Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Crl. Misc. No. 4411/B/2026

Nadeem Abbas Vs The State and another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of the parties or counsel, where necessary
	26.02.2026	Ch. Zulqarnain, Advocate, with the Petitioner. Mr. Abdul Samad, Additional Prosecutor General, with Sharif/SI. Mr. Munir Ahmad Bhatti, Advocate, *amicus curiae*.

Tariq Saleem Sheikh, J. – Through this application, the Petitioner, Nadeem Abbas, seeks pre-arrest bail in case FIR No.805/2025 dated 26.11.2025 registered at Police Station Badiyana, District Sialkot, for the offences under sections 279, 322, and 427 PPC.

2. According to the FIR, the prosecution case is that on 25.11.2025, the Complainant's son, Muhammad Usman, had gone to *Mangal Bazar Badiyana* along with Ilyas Naeem and Arshad Naeem. On their return, they were travelling in a loader rickshaw, driven by Ilyas Naeem. At about 8:00 p.m., when they reached Adda Sohadriki on Chowanda Road, two cars bearing registration Nos. EF-121 (silver colour) and AGA-378 (white colour), coming from the direction of Chowanda and being driven at a high speed in a rash and negligent manner by unknown drivers, struck the rickshaw loader from the front. As a result of the collision, Muhammad Usman, Ilyas Naeem, and Arshad Naeem died on the spot. On 19.12.2025, the Complainant recorded his supplementary statement implicating the Petitioner, Nadeem Abbas, and Shahid Mehmood.

3. Ch. Zulqarnain, Advocate, contends that the Petitioner has been falsely implicated in this case due to ulterior motives. He submits that although the FIR was registered on 26.11.2025, the Complainant nominated the Petitioner in his supplementary statement recorded on 19.12.2025, that is, after 23 days, and that no explanation for this delay has been furnished. He further argues that the identities of the drivers of the two cars involved in the incident were not

established with certainty during the investigation. Counsel also submits that section 322 PPC has been wrongly invoked in the FIR. According to him, having regard to the facts stated in the FIR, the matter falls within the ambit of section 320 PPC, which, like sections 279 and 427 PPC, is a bailable offence. He adds that even if it is assumed that section 322 PPC, rather than section 320 PPC, is attracted, the offence is punishable with *diyat* and not imprisonment under Schedule II to the Code of Criminal Procedure, 1898 (the “Cr.P.C.” or the “Code of 1898”). Therefore, even if the prosecution case is ultimately accepted at the trial, the Petitioner would, at the most, be liable to payment of *diyat*, which, under section 331 PPC, may be paid in instalments over a period of five years from the date of the final judgment. On that basis, he contends that the Petitioner is entitled to the concession of pre-arrest bail.

4. Mr. Abdul Samad, Additional Prosecutor General (APG), opposes this application. He submits that the Petitioner is specifically accused of driving one of the two cars at a high speed and in a rash and negligent manner, which struck the rickshaw loader and caused the death of three persons on the spot. He further submits that there is no reason for the Complainant to falsely implicate the Petitioner and that the mere fact that he was nominated through a supplementary statement recorded on 19.12.2025 does not render the prosecution case doubtful. The APG contends that, having regard to the gravity of the offence, the Petitioner is not entitled to the concession of pre-arrest bail. He maintains that the police have invoked sections 279, 322, and 427 PPC in the FIR. The offences under sections 279 and 427 PPC are bailable, but the offence under section 322 PPC is non-bailable, even though it is punishable with *diyat* alone.

5. Mr. Munir Ahmad Bhatti, Advocate, *amicus curiae*, has advanced two submissions. First, he submits that sections 279, 320, and 322 PPC are distinct provisions that apply to different situations and do not overlap. Further, sections 279 and 320 PPC cannot be invoked simultaneously. According to him, section 279 PPC may be attracted at the initial stage to the act of rash or negligent driving, but where that act results in death, it ceases to be the governing provision.

He adds that section 322 PPC would not apply if section 320 PPC is found to be specifically attracted. As regards section 427 PPC, he treats it as an ancillary count relating to the damage caused in the same occurrence. Secondly, Mr. Bhatti submits that the offences under sections 320 and 427 PPC are bailable and compoundable. He points out that the entry against section 320 in Schedule II to the Code of 1898 uses the expression "may arrest without warrant". According to him, that expression preserves the power of the police to arrest, notwithstanding the bailable character of the offence. He, therefore, contends that the existence of a right to bail after arrest does not, by itself, conclude the present controversy in the Petitioner's favour.

