

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No.421 of 2020.

APPLICANT : Saleem Khalid son of Khalid Abdul Aziz,
through Mr. Adnan Ali, Advocate.

COMPLAINANT : Nimra Saleem d/o Muhammad Tahir Khan.
through Ms. Sabra Qaiser, Advocate.

RESPONDENT : The State,
through Ch. Waseem Akhtar, A.A.G.

Hearing on : 09.04.2020.

Decided on : 09.04.2020.

ORDER .

ABDUL MOBEEN LAKHO, J.-Through instant criminal bail application, applicant/accused Saleem Khalid son of Khalid Abdul Aziz, seeks post arrest bail in crime No.06 OF 2020, registered under Section 20, 21 and 24 of Prevention of Electronic Crimes Act, 2016 at Police Station F.I.A, Cybercrime Reporting Center, Karachi. His earlier Cr. Bail application bearing No.849/2020 was dismissed by the by the learned Sessions Judge, Karachi East, vide order dated 25.02.2020.

2. Briefly stated, the facts of the prosecution case are that complaint's ex-husband Saleem Khalid son of Khalid Abdul Aziz, having CNIC No.42201-0506715-7, Resident of House No.20, Kokan Society, Shaheed-e-Millat Road, Karachi who is a U.K national with contact No.00447761495 of U.K and 0301-1915500 in Pakistan, complainant got married to him when he was working in Naheed Super Store and after some time he took her to DANDI in UK in 2017 where the complainant allegedly started to maltreat her and forced her by indulging into obscene activities under the influence of Alcohol and Drugs which particularly included making of sexual videos of the complainant with his friends and others people for money and recording the same activity on electronic media as alleged. The prosecution story is that the complainant after delivering their baby developed medical issues with her back for which the accused gave her marijuana and alcohol as pain reliever and when she used to get high on the drugs and alcohol he used to take advantage of her state and used to sell her to his friends and other persons, he also created her account on tinder (another dating

website) and used to socialize with strangers and forced her to log on and have sexual interaction with them. He allegedly recorded a videos in which she is not in her senses and is having sex with someone these type of videos were used to blackmail her in forcing her to do many things including prostitution and if she refused, would send all her videos and photos with strangers, to her family and parents. He used to send strangers in her room to record her obscene videos and nude photos to be forwarded to strangers on whatsapp when the complainant was under influence of drugs.

3. She was brought to Pakistan when she stopped taking order from the accused and was slapped with a divorce deed. She approached FIA and after approval of competent authority the FIA, Cyber Crime Reporting Centre, Karachi raided the house No.20, Kokan Society, Shaheed-e-Millat road, Karachi questioned from Saleem Khalid son of Khalid Abdul Aziz regarding the uploaded / spread persons /obscene pictures of the complainant. On which he / Saleem Khalid son of Khalid Abdul Aziz voluntarily admitted that he had made generated / uploaded / transmitted the personal / obscene pictures and videos of the complainant's to only the family. He also produced following equipment/ incriminating articles (1) One Mobile SAMSUNG MODEL #G973F IMEI 35191010267537/01 & 351911102672535/01 AND (1) Q-Mobile M-400 having IME # 351699061471276 & 351699066471271 with U.K SIM # 447761661495. The FIA team took into possession the above articles under the proper seizer memo dated 13.02.2020. The accused alongwith deceased equipment was brought to the Police Station FIA, Cybercrime Reporting Centre, Karachi and a FIR was registered on 14.05.2020 against the present accused.

4. Learned counsel for the applicant/accused has contended that the applicant/accused is law-abiding citizen and is innocent and has been falsely implicated by the FIA, NR3C; that the subject FIR has been lodged with a delay of at least sixty (60) days without providing any plausible reason whatsoever; that the raid conducted by the FIA, NR3C was conducted unlawfully without obtaining search warrants as provided for under Cr.P.C and hence the raid at the resident of the applicant is illegal and void; As admitted, the challan the video recording in question has only been shared with the family members of the complainant;; that there is no evidence available on record that can establish that the applicant sent nude photos of the complainant to strangers over

whatsapp; that there is no evidence, digital or otherwise, that the applicant forced the complainant for prostitution; that there is no evidence available on record which can established that the applicant committed cyber stalking since at no material time did the applicant had the intent to coerce or intimidate or harass the complainant since the video recording was shared only with the family member of the complainant on their request as evidence of the infidelity of the complainant; that the offence u/s 20, 21 and 24 of PECA, 2016 are not attracted to the facts of the present case and neither is the same applicable to the applicant; that the offence u/s 20 and 24 of PECA is punishable with a maximum penalty of three (3) years and hence do not fall under the prohibitory clause of section 497 of the Cr.P.C.; that the offence u/s 21 of the PECA is punishable with a maximum penalty of five (5) years and hence, does not fall under the prohibitory clause of section 497 of the Cr.P.C; that the grant of bail in offences not falling under the prohibitory clause of section 497 Cr.P.C.; that no useful purpose will be served by keeping the applicant in custody, as the applicant is no longer required for investigation purposes and has already been sent to Jail Custody, that the FIA, NR3C has allegedly seized all equipment allegedly used in the commission of the offences, further, the FIR NR3C has already recorded the statement of the applicant and prays for the grant of bail.

