

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl.B.A.No. S-180 of 2019

Applicant: Waheed Dhehphal Chandio
Through Mr. Qurban Ali Malano
Advocate.

The State: Through Mr. Mahmood Khan Yousifi DAG
along with Inspector Muhammad Ali Sawand.

Date of hearing: 24th June, 2019.

ORDER

Adnan-ul-Karim Memon, J- The Applicant Waheed Dehphal Chandio is seeking his Post-arrest bail in Crime No.01/2019 registered for offence under section 20, 21, 24, PECA 2016 read with Section 506/B, 109 PPC at Police Station FIA Cyber Crime Reporting Center Sukkur.

2. The complainants have lodged complaint against the Applicant on the plea that he made nude video and pictures of complainant namely Mst. Erum and Mst. Qurat-ul-Ain @ Annie on the assertions that Mst. Erum and Mst. Qurat-ul-Ain @ Annie made complaint before F.I.R that applicant/accused sent marriage proposal of Mst. Erum which was accepted by the family and she was engaged to the applicant/accused for some time but that engagement did not last. During the period of engagement, applicant/accused made nude video and pictures of Mst. Erum. After termination of engagement with Mst. Erum, applicant/accused made marriage proposal for Mst. Annie (sister of Mst. Erum). Applicant/accused also threatened the family of Mst. Erum and

Annie that if his marriage proposal for Mst. Annie will be refused then he will upload nude videos of Mst. Erum on social media. Finding no other way out, victim family accepted the offer by surrendering to the deadly threats of applicant/accused. Married life of Mst. Annie lasted for one and half year, after which she was divorced by applicant/accused. After the divorce, applicant/accused shared the nude videos of Mst. Erum and Mst. Annie respectively which were made by applicant/accused during the periods of engagement and marriage, respectively. Such sensitive videos of both girls were also sent to their family members. On the complaint of victim, F.I.A conducted raid and recovered incriminating articles 1 (USBs, Hard Drives and Mobile Phones) from the exclusive possession of applicant/accused. Initial technical evaluation revealed that seized articles were containing the material which was supporting the allegations of victim girls; hence the F.I.R was lodged as stated above. Investigating officer has recorded statements of PWs, arrested and interrogated the Applicant and obtained Final Forensic Analysis Report dated 15.5.2019 of recovered incriminating Articles, which supports the prosecution case and finally obtained permission for submission of Final challan in the aforesaid crime vide letter dated 21.6.2019. The applicant after failing to obtain post arrest bail from the Court of learned Additional Sessions Judge-III, Sukkur vide order dated 6.3.019 has preferred this bail application on 20.3.2019.

3. Mr. Qurban Ali Malano learned Counsel for applicant has contended the applicant is innocent and has been falsely involved in this case by the complainant in connivance with the F.I.A Police; He argued that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C and there is no previous criminal record of the applicant/accused; that the investigation stands concluded and the applicant is not required

for the same; that the offence under section 10 of Prevention of Electronic Crimes Act, 2016 entails maximum punishment of 14 years or fine and in this behalf the lesser sentence is to be considered for the purposes of bail. Reliance was placed on case reported as "Mustafa Ali v. The State" (2014 1464) that the applicant is allegedly the first time offender and does not have a history of any involvement in immoral activities. Reliance was placed on case reported as "Ameer Ullah v. The State" (2012 PCr.LJ 1858); that though, the forensic test has been conducted of the purported incriminating Articles taken from the custody of the applicant, however, it is still to be established that the same was owned by him, hence, the case is one of further inquiry; that it is still to be corroborated through independent evidence and established during trial that the material was put up by the applicant in support of his contention he relied upon the case reported as MUHAMMAD HAYAT KHAN Vs. The STATE and another (2019 PCr.LJ 472), Muhammad Azam Davi Vs. The State (2017 PCr.LJ 1715), and Atta Muhammad Khaskheli Vs. The State (2017 PCr.LJ Note 197). He lastly argued that the applicant is behind the bar, since his arrest in the aforesaid crime.

