

JUDGMENT SHEET  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No. 798/2020**

**IMRAN KHAN.**

Versus

**THE STATE.**

*Petitioner by:* Mr. Yasir Sultan Yousafzai, Advocate.

*Complainant by:* Mr. Razzaq A. Mirza, Advocate.

*State by:* Ms. Ruqayya Sami, AAG.  
Mr. Adnan Khan, A.D, FIA.

*Date of Hearing:* 17.07.2020.

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**LUBNA SALEEM PERVEZ; J:** This petition for bail after arrest u/s 497 Cr.P.C has been filed by Imran Khan, who has been arrested on the complaint of one Liaqat Ali Khan, in case FIR No.30, dated 22.10.2019, for offences under section 20,21,24 of the Prevention of Electronic Crime Act, 2016 read with Section 500, 506 & 109/34 PPC, registered at Police Station, Cyber Crimes reporting Centre, Islamabad.

2. The facts in brief are that, the above cited FIR against the petitioner along with other accused persons was registered on the complaint of Liaqat Ali Khan, for sending immodest and indecent pictures of the complainant and his family members and messages with abusive language through What'sapp cell phone Nos. 0345-5975421 & 0349-5401030 and through following created/operated Facebook profiles:-

- (i) Imran Khan (cousin of Awais Khan), at Facebook Profile Khan Imran Khan having URL: [www.facebook.com/profile.php?id=100016078606630](http://www.facebook.com/profile.php?id=100016078606630);
- (ii) Shahbaz Khan, at Facebook profile Shahbaz Khan having URL: [www.facebook.com/profile.php?id=100015141307153](http://www.facebook.com/profile.php?id=100015141307153);
- (iii) Waqas Ahmed Khattak at Facebook profile URL: [www.facebook.com/profile.php?id=1000025429658699](http://www.facebook.com/profile.php?id=1000025429658699); and
- (iv) at webpage "ChakMansoor News" having URL: <https://www.facebook.com/KhaN.Group.ChaKMaNsOoR.786/>.

3. Allegedly, the accused used to upload superimposed and fabricated sexually explicit pictures with derogatory and filthy language by using above mentioned links and means of social media with the intention to harass, defame the complainant, his wife, sons and daughters including a minor daughter.

4. Learned Counsel for the Petitioner/accused submitted that he has been involved in the case on account of enmity between the families of the complainant and his real brother, the father of co-accused Awais Khan who have more than 15 years old history of family animosity over properties. The hatred between them was developed when Tariq, the son of the complainant broke engagement with said co-accused's sister. Learned counsel argued that the present FIR is a counter blast of another FIR registered by family of the co-accused Awais Khan for same offences under PECA 2016, against son of the complainant, whose bail petition has also been rejected by the Hon'ble Sindh High Court; that the petitioner is a civil servant and has unblemished service record; that no specific role has been assigned to the Petitioner in the FIR; that the petitioner although received those pictures but has not transmitted the same onward; that the petitioner has been involved in fake, frivolous, baseless and ill-founded case; that the petitioner has voluntarily surrendered himself to the authorities after the order of the Hon'ble Supreme Court dated 07.04.2020 as he was released on bail, vide order of the Hon'ble Islamabad High Court dated 20.03.2020; that the petitioner has no criminal history; that the case is of further inquiry and the investigation in respect of the petitioner has already been completed thus his incarceration would serve no useful purpose; that there is also no possibility of tempering the prosecution evidence or record by the petitioner. Learned Counsel placed reliance on case of ***Muhammad Hayat Khan vs. The State (2019 Cr.L.J472)*** and submitted that in view of settled principles u/s 497(2) CPC, the petitioner is eligible for grant of bail in the instant case.

5. On the other hand, learned Counsel for the complainant vehemently opposed the arguments of learned counsel for the accused/petitioner and objected the grant of bail to the accused while submitting that the petitioner has been nominated with specific role in the FIR for having created the face book links for the purposes of uploading and transmitting the fabricated derogatory pictures and indecent material by using whatsapp having cell phone sims in his name, against the family of the complaint, more particularly against the female

family members, thus has direct nexus in the criminal activity under consideration along with his cousin Awais Khan and other co-accused persons; that the petitioner has been removed from service as such is no more a civil servant; that the offences, though, do not fall within the prohibitory clause of section 497 Cr.PC but the offences are extremely immoral which involve question of reputation of a respectable family and more importantly dignity and modesty of ladies who are school & college students. Learned counsel further contended that grant of bail cannot be claimed as of a right and each and every case is to be dealt with on the basis of its own facts and circumstances, that the bail of his co-accused namely Awais Khan has also been rejected by this Court vide Crl. Misc No. 109-B/2020 dated 09.03.2020. Thus having common set of facts and circumstances, the accused is not entitled for concession of bail and this petition is also liable to be dismissed.

6. I have heard the learned counsel for the rival parties and have also perused the relevant record submitted by the IO through State Counsel.

