

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

Criminal Misc. 987-B/2020  
Sohail Akhtar  
Versus  
The State.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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12.10.2020	Mr. M Afzal Janjua, Advocate for petitioner, Syed Shahbaz Shah, State Counsel, Mr. Shahid Munir, Advocate for complainant, Muhammad Niaz Khan SI with record.
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This is post-arrest bail petition by accused-petitioner (Sohail Akhtar) in F.I.R. No.91 dated 02.07.2020, under Section 322,279,337-G, 427 PPC, Police Station Shams Colony, Islamabad.

2. Briefly, the allegations set forth in the F.I.R. are that, on 24.06.2020, at about 02:00 p.m. within the area of I.J.P. Road, Islamabad, petitioner while driving the dumper rashly and negligently, hit motorcycle bearing registration No.RIQ-5772, due to which Farrukh Butt, son of the complainant died on the spot while Shahroz sustained serious injuries.

3. Learned counsel for the petitioner contends that the petitioner had already applied for provision of Heavy Transport Vehicle (H.T.V) licence, receipt whereof is available with him, therefore, application of Section 322 PPC requires further inquiry; that substantive punishment for the offence of Section 322 PPC is only Diyat which does not fall within the ambit of prohibitory clause, where grant of bail is a rule and refusal is an exception; that

investigation has been completed and petitioner is no more required, therefore, entitled to the concession of bail. Learned counsel in support of his submissions, placed reliance upon case law reported as 2005 YLR 1968.

4. On the other hand, learned State Counsel assisted by the learned counsel for the complainant argued that the petitioner is nominated in the F.I.R; due to his lethal act, a young boy died on the spot while the other sustained serious injuries; that offence under Section 322 PPC is non bailable, that grant of bail is a discretion of the Court which is not liable to be exercised in the present case. The challan has already been submitted before the learned Trial Court on 15.09.2020 and the trial is in progress. Lastly submits that petitioner is not entitled for the concession of bail.

5. Arguments heard, record perused.

6. Record reveals that the alleged act has specifically been described as '*reckless and negligent driving*' which resulted in instantaneous death of a young boy (son of the complainant) and severe injuries to the other rider of the motorcycle, who has been paralyzed, as stated by the learned counsel for the complainant at bar.

7. The petitioner at the relevant time had no valid license to drive a heavy-duty vehicle and during the course of investigation, admitted his guilt, therefore, in such an eventuality, at present he is not entitled to the concession of bail.

8. Every sane person has knowledge of the act which he is performing. An act of rash and negligent driving on the one hand is admitted and claiming the benefit of concession of bail on the other hand is self-contradictory in nature. That one who is a sane person is presumed not to commit an unlawful act. The term ‘unlawful act’ as per Black’s Law Dictionary 11<sup>th</sup> Edition means “**Conduct that is not authorized by law; a violation of a civil or criminal law**”, therefore, in absence of valid licence, the alleged act would be an unlawful act. When a person is driving negligently and rashly not only endangers himself but also causes danger to the lives of others, including those who are on the road and those too, who are sitting with him.

9. Although *mens rea* and guilty mind is not in existence but this Court believes that at-least act being committed/performed is not a lawful act because one who is driving the vehicle on the road without holding a required driving license is not permitted by the law to drive and is doing an unlawful act. The consequential effect of that unlawful act becomes more aggravated when same caused death of a young boy while paralysing the second one.

10. The Hon’ble Supreme Court of Pakistan in a judgment reported as “**Majid Naeem v. State and another**” (PLJ 2011 SC 662) has expounded in the following terms by declining concession of bail in like offence:-

“Every sane person is presumed to know the consequences of any act of his

commission or omission. A person driving a motorcar in a thickly populated busy bazaar of a city cannot be allowed to drive the vehicle at a speed of his own choice because it will put life of the others at risk. Such person may claim benefit of bail although he might have crushed a large number of people in a busy bazaar by driving at a speed, which he knows is likely to endanger the life of others. Every act of rash or negligent driving by a person neither can be condoned nor the discretionary power of the Court can be exercised in his favour because through his act of rash and negligent driving, a man of ordinary prudent can understand the consequences of his act that a large number of people would lose their lives; such conduct of accused person has also to be kept in mind.”

11. The Hon’ble Lahore High Court in case reported as “***Muhammad Yaqoob v. The State and another***” (2018 PCr.LJ Note 19) where the accused had been subject of an F.I.R. wherein two young lads lost their lives, declined bail to the accused by observing that:-

“Complainant alleged that accused while driving a bus rashly and negligently, rammed it into a motorcycle whereon two young lads were killed. Driving license of accused was found tampered with and thus cancelled by motor licensing authority. Accused drove speedy vehicle unauthorizedly in a rash and negligent manner and killed two youths in their teens. Counsel for accused had already taken couple of adjournments to approach the parents of deceased for compromise but to no avail. Accused had show worst degree of rashness and negligence when he drove the passenger-bus and crashed it into the motorcycle of deceased-duo who were real brothers inter se. Accused's case did not call for further probe into his guilt within the scope of S. 497(2), Cr.P.C.”

12. In another judgment reported as “***Sadaqat Ullah Khan v. The State and another***”

(2017 PCr.LJ Note 125 Lahore) bail in the like offence was refused on the ground of negligent driving and having no valid driving licence.

13. Likewise, the Hon'ble Sindh Court in case reported as "***Atta Muhammad v. The State***" 2005 PCr.LJ 1648, declined bail to an accused of offence under Section 322 PPC by observing that "*Offences of accidents were increasing day by day particularly at the hands of the drivers who ply transport vehicles without a licence or a valid or effective licence. Reasonable grounds existed to believe that accused was involved in the case.*"

14. Comparison of the facts of the instant case with that of referred above, aptly indicates that the same retain much gravity as the petitioner was allegedly driving the dumper without any licence and caused sudden death of a young boy besides paralyzing the other. Such an act, which is in rampant increase now-a-days, cannot be taken lightly and is required to be dealt with iron hands.

15. The case law relied upon by learned counsel for the petitioner does not extend any help to the petitioner due to having distinct facts. In the referred case, challan was submitted under Section 320 PPC while in the instant case, challan has been submitted under Section 322 PPC which is non-bailable offence.

16. In view of above, petitioner is not entitled to the concession of bail at this stage. Consequently, instant bail petition being devoid of merits is **dismissed**. However, while relying upon case law reported as **Rehmatullah v. State** (2011 SCMR 1332), the learned Trial Court is

directed to conclude the trial within a period of three months from the receipt of this order.

17. Needless to mention that above is only tentative assessment for the purpose of instant bail petition only and shall not affect/influence trial of the case in any manner.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

Imran

Approved for reporting.

**JUDGE**