4. Conversely, Mr. Mahmood Khan Yousifi DAG has opposed the bail application on the ground that the applicant is nominated in the FIR. He further contended that the applicant shared the nude videos of Mst. Erum and Mst. Annie respectively which were made by applicant/accused during the periods of engagement and marriage, respectively. Such sensitive videos of both girls were also sent to their family members. On the complaint of victim, F.I.A conducted raid and recovered incriminating articles 1 (USBs, Hard Drives and Mobile Phones) from the exclusive possession of applicant/accused. Initial technical evaluation revealed that seized articles were containing the material

which was supporting the allegations of victim girls. He argued that on pointation of complainant applicant/accused was arrested and from his possession incriminating articles were recovered and since the offence is heinous in nature, therefore, he prayed for dismissal of instant bail application.

5. I have considered the arguments advanced by the counsel for the parties and examined the contents of FIR and interim challan. I have noted from the record as under:-

i) Complainant Mst. Erum alleged that the applicant raped her during her engagement with the applicant, after promising her marriage and also used nude photos and videos of her to harass her.

ii) complainant Mst. Annie alleged that her family accepted the offer by surrendering to the deadly threats of applicant and contracted marriage with him. Her married life lasted for one and half year, after which she was divorced by applicant and also used nude photos and videos of her to harass her

iii) F.I.A conducted raid and recovered incriminating articles 1 (USBs, Hard Drives and Mobile Phones) from the exclusive possession of applicant/accused.

iv) Prima-facie Initial technical evaluation revealed that seized articles were containing the material which was supporting the allegations of victim girls.

v) Interim challan has been submitted in the competent court of law.

vi) There is statement of ex-wife of the applicant recorded under Section 161 Cr.P.C. There is also statement of Mst. Erum sister of the ex-wife of the applicant, recorded by the police, who supported and corroborated the each other.

vii) The nature and gravity of the offence and serious allegations of life threats leveled against the applicant.

viii) Indulgence of the applicant in immoral activities.

xi) The applicant, if released on bail, may tamper with the evidence and there is also chance of his absconding.

x) Prima-facie Final Forensic Analysis Report dated 15.5.2019 of recovered incriminating Articles, connects the applicant in the aforesaid crime.

6. In order to see whether the basic ingredients of the aforesaid offences are attracted in the present case, it is expedient to have a glance on Section 20 and 21 of the PECA 2016, which provide as under:-

“— (1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:

Provided that nothing under this sub-section shall apply to anything aired by a broadcast media or distribution service licensed under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002).

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority.

Section 21.(1) Whoever intentionally and publicly exhibits or displays or transmits any information which,--

(a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or

(b) includes a photograph or a video of a natural person in sexually explicit conduct; or

(c) intimidates a natural person with any sexual act, or any sexually explicit image or video of a natural person; or

(d) cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

(2) Whoever commits an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees:---

Provided that in case of a person who has been previously convicted of an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data. also direct any of its licensees to secure such information including traffic data.”

7. Argument that the applicant 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. 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 to 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 applicant, supported by technical evidence is that he by betraying the trust reposed by the ex-wife and her sister exposed her and shared indecent images not only with her but with others as well; it is a flagrant intrusion into privacy that brings a young ladies into perennial embarrassment and ridicule within and outside family fold. Reference to his ex-wife and her sister volitional intimacy with the applicant as a contributory factor tantamount to add insult to injury, thus, I do not feel persuaded to receive applicant's bail plea with favour in my discretionary jurisdiction.

8. The case law cited by the learned Counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand. On

the proposition of precedents in bail matters, I am fortified by the decision rendered by the Hon'ble Apex Court in the case of Muhammad Faiz alias Bhoora Vs. the State & others (2015 SCMR 655), The Hon'ble Supreme Court has held that the precedents in bail matters were of no help to a party, as it varied from case to case depending upon the facts of each case.

9. In view of the above facts and circumstances, the Applicant has not made out a case for grant of post arrest bail in the Crime No.01/2019 registered for offence under section 20, 21, 24, PECA 2016 read with Section 506/B, 109 PPC at Police Station FIA Cyber Crime Reporting Center Sukkur, at this stage.

10. Resultantly his post arrest bail application is dismissed. However, it is clarified that observations made hereinabove being tentative would not impact upon the fate of the trial. However, the learned Trial Court is directed to record evidence of the material witnesses within a period of three months, where after the Applicant will be at liberty to move fresh bail application before the learned Trial Court on fresh ground, if any.

11. It is expected from the learned trial Court that the direction of this Court, particularly in the Bail matters shall be adhered to and valid reasons are to be assigned, if the trial is not concluded within the stipulated time.

12. The instant Bail Application stands disposed of in the above terms.

JUDGE

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