

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

Criminal Misc. No. 1280-B/2021

Ahmad Shah
Versus
The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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05.01.2022	Mr. Akseer Ahmad Abbasi & Mr. Allah Rehman Abdullah Advocates for the Petitioner. Ch. Fayyaz Hussain, learned AAG. Tahira Hira, Assistant Director (Investigation), FIA.
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Through the instant petition, the petitioner / accused seeks bail after arrest in case F.I.R. No. 83, dated 21.10.2021, offence u/s 16, 20, 21, and 22 of Prevention of Electronic Crimes Act, 2016, registered at Police Station FIA Cybercrime Reporting Centre, Islamabad.

02. It is alleged that the petitioner / accused alongwith his sister / co-accused with malafide intentions and ulterior motives, unauthorizedly used different mobile numbers through WhatsApp, operated the same for illicit purposes to tarnish the modesty of the victim and her family by defaming, harassing and blackmailing the complainant (minor girl). The alleged numbers alongwith WhatsApp accounts were recovered from his possession. The technical report reveals that the petitioner / accused used to transmit nude and naked pictures

/ videos of the complainant (minor girl) and also possess pornographic material of underage boys and girls, hence the instant FIR.

03. Learned counsel for the petitioner, inter alia, contends that the petitioner is innocent; no evidence is available against him; case has been registered with malafide intentions and ulterior motives by the complainant; the offences do not fall under the prohibitory clause of 497 Cr.P.C.; investigation in the case has been completed; he is no more required by the police for investigation, therefore, he is entitled for grant of post arrest bail.

04. On the other hand, learned law officer assisted by Assistant Director, FIA states that sufficient evidence is available against the petitioner / accused; mobile phones have been recovered from his custody; according to forensic report, it transpired that the petitioner / accused with criminal intentions and ulterior motives blackmailed the complainant (minor girl) by sharing her naked and nude pictures / videos, hence he is not entitled for grant of bail after arrest.

05. Arguments advanced by learned counsel for the petitioner, learned law officer and Assistant Director (FIA) have been heard and record has

been perused with their able assistance.

06. A complaint was lodged by Mst. Iqra Bibi (minor girl) that the petitioner / accused is sharing her naked and nude pictures / videos through WhatsApp to different persons; blackmailing the complainant, demanded an amount of Rs. 20,000/- and also torturing and harassing her through various modes.

07. FIA has conducted an inquiry, mobile phone sets were recovered from the possession of the petitioner / accused; said mobile phone numbers which were in use of the petitioner / accused were found registered in the names of his family members i.e. father, mother and brother-in-law, whereas, one mobile phone number was found registered in the name of co-accused / sister of the petitioner namely Najma bibi.

08. All the recovered mobile phones from the petitioner / accused were sent for technical analysis. The relevant portion of the report of technical expert of FIA is reproduced as under:

"After the detailed technical analysis of the aforementioned evidentiary item i.e. Redmi Note 8 Pro bearing IMEI: 863495043897733 & 863495043897741, the facts and findings are appended below:

- i. The nude/naked pictures /

- videos of the complaint are found and recovered/retrieved.
- ii. Some child pornographic material is found and recovered / retrieved.
 - iii. Five (05) active WhatsApp accounts i.e. 03405865512, 03015426991, 03174909685, +1(213)9298690 and +1(213)5596104, and chat with the complaint, are found and recovered.
 - iv. Two (02) SIMs i.e. 03405865512 and 03015426991 are found active in the said mobile phone.

Technical Analysis Summary:

Keeping in view all the above, it is transpired that the accused Ahmed Shah s/o Shehzada gul with malafide intention and ulterior motives, illegally and unauthorizedly, kept/stored nude/sexually explicit pictures/videos of the complainant, in his possession and further used the same for blackmailing and harassment as well as transmitted to other persons thus defamed and spoiled the repute, honour and dignity of the complainant among her family."

09. WhatsApp messages and pictures retrieved from the mobile phones recovered from the possession of the petitioner / accused shows that he was found involved in sharing nude and naked pictures / videos of the complainant / minor girl; also having the pornographic material of other

innocent / minor children; tried to extort / blackmail the complainant by demanding money from her; sent her very abusive, insulting and threatening messages; even the complainant got recorded her statement that due to such acts she tried to commit suicide and if the justice is not provided, she will commit suicide as she is a married girl and the petitioner / accused alongwith co-accused has shared her objectionable / nude and naked pictures / videos to her husband and other relatives.

10. As far as the argument regarding the grant of bail in the cases not falling under the prohibitory clause is concerned. It is clarified, that the Hon'ble Supreme Court of Pakistan has held in a case titled as "**Shameel Ahmed VS. The State**" (2009 **SCMR 174**), that:

"with regard to the contention that the bail should always be granted in cases not falling within the domain of prohibition clause of proviso to section 497, Cr.P.C. it is observed that it is not a rule of universal application. Each case has to be seen through its own facts and circumstances".

The same principle has been laid down in a case titled as "**Afzaal Ahmed VS. The State**", 2003

SCMR 573 which states that:

"The mere fact that an offence did not fall within the prohibitory clause of section 497(1) of the Cr.P.C. did not mean that such an offence had become a bailable offence. The discretion still remained with the competent Court to consider whether a person accused of such an offence did or did not deserve the grant of bail in accordance with established norms governing the exercise of such a power."

It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Muhammad Siddique VS. Imtiaz Begum and others"**, **2002 SCMR 442** that:

"none can claim bail as of right in non-bailable offences even though the same do not fall under the prohibitory clause 497 Cr.P.C'."

On the same subject the guidance has also been taken from the law laid down in a case titled as **"Haji Muhammad Nazir and others VS. The State"**, **2008 SCMR 807** wherein, it has been held that:

"It is true that offences for which petitioners have been charged entails punishment not more than five years, which also falls within the category of non-bailable offence, therefore, they are not entitled as a

matter of right for release on bail, notwithstanding the fact that their case is covered under the non-prohibitory clause as defined under section 497, Cr.P.C. as it has been held in the case of Muhammad Siddique (ibid). As far as principle of law being relied upon by the learned counsel from the judgment in the case of Tariq Bashir (ibid) that the grant of bail in offence punishable with imprisonment for less than ten years is a rule and refusal is exception would not help to the petitioners in view of exceptional and extraordinary circumstances of the case'.

In different cases under the Prevention of Electronic Crimes Act, 2016 where the offences not falling under prohibitory clause of section 497 Cr.P.C, the bail after arrest has been rejected by this Court vide judgment reported as **2020 PCr.LJ 1652** as well as by the Hon'ble Lahore High Court, Lahore vide cases reported as **2018 PCr.LJ 408 and 2018 PCr.LJ 1667** and the Hon'ble Sindh High Court vide case reported as **2018 YLR 329.**

11. Offence committed by the petitioner / accused is a heinous crime which is harmful for the society as the child pornographic videos have also been retrieved from the mobile phone of the petitioner and was also found sharing the same.

The impact of child pornography on the society is remarkable and enforces the normalization of child exploitation by way of providing them safety and protection and by awarding severe punishments to the accused.

12. As the sufficient evidence is available against the petitioner / accused; challan has been submitted in the learned trial Court. It has also been laid down by the Hon'ble Supreme Court of Pakistan in a case titled as **"Rehmat Ullah Vs. State" (2011 SCMR 1332)**, that the Courts should not grant or cancel bail when the trial is in progress.

13. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out his case for grant of bail on the ground of further inquiry as envisaged under section 497(2) Cr.P.C, consequently, the instant bail petition stands **dismissed**.

14. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE