

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. JUDICIAL DEPARTMENT.

Criminal Misc. No. 504/B/2019.

Faraz Ahmed

Versus

Shaukat Zia, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.08.2019.	Syed Zafar Ali Shah, Advocate for petitioner. Barrister Ayesha Siddiq Khan, State Counsel. Complainant/respondent No.1 in person. Noor Aslam, ASI, P.S. Homicide, Islamabad.

Through this Crl. Misc. petition, the petitioner has applied for post-arrest bail in case FIR No.141, dated 27.06.2019, U/S 279, 427, 322, 337(G) PPC, P.S. Noon, Islamabad.

2. Brief facts referred in this case are that instant FIR was got lodged by complainant/respondent No.1 Shaukat Zia with the allegations that on 27.06.2019, he alongwith his wife and Nieces namely Mst. Dua, Mst. Ayeza and Mst. Shamaim daughters of Sohail Fareed Samdani were going to Faisal Movers Bus stop in their vehicle No.LRP-6760 when a car No.AFW-158-ICT, Suzuki Mehran, silver colour, which was driven by present petitioner Faraz in reckless/negligent manners hit the vehicle from back side as a result whereof complainant's wife and nieces became injured, however, Mst. Dua succumbed to injuries.

3. Learned counsel for the petitioner contends that petitioner has been nominated in this case and is behind

the bars since 27.06.2019; even challan has been submitted in the Court and petitioner is no more required for the purposes of investigation; that all the offences are bailable except Section 322 PPC, which only provides Diyat as punishment and petitioner is entitled for concession of post arrest bail as matter of right.

4. Conversely, learned State Counsel as well as complainant/respondent No.1 in person state that petitioner has been attributed specific role of rash and negligent driving, even otherwise, his license was expired and he is disabled from one hand, therefore, he is not entitled for concession of post arrest bail.

5. Arguments heard, record perused.

6. From the cursory glimpse of record, it reveals that petitioner has been nominated in the above mentioned criminal case for rash and negligent driving and while driving car No.AFW-158-ICT, in a rash and negligent manner, petitioner hit complainant's car No. LRP-6760 due to which Mst. Dua died during accident. Petitioner was taken into custody on 28.06.2019 and is behind the bars from last 40 days and as such he is no more required for the purposes of investigation. The offence U/S 322 PPC is though non-bailable, yet is not punishable with any period of imprisonment beside payment of Diyat, whereas in terms of Section 497 Cr.P.C. offence punishable with 10 years or more only falls within the prohibitory clause, therefore, prohibitory clause does not attract in this regard, as

such petitioner is entitled for concession of post-arrest bail. Reliance is placed upon 2000 P.Cr.L.J 203 (Yousuf Khan Vs. State).

7. Keeping in view the above background, in such type of proposition where act and intention of the accused is yet to be determined during the course of trial and is no more required for the purposes of investigation, bail could be granted. Even otherwise, major offences are bailable except Section 322 PPC which provides only Diyat as punishment. In such type of eventuality principle laid down in PLD 1995 SC 34 (Tariq Bashir and 5 others Vs. The State) comes into play.

8. Keeping in view the above background, I am inclined to accept instant post-arrest bail application of the petitioner. The petitioner is admitted to post-arrest bail subject to furnishing of bail bonds in sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE