

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.987 of 2024

Date	Order with signature of Judge
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1. For order on MA No.6021/2024 (Exemption)
2. For hearing of bail application

**Date of hearing and Order:- 11.7.2024**

Mr. Hyder Farooq advocate for the applicant  
Mr. Saleem Akhtar Buriro, Additional PG

**ORDER**

**Adnan-ul-Karim Memon, J :-** Through this Bail Application under Section 497 Cr. P.C, applicant Shahid is seeking post-arrest bail in Crime No.601 of 2023 registered for offenses under sections 385,386 and 25 –D of the Telegraph Act. of PS Ferozabad. His earlier bail has been declined by the learned trial Court vide order dated 08.04.2024 on the premise that police recovered a picture of the nephew of the complainant and the surrounding building and CDR supports the case of the prosecution.

2. The prosecution story as per the contents of the FIR is that on 08.08.2023 the complainant Muhammad Ashraf was present in his flat and one unknown called on his Cell No. 0321-2525557 from Cell No: 989116863806 and used abusive language and demanded one Revo Vehicle and in case of non-compliance extended life threats and later on powered off the mobile phone after ½ hours his nephew Talha Aslam again received phone calls from 97155283529, 12342224123 and 00989031955245 on 18.08.2023 on different times with the voice that when they would deliver the vehicle, as he knew about their family, children, and in-laws and would kill them, upon which his nephew agreed to give the vehicle, but the caller turned back and demanded to give cash Rs.1,50,00,000/- and also disclosed that his nephew was in their observation and in case of non-payment of Rs.1,50,00,000/- his dead body would be received. He lodged such a complaint with Ferozabad police station, who lodged the subject F.I.R against an unknown caller. During the investigation, the applicant was arrested on 03.10.2023 on the pointation of the complainant and allegedly recovered a picture of his nephew Talha and a residential building.

3. Learned counsel has argued that hat, the Applicant/accused is a law-abiding and peace-loving citizen and he has spotless character; that

there is an ordinate delay of 30 days in lodging the FIR, which plausibly unexplained by the complainant, which gave inference the FIR had been lodged after deliberate and consultation which is mentioned in the FIR that the FIR after consultation. Per learned counsel, no useful purpose would be served by keeping the applicant behind bars. He added that bail is not to be withheld as a punishment. He prayed for allowing the bail application.

4. Learned Additional PG states that notice was issued to the complainant and he put his appearance through his counsel on 11.06.2024 and the matter was adjourned to 27.06.2024 whereby his counsel was called absent and adjournment was sought on his part and the matter adjourned to 11.07.2024 and on the very day he was called absent and the matter was adjourned today. Today the complainant and his counsel are called absent though a specific date was given to him to appear and assist this Court. However, learned Additional PG has opposed the bail application on the premise that the applicant demanded Rs. 1,50,000,000/- as extortion money from the complainant and issued threats of dire consequences to the complainant. He further submitted that upon his arrest recovery of photographs and buildings was effected from his mobile phone which shows his complicity in the crime. Besides CDR with talking time between the numbers of applicant and complainant matching as such the applicant is not entitled to grant of bail at this stage. He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Forensic report dated 13.10.2022 prima facie shows that the extraction report of mobile phone(OPPO)CPH 1909 IMEI(868538043818293) and (868538043818282) with sim card cannot be generated with UBED 4 PC Software for Data Extraction( Expired since 28.02.2017). The audiovisual analysis report suggests that after forensic audio analysis, no traces of editing were detected in the audio file.

7. Prima facie, the I.O. has not opined that merely taking into possession the purported pictures of the house of the complaint from the mobile phone of the applicant on which the alleged call was made has not reported that such extortion money was demanded as the applicant was arrested and he attempted to move an application to the trial Court for recording statement of witnesses Talha Aslam and complainant but they did not turn up and the trial Court passed the order on 15.11.2023 and disposed of the application of the Investigating Officer.

8. The offense under Section 385 is punishable with a punishment of two years, however, the punishment under Section 386 is ten years, with which the applicant is charged primarily from the facts and circumstances of the case, which does not fall within the prohibitory clause of Section 497 Cr.P.C. Rather the offense under Section 25-D of the Telegraph Act entails a maximum punishment of three years or with a fine or both.

9. It is settled that when an offense is also punishable with a fine only, the accused shall be entitled to bail as of right because if at the trial he is only sentenced to a fine, period as under trial prisoner due to refusal of bail shall amount to a case of double jeopardy. The Supreme Court in the case of *Iftikhar Ahmed v The State* **PLD 2021 SC 799**, has held in categorical terms that granting of bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule, and refusal shall be an exception and directed the Courts of the country to follow this principle in its letter and spirit because principles of law enunciated by the Supreme Court are constitutionally binding [under Article 189] on all Courts throughout the country.

10. The Supreme Court in several cases has held that in the absence of any concrete material the Call Data Record is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused. Merely based on bald allegations, the liberty of a person cannot be curtailed. In these circumstances, the applicant has made a case for bail as his case squarely falls within the purview of Section 497(2) Cr.P.C. entitling further inquiry into his guilt. Resultantly, this bail application is accepted and the applicant is allowed post-arrest bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (Rupees one lac only) with one surety in the like amount to the satisfaction of the learned trial Court.

11. The observation recorded hereinabove is tentative which shall not prejudice the case of either party at trial, which shall be concluded within two months from today.

JUDGE