

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.M BA No.3745-P/2019
Professor Akhtar Khan Vs the State

Date of hearing: 01.01.2020

Mr. Shahab Khattak, Advocate, for the petitioner.

Mr. Jawad Ali Khan, Assistant Attorney General, for the State.

JUDGMENT

AHMAD ALI, J. Through the instant petition, the accused-petitioner (Akhtar Khan), seeks his post arrest bail in case FIR No.40/2019 dated 06.11.2019, under sections 10/11 PECA 2016 r/w 109 PPC, PS, FIA/CBC Peshawar.

2. Allegations against the petitioner are that he was found involved in sharing broaden hate speech and fake information against Government Institutions of Pakistan through his facebook/twitter accounts. After thorough investigation, FIR ibid was registered against the accused. He is behind the bars in the instant case since his arrest, hence the present petition for bail.

3. Arguments of learned counsel for the parties heard and record perused.

4. Without dilating upon the merits of the case, which may prejudice the case of either party during trial, suffice it to say that the offences, for which the petitioner is charged, are under sections 10 & 11 of the Prevention of Electronic Crimes Act, 2016, which are punishable with imprisonment or fine or both, in the circumstances the accused shall be entitled to bail as of right because, if at the trial, he is only sentenced with fine, the period as under trial prisoner due to refusal of bail would amount to a case of '*double jeopardy*'. Reference is made to the case of "Sher Ahmad Vs State reported in PLD 1993 Peshawar 104 and "Ameer Ullah Vs the State" 2012 P.Cr.L.J 1858. 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 v. State" (2014 P.Cr.L.J 1464), "Tariq Bashir v. The State" (PLD 1995 SC 34) & "Muhammad Hayat Khan Vs the State & another" (2019 P.Cr.L.J 472).

5. Even otherwise, the complaint in the instant case was made after four months of the occurrence which has taken place on 02.02.2019. The record further 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 though 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 trial stage, hence, the case against the petitioner is also one of further inquiry as provided under Sub-Section (2) of Section 497 Cr.P.C.

6. The accused-petitioner is no more required for the purpose of investigation. Besides, there is nothing on record regarding his previous involvement in such like criminal activities coupled with the fact that he is serving as a lecturer in the Abdul Wali Khan University, which has also tilted scales of justice in favour of bail rather than jail. Reliance can be safely placed on 2012 SCMR 573.

7. Moreover, it has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported

in 2008 SCMR 807 "Haji Muhammad Nazir Vs State".

8. Before parting with this order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case and; as per law laid down in (1996 SCMR 1845).

9. In view of the forgoing discussion and on tentative assessment of material available on record, a case arguable for the grant of bail is made out. Resultantly, this petition is allowed and the accused-petitioner, named above, is admitted to bail, provided he furnishes bail bonds in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial/ Duty Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

10. Above are the detailed reasons of short order of even date.

**Announced:
01.01.2020**



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