

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 794-B of 2019.

Sanaullah.
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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27.01.2020. Mr Aamir Abbas Malik, Advocate for the petitioner.
Syed Muhammad Tayyab, Deputy Attorney General.
Mr Fazal Maabood, S.I. FIA with record.

The petitioner Sanaullah son of Muhammad Ramzan has sought post arrest bail in case, F.I.R. No. 23, dated 05.07.2019, registered under sections 500, 509, 377, 109/34 of Pakistan Penal Code, 1860 and 20, 21, 22 and 24 of the Prevention of Electronic Crimes Act, 2016 (hereinafter referred to as the "**FIR**") at Police Station FIA, Cyber Crime Reporting Centre, Islamabad.

2. Brief facts as narrated in the FIR are that the petitioner was alleged to have uploaded, generated and posted objectionable pictures of the complainant on social media. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; allegations against the latter are false, frivolous and vexatious; the petitioner has been falsely involved in the instant case just to harass, pressurize and blackmail him; the offences are not attracted against the petitioner; the petitioner has not committed the alleged offences; medical examination of the petitioner was not conducted so as to attract the

offences under sections 377 of PPC and 22 of PECA; no incriminating material was recovered from the petitioner and at the most section 109 of PPC is attracted against the present petitioner; the petitioner was driving the vehicle of the co-accused; the petitioner has not used an electronic device by transmitting explicit material relating to the complainant; there is no allegation that the present petitioner has used his personal cellular phone for transmitting or sending explicit material to another person; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; the petitioner has been incarcerated for more than six months; further incarceration of the petitioner will not serve any useful purpose; recovery if any is fake and concocted; the petitioner is previously non-convict and non-record holder; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the case against the petitioner is based on malafide and ulterior motives of the complainant; the offences do not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the case against the petitioner is that of further probe; the story as narrated in the FIR is false, frivolous and baseless; hence the learned counsel urges the petitioner to be released on bail.

4. The learned Deputy Attorney General appeared alongwith Fazal Maabood S.I. FIA. They have contended that; recovery has been affected from the petitioner; the petitioner has been specifically nominated in the FIR; the petitioner has deliberately uploaded personal and objectionable pictures of the complainant; the said act of the petitioner has destroyed the honour and modesty of the complainant not only in family but also in the community; investigations qua the petitioner

have been completed and report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the trial of the case will be concluded shortly; hence urges for dismissal of bail.

5. The allegation against the present petitioner is to the extent that he was accompanying another person who is the main accused in the case in hand. There is nothing on record to show that the number used for sending the objectionable pictures and messages was in the name of the petitioner or in his use. Furthermore, the present petitioner is not the main accused. Investigations qua the petitioner have been completed and further incarceration of the latter will not serve any useful purpose. Report under section 173 of Cr.P.C. has been submitted before the learned trial Court. Whether or not the offences mentioned in the FIR are attracted to the extent of the petitioner needs further probe. Deeper appreciation of evidence at this stage is not permissible. The petitioner does not have a criminal record. His continued custody is not likely to serve any beneficial purpose at this stage. Nothing has been placed on record to indicate that the petitioner may abscond if he is released on bail. This Court is, therefore, of the opinion that the petitioner is entitled to be released by extending the concession of bail.

6. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation

can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run”.

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioners.

7. In the circumstances as mentioned above, this petition is ***allowed*** and the petitioner is ***admitted*** to bail, subject to furnishing bail bonds in the sum of Rs.20,00,000/- (Rupees two million only) with one surety in the like amount to the satisfaction of learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**