

**2019 P Cr. L J 769**

**[Balochistan]**

**Before Abdullah Baloch, J**

**BAHLOOL KHAN---Applicant**

**Versus**

**The STATE---Respondent**

Criminal Bail Application No. 285 of 2018, decided on 9th November, 2018.

**Criminal Procedure Code (V of 1898)---**

---Ss. 497 & 164---Prevention of Electronic Crimes Act (XL of 2016), S. 21---Offences against modesty of a natural person and minor---Bail, refusal of---Crime against society--  
-Scope---Prohibitory clause of S. 497, Cr.P.C.---Scope---Complainant, a lady alleged that the petitioner, through Facebook messenger, demanded money by threatening/blackmailing her to upload her private objectionable pictures which would cause her character assassination and damage to her reputation---Petitioner contended that offence with which he had been charged did not fall within prohibitory clause of 497, Cr.P.C.---Complainant contended that two mobile phones had been recovered from the petitioner through which he made number of messages---Validity---Record revealed that messages in question suggested that the petitioner had threatened the complainant to upload her objectionable pictures on the website in case she would fail to pay certain amount to him---Apart from conversation made in between the parties regarding demand of money, said messages also carried the request on the part of complainant for deleting said pictures---Such dissolute act had put a young lady, being a mother and wife, into perennial embarrassment and ridicule within and outside family fold---Investigation revealed that not only the petitioner had recorded his disclosure admitting his guilt of capturing objectionable pictures of the complainant without her knowledge, but also had recorded his confessional statement under S. 164, Cr.P.C. before the concerned Magistrate, whereby once again he had confessed his guilt---Offence with which the petitioner was charged though did not fall within the ambit of prohibitory clause of S. 497, Cr.P.C., but the fact remained that merely on the basis of said ground the petitioner could not claim his release on bail as a matter of right---Charged offence being not only heinous in nature, but also dangerous and harmful for society coupled with the fact that the same would give courage to others to play with the modesty of public-at-large---Both the Courts below had rightly restrained themselves in enlarging the petitioner on bail---Bail was refused to the petitioner, in circumstances.

Usman Bin Mehmood v. The State and another 2018 PCr.LJ 408 ref.

Naseer Ahmed for Applicant.

Allahuddin Baloch, Assistant Attorney General along with Syed Abid Ali, S.I./I.O. for the State.

Date of hearing: 5th November, 2018.

## ORDER

**ABDULLAH BALOCH, J.**---This order disposes of Criminal Bail Application No.288 of 2018 filed on behalf of applicant-accused Bahlol Khan son of Abdul Bari, seeking bail after arrest in case FIR No.04 of 2018 dated 25th September 2018, lodged at FIA Quetta, under section 21(1)(b)(d) of the Prevention of Electronic Crimes Act, 2016 on the complaint of Hina Nadeem wife of Nadeem Ahmed, with the averments that the accused-applicant has threatened and blackmailing her through Face book messenger by uploading her private objectionable pictures causing character assassination and damage to her reputation. Besides the accused-applicant was also demanding Rs. 130,000/- in order to delete her pictures. Hence, on the said date raid was conducted at the house of complainant Hina Nadeem, where she had already called the accused-applicant for payment of amount and for trap. The accused-applicant arrived and was arrested at the spot and recovery of two mobile phones was effected from his possession.

2. After his arrest and on completion of investigation, the accused-applicant filed an application for grant of bail before the learned trial Court i.e. Judicial Magistrate-XII Quetta, but the same was rejected vide order dated 10th October, 2018. The accused-applicant approached the learned Sessions Judge, Quetta for grant of bail, but the same was declined, vide order dated 23rd October, 2018. Whereafter, instant application has been filed.

3. Learned counsel for accused-applicant contended that the applicant is innocent, he has never ever demanded money from the complainant and even did not up-load her pictures in any site; that there is no direct or circumstantial evidence available on record connecting the accused-applicant with the commission of crime; that the Face book ID has no relevancy with the accused-applicant; that the alleged confessional statement under section 164, Cr.P.C. was recorded after delay of 14-days, thus having no evidentiary value in the eyes of law; that the alleged offences do not fall within the prohibitory clause of section 497(1), Cr.P.C., hence prayed for release of the accused-applicant on bail in order to make his defence properly.

