

2024 P CrLJ 1462

[Islamabad]

Before Tariq Mehmood Jahangiri, J

MUHAMMAD HASEEB---Petitioner

Versus

The STATE and another---Respondents

Criminal Misc. Application No. 321-B of 2024, decided on 27th February, 2024.

ORDER

TARIQ MEHMOOD JAHANGIRI, J.---Through the instant petition, the petitioner / accused seeks bail after arrest in case FIR No.256, dated 28.12.2023, offence under sections 21 and 24 of Prevention of Electronic Crimes Act, 2016, registered at Police Station FIA Cybercrime Reporting Centre, Islamabad.

02. It is alleged that the petitioner / accused with mala fide intentions and ulterior motives illegally and unauthorizedly, captured / recorded objectionable pictures of complainant Noor-e-Hira and further transmitted / disseminated / publicly projected the alleged objectionable pictures of the complainant by using WhatsApp accounts to her father and husband, thus disgraced and destroyed the modesty of the complainant among her family members and relatives, hence the instant FIR.

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

4. On the other hand, learned Assistant Attorney General states that sufficient evidence is available against the petitioner / accused; he has committed a heinous crime which is against the society; he is nominated in the FIR, hence is not entitled for grant of bail after arrest.

5. Arguments advanced by learned counsel for the petitioner, learned AAG have been heard and record has been perused with their able assistance.

6. The petitioner has committed a heinous crime by sending the sexually explicit pictures of the complainant to her father, husband, friends etc. as well as by posting the same on the Facebook; FIA collected sufficient incriminating evidence against him. Technical analysis expert is available on record which shows that the petitioner has committed aforementioned crime.

7. This offence has become very common in the society where the boys and girls while they are in relation with each other, girls sent their objectionable pictures to boys / friends but when there is breakup, boys share those objectionable pictures to the family members / friends etc of the girls, post on Facebook etc. which is very heinous crime, as these pictures become stigma throughout the life of girls and in many cases their family life has destroyed; the girls have also committed suicide, hence the accused committing such offences are not entitled for any leniency.

8. As far as the argument regarding grant of bail in the cases not falling under the prohibitory clause is concerned, it is held by this Court in a case titled as "Irfan Sarwar v. The State" (2022 PCr.LJ Note 71), 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 v. 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 v. 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 v. 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, 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 in cases reported as 2018 PCr.LJ 408 and 2018 PCr.LJ 1667 and the Hon'ble Sindh High Court in a case reported as 2018 YLR 329.

9. 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 v. The State" (2011 SCMR 1332), that:

"the Courts should not grant or cancel bail when the trial is in progress".

10. 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.

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

Petition dismissed.