from contract, (c) duties based on a relationship, (d) duties arising from the assumption of responsibility, and (e) duties arising where accused has created a danger.

13. The courts have long held that murder and manslaughter can be committed by omission.[7] Most cases of homicide by omission have resulted in manslaughter convictions, but in ***Gibbins and Proctor***, (1918) 13 Cr. App. R 134, the accused were found guilty of murdering a child. In that case, Walter Gibbins and Edith Proctor lived with Gibbins' seven-year-old daughter, Nelly, and other children. The children were healthy except for Nelly, who was kept upstairs apart from the others and was starved to death. There was evidence that Proctor despised Nelly and cursed and physically assaulted her, from which the jury could infer that she had a very strong interest in Nelly's death. Gibbins had regular employment and was earning good wages, which he gave to Proctor. The court ruled that the man breached the duty parents owe their children. The woman had assumed a duty towards the child by taking money to buy food.

14. Although the courts have accepted that homicide can be perpetrated by omission, they have assumed that assault or battery requires an act.[8]

15. Section 321 PPC must be interpreted according to the principles discussed above. It makes a person legally accountable not only for engaging in an illegal act that results in the death of another

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[7] *Smith, Hogan and Ormerod's Criminal Law,* 15th Edn. p. 49.

[8] *ibid*.

person but also for failing to take measures within his power to prevent such an event from happening if he owes a duty of care. In order to succeed, the prosecution must establish a causal relationship between the accused's conduct (or omission) and the incident resulting in a person's death. In other words, it must demonstrate that the incident would not have happened but for the accused's actions. (This is also known as the *"but for"* test). Second, the prosecution must establish legal causation, which is closely connected to the notions of responsibility and culpability. Williams explains:

> "When one has settled the question of but-for causation, the further test to be applied to the but-for cause in order to qualify it for legal recognition is not a test of causation but a moral reaction. The question is whether the result can fairly be said to be imputable to the defendant … If the term 'cause' must be used, it can best be distinguished in this meaning as the 'imputable' or 'responsible' or 'blamable' cause, to indicate the value-judgment involved."[9]

16. As adumbrated, under section 322 PPC, *Qatl-bis-sabab* is punishable with *Diyat* only. However, per Schedule II of the Code of Criminal Procedure, 1898, the offence is cognizable and non-bailable. This provision was introduced following the amendment of Chapter XVI of the Pakistan Penal Code (Of offences affecting the human body) in 1990. The issue of whether an accused is entitled to pre-arrest or post-arrest bail straightaway as of right in such a case is highly contentious. One set of decisions holds that he is not. According to this point of view, the legislature's intention is clear. Since the offence under section 322 PPC is cognizable, the accused can be arrested without a warrant, and because it is non-bailable, he can be held in jail pending his trial unless he presents a case for bail. The mere fact that the offence is penalized by *Diyat* is not sufficient by itself for his release.[10] The second series of cases holds that an accused cannot be sent behind bars when charged with an offence under section 322 PPC because, even if he pleads guilty at his trial and is convicted, he can only be imprisoned if he fails to pay the *Diyat* sum. His incarceration would, therefore, amount to punishing him before conviction.[11] In any event, the courts are liberal in admitting an accused to post-arrest bail

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[9] Glanville Williams, *Textbook of Criminal Law*, 2nd Edn. p. 382.

[10] See, for example, *Munir Hussain v. The State* (1994 PCr.LJ 406).

[11] See, for example, *Muhammad Usman v. State and another* (PLJ 2022 Cr.C. 101).

on the grounds that the offence under section 322 PPC does not fall within the prohibitory clause of section 497(1) Cr.P.C.[12]

17. When the courts grant bail, they generally rely upon the following observations of the Supreme Court of Pakistan in ***Syed Muhammad Firdaus and others v. The State*** (2005 SCMR 784):

> "In addition to the above, it is to be noted that learned trial court vide order, dated 19th January 2004, summoned him and Dr. Sajid Hussain (petitioner No.2) being accused for the offence under section 319 PPC but surprisingly on 17th December, 2004 on the basis of the same material, they were charged for *Qatl-bis-sabab* under section 322/34 PPC, which is a non-bailable offence as per schedule of Cr.P.C. It seems that the learned Judge could not decide whether it is a case under section 319 or 322 PPC. Be that as it may, in any case, they shall not be punished ultimately for death or life imprisonment as under section 322 PPC. the sentence is of *Diyat*; therefore, for this added reason as well, concession of bail cannot be denied to them under the law."