6. Arguments heard. Record perused.

7. The Petitioner is booked under sections 279, 322, and 427 PPC. Section 279 PPC criminalizes rash or negligent driving on a public way so as to endanger human life or to be likely to cause hurt or injury to any person; the offence is cognizable, bailable, and not compoundable. Section 320 PPC provides punishment for *qatl-i-khata* by rash or negligent driving. The offence is cognizable, bailable, and compoundable, and is punishable with *diyat* and, having regard to the facts and circumstances of the case, may also entail imprisonment of either description for a term which may extend to ten years. *Qatl-i-khata* is defined in section 318 PPC as causing death without any intention to cause death or harm, either by mistake of act or mistake of fact. Section 321 PPC defines *qatl-bis-sabab* as causing death without intention by doing an unlawful act which becomes the cause of death, and section 322 PPC prescribes its punishment as *diyat*. This offence is cognizable, non-bailable, and compoundable. Section 427 PPC relates to mischief causing damage to property amounting to fifty rupees or more; it is non-cognizable, bailable, and compoundable.

8. The first question arising from the arguments addressed at the bar concerns the proper legal characterisation of the occurrence. It is trite that the court is not bound by the penal provision invoked by the police. It must tentatively examine the facts stated in the FIR and the material collected during the investigation to see what provision is

prima facie attracted. Sections 279, 320, and 322 PPC each have a different scope, and the precise distinction between them may, in a given case, require careful examination in the light of the facts ultimately established on the record. However, for the purposes of the present application, it is neither necessary nor proper to finally determine whether the occurrence would more appropriately fall under section 320 PPC or section 322 PPC. That question must depend on the facts that emerge during the investigation and the material eventually placed before the trial court.

9. That said, it is necessary to determine the effect of the relevant entries in Schedule II to the Code of 1898. Mr. Bhatti has drawn attention to the expression “may arrest without warrant” appearing in Schedule II in relation to both sections 320 and 322 PPC. That expression, appearing in Column 3 of the Schedule, simply denotes that both offences are cognizable, i.e., the police are empowered to arrest without a warrant and to investigate without prior magisterial sanction. It does not conclude the question whether anticipatory relief should or should not be granted. For present purposes, it is sufficient to observe that section 322 PPC, as invoked in the FIR, is expressly classified as non-bailable in Schedule II, and that the grant of pre-arrest bail must be examined on its own settled principles.

10. The Petitioner has argued that even the principal offence invoked by the police, namely section 322 PPC, entails only liability to *diyat*, not imprisonment, and that he should not be deprived of his liberty before conviction. However, there is a divergence of judicial opinion on this point. One view is that because the offence is cognizable and non-bailable, the accused may be arrested without a warrant and may remain in custody pending trial unless he makes out a case for bail. The mere fact that the punishment prescribed for the offence is *diyat* does not entitle him to release. The other view emphasizes that, since the liability under section 322 PPC is confined to *diyat,* incarceration before conviction amounts to punishment before trial. It may nevertheless be observed that, in post-arrest bail matters, the courts have generally adopted a liberal approach, as an

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

11. 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."

12. *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 granted them pre-arrest bail. Its observation regarding section 322 PPC was undoubtedly one of the grounds of the order. However, *Firdaus* is distinguishable from the present case on two material counts. First, the causal connection there was neither direct nor proximate. It was remote and considerably attenuated because the accused doctors did not cause the attack itself. Their alleged culpability arose from the quality of treatment rendered after the event. In the present case, by contrast, the Petitioner is alleged to have directly driven a vehicle at high speed into a laden rickshaw, killing three persons on the spot. The causal link between the act attributed to him and the deaths is immediate. Secondly, a careful reading of *Firdaus* shows that the grant of bail rested primarily on the absence of

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[1] *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), *Salman Khan v. The State* (2022 SCMR 515).

sufficient incriminating material against the accused doctors. The observation that an accused charged under section 322 PPC faces *diyat* rather than imprisonment was an additional consideration. *Firdaus*, therefore, supports the proposition that bail may be granted in an appropriate case under section 322 PPC where the incriminating material is lacking or weak; it does not lay down an inflexible rule that bail must follow as of right whenever that provision is invoked.

