

ORDER SHEET
IN THE HIGH Court OF SINDH, KARACHI
Cr. Bail Application No. 1614 of 2023

Date	Order with signature of Judge
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For Direction/Disposed of

For further orders in view of
Court's order dated 31.07.2023
(Order forwarded to Cyber Crime Director for compliance)

04.08.2023

Mr. Abdul Qayyum Abbasi Advocate for the Applicant along
with Mr. Muhammad Abdullah Advocate
Mr. Sadaqat Hussain Awan, Additional Attorney General
along with IO/SI Komal Anwar, Cyber Crimes
Dr. Muhammad Farooq PSP, Director (Operation), FIA
Cybercrime Wing (South)
Mr. Aijaz Kalwar, Assistant Director, (Legal) Cybercrime

In compliance of this Court order, Dr. Muhammad Farooq, Director (Operation), FIA Cybercrime Wing (South), Mr. Aijaz Kalwar, Assistant Director (Legal) Cybercrimes and SI Komal Anwar (IO) are present. These officers were called in sheer distress as it was found that the IO lacked expertise to investigate Cybercrimes. Court sought information as to educational qualification and training of IOs for such a state of art investigation endeavor. A report has been submitted by the Director (Operation) allegedly in compliance of this Court's order dated 31.07.2023, however, perusal of the report reflects that except taking excerpts from the Electronic Crime Act, 2016 ("PECA") as well as the Electronic Crime Investigation Rules, 2018 enacted under section 51 of PECA ('the Rules') nothing is placed before this Court to build its confidence that the Cybercrime Wing has competency to effectively investigate cybercrimes, let alone combating those. In the context at hand it would be useful to consider provisions of Section 29 of PECA which at the first go envisages that a new investigation agency for the purposes of combating Cybercrimes would be created by the Federal Government, but in the alternate possibility of designating an existing law enforcement agency for such purposes is also a given option, and using the latter flexibility, vide SRO 897(I)/2016 dated 22.09.2016 the Federal Investigation Agency (FIA) was designated for investigation of

offences under PECA. Be that as it may, in any case for cybercrimes' investigation specialized courses in digital forensics, information technology, computer science and other related matters are required to be imparted to the officers and staff of the investigation agency, whatever is the case. Rule 4 thus makes it mandatory for the Cybercrime Wing to be manned by such personnel, having qualifications and skills in the relevant subjects including computer science, digital forensics, information technology, telecommunications, computer engineering, law or a related field to generate forensic reports, investigate and prosecute offences under PECA law. Also of relevance is Rule 15 which makes it mandatory for the personnel of Cybercrime Wing to go through training courses pertaining to cyber investigation, network security and cyber research particularly for the investigative officers. Emphasis on the qualification and skills of the officers is so essential that Rule 16 treats the Wing as a Specialized Cadre and only permits appointment, promotions and transfers of those personnel to the Wing who meet the prescribed qualification and criteria specified in Schedule 1 of the Rules, which requires Inspectors and Sub-Inspector Cybercrime Investigation Officers to have five years or above **post qualification** experience in the relevant field of forensics, information security, data recovery techniques, which experience was found missing in the officers present in the court. As to inquiries and investigations, the Rules provide for a comprehensive process to be followed. Rule 7(2) makes it mandatory for the IO to conduct investigations on a clearly chalked out Work Plan approved by the Circle In-charge in the format prescribed by Schedule-IV which requires that as a part of Work Plan Steps & Timelines, an IO needs to identify interviewees, their contact details and a tentative schedule in the following Table:

PROPOSED INTERVIEWS

No.	Name	Status (complainant, accused, witness, victim)	Contact Info (phone and e-mail)	Purpose of Interview	Tentative date/availability

As a part of Evidence/Records Preservation and Collective initiative, an IO first needs to identify known and possible sources of evidence and specify means/process for securing those sources and collecting records i.e. files, electronic data etc. and to retain those in the following format:

COLLECTION OF EVIDENCE/RECORDS

No.	Evidence/Records to be Collected	Means of Collection/Contact Point)	Date Completed

After identification of Equipment and Investigation Tools where IO has to list out the required equipment for investigation, including laptop computer, portable printer, external hard drive, flash drive, digital camera, digital audio recorder, hard disk cloning software, SIM card reader/back-up, evidence bags/seals, the Schedule also requires an IO to call for Forensics or External Expertise in the following format:

Type of Evidence	Explanation	Date obtained

Once Investigations conclude, the Schedule prescribes an Investigation Report Structure per Annex-B to be presented in the following format:

<p>INVESTIGATION REPORT STRUCTURE</p> <p>1. Background</p> <p>This section outlines the background of alleged complaint or the activity investigated, when and how allegations surfaced, and locations of investigations. It also provides the name and job title of the person who authorized the investigation and the terms of reference of the investigation.</p>

2. Persons Implicated

This section of the report provides the details about allegations made by the complainant against the investigation subjects.

3. Applicable Sections of Law

This section outlines the relevant provisions of Prevention of Electronic Crimes Acts 2016 (PECA), Pakistan Penal Code (PPC) and other relevant laws on FIA schedule that have been violated.