18. *Firdaus* had its peculiar facts. On 25.7.2003, the District and Sessions Judge, Sialkot, went to inspect the District Jail with some judicial and other officers when five prisoners attacked them with deadly weapons, killing three and wounding another five. Syed Shehryar Bukhari, one of those injured, succumbed to his injuries later. The petitioners were doctors who were accused of being negligent in providing adequate medical treatment to Shehryar. The Supreme Court admitted the accused doctors to pre-arrest bail primarily due to a lack of incriminating evidence. Its observation regarding section 322 PPC (reproduced in the preceding paragraph) was undoubtedly one of the grounds for the decision, but it is respectfully pointed out that there is no elaborate discussion on the above-mentioned issue.

19. I could lay my hands only on a few cases which examine section 322 PPC in detail. In ***Haji Maa Din and another v. The State and another*** (1998 SCMR 1528), the accused sought post-arrest bail in a case registered under sections 336, 337-F(v) and 34 PPC, which was denied up to the High Court. They raised two questions before the Supreme Court: (i) Whether a person accused of an offence punishable with *Qisas*, or in the alternative *Arsh (Diyat)*, can be detained in prison

[12] *Muhammad Nadeem v. The State* (1998 MLD 1537); *Yousaf Khan v. The State* (2000 PCr.LJ 203); *Tariq Mahmood v. The State* (2005 YLR 1968); *Ghulam Ali v. The State* (2017 YLR Note 339); *Ameer Khan v. The State* (2018 YLR Note 283); *Muhammad Shafi v. The State and another* (2020 PCr.LJ 1530); and *Israr Hussain Shah v. The State and others* (2020 PCr.LJ 1164).

pending the decision of his case? and (ii) Whether and when a person accused of an offence punishable with *Qisas*, or in the alternative *Arsh (Diyat)*, can also be punished with imprisonment? Seeking support from the treatise of Abdul Kadir Audah's treatise, the Supreme Court answered the first question in the affirmative. It held that an accused might be detained in jail pending investigation or decision if the interests of justice and public good warrant it. The relevant excerpt from the judgment is reproduced below:

> "7. As regards authority to detain a person accused of an offence punishable with *Hadd*, *Qisas* or *Diyat*, reference may be made to the case cited by Abdul Kadir Audah with reference to شرح فتح القدیر, Volume IV, page 117 in his book شرح الجنائی الاسلامی --See its Urdu translation اسلام کا فوجداری قانون pages 206-207, which reads as under:
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> مفاد عامہ کی خاطر تعزیر میں فقہاء کرام کا استدلال اس سنت نبوی پر ہے کہ آپ نے ایک شخص کو قید فرمایا، جس پر اونٹ کی چوری کا الزام تھا۔ مگر جب یہ بات واضح ہو گئی کہ اس نے چوری نہیں کی ہے تو آپ نے اسے چھوڑ دیا۔ اس واقعے سے استدلال اس طرح کیا گیا ہے کہ مذکورہ واقعے میں قید ایک تعزیری سزا ہے کیونکہ اصل سزا تو صرف ثبوت جرم ہی کے بعد دی جاسکتی ہے اس لئے اگر آپ نے صرف الزام پر اس شخص کو قید کیا تو اس کا مطلب یہ ہوا کہ صرف الزام ہی پر اسے سزا دی گئی اور اس طرح آپ نے عملاً ہر اس شخص کو سزا دینا جائز قرار دے دیا جو خود اپنے آپ کو ایسی صورت حال میں پیش کرے جو قابل الزام ہو یا حالات اس کو قابل الزام ٹھہرائیں۔ اگرچہ وہ کسی فعل حرام کا مرتکب نہ ہوا۔ رسول اللہ ﷺ نے عملاً یہ سزا لازم قرار دی ہے اور اس سزا کا جواز مفاد عامہ اور عمومی نظم کا تحفظ ہے کیونکہ اگر ملزم کو الزام کے ثابت ہونے تک آزاد چھوڑ دیا جائے تو وہ فرار بھی ہو سکتا ہے۔ اس پر کسی نادرست فیصلے کا اجراء بھی ہو سکتا ہے۔ یا یہ ہو سکتا ہے کہ عدالتی فیصلے کے بعد اس پر سزا کا اجراء نہ ہو سکے۔ غرض اس قسم کی صورت حال میں سزا کی اساس مفاد عامہ اور عمومی نظم کا تحفظ اور بچاؤ ہے ۔۔۔ مفاد عامہ کی خاطر تعزیر کے اصول سے ہر ایسے اقدام کا جواز نکل آتا ہے جس کا مقصد مشتبہ اور خطرناک اشخاص اور عادی مجرموں، انقلابیوں اور فتنہ پروروں سے امن عامہ اور نظام عمومی کا تحفظ ہو۔ اس اصول کی بنیاد شریعت کے ان عمومی اصولوں پر ہے جن کا تقاضا یہ ہے کہ ضرر خاص سے ضرر عام کو دور کیا جائے اور زیادہ نقصان کا کم تر نقصان سے تدارک کیا جائے۔