7. Examination of the record revealed that the complainant and all the accused are relatives and allegations against all of them are similar, comprising the offence of superimposing, fabricating, preparing and transmitting illicit, immoral pictures of the family members of complainant using different means of social media i.e facebook and whatsapp by also using filthy, abusive, derogatory and defamatory language. It is noted that another FIR has been registered against son of complainant Tariq in FIA, Cyber Crime Reporting Center, Karachi invoking the provisions of Sections 16, 20, 21 of PECA 2016 r/w 419 & 109 PPC and the bail of accused Tariq has been rejected by the Hon'ble Sindh High Court, Karachi. Moreover, the Criminal Petition No. 1028 of 2019 against the said bail refusal order has also been dismissed by Hon'ble Supreme Court.

8. I have also gone through the bail rejection order dated 09.03.2020 of the other co-accused namely Awais Khan who happens to be the nephew of the complainant. Record transpired that the contention of the Learned Counsel of the Petitioner regarding old enmity between rival party is correct, but that cannot be made ground for considering the grant of bail when investigation record of subscriber information of the creator of Facebook ID and link as well as cell phone number against which Whatsapp account was created depicts the name of the petitioner and point towards his direct connection with the offence and also

shows uploading and transmitting the indecent, offensive and vulgar pictures and material against the complainant and his family member from those accounts. The argument of non-assigning of specific role to the petitioner has no weight thus rejected.

9. The case record produced by FIA shows that petitioner, during investigation, admitted receiving, transmitting, sharing, uploading derogatory and indecorous, fabricated photos of the complainant and his family members including female members for the purposes of defaming them. Data of facebook and whatsapp collected from cell phones of the accused/petitioner and other co-accused was retrieved and also sent for forensic analysis and examination. In addition, information in respect of facebook URLs created and operated by all the accused were also obtained by the facebook authorities. All the information/data of conversation at whatsapp, forensic examination report of the cell phones and information and verification of URL and IDs received from facebook authority *prima facie* constitute sufficient incriminating material against the accused/petitioner shows existence of reasonable grounds of the accused/petitioner's involvement in the alleged offence and disentitle him for the concession of bail. Learned Counsel for the Complainant also informed the Court that Awais Khan was released on bail, vide order dated 20.03.2020, passed by the Hon'ble Islamabad High Court, on the outbreak of Covid-19 pandemic, however, after setting aside of the said order by Hon'ble Supreme Court on 07.04.2020, he is now absconder. Moreover, the other co-accused have also been declared proclaimed offenders. The contention of the Learned Counsel for the Petitioner that offence in the present case do not fall within the prohibitory clause has no force as the law has also been settled in this regard that mere fact that the offence does not fall within the prohibitory clause of section 497 Cr.PC, does not mean that the offence becomes bailable, as it is also well settled that the concession of bail cannot be claimed as a right. The concession of bail is legally allowable where nature of offence is not heinous and against the society; where there is no possibility of repetition of offence; where there are *prima facie* evidence of fake and frivolous involvement of the petitioner; where there is no chance of abscondence; when there is no chance of tampering with evidence of prosecution and that petitioner is not a habitual offender has no previous criminal history and that the concession of bail will not be misused by the Petitioner. All these possibilities are taken into consideration while considering

the present petition for grant of bail after arrest. Regarding accepting/refusing of bail involving similar offence as in the instant case, the Hon'ble Sindh High Court in case titled **Farhan Kamrani versus The State (2018 YLR 329)** on the arguments that offence being out of the prohibitory clause of section 497 CPC, has held as under:-

*"9. Although, the offence under section 21 of the Act does not fall within the prohibitory clause of section 497, Cr.P.C. being punishable up to five (05) years, but in such like cases the grant of bail is not a right of the accused but a concession and since the accused is prima facie involved in a case of superimposing a photograph of the face of a woman over sexually explicit image, he is not entitled to the concession of bail simply for the reason that he is connected with such offence, which seriously affect the whole society. The accused has apparently gone to grotesque lengths to humiliate the complainant online, which may cause a detrimental effect on her. It may be observed that the impact of uploading on internet the superimposed porn photographs of a woman is more than the shame and shock that one might feel when she discovers herself to be the victim of this crime. The immediate real time effect is the social stigmatization of the victim by blaming her for the pictures and questioning her character. This may lead to depression, social alienation and in some extreme cases suicide attempts by the victim who cannot handle the pressure of dealing with such targeted vengeance. Under the circumstances, the accused is not entitled to the concession of bail; therefore, this application is dismissed, accordingly".*

10. Respectfully following the above cited judgment and keeping in view the facts and circumstances of the present case, instant bail petition, being devoid of any merit, is hereby **dismissed**. However, the learned trial Court is directed to conclude the trial of the case in accordance with law, expeditiously, preferably within a period of four (4) months from receipt of copy of this judgment.

11. It is made clear that the observations made hereinabove, being tentative in nature, shall not prejudice the case of either party.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**APPROVED FOR REPORTING.**  
**Blue Slip added**

Adnan/-