

Form No: HCJD/C-121.

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

Criminal Miscellaneous No. 564/B of 2018

Muhammad Hayyat Khan
VS
The State & another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.09.2018.	Dr. Babar Awan & Abdur Rahim Wazir, Advocates for petitioner. Raja Khalid Mehmood Khan, learned Deputy Attorney General. Tahir Khan, Inspector, FIA. Muhammad Aslam, complainant in Person.

The petitioner, Muhammad Hayat Khan, seeks bail after arrest in case FIR No. 31, dated 11.07.2018, under Sections 9 & 10 of Prevention of Electronic Crimes Act, 2016 read with Section 500 & 109 PPC, Police Station FIA-Cyber Crime Circle, Islamabad.

2. The facts as narrated in the FIR are that a complaint was lodged by respondent No.2 against certain elements who are involved in Anti State activities through Social Media by putting up material which is derogatory and against the State Institutions. The petitioner was arrested pursuant thereto.

3. The petitioner applied for bail after arrest, which was dismissed vide order dated 20.07.2018.

4. Learned counsel for the petitioner, *inter alia*, contended that the investigation stands concluded and the petitioner is not required for the same; that the offence under Section 10 of Prevention of Electronic Crimes Act, 2016 entails maximum punishment of 14 years or fine and in this behalf the lesser sentence is to be considered for the purposes of bail. Reliance was placed on case reported as **"Mustafa Ali Vs. The State" (2014 P Cr.LJ 1464)**. It was also contended that the petitioner is the first time offender and does not have a history of any involvement in Anti State activities. Reliance was place on case reported as **"Ameer Ullah Vs. The State" (2012 P Cr.LJ 1858)**. It was contended that though the forensic test has been conducted of the laptop and other material taken from the custody of the petitioner, however, it is still to be established that the same was owned by him, hence, the case is one of further inquiry. It was further submitted that it is still to be corroborated through independent evidence and established

during trial that the material was put up by the petitioner.

5. Learned Deputy Attorney General, inter alia, contended that the petitioner as such is not involved in any other Anti State activities and the derogatory material was put up under his identity within span of almost three (03) weeks. It was further contended that there is nothing on record to indicate that the petitioner belongs to any proscribed organization. Learned Deputy Attorney General further contended that investigation stands concluded and challan shall be submitted shortly.

6. Arguments advanced by the learned counsels for the parties have been heard and documents placed on record examined with their able assistance.

7. The petitioner is imputed with offences under Sections 9 & 10 of Prevention of Electronic Crimes Act, 2016 the maximum punishment involved is provided in under Section 10 which is 14 years or fine; for the sake of convenience Sections 9 & 10 are reproduced below:-

***“9. Glorification of an offence.- (1)
Whoever prepares or disseminates
information, through any information
system or device, with the intent to glorify
an offence relating to terrorism, or any
person convicted of a crime relating to***

terrorism, or activities of proscribed organizations or individuals or groups shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to ten million rupees or with both.

Explanation -For the purposes of this section "glorification" includes depiction of any form of praise or celebration in a desirable.

10. Cyber terrorism.- Whoever commits or threatens to commit any other offences under sections 6, 7, 8 or 9, where the commission or threat is with the intent to.- (a) coerce, intimidate, create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society: or

(b) advance inter-faith, sectarian or ethnic hatred; or

(c) advance the objectives of organizations or individuals or groups proscribed under the law, shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine which may extend to fifty million rupees or with both."

8. It is an established principle that for the purposes of grant of bail, the lesser sentence is taken into account. Reliance is placed on case reported as **"Mustafa Ali Vs. State" (2014 P.Cr.LJ 1464)** and **"Tariq Bashir Vs. The State" (PLD 1995 SC 34)**.

9. The record reveals that under the identity created on Social Media which purportedly is in the name of the petitioner material has been put up which is derogatory and Anti State and tantamount to maligning the State Institutions and is deplorable. However, the actual usage of

the Social Media on Facebook and Twitter etc by petitioner is a question of evidence which can only be done at the stage of trial, hence, the case against the petitioner is one of further inquiry. The investigation stands concluded and the petitioner is no more required for the same.

10. In view of above, the instant petition is allowed and the petitioner is released on conditional bail after arrest subject to furnishing bail bonds in sum of Rs.5,00,000/- with two (02) sureties in the like amount to the satisfaction of the learned Trial Court. The nature of offence is such that the petitioner shall surrender his passport at the time of submission of surety before the trial Court. Name of the petitioner, shall also be placed on Exit Control List, hence, copy of instant order be immediately sent to Ministry of Interior, Federation of Pakistan with a compliance report before the release of the petitioner on bail.

11. The Prosecution/FIA shall monitor the identities under which the petitioner allegedly uses his Social Media accounts and in case any activity, which falls within ambit of the offences in question is repeated or there comes to light any

material establishing link of the petitioner with proscribed organizations, an application may be filed for cancellation of the bail.

(AAMER FAROOQ)
JUDGE

Shakeel Afzal

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