

**HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

Cr. Bail Application No.S-336 of 2023
[Faisal Imran versus The State]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicant : Through Barrister Jawad Ahmed Qureshi
advocate

State` : Through Mr. Bashir A. Almani Asstt. Attorney
General

Date of hearing: 18.07.2023

Date of Decision: 18.07.2023

ORDER

MOHAMMAD ABRUR RAHMAN, J. - This is a bail application under Section 497 of the Code of Criminal Procedure 1898 that has been maintained by the Applicant, who is accused in Crime No.01 of 2023 that was registered at P.S FIA Cyber Crime Reporting Centre, Hyderabad pending trial before the Court of the Civil Judge/Judicial Magistrate-I/MCTC-II Hyderabad on a charge punishable under Section 20, 21 and 24 of the Prevention of Electronic Crimes Act, 2016.

2. The Applicant had originally applied for post arrest bail before the Civil Judge & Judicial Magistrate/Judge of Consumer Protection Court bearing Bail Application No.03 of 2023 and which had been rejected by that Court on 28 February 2023 and had thereafter applied for post arrest bail before the Sessions Judge Hyderabad bearing Special Bail Application No. 2 of 2023 which was also dismissed on 25 March 2023.

3. It seems that an FIR was registered on the complaint of Mst. Shakeela on 13 February 2023 which culminated in Enquiry No. 8 of 2023 being registered with the P.S FIA Cyber Crime Reporting Centre Hyderabad against the Applicant, alleging that he was circulating obscene photographs/videos of the Complainant to the Complainant's sister Mst. Shamim Akhtar by whatsapp application on a cellular telephone number 0332-8291151. The enquiry revealed that the whatsapp messages were emanating from a cellular telephone bearing an IME No.357681105579490 and which matched a phone that was purportedly found by the FIA in the custody of the Applicant. The phone was forensically examined and it was found that the videos and photographs had been sent from the same phone.

4. Barrister Jawad Ahmed Qureshi appearing on behalf of the Applicant has contended that Applicant serving as the Litigation

Officer/DEO, Badin and had implicated various family members of the Complainant as being listed as a Government School Teachers without having performed such duties. He clarified that each of the offences that the Accused has been charged with do not come within the prohibitory clause and that bail in such matters should be granted as a rule. He pleaded that the Applicant has been in jail from the last seven months and to detain him in such a manner would be unjust.

5. The Assistant Attorney General while accepting that the offences did not come within the prohibitory clause of Section 497 of the code of criminal Procedure, 1898 stated that this is an offence against society and should be viewed in that light. He further contended that the cellular phone bearing IME No. 357681105579490 was recovered from the Applicant and which had been used by the Applicant to disseminate the videos/photographs by whatsapp. He stressed that as there was enough information to connect the Accused to the crime and hence bail should be declined.

6. I have heard both the Counsel for the applicant as well as the Additional Prosecutor General and have perused the record.

7. Admittedly the offences of which the Accused is charged carry a maximum sentence of five years and the same does not come with the prohibitory clause contained in Section 497 of the Code of Criminal Procedure, 1898 and in such cases bail should be granted as a rule. However, I am mindful of the fact that such an offence is an offence against a lady and whose family members have been subjected to a certain amount of anguish on account of the dissemination of such information through electronic means and ordinarily I would have been inclined to decline bail when there is prima facie material on record to connect the Accused with the crime in such matters.

8. However, considering the evidence connecting the Applicant to the Offence it is contended that a cellular telephone with an IME No. 357681105579490 from which the video/photograph was shared via whatsapp was recovered from the possession of the Applicant. However, it is to be noted that the Applicant is a Legal Officer in the Education Department and has acted on the complaint of one Zulfiqar Khoso who had acted as a whistle blower to complain about one Arslan Leghari who was purportedly posing as a teacher at village Imdad Khan while simultaneously practicing as a Medical Practitioner in Karachi. According to the Applicant the complaint against the said Arslan Leghari instigated Mst. Shamim Akhtar to lodge an FIR as against Zulfiqar Khoso bearing No.168 of 2022 under Section 506(2), 509, 504 and 34 PPC at P.S Matli and this complaint was now an act of retribution as against the Applicant

who had acted on such information as against the family members of the Complainant.

10. The Applicant has been in jail for the last seven months and, I do believe that his role in the Department of Education by acting on the complaint of Zulfiqar Khoso as against Arslan Leghari, leading to a Complainant being filed by the said Shamim Akhtar against Zulfiqar Khoso and Shamim Akhtar being the sister of the Complainant who is the subject of this crime to my mind makes this a case of further inquiry which would need to be examined. The particular factual circumstances bringing this matter within the parameters of Sub-section (2) of Section 497 of the Code of Criminal Procedure 1898, led me to grant this Bail Application on 18 July 2023 and these are the reasons for that order.

JUDGE

Hyderabad 4 August 2023

Sajjad Ali Jessar