13. The question was examined more directly in ***Haji Maa Din and another v. The State and another*** (1998 SCMR 1528). In that case, the accused sought post-arrest bail in a case registered under sections 336, 337-F(v), and 34 PPC, i.e., provisions relating to hurt rather than homicide, but their request was declined 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* or *diyat*, can be detained in prison pending the decision of his case; and (ii) whether and when such a person can also be punished with imprisonment. Drawing support from the treatise of Abdul Kadir Audah, the Supreme Court answered the first question in the affirmative. It held that an accused may be detained in jail during investigation or trial where the interests of justice and public good so warrant. Although that case concerned hurt offences, the underlying principle, namely that detention pending trial is not legally impermissible merely because the offence carries *qisas*, *arsh*, or *diyat* consequences, is equally relevant in considering an accusation under section 322 PPC. The Supreme Court did not consider it necessary to decide the second question, observing that the matter did not arise for determination in bail proceedings.

14. In ***Ali Muhammad v. The State*** (PLD 2009 Lahore 312), a Full Bench of this Court considered the import of section 337-N(2) PPC in the context of bail in offences under Chapter XVI of the Penal Code. It observed that "in a case involving a bailable offence an accused person can be arrested during the investigation, but he is entitled to be admitted to bail as of right. Bailable nature of an offence does not mean that the accused person involved in such offence cannot be arrested in connection with the investigation of such

a case. As a matter of fact, the provisions of section 496 Cr.P.C. expressly contemplate arrest or detention of accused persons even in cases involving bailable offences … arrest of an accused person involved in a case of hurt may be necessitated by the requirements of a proper investigation but such arrest cannot be equated with punishment so as to conclude or infer that upon his ultimate conviction … [A]rrest or detention of an accused person during an investigation has no relevance to the issue whether the accused person could or could not be imprisoned after recording of his conviction … an accused person can be detained in jail pending investigation or decision provided the dictates of justice and public good so demand; hence refusal or grant of bail will be regulated by the Court in accordance with the well-settled principles." Although *Ali Muhammad* was concerned with hurt offences, its significance for present purposes lies in affirming that arrest during investigation is not punitive in character and may serve legitimate investigative purposes beyond recovery. That principle is equally relevant in considering an accusation under section 322 PPC.

15. 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 – the same combination of provisions as in the present case. He applied for post-arrest bail, contending that all the offences were bailable except the one punishable under section 322 PPC, and that the sentence provided thereunder is *diyat* only. The Sindh High Court dismissed his application, 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 has 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 society and persons directly affected, and the wisdom of Parliament."

The above observations, though made in the context of post-arrest bail, support the view that the mere fact that section 322 PPC provides for *diyat* does not, by itself, create an entitlement to bail.

16. In ***Majid Naeem v. The State and another*** (2011 SCMR 1227), the accused killed five persons by rash and negligent driving and caused injuries to others. An FIR was initially registered under provisions relating to rash and negligent driving, but during the investigation sections 302 and 324 PPC were added. It was contended on his behalf that the case, at most, fell under section 322 PPC (*qatl-bis-sabab*), punishable with *diyat* only, and in the absence of *mens rea* for *qatl-e-amd*, he was entitled to bail. Reliance was also placed on the grant of bail to a co-accused on the principle of consistency. The Supreme Court held that the case of the petitioner was distinguishable from that of the co-accused, as he was the driver of the vehicle that caused the deaths, whereas the co-accused had a different and lesser role. It further held that, at the bail stage, the precise applicability of sections 302 or 322 PPC was a matter for trial and need not be conclusively determined. At the same time, having regard to the nature of the allegations, the number of fatalities, and the circumstances of the occurrence, the Court declined bail and made it clear that such acts cannot be lightly treated or condoned. *Majid Naeem* thus shows that, even where section 322 PPC may

ultimately come into consideration, bail in such cases remains a matter of judicial discretion. It does not follow, as of right, merely because the offence is punishable with *diyat*.

17. It is necessary to point out that there is no conflict between *Firdaus* and *Majid Naeem*. The former shows that, in an appropriate case under section 322 PPC where the incriminating material is weak, bail may be granted; the latter shows that the mere fact that the offence entails *diyat* does not, by itself, create an entitlement to bail.

