

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.2652 of 2023

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**Date**                                    **Order with signature of Judge**  
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FOR HEARING OF MAIN APPLICATION

M/s. Zahid Farooq Mazari, Farhan Javed, Muhammad Imran Shamsi, Saqlain Shafi Rajput and Ms. Sabeen Muneer, advocates for the applicant/accused. Applicant/accused is present on bail.

Mr. Qadir Raza Baloch, advocate for the complainant.

Mr. Altaf Ahmed Sehar, Assistant Attorney General Pakistan.

IO/SO Farhad Ali, FIA Cyber Crime, Karachi.

Date of hearing & Order: 22.02.2024

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**ARSHAD HUSSAIN KHAN J.-** Through instant Criminal Bail Application, the applicant/ accused Muhammad Javed Memon son of Wali Muhammad seeks pre-arrest bail in Crime No.09/2023, registered at PS FIA, CCRC under Sections 20/21/24 of the Prevention of Electronic Crimes Act, 2016.

2. The facts of the case need not to be reiterated here as the same have already been stated in the FIR and the impugned order as well as in the bail application.

3. Learned counsel submits that the applicant / accused is innocent and has falsely been implicated in the case. It is contended that the alleged offences do not fall within the prohibitory clause of Section 497 Cr.P.C. and in such cases grant of bail is a rule and its refusal is an exception and as the case of the applicant does not fall in any exception, in view of the entire material of the prosecution as well as conduct of the applicant, he is entitled for grant of bail. It is also contended that no time, date and month of incident have been mentioned in the FIR, which makes the case highly doubtful; there is a delay of almost 05 months in lodging of FIR, which has not been explained. He has further contended that there is also a delay of two days in recording of statements of the complainant and her real sister, which creates heavy doubts. It is contended that there are material contradictions in the

statements of the complainant and her sister as well as material available on the record. It is further contended that the applicant is a practicing lawyer since last 36 years and remained MMC KBA and General Secretary Karachi Bar Association in the year 2004. He has further contended that the complainant remained as junior of the applicant from 2005 to 2022 and the applicant used to help her in every matter and she used to call from the mobile of the applicant; however, when two sons of the applicant / accused have become lawyer and joined his office, the complainant became aggressor and there were also some disputes between the applicant and the complainant over elections of KBA. It is urged that the case of the complainant is based on concocted story as nowhere it is alleged that the mobile phone of the applicant was used; it is also alleged that the Whatsapp was used to send pictures and videos to the complainant and her sister. He has further urged that the complainant after taking the mobile phone of the applicant connected it to Whatsapp through QR Code and she herself managed all things; that the applicant / accused is of more than 62 years of age and is a senior practicing advocate, he is allegedly first offender and also suffering from diabetics hence being an 'infirm person' entitled for grant of bail. Lastly, he has prayed for confirmation of bail to the applicant on the above grounds. To support the contentions, learned counsel has relied upon the cases of Abdul Haleem and another v. The State and 2 others [[2016 P.Cr.L.J. 482], Professor Akhtar Khan v. The State [2021 P.Cr.L.J. 506], Ismail Ijaz v. The State [2023 P Cr.L.J. 114], Ameerullah v. The State [2012 P.Cr. L.J. 1858], Muhammad Hayat Khan vs. The State [2019 P. Cr.L.J. 472], Muhammad Tanveer v. The State [PLD 2017 SC 733], Ahmad Khalid Butt v. The State [2021 SCMR 1016], Sohail Ahmad v. The State and another [2022 YLR 2210], Abdul Aziz Khan Niazi v. The State and another through Chairman NAB, Islamabad [PLD 2003 SC 668], Muhammad Ajmal v. The State and another [2022 SCMR 274], Abdul Saboor v. The State through A.G. Khyber Pakhtunkhawa and another [2022 SCMR 592], Riaz Jaffar Natiq v. Muhammad Nadeem Dar and others [2011 SCMR 1708], Tariq Bashir and 5 others v. The State [PLD 1995 SC 34], Iftikhar Ahmad v. the State [PLD 2021 SC 799], Khalil Ahmed Soomro and others v. The State [PLD SC 730], Malik Usama Bin Tahir Awan vs. The State and another [2023 P.Cr.L.J 517],

Muhammad Ramzan v. Zafarullah and another [1986 SCMR 1380], Khair Muhammad v. The State through P.G. Punjab and another [2021 SCMR 130], Ghulam Murtaza Qureshi v. The State [1990 P Cr. J.323], Rafique Ahmed v. The State [2000 P.Cr.L.J 994], Abdul Hai Siddiqui and 2 others v. The State [1993 P.Cr.L.J 446], Ali Sher v. The State [2005 MLD 535], Abdul Rehman Ashraf v. The State and others [ 2019 YLR 1895], Muhammad Ejaz Anwar v. The State [1993 MLD 1749], Imran and 3 others v. The State [2019 YLR 1478] and Munir Ahmad Bhatti v. Director, FIA Cyber Crime Wing, Lahore and 3 others [PLD 2022 Lahore 664].