The Supreme Court did not consider deciding the second question in those proceedings necessary because it was a bail matter. However, it observed that section 337-N(2) PPC specifies, amongst others, the instances and conditions in which a prison sentence should be handed down as *Ta'zir*. The following factors must be taken into account when determining whether to impose a *Ta'zir* punishment: the facts and circumstances of the case, the type of harm/injury caused, the weapon used, and the manner in which the offence was committed – whether it was the brutal or shocking, outrageous to the public

conscience or adversely affected harmony among different sections of the people.

20. In ***Ali Muhammad v. The State*** (PLD 2009 Lahore 312), a Full Bench of this Court was called upon to resolve the conflicting views of different Benches on the import of section 337-N(2) PPC[13] and give an authoritative opinion on what would be its effect when an accused applies for bail in offences under Chapter XVI of the Penal Code. The Full Bench stated that even if the offence is bailable, an accused person can be arrested during the investigation phase, but he is entitled to be admitted to bail as of right. It held that the arrest of an accused person for investigation cannot be equated with the punishment of a prison sentence, which may be imposed on him upon his conviction after the trial. The Full Bench further stated that when considering a post-arrest bail, the court should treat hurt cases punishable only by *Arsh* or *Daman* differently from those cases where the offence attracts the optional additional sentence of imprisonment as *Ta'zir* because the accused "is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour" as mentioned in subsection (2) of section 337-N PPC. The court may legitimately refuse bail to an accused person falling in the second catogory, taking into account the specific circumstances of the case.

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[13] Section 337-N PPC is reproduced below for ready reference:

337-N. Cases in which *qisas* for hurt shall not be enforced. (1) The *qisas* for a hurt shall not be enforced in the following cases, namely:

(a) when the offender dies before execution of *qisas*;

(b) when the organ of the offender liable to *qisas* is lost before the execution of *qisas*:

Provided that the offender shall be liable to *arsh*, and may also be liable to *ta'zir* provided for the kind of hurt caused by him;

(c) when the victim waives the *qisas* or compounds the offence with *Badal-i-Sulh*; or

(d) when the right of *qisas* devolves on the person who cannot claim *qisas* against the offender under this Chapter:

Provided that the offender shall be liable to *arsh*, if there is any wali other than the offender and if there is no wali other than the offender he shall be liable to *ta'zir* provided for the kind of hurt caused by him.

(2) Notwithstanding anything contained in this Chapter in all cases of hurt, the Court may, having regard to the kind of hurt caused by him in addition to payment of *arsh*, award *ta'zir* to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of the honour.

Provided that the *to'zir* shall not be less than one third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour.

21. The Sindh High Court made some very pertinent observations in ***Atta Muhammad v. The State*** (2005 PCr.LJ 1648), a case in which the accused killed a motorcyclist and damaged two cars in an accident while driving a transport bus. He was booked under sections 322, 427, and 279 PPC. He applied for post-arrest bail, contending that all the offences were bailable except the one punishable under section 322 PPC, but the sentence provided thereunder is *Diyat* only. The Sindh High Court dismissed his plea ruling as follows:

> "12. The sentence provided under section 322 PPC is simply *Diyat*. Nevertheless, the legislature has made the offence non-bailable. It is not the function of the court to challenge and examine the wisdom of Parliament as to why this offence has been made non-bailable. The laws are made by the Parliament after taking into consideration several aspects available in the society. From the simple reading of the above provision of law it appears that the Parliament appear to be sensitive about the unlawful actions of the persons, who committed such action. It will be further noticed that the offence under section 320 PPC is bailable, which is punishable up to ten years even if, in the accident, a large number of people lose their lives though the punishment provided thereunder falls under the prohibitory clause of section 497 Cr.P.C. It appears that the Parliament took a view that because the action was lawful but it was due to some accident, the offence was committed; therefore, the said offence has been made bailable. Thus, for each offence, the Parliament have taken a different yardstick for making an offence bailable or non-bailable irrespective of the punishment provided thereunder."
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> "13. Section 497 Cr.P.C. deals with the grant of bail. In the Chapter of bail, Parliament has made two provisions, viz. sections 496 and 497. The former deals with the cases of bailable offences whereas the latter deals with the cases of non-bailable offences. Under the latter provision, a discretion has been given to the court to release or not to release an accused person in a case of non-bailable offence, but the court has been debarred from releasing an accused person if there appear reasonable grounds for believing that the accused is guilty of offence punishable with death or imprisonment for life or 10 years. As such, the discretion has to be exercised judiciously and keeping in view the nature of the offence, its impact on the society and persons directly affected and the wisdom of Parliament."

