

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2024 of 2023

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

02.10.2023

Ms. Farah Khan, Advocate applicant/accused
 Mr. Mr. Gulfaraz Khattak Assistant Attorney General along with
 Ahmed Shahzad complainant and SI Shoaib Shahab FIA Cyber Crime.

Through this bail application under Section 497 Cr.P.C., the applicant Nasir Durrani has sought admission to post-arrest bail in F.I.R No.15/2023, registered under Section 20/21/24 PECA, 2016 r/w 109/384/406 PPC of P.S FIA Karachi.

2. The allegations leveled by the complainant in the aforesaid FIR are that the unknown person shared, the obscene video and pictures of the complainant and his wife in compromising condition which was saved in his mobile phone and he was/is not aware as of how his mobile was accessed by the unknown person who allegedly blackmailed the complainant by securing 9,000/- rupees from him, however, his lust could not be fulfilled and he demanded more money and in failure to meet his demands, he issued threats of dire consequences to the complainant, with a resolute to leak the obscene pictures/ video on the website through his WhatsApp No. 0333-61101666.

3. The Complainant being aggrieved by and dissatisfied with the illegal action of the applicant approached the FIA who initiated the enquiry and obtained subscriber details of WhatsApp No. 03361101666 and found the same registered in the name of Hamza Abbas. Thereafter the Enquiry Officer collected the details of beneficiary account IBAN No. PK63 UNIL0109000247013744 which was in the name of title namely Muhammad Ahsan Nadeem in which alleged extortion money was secured. Subsequently, the inquiry officer obtained an order for search and seizure of the office of the applicant situated at CTO compound I. I Chundrigarh Road; and, seized all the digital equipment of Hamza Abbas and Ahsan Nadeem. Then the raiding team headed towards Pakistan Chowk to interrogate the applicant/accused and recovered some digital equipment from his possession. As per the FIA report, it was established that the applicant/accused had committed the offences punishable under section 20/21/24 of PECA 2016, r/w 109/384/406 PPC. Upon such inquiry, the subject FIR was lodged and the investigation officer submitted a challan before the concerned Magistrate who passed the order on 22.06.2023.

4. The earlier bail plea of the applicant has been declined by the learned VII Additional Sessions Judge (East) Karachi vide order dated 07.08.2023 in Criminal Bail Application No. 3822/2023, on the premise that ample material was/is available on record in the shape of 161 Statement of PW and recovery of Mobile Galaxy A-10-01, from the possession of the applicant containing obscene video/pictures of the complainant and his wife, however this assertion of the complainant has been denied by the applicant with the narration that the parties have patched up the matter.

5. At the very outset learned counsel for the applicant states at the bar that she is only pressing the bail plea of the applicant based on the consensus reached between the parties in the shape of the compromise, with the assertion that all the grounds taken by the applicant are secondary except the ground of compromise. In support of her contention, she relied upon the cases of *Abdul Hafeez v The State* 2016 SCMR 1439, *Abdul Qadir v The State* 2022 YLR 22, *Imamuddin v The State* PLD 2022 Sindh 359, *Ali Raza v The State* PLD 2013 Lahore 651, *Anas Khan v The State* 2023 YLR 39, *Hassan Nawaz v The State* 2022 YLR Note 211, *Talib Hussain v The State* 2014 YLR 1319 and *Faizan v The State* 2021 YLR 629. She prayed for allowing the bail application.

6. The complainant who is present in person has filed his affidavit of compromise and submitted that he has settled the differences with the applicant/accused due to the intervention of well-wishers and has shown his consent not to press against the bail plea of the applicant, he has also joined him in his quest for seeking the aforesaid relief, such statement has been filed by the applicant on 26.09.2023 along with a copy of compromise agreement.

7. At this juncture, the learned Assistant Attorney General has opposed the aforesaid proposal on the premise that the alleged offenses are non-compoundable and consent in such cases is against the law. He further submitted that the applicant is accused of having released obscene photographs of the complainant and his wife from his WhatsApp; and the matter was reported to the Federal Investigating Agency, pursuant whereto, in the wake of a detailed inquiry, devices transmitting the impugned communication were secured upon his disclosure that conclusively established his culpability as the source behind family's embarrassment. He finally supported the impugned order dated 07.08.2023 passed by the learned VII Additional Sessions Judge Karachi East and prayed for the dismissal of the bail application.

