IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No.D-1552 of 2025
[Muhammad Bilawal v. Province of Sindh & others]

BEFORE:
MR. JUSTICE ADNAN-UL-KARIM MEMON
<u>Mr. JUSTICE RIAZAT ALI SAHAR</u>

Petitioner:	Muhammad Bilawal through Mr. Altaf Sachal Awan, Advocate.
Respondents No.1to4:	Province of Sindh & others through Mr. Nazar Muhammad Memon, Additional Prosecutor General Sindh along-with Inspector Sohail Ahmed, sub-division Sakrand.
Respondents No.5&6:	Nemo.
Date of hearing:	25.11.2025.
Date of decision:	25.11.2025.

O R D E R

RIAZAT ALI SAHAR, J: - Through this petition, the petitioner has challenged certain findings and observations recorded by the learned Additional Sessions Judge-III, Shaheed Benazirabad, in the impugned common order dated 17.05.2025 passed in Bail Applications No. 924 and 925 of 2025. By the said order, the learned Judge directed that the alleged victim be arrayed as an accused and further ordered that the investigation relating to the alleged offence be entrusted to the National Cyber Crime Investigation Agency (NCCIA). Aggrieved, the petitioner has filed the present petition seeking the following reliefs:-

1. To set-aside/ex-pinch the portion of impugned order dated 17.05.2025 extent to joining the victim as accused and transfer of investigation to National Cyber Crime investigation (NCCIA) passed by the Court of learned Additional Sessions Judge-III, Shaheed Benazirabad, which is excess his jurisdiction.

2. To suspend the implementation of joining the victim as accused and transfer of investigation to National Cyber Crime Investigation (NCCIA), till the final disposal of instant petition.

3. Any other relief(s), which this Honourable Court deems fit, just and proper in favour of the applicant.

2. Background of the case is that an FIR No.50/2025 was lodged by the petitioner. As per FIR, on 16.04.2025, the petitioner along with his relative visited the house of his sister, Mst. Ashraf Khatoon, a widow residing in village Sahib Khaskheli. Upon her non-availability, her son Yasir informed that she had gone to meet them in the village. During search, they heard cries emerging from a vacant house belonging to one Wali Muhammad Jamali. Upon entry, they found accused Ghulam Murtaza standing outside a room and accused Faheem allegedly found in a compromising position with the petitioner's sister inside the room. It was further alleged that the act was being recorded on a mobile phone placed in front of them.

3. While rejecting the bail application of accused Faheem, the learned Additional Sessions Judge observed that the alleged victim, being an adult, appeared to have voluntarily participated in the act and therefore was liable to be arrayed as an accused within the meaning of Section 496-B, PPC. The learned Judge further directed that if such allegations remained uncontroverted during investigation, the Investigating Officer must proceed to array her as an accused. He also directed that the aspect relating to Section 21 of the Prevention of Electronic Crimes Act, 2016 (PECA) be referred to NCCIA for forensic and electronic evidence analysis. These directions have prompted the filing of the present petition.

4. Learned counsel for the petitioner contends that the direction for joining the victim as an accused and for transferring investigation to NCCIA is wholly without jurisdiction, illegal, void, and contrary to law. He further contends that the learned Additional Sessions Judge had exceeded the scope of his authority while hearing bail applications and he was legally confined to deciding bail alone either to confirm or reject it. According to learned counsel, the power to issue directions regarding the conduct of investigation vests in the Magistrate and not in a Court seized merely with bail proceedings, as such, the impugned portion of the order is liable to be set aside.

5. Conversely, learned A.P.G. Sindh, while referring to the progress report of the enquiry officer, contends that Section 21 of PECA, 2016 is not attracted to the facts of the present case since the provision

concerns intentional and public transmission of sexually explicit or obscene material. In view of the nature of allegations, learned A.P.G. Sindh contends that appropriate directions may be issued by this Court to determine the future course of the case particularly concerning the applicability or non-applicability of the alleged offences.

6.   We have heard learned counsel for the petitioner and the learned Additional Prosecutor General, Sindh and have carefully examined the material available on record.

7.   On meticulous assessment of the record, it appears that learned Additional Sessions Judge, while adjudicating bail applications, was not competent to issue directions interfering with the investigation or compelling the Investigating Officer to nominate additional accused persons. Such powers lie within the domain of the Investigating Agency and the Magistrate who upon request agree or disagree with such report of Investigating Officer and not with the Court hearing bail proceedings. We observe that the impugned order dated 17.05.2025, to the extent that it directs the Investigating Officer to array the alleged victim as an accused and further direct the transfer of investigation to NCCIA, is not sustainable under the law. Consequently, we hereby set-aside such portion of the impugned order, having been passed without lawful jurisdiction and beyond the jurisdiction of the learned Additional Sessions Judge.

8.   As a result of above, it is pertinent to note that the investigation shall continue in accordance with law under the supervision of the competent Investigating Officer without being influenced by the portion of the impugned order as discussed supra. No direction is required at this stage regarding PECA provision. Hence, it is up to Investigation Officer to do the investigation in accordance with law. However, the Investigating Officer shall remain at liberty to apply the relevant provision of law upon objective assessment of evidence strictly in accordance with law.

9.   The petition stands **disposed of** in the above terms.

<div align="right">JUDGE</div>

<div align="right">JUDGE</div>

Abdullahchanna/PS