18. The principle emerging from the above discussion is that, in a case under section 322 PPC, the question of bail is not governed by the mere form of punishment. Section 322 PPC being a non-bailable offence, an accused charged thereunder cannot claim bail as of right. Every bail application must be decided judiciously on its own facts, having regard to the nature of the allegation, the material available on record, and the settled principles governing the grant or refusal of bail.

19. Before turning to the facts of the present case, it may be observed that pre-arrest bail is an extraordinary relief. Its object is to protect a person from abuse of the process of law, arbitrary arrest, or harassment. The considerations for granting pre-arrest and post-arrest bail are different.[2] The Supreme Court has laid down important principles for the grant of pre-arrest bail 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 1898. It held that if the High

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

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 component 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.

20. It is well settled that in bailable offences the grant of bail "is a right and not a favour, whereas in non-bailable offences, it is not a right but a concession/grace."[3] Since section 322 PPC, the principal offence invoked in the FIR, is non-bailable, the Petitioner's prayer for pre-arrest bail must be examined on that basis.

21. The record shows that, on 25.11.2025, three persons, namely Muhammad Usman, Ilyas Naeem, and Arshad Naeem, who were travelling in a loader rickshaw, died on Chowanda Road when two cars, coming from the opposite direction and allegedly being driven at a high speed in a rash and negligent manner, collided with them. It is true that the Petitioner and Shahid Mehmood were not nominated in the FIR and that the drivers were initially described as unknown. However, on 19.12.2025, the Complainant recorded a supplementary statement asserting that Muhammad Asif had informed him that, at the time of the occurrence, he was following the loader rickshaw on a motorcycle and had identified the drivers of car Nos. EF-121 and AGA-378 as the present Petitioner and Shahid Mehmood. Muhammad Asif is also stated to have recorded his own statement under section 161 Cr.P.C. to that effect. At this stage, those statements cannot be subjected to deeper scrutiny. Their evidentiary value shall be examined by the trial court in the light of the evidence recorded.

[3] *Tariq Bashir and others v. The State* (PLD 1995 SC 34). Also see: *Mian Mahmud Ali Qasuri and others v. The State* (PLD 1963 SC 478), wherein the Supreme Court held that the "policy of the Code [of 1898] seems to be that in the case of bailable offences the accused has the indefeasible right to grant of bail subject of course to satisfactory sureties being offered, if sureties are considered necessary."

22. The postmortem reports show that the deceased sustained multiple injuries, including lacerations, fractures, and extensive internal damage to vital organs. In particular, the postmortem report of Arshad Naeem shows that he suffered burn injuries and trauma to major parts of the body, including fractures and injuries to vital organs such as the liver, lungs, and sternum, with six injuries noted, consistent with his having been dragged by one of the offending vehicles. Likewise, Ilyas Naeem sustained nine severe injuries involving fractures, dislocations, and ruptures. Muhammad Usman also suffered six injuries, including fractures of the right temporal and left parietal bones. The nature and extent of these injuries, as reflected in the postmortem reports, *prima facie* support the prosecution version that the collision was caused by vehicles being driven at high speed in a rash and negligent manner.

23. The Petitioner's contention is that, even if the prosecution case is assumed to fall under section 322 PPC, the fact that the offence entails liability to *diyat* and not imprisonment should weigh in favour of pre-arrest bail. The argument is significant, but it is not decisive. As already discussed, in an application for pre-arrest bail, the question is not merely what punishment may ultimately follow, but whether the accusation is patently groundless or the proposed arrest is shown to be arbitrary, *mala fide*, or intended for an ulterior purpose. In the present case, the allegation of false implication on account of ulterior motives is vague and unsupported by any specific material or circumstance.

24. I have also considered the submission relating to section 427 PPC. It is correct that it is an ancillary count relating to the damage caused in the same occurrence and that it is non-cognizable and bailable. Its inclusion in the FIR does not furnish a ground for the grant of pre-arrest bail.

25. This application was **dismissed** by the short order of even date, and the ad-interim pre-arrest bail granted to the Petitioner was recalled. These are the reasons for it.

26. The observations made herein are tentative and shall not prejudice the trial in any manner.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge