

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 1154 OF 2021

(On appeal against the order dated 30.08.2021 passed by the Peshawar High Court, Peshawar in Cr.MBA No. 798-A/2021)

Umer Khan

... Petitioner

VERSUS

The State and another

... Respondents

For the Petitioner: Raja Faisal Younas Abbasi, ASC

For the State: Syed Nayyab Hussain Gardezi, DAG
Mr. Basit, I.O

Date of Hearing: 01.11.2021

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 30.08.2021 passed by the learned Single Judge of the Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case registered vide FIR No. 21/2021 dated 06.07.2021 under Section 22(1) of Prevention of Electronic Crimes Act, 2016 at Police Station Cyber Crimes Reporting Center, Abbottabad, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he was sharing child pornographic content on the Facebook through his mobile. On receipt of the information from the Facebook, the matter was inquired into by the Federal Investigating Agency and after its conclusion the aforesaid FIR was registered and the petitioner was apprehended.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances of this case. Contends that there is no direct evidence to show that the petitioner

has shared the pornographic content on Facebook. Contends that no victim has been associated in the present case. Lastly contends that the maximum punishment for the offence with which the petitioner is charged with is seven years and the same does not fall within the prohibitory clause, therefore, the petitioner may be released on bail.

4. *On the other hand, learned Law Officer has defended the impugned order whereby post-arrest bail has been declined to the petitioner. He contended that the petitioner has committed a heinous offence and there is sufficient material available on record to connect him with the commission of the crime, therefore, he does not deserve any leniency by this Court.*

5. *We have heard learned counsel for the parties at some length and have perused the record with their assistance.*

As per the contents of the crime report, the allegation leveled against the petitioner is that he was involved in sharing child pornographic content through his Facebook profile via his mobile device. There is no denial to this fact that it was the Facebook Authority who had contacted Federal Investigating Agency and had provided the information against the petitioner, upon which the FIA had inquired into the matter. The mobile phone of the petitioner was taken into possession and was sent to Forensic Science Laboratory and according to the report of the FSL, the Facebook profile of the petitioner was found active on his mobile phone and child pornographic videos and images were also extracted from his mobile phone. The mobile numbers which the petitioner was using in his mobile device were also found active and the same were registered in his name. We have noticed that one of the most alarming social evil prevailing in the society is child pornography. It has created a havoc in society as it contains a great threat to morality and the future of children. One of the reason for the rise of child abuse/rape cases is squarely because of child pornographic content. The concerns regarding child sexual abuse and exploitation have been prevailing in the society in the past also. However, due to various factors, the gravity and impact of the offense of child pornography is increasing at an alarming rate and this menace needs to be curbed with iron hands. Although the offence with which the petitioner has been charged with does not fall within the prohibitory clause of

Section 497 Cr.P.C. and the maximum punishment for the same is seven years but keeping in view the nature of accusation, its impact on the society and the material collected so far merits the case to fall within the exception of granting bail when the offence falls within the non-prohibitory clause. Otherwise, it is not an absolute principle of law. So far as the argument of learned counsel for the petitioner that no victim has been associated in the case is concerned, the allegation against the petitioner is of spreading child pornographic videos and not of making them. Since when he was doing this act and how many children's videos has he shared so far is yet to be determined. In any case, it is a crime to hollow out the society, therefore, the argument of the learned counsel for the petitioner is of no help to the petitioner. Even otherwise, this petition is barred by 03 days and no plausible explanation for the condonation of the delay has been given.

6. *For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused. Before parting with the order, we direct the learned Trial Court to proceed with the trial expeditiously and conclude the same as early as possible.*

JUDGE

JUDGE

Islamabad, the
1st of November, 2021
Approved For Reporting
Khuram