5. On the other hand, learned counsel for the complainant has vehemently opposed this application for grant of bail on the ground that the accused has seriously damaged /ruined the career, modesty and prestige of the complainant by forwarding her obscene videos /photographs on social media and her parents after indulging her with obscene and untrosiating materiel; that the offence alleged falls under Section 20, 21 and 24 of the Act, the same is applicable in this case; that enough tangible physical evidence is available with the prosecution to connect the accused with the commission of alleged offence; therefore, he is not entitled to concession of bail.

6. The learned Assistant Attorney General for the State while adopting the arguments of the learned counsel for the complainant also opposed grant of bail to the accused, on the ground that the accused has maligned the honour and prestige of the complainant in the society by forwarding her obscene explicit video/ pictures via whatsapp/tinder. He

has also contended that the digital equipments recovered from the accused containing the above data has been sent to Forensic Laboratory for forensic report and in case prosecution deems it necessary to include the name of forensic expert in the calendar of witnesses, the same shall be done in the final report / challan and in support of his arguments, the learned A.A.G relied upon the cases of law reported in *2018 P.Cr.L.J. 408 [Lahore]*, *2018 Y L R. 329 [Sindh]*, *2017 P.Cr.L.J. 1715 [Balochistan]*, *2020 P.Cr.L.J. 259 [Sindh]* and unreported order in *Cr.Bail Application No.958 of 2019 of the Court being case of TARIQ LIAQUAT ALI KHAN VERSUS THE STATE*. He has prayed for dismissal of the instant Bail Application.

7. I have considered the arguments advanced by the learned counsel for the accused, complainant and learned Assistant Attorney General for the State as well as perused the material available on record.

8. The complainant made a complaint to F.I.A. regarding sharing of her obscene videos within family and outside family F.I.A. officials proceeded to the house of accused and got recovered on pointation the incriminating paraphernalia which contained the objectionable material i.e. alleged videos of the complainant which was seized in presence of witnesses under a seizure memo.

9. The accused after getting married to the complainant took her to U.K where allegedly he maltreated her by giving her addiction drugs alcohol as pain relievers and allegedly forcing her to indulge into sexual activities with his friends, and other people. He also used social media for the same purpose and recorded her obscene videos posted/ forwarded the same to other persons and family. The act of forwarding the obscene videos to the family and outside the family by the applicant/accused brought the complainant into perennial embracement within and outside the family. Admittedly in grounds “f” and “l” of the instant application the applicant admits making of the videos which are reproduced as ready reference.

...

f. That the PECA, 2016 does not define the word “publicly”, however, the dictionary definition of the word “Publicly” is provided as “in a manner observable by or in a place accessible to the public openly and by the people generally”. As admitted, the challan the video recording in question has only been shared with the family members of the complainant.

l. That there is no evidence available on record which can establish that the applicant committed cyber stalking since at no material time did the applicant have the intent to coerce or intimidate or harass the complainant since the video recording was shared only with the family member of the Complainant on their request as evidence of the infidelity of the complainant.

10. The above two reproduced paragraphs give weight to the allegations against the accused/applicant that by making videos and photographs forced the complainant to indulge into obscene activities with his friends which he recorded on electronic media which later on were used to control the complainant by blackmailing her on explicit images and videos of her and force her to perform other sexual activities and to coerce her into continuing or doing as ordered harass her or to silence her by putting her in danger. The FIA during investigation recovered the paraphernalia from the house of the accused on the pointation of the accused, as is done in any criminal case, "recovery on the pointation".

11. The above brings the act of making and posting of the videos under P.E.C.A Act and the relevant sections are reproduced as under: -

20. Offences against dignity of natural person.--- (1) Whoever intentionally and publically 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 or for 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.

21. Offences against modesty of a natural person and minor.

(1) Whoever intentionally and publically 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 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.

24. Cyber stalking. -(1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the Internet, website, electronic mail or any other similar means of communication to—

- (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;*
- (b) monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication;*
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or*

(d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.

(2) Whoever commits the offence specified in sub-section (1) 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;

Whoever intentionally and publically 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 Electro.

12. At bail stage only tentative assessment of record is permitted and deeper appreciation of evidence / material is not permitted. The offences charged (Sections 20, 21 and 24 of P.E.C.A) do not fall within the prohibitory clause of section 497 Cr.P.C. being punishable up to five (05) years, but in such like cases where dignity and modesty of a person is at stakes, the discretion for grant of bail has to be exercised cautiously specially when the offence seriously affect the whole society and the impact is devastating not only for the complainant but to his/her family which may ruin the future life of the victim. I am of the opinion that if the husband wanted to divorce the complainant as elaborated in ground (l) he could have done so without making any video, he did not have to make videos of her to prove her infidelity by making her obscene videos. The applicant not only made the videos but admittedly forwarded on whatsapp to the in-laws to prove his case and justifying the reason for divorce and by admitting the fact that the applicant did make obscene video of his wife with another person and posted it on social media (whatsapp), to me takes the case out of the ambit of further enquiry. Hence, prima facie prosecution has sufficient material against the accused to connect him with the commission of alleged offence. I, therefore, dismiss the instant bail application.

13. These are the reasons of my short order dated 09.04.2020.

This Criminal Bail Application stands dismissed in the same terms.

JUDGE

Jamil Ahmed / PA