8. I have considered the arguments advanced by the counsel for the parties and examined the contents of FIR, challan, as well as the impugned order passed by learned VII Additional Sessions Judge (East) Karachi vide order dated 07.08.2023 in

Criminal Bail Application No. 3822/2023 and Forensic Analysis report placed on record.

9. Prima facie the case of the prosecution is based on the facts and findings of the Forensic Analysis report. For convenience's sake, an excerpt whereof is reproduced as under:-

“12. Facts & Findings of Forensic Analysis:-

The evidentiary items labeled as “FIA/CCW/KHI/FIR-15-2023/Mobile/ Galaxy A10/01, FIA/CCW/KHI/FIR 15-23/Mobile/ Realme C25/02, FIA/CCW/KHI/FIR 15-23/Mobile/VIVO 1811/03 AND FIA/CCW/KHI/FIR 15-23/Mobile/ GALAXY 18/04” as per Annex-B have been examined in the Digital Forensic Laboratory of Cyber Crime Zone Sindh, FIA Following are the facts & findings.

12.1 Finding 1: (FIA/CCW/KHI/FIR 15-23/Mobile/ GALAXY A 10/01)

During the forensic analysis, as per the case requirement,

Found the WhatsApp configured accounts are WhatsApp (Nasir Durrani/+923233250208) and WhatsApp Business (Haroon Butta/+92 336 11010666) in above evidentiary item.

Found the Gmail ID namely (nasirdurrani92@gmail.com) in above evidentiary item.

Found the victim's obscene screenshot images in above evidentiary item. (Sample images provided by IO/EO to lab)

Found the victim's obscene screenshot images in Google Photo available cache memory in above evidentiary item.

Found the threatening/Blackmailing and extortion WhatsApp messages related to pictures/videos from the number (Ahmed Khalid/+92 323 2881289) to the configured number (Haroon Butta/ +92 336 11010666) in above evidentiary item.

Found the WhatsApp conversation related to the payment transaction between the WhatsApp configured number (Nasir Durrani/+92 323 3250208) with the number (Hamza Tnt/+92 334 3403733) in above evidentiary item.

12.2 Finding 2:- FIA/CCW/KHI/FIR 15-23/Mobile/ Realme C25/02,

During the forensic analysis, as per the case requirement,

Found the WhatsApp configured account is (Muhammad Ahsan Nadeem/ + 92 34312599719) in above evidentiary item.

Found the Gmail ID namely (nadeemuddin034@gmail.com) in above evidentiary item.

Not found victim obscene screenshots/pictures and videos in above evidentiary item.

Not found transmission of the victim obscene picture/video in above evidentiary item.

Not found threatening, blackmailing, harassing, and demanding extortion WhatsApp messages/chat in above evidentiary item.

12.3 Finding 3: FIA/CCW/KHI/FIR 15-23/Mobile/ VIVO 1811/03)

During the forensic analysis, as per the case requirement,

Found the installed WhatsApp Business and WhatsApp application without a configured account in above evidentiary item.

Found the Gmail IDs namely are (nadeemuddin034@gmail.com) in above evidentiary item.

Not found victim obscene screenshots/pictures and videos in above evidentiary item.

Not found transmission of the victim's obscene picture/video in above evidentiary item.

Not found threatening, blackmailing, harassing and demanding extortion WhatsApp messages/chat in above evidentiary item.

12.4 Finding 3: FIA/CCW/KHI/FIR 15-23/Mobile/ VIVO 18/04)

During the forensic analysis, as per the case requirement,

Found the WhatsApp configured accounts are WhatsApp (+ 92 315 2209643) and WhatsApp Business Hamza Abbas/+92 334 3403733) in above evidentiary item.

Found the Gmail IDs namely are (hk0962486@gmail.com) in above evidentiary item.