22. In ***Majid Naeem v. The State and another*** (2011 SCMR 1227), the accused killed five persons by rash and negligent driving. The Supreme Court refused him post-arrest bail, holding that the bail application of an accused has to be decided on the basis of the nature of the allegation levelled against him and the evidence collected. The offence under section 322 PPC is not bailable, and the grant of bail is a discretionary relief, which cannot be claimed as of right.

23. The principle that emerges from the above discussion is that the offence of *Qatl-bis-sabab* being non-bailable, an accused cannot seek bail as of right. The court has to decide every bail application judiciously considering its facts, the nature of allegations and the evidence available on record, and the principles regulating refusal or grant of pre- and post-arrest bail.

24. The considerations for granting pre-arrest and post-arrest bail are different.[14] The Supreme Court has given some important guidelines for pre-arrest bails in ***Rana Muhammad Arshad v. Muhammad Rafique and another*** (PLD 2009 SC 427), ***Malik Nazir Ahmed v. Syed Shams-ul-Abbas and others*** (PLD 2016 SC 171), and ***Shahzada Arfat alias Qaiser v. The State and another*** (PLD 2021 SC 708). *Malik Nazir Ahmed* is particularly significant. It was a case under section 489-F PPC, and the High Court admitted the accused to pre-arrest bail, stating that the police did not need his custody to recover any money. The Supreme Court disapproved of this "generalized" approach, ruling that it "militated" against the scheme of the Code of Criminal Procedure. It held that if the High Court's reasoning was adopted, pre-arrest bail could not be denied to an accused, even in cases of rape, murder by strangling, or terrorist planning. The arrest of an accused person during the investigation of a criminal case is meant not only to effect recovery from his possession but also to investigate the circumstances of the case and collect evidence. Recovery, where required, is merely one of the components of the investigation. The Supreme Court pointed out that the High Court's decision also ignores the consideration of *mala fide* on the part of the police or the complainant party, which is one of the prerequisites for pre-arrest bail in a case involving a non-bailable offence.

25. Regarding post-arrest bail, section 497 Cr.P.C. outlines the circumstances when a court may admit an accused to bail in cases involving non-bailable offences. Furthermore, in ***Tariq Bashir and others v. The State*** (PLD 1995 SC 34) and a chain of subsequent

[14] *Shah Nawaz v. The State* (2005 SCMR 1899); and *Muhammad Sadiq and others v. The State and another* (2015 SCMR 1394).

decisions,[15] the Supreme Court has ruled that where an offence does not fall under the prohibitory clause, accepting bail is a rule and the rejection is an exception.

26. The offence under section 322 PPC does not fall within the prohibitory clause since its maximum punishment is *Diyat*.

27. Let's now turn to the case at hand. The Petitioner operates a private hostel in Riaz Colony, Bahawalpur, without the permission of the appropriate authorities. Its building plan is also not approved. The Deputy Prosecutor General has submitted documents showing that the Building Inspector, Municipal Corporation Bahawalpur, issued him notices multiple times. According to the prosecution, the hostel's water tank on the roof was continually leaking. The students repeatedly asked the Petitioner to get it repaired but he ignored them. The water eventually damaged the building, which was already in bad shape, and on 29.04.2023, the roof collapsed, killing Saliha Munawar and Maida Iqbal and injuring Faiza Zafar and Ayesha Nawaz. The Petitioner had a duty to ensure the safety of the girls residing in his hostel and protect them from harm. His failure to get the water tank fixed caused the incident of 29th April. PWs have recorded their statements under section 161 Cr.P.C. supporting the prosecution case. The Petitioner has not provided any evidence to this Court that would indicate that the FIR against him is driven by ulterior motives.

28. The Petitioner does not have a case for pre-arrest bail. This application is **dismissed**.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge

[15] *Muhammad Tanveer v. The State and another* (PLD 2017 SC 733); *Arsalan Masih and others v. The State and others* (2019 SCMR 1152); *Muhammad Ramzan alias Jani v. The State and others* (2020 SCMR 717); *Dr. Abdul Rauf v. The State* (2020 SCMR 1258); *Iftikhar Ahmad v. The State* (PLD 2021 SC 799).