4. Investigation Proceedings/Methodology

This provides methods used to undertake investigations such as interviews of witnesses, subjects, documents and evidence collected and field missions undertaken. Reports should include both exculpatory and inculpatory evidence.

If the offences under investigation are compoundable, bailable and non-cognizable or non-bailable, non-compoundable and cognizable as provided under section 43 of the Act, the investigation officer shall follow the requisite course of action in line with the relevant provisions of the Act and the Code.

5. Findings

The investigation findings provide a detailed account of the facts of the case. This section explains the investigative steps undertaken, how evidence was obtained, results of the evidence and how evidence is relevant to the allegations and conclusion of the investigation.

In short, the findings of the report:

- (i) summarizes the key evidence from each witness statement
- (ii) what facts have been established
- (iii) what facts have not been established
- (iv) whether there are any mitigating factors to consider
- (v) whether there is any other relevant information to consider

6. Conclusion

Conclusion provides summary of the investigation based on the established facts and how they relate to the allegations

and applicable laws. This section of the report describes as to whether or not the allegations were substantiated.

7. Recommendations

Recommendations should be supported by the investigative findings.

Before proceeding further it would be appropriate to reproduce brief facts of the case at hand, which are that an enquiry 16th May was registered upon the complaint of a Ms. Nabeela resident of Karachi, where she stated that a person named Zahid, one of her neighbor, was sending her obscene photos to her brother and classmates. She requested that immediate action be taken against Zahid as the latter was destroying her honor. During the course of enquiry, IO recorded statement of the complainant, where she stated that she had an earlier relationship with the accused who wanted to carry on their illicit relationship against her will, whereupon being annoyed he started blackmailing, harassing, cheating and defaming her with the help of their inappropriate and objectionable pictures/videos by sending these materials on social media i.e. Instagram too.

With this background and the self-implicating story of the complainant as the pictures clearly showed having been taken with complainant's consent and where there was no proof that such media was placed on any public forum (ie Instagram) as affirmed by the IO, subject FIR under sections 16, 20, 21 and 24 of PECA was registered. When posed a question as to whether IO had taken mobile phones of brother of the Complainant and the Complainant herself, the answer was in the negative. While the complaint was also that objectionable media were sent to Complainant's classmates, but this aspect was ignored and complainant's class fellows were not included in the Interviewers' list prescribed by the Schedule. Even the Complainant's brother was not interviewed. A very incomplete handwritten (in Urdu) Investigation/Seizure Report was presented by the IO to the court which included an Officer as witness who later on turned out to be an internal forensic expert affirming the Report. As to Search and Seizure, one must keep in sight requisite of such intrusive action where Rule 8 casts duty on the IO to thoroughly process the crime scene by

ensuring its integrity, security and proper documentation of seized items and to mandatorily prepare a crime scene sketch and video record and photographs of the crime scene and seized items, which evidence was not collected by the IO, which act itself renders the concerned officer guilty of misconduct under Rule 8(5).

As to Forensic Report, while Section 40 of PECA requires that evidence collected during investigation be sent to the Forensic Laboratory established by the Federal Government for independent evaluation, however no such effort was made to get the evidence collected by the IO to be independently evaluated. Neither the Seizure Memo nor the Chain of Custody report (Form 1 and 2 respectively) shown to the court are in the prescribed format.

It appears that serious lack of education and expertise is prevailing in the Cybercrime Wing which on the face of it does not correspond with the knowledge, skills and expertise necessary to investigate and combat cybercrime.

In these circumstances, Sindh Judicial Academy in consultation with the Director General, Cybercrimes to assess training needs of Officers and other staff of the Cybercrimes Wing Sindh with the objective of imparting legal as well as technological and forensic training to Wing's personnel and let a report be submitted to this court.

But such training would only help those who were appointed while strictly following the qualification and experience criteria as provided under Schedule I. It was also noted that personnel present in the court lacked the requisite post qualification experience in the relevant fields of forensic, information, security, data recovery techniques, which post qualification experience is mandatory for the post of Additional Director Operations/Crimes, Deputy Director Investigation/Crime, Deputy Director Admin, Deputy Director Forensics, Assistant Director Cyber Crime Investigation, Assistant Director Admin, Assistant Director Logistics, Assistant Director Forensic, Inspector-Cyber Crime Investigator, Cyber Crime Analyst, Sub-Inspector – Cybercrime Investigator.

Director General, FIA is thus directed¹ to institute an inquiry in the Sindh Cybercrime Wing and to prepare a detailed report of the education and post qualification experience of all the above identified post-holders, and to give its finding as to whether all such personnel meet the requisite education and post qualification prescribed in Schedule-I, and submit a report within 30 days to the MIT(II) of this Court for compliance.

Let a copy of this order be sent to the Director General, FIA, Islamabad for compliance.

JUDGE

Amjad PS/B-K Soomro

¹ As per the dictum laid down by the Supreme Court of Pakistan in the cases of Muhammad Qasim v. the State, 2021 SCMR 1344; Bahar v. the State, 2020 SCMR 761 and order dated 12.05.2020 passed in Criminal Petition No.419 of 2020 (Saddam Hussain v. the State).