Not found victim obscene screenshots/pictures and videos in above evidentiary item.

Not found transmission of the victim obscene picture/video in above evidentiary item.

Not found threatening, blackmailing, harassing, and demanding extortion WhatsApp messages/chat in above evidentiary item.

*Found the WhatsApp conversation related to payment transaction between the WhatsApp Business configured number **Hamza Abbas/+92 334 3403733**) in above evidentiary item.*

Found the single call log with the number (+92 3232881289) in above evidentiary item."

10. The prosecution has applied Sections 20, 21, and 24 of PECA, 2016, the general punishment whereof is three years; whereas the punishment of extortion is also three years, and the punishment of Criminal Breach of Trust is seven years. Prima facie all the offences are out of prohibition contained in section 497(1) Cr.P.C. The principles of bail in such cases have already been elaborated by the Supreme Court in the cases of Shahzad vs. The State 2023 SCMR 679, Ali Asghar vs. The State 2023

SCMR 970, *Muhammad Ajmal vs. the State* **2022 SCMR 274** and *Muhammad Daniyal Farrukh Ansari v The State* **2021 SCMR 557**. As such no further deliberation is required on the part of this Court. The question of whether the aforesaid sections are applicable in the present case or otherwise is required to be trashed out by the trial court after recording the evidence of the parties as prima facie the prosecution has narrated the facts to the extent that FIA obtained subscriber details of **WhatsApp No. 03361101666** and found the same registered in the name of one Hamza Abbas. Whereas the Enquiry Officer collected the details of beneficiary account IBAN No. PK63 UNIL0109000247013744, which is also in the name of one Muhammad Ahsan Nadeem in which alleged extortion money was secured. Besides the aforesaid material prima facie was not released on the website as at this stage no opinion could be formed for and against for the reason that the alleged offenses are only attracted when they could have been released on the website or any other WhatsApp group and it is yet to be ascertained as to how the aforesaid videos and pictures were transferred from the WhatsApp phone of the complainant to another WhatsApp phone. The aforesaid factum needs to be looked into trial Court after recording the evidence of the Forensic Analyser, as this Court is not in a position to dilate upon the aforesaid report of the Forensic Analyser and is only required to tentatively assess the material available on the record.

11. Prima facie there are sufficient grounds to take into consideration that the case of the applicant is fully covered by section 497(2), Cr.P.C. calling for further inquiry into his guilt. Even otherwise, the offenses mentioned in the FIR are out of prohibition contained in section 497 Cr.P.C., and in such like cases grant of bail is a rule and refusal is an exception, as laid down in the case of *Tariq Bashir v. The State* (**PLD 1995 SC 34**); besides, the applicant has no previous criminal record. The investigation has been completed and the applicant is no longer required for further investigation.

12. Adverting to the point raised by the learned Assistant Attorney General that the compromising affidavit of the complainant cannot be considered at the bail stage. I am cognizant of the fact that the trend that PWs take somersault and give statements that are different from the prosecution case and file affidavits at the stage of hearing of bail application to create doubt in the prosecution case to enable the accused to get the bail. This practice was/is deprecated by the Supreme Court.

13. From the above statement of the complainant, prima facie, it appears that if the complainant party is no longer willing to prosecute the matter for certain reasons, then it should not be for the court to say for and against. However, the gravity of the offense allegedly committed can validly be determined by the learned trial court after

recording evidence of the parties at trial. As such, keeping the applicant behind bars would not serve any useful purpose anymore.

14. For what has been stated above, without going deep into the merits of the case, I hold that it is a fit case for the admission of the applicant to bail, consequently, he is admitted to bail subject to furnishing security in the sum of Rs. 3,00,000/- (Three Hundred Thousand only) with one surety of the half amount of security and P.R Bond in the like amount to the satisfaction of learned trial Court. The trial Court to take pains to expedite the trial and conclude the same within two months positively, if not concluded in time, at least the complainant must be examined in the intervening period; and, in case, the charge has not yet been framed the same shall be framed on the next date of hearing.

15. Needless to mention, this is a tentative assessment that shall not affect the trial of the case in any manner.

JUDGE