4. Learned Assistant Attorney General, assisted by learned counsel for the complainant, has strongly opposed the confirmation of bail to the applicant / accused. It is contended that applicant / accused is fully nominated in the FIR with the specific role in commission of the crime. He has further contended that all the illegal and unethical activities were made from the mobile numbers of the applicant / accused and as per CDR report the mobile numbers were with the applicant / accused till April, 2023. He has further contended that it is a crime against the society and such like people are not entitled to any concession. It is also argued that sufficient material is available on the record, which prima facie connects the applicant / accused in the commission of crime, as such, he is not entitled for confirmation of bail and his bail application may be dismissed. He has also relied upon the cases of Abdul Rehman v. The State and another [2022 SCMR 526], Umer Khan v. The State and another [2022 SCMR 216], Inam Ullah v. The State and others [PLD 2021 Supreme Court 892].

5. I have heard learned counsel for the applicant, counsel for complainant and learned Assistant Attorney General as well as perused the material available on the record with their assistance.

Upon the tentative assessment of the material available on the record, it appears that no exact time and date of the alleged incident is mentioned in the FIR and only the year 2022 is mentioned whereas the FIR was lodged on 11.04.2023 with an inordinate delay and that too without any plausible explanation. The applicant / accused is an advocate by profession and complainant remained his junior associate and it is also a common practice

that for office work the juniors used to take mobile phones of their seniors to call clients and as such it cannot be ruled out that the complainant being associate used the cell phone of the applicant as they worked together till 31.12.2022. Further that the FIR was lodged on 11.04.2023 whereas the statement under section 161 Cr. P.C. of the complainant and her witness were recorded on 13.04.2023, after a delay of two (2) days, however, such a delay has not been explained plausibly. It is established principle of law that delayed recording of statement of the PW under section 161 Cr.P.C. reduces its value to nil.<sup>1</sup> Further there are material contradictions in the contents of the FIR and the statements under Section 161 Cr.P.C. i.e. sister of the complainant in her 161 Cr.P.C. statement has taken absolutely different version that the applicant is giving kidnaping threats of her nephew namely; Tasbish son of her sister but such fact is not mentioned by the complainant either in the FIR, or in her statement recorded under section 161 Cr.P.C and/or anywhere else, which makes the case of further inquiry.

6. To attract the offences under sections 20 and 21 of the Prevention of Electronic Crimes Act, 2016, the requirement seems to be that the offending content/information is intentionally made public. Whereas the offence under section 24 of the said Act, deals with Cyber Stalking. In the instant case the allegations against the applicant is that he sent superimposed pictures and videos to the complainant and her sister on WhatsApp and further the Applicant was blackmailing the complainant with threats to make public her nude photographs. It may be observed that WhatsApp messages sent by one person to another are end-to-end encrypted which means, only the sender of the message and the recipient of the message can read the messages. It may also be observed that nobody, not even WhatsApp, can read these messages. Therefore, WhatsApp cannot be a public place if messages are exchanged on personal accounts of two persons. If these messages had been posted on WhatsApp Group, in that case the same could have been called as public place because all the members of the group, will have access to those messages. It is not the prosecution case that the alleged superimposed messages were posted on WhatsApp Group of which the applicant and complainant and others are the members. Therefore, sending the personal

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<sup>1</sup> Abdul Khaliq v. The State [1996 SCMR 153]

messages on WhatsApp will not amount to transmission of obscene words, video and pictures to public.<sup>2</sup>

7. Besides above, the charges levelled against applicant could only be determined by the trial court after recording and evaluating the evidence.<sup>3</sup> It is also settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. The record shows that the applicant/accused is a senior practicing advocate; further there is nothing available on the record that previously he was involved in any criminal case. All the mobiles and other evidence have been taken into custody by the FIA Officials and if the applicant is released on bail there is no likelihood of tempering with the prosecution evidence. Moreover, he is no more required for any investigation nor the prosecution has claimed any exceptional circumstance. Record also shows that this Court granted interim pre-arrest bail to the applicant on 21.11.2023 and since then he is attending this Court as well as the trial court regularly and no complaint with regard to misusing the concession of ad-interim bail has been made by the complainant.

8. Keeping in view the above, it may be observed that the purpose of the remedy under section 498 Cr. P.C. is to protect liberty and reputation of citizens, particularly in a case where the circumstances, in which the case seems to be a case of further inquiry on the basis of material placed before the Court.

9. For the foregoing reasons and peculiar circumstances of the case, I am of the opinion that the applicant has made out a case for confirmation of pre-arrest bail. Accordingly, interim pre-arrest bail already granted to the applicant / accused by this Court, vide order dated 21.11.2023, is hereby confirmed on the same terms and conditions, however, subject to furnishing additional solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs only) and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court within two (02) weeks hereof. However, in case, applicant fails to furnish additional surety within stipulated time, this Criminal Bail Application shall stand dismissed by recalling interim pre-arrest bail order

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<sup>2</sup> *Nivrutti v. The State of Maharashtra and another* [AIRONLINE 2020 BOM 237]

<sup>3</sup> *Manzoor Hussain and 5 others v. The State* [2011 SCMR 902].

dated 21.11.2023. Applicant present in Court is directed to continue his appearance before the trial court for final decision of the main case.

Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if during proceedings, the applicant/accused misuses the bail then the trial court would be competent to cancel his bail without making any reference to this Court.

Bail application stands disposed of accordingly.

JUDGE

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