4. Learned Assistant Attorney General strongly opposed the arguments so advanced by the learned counsel for the accused-applicant and contended that sufficient incriminatory evidence is available on record connecting the accused-applicant with the crime, thus he is not entitled for grant of bail.

5. Heard the learned counsel for parties and perused the record with their valuable assistance. Though at bail stage, the deep appreciation of material available on record is unwarranted and only the Court has to form its opinion tentatively on the basis of available record, but it is also true that the bail application cannot be decided in vacuum rather a bird view is required to be taken. The tentative assessment of record prima facie connects the accused-applicant with the commission of crime. The accused-applicant was arrested by the FIA Authorities from the house of complainant, when the complainant with the collaboration of FIA Authorities already called the accused-applicant for his trap and on the personal search of accused-applicant two mobile phones were recovered, through which the accused-applicant made number of messages through Messenger to the complainant. The perusal of messages placed before the Court would suggest that the

accused-applicant has threatened the complainant to upload her objectionable pictures in the website in case she fails to pay certain amounts to him. Besides, the accused-applicant has not disowned the alleged recovered mobile phones from his possession. The messages contained in the Messenger ID of said mobile phones has not only suggests the conversation made in between the parties regarding demand of money, but also the request on the part of complainant for deleting such pictures. The dissolute act has put a young lady being a mother and wife into perennial embarrassment and ridicule within and outside family fold.

6. Furthermore, during investigation of the case the accused-applicant has not only recorded his disclosure admitting his guilt of capturing objectionable pictures of the complainant without her knowledge, but also recorded his confessional statement under section 164, Cr.P.C. before the concerned Judicial Magistrate, whereby once again the accused-applicant has confessed his guilt.

7. Adverting to the argument of the learned counsel for accused-applicant that the charged offences do not attract in the case in hand, but on tentative assessment of record it appeared that initially the accused-applicant in the garb of friendship started visiting the house of complainant in absence of her husband and on getting chance he succeeded in sexual harassment of complainant and thereafter captured her objectionable pictures and subsequently the accused-applicant used the same as a tool to extract money from her, while in case of failure to pay the certain amounts, threats were extended for exhibiting or displaying the same in the internet.

8. So far as the arguments made on behalf of the accused-applicant that he is entitled for grant of bail as the offences do not fall within the prohibitory clause of section 497, Cr.P.C. is concerned, suffice to observe here that though section 21(1)(b)(d) of the Prevention of Electronic Crimes Act, 2016, does not fall within the ambit of prohibitory clause of section 497, Cr.P.C. as the punishment in the charged offences are less than 10-years imprisonment, but the fact remains that alone on the basis of this ground the accused-applicant cannot claim his release on bail as a matter of right. Since, the charged offences are not only heinous in nature, but also dangerous and harmful for society coupled with the fact it will give courage to others to play with the modesty of public at large, thus rightly both the Courts below restrained themselves in enlarging the accused-applicant on bail. In a similar case titled *Usman Bin Mehmood v. The State* and another 2018 PCr.LJ 408, the grant of bail was declined to accused and it was held that:

"Argument that the petitioner is entitled to concession of bail as the offences scheduled as non-bailable do not attract the bar contained under section 497 of the Code of Criminal Procedure, 1898 is beside the mark; no doubt, bail in offences punishable with less than 10-years of imprisonment is ordinarily granted as a rule, however, the concession is to be extended, having regard in the facts and circumstances of each case and in appropriate cases, the Court may justifiably depart from the rule to deny the favour. In the present case, allegation against the petitioner, supported by technical evidence is that he by betraying the trust reposed by the prosecutrix exposed her on the internet and shared indecent images not only with her better half but with others as well; it is a flagrant intrusion into privacy that brings a young lady into perennial embarrassment and ridicule within and outside family fold."

For the above reasons, the application being devoid of merits is rejected.

The observations made hereinabove are tentative in nature and the same shall not influence the merits of the case.

MQ/79/Bal.

Bail refused