

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.109-B/2020

AWAIS KHAN.

Versus

THE STATE, ETC.

Petitioner by: M/s Haroon Rashid and Aftab Rashid, Advocates.

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

State by: Mr. Farrukh Shahzad Dall, AAG.
Mr. Adnan Khan, A.D, FIA.

Date of Hearing: 09.03.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner namely Awais Khan, seeks post arrest bail under section 497 Cr.P.C, 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 500, 506 & 109/34 PPC, registered at Police Station Cyber Crimes reporting Centre, Islamabad..

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

(i) Imran Khan (petitioner's cousin), at Facebook Profile Khan Imran Khan having URL: www.facebook.com/profile.php?id=100016078606630;

(ii) Shahbaz Khan, at Facebook profile Shahbaz Khan having URL: www.facebook.com/profile.php?id=100015141307153;

(iii) Waqas Ahmed Khattak at Facebook profile URL: www.facebook.com/profile.php?id=1000025429658699;

at page "ChakMansoor News" having URL: <https://www.facebook.com/KhaN.Group.ChaKMaNsOoR.786/>. Accused used to upload fabricated sexually explicit, superimposed and fabricated pictures with the

intention to harass, defame the complainant, his wife, sons and daughter including a minor daughter.

3. Learned Counsel for the Petitioner/accused argued that he has been involved in the case on account of enmity between the families as the complainant and the father of the accused are real brother and hatred between the parties was developed when Tariq the son of the complainant broke engagement with accused's sister. Learned counsel referred the following last lines of the FIR:-

"Prima facie a case u/s 20, 21, 24, PECA 2016 r/w 500, 506, 509, 109 & 34 PPC against i). Imran Khan s/o Juma Khan, r/o Village Chak Mansoor, P.O Chhab, Tehsil Pindi Ghab, Attock, ii). Shahbaz Khan s/o Rizwan Ullah Khan Khattak, CNIC 42501-1250572-3, r/o Village Chak Mansoor, P.O Chhab, Tehsil, Pindi Ghab, District, Attock, iii). Waqas Ahmed s/o Mesen Khan r/o Village Chak Mansoor, P.O Chhab, Tehsil, Pindi Ghab, District, Attock is registered after permission from the competent authority and the role of iv). Rizwan Ullah Khan Khattak, V) Owais khan and others if any will be trashed out during investigation. Copy of the FIR is being sent to concerned quarter"

and submitted that accused has been arrested without determining the role in the offence, hence, there is no specific allegation against the accused. Learned counsel further submitted that investigation has been completed and challan has already been submitted before the concerned Court on 20.01.2020. Learned counsel added that the accused has been nominated on the statement of co-accused, whereas, the case to the extent of petitioner is of further inquiry. Learned counsel lastly contended that the alleged offences, however, do not fall within the prohibitory clause of section 497 Cr. P.C; petitioner has no criminal history; petitioner is no more required by the local police and is ready to furnish adequate surety to the satisfaction of the court; therefore, may be released on bail.

4. The 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 during investigation from the co-accused, it was found out that he received the sexually explicit pictures from the accused through facebook account having URL: www.facebook.com/profile.php?id=10008695339445. Learned counsel further submitted that in addition to above registration information provided by Facebook revealed IP logos and cell phone numbers 0345-2795022 and 03003646788 registered in the name of accused and found associated with his

email account owaiskhan4145@yahoo.com. Therefore, the role of the accused is not undetermined as he is directly involved in blackmailing, defaming and damaging the reputation of the complainant and his family which include an elderly lady and also a minor daughter. Learned counsel contended that though the offences 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, therefore, under the circumstances the accused is not entitled for concession of bail.

5. I have heard the learned counsel for the parties and have also perused the relevant record.

6. The examination of the record revealed that the complainant and all the accused are relatives and allegations against all the accused are the same comprising the offence of superimposing, fabricating, preparing and transmitting illicit, immoral picture of the family members of complainant through facebook and whatsapp with the use of abusive, derogatory and defamatory language. It is noted that an FIR has been registered against son of complainant Tariq in FIA, Cybercrime Reporting Center, Karachi invoking the 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 and the Criminal Petition No. 1028 of 2019 is pending before Hon'ble Supreme Court.

7. In the said backdrop the case of the accused has been considered and record perused which transpired that the rivals are in litigation over some property dispute, which led to the commission of alleged offences by the accused. The case record produced by FIA shows that Imran Khan, the co-accused named accused, during investigation, admitted receiving, transmitting, sharing, uploading derogatory and indecorous, fabricated photos of the complainant and his family members for the purposes of defaming him. Data of facebook and whatsapp from cell phones of the accused/petitioner and co-accused was retrieved and 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 cells and

information and verification of URL and IDs received from facebook authority prima facie constitute sufficient incriminating material against the accused/petitioner to connect him with commission of alleged offence and existence of reasonable grounds of the accused/petitioner's involvement in the alleged offence, disentitle him for the concession of bail. 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 the law has now been well settled that the concession of bail is not a right. The Hon'ble Sindh High Court in case titled **Farhan Kamrani versus The State** reported as **(2018 YLR 329)** while refusing bail in a similar case has also 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"..

8. For the foregoing reasons, instant bail petition is **Dismissed**. However, the learned trial Court is directed to conclude the trial of the case expeditiously preferably within the period of four (4) months from receipt of copy of this judgment.

9. 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

Adnan/-