

cases of Muhammad Daniyal Farrukh Ansari v. The State [2021 SCMR 557], Shahzad v. The State [2023 SCMR 679], Hassan Nawaz v. The State [2022 YLR Note 211], Saeed Ahmed v. The State [1996 SCMR 1132], Syed Amir Ahmed Hashmi and another v. The State [PLD 2004 Karachi 617, Zahid Hussain Chandio v. The State [2016 MLD 1103, Ahmed Nawaz Solangi v. The State [2014 YLR 1723], Muhammad Burhan Mirza v. The State [Cr. Bail Application No.1021 to 1026 of 2021], Muhammad Javed Memon v. The State [Cr. Bail Application No.2652/2024] and Nivrutti v. The State of Maharashtra and another [Airoline 2020 Bom 237].

Learned counsel for complainant strongly opposed the confirmation of bail to the applicant / accused and submits that applicant / accused is fully nominated in the FIR with specific role in commission of crime. He further submits that due to the brutal act of the applicant not only complainant's dignity and reputation has been ruined but the married life of the complainant and her sisters has also been destroyed. He further submits that sufficient material is available on the record which prima facie connects that applicant / accused in commission of crime, as such, he is not entitled for grant of bail and his bail application may be dismissed. He has relied upon the case of Saleem Khalid v. the State [2021 P.Cr.L.J. 119], Kashif Dars v. The State and 2 others [2020 P.Cr.L.J. 259], Junaid Arshad v. The State and another [2018 P.Cr.L.J. 739] and Abdul Rehman v. The State and another [2022 SCMR 526].

I have heard learned Counsel for the applicant and counsel for complainant as well as perused the record with their assistance.

A perusal of the FIR shows that name of the applicant / accused is mentioned in the FIR with specific role of sending obscene pictures of the complainant to her elder brother. The digital equipment / mobile phone i.e. one vivo 1906 of her brother was referred for the technical analysis report and initial report revealed that the nude (objectionable) pictures / screenshots found sent from 031652249991 (alleged) to 03136956679 (victim's brother) through WhatsApp and during investigation former mobile number was found registered in the name of the applicant / accused and a WhatsApp account was also found operational on his VIVO Reno 12F mobile phone. Record also reflects that as a result of present offence, three families have been devastated. The accused has already divorced his wife, who is the sister of the victim and the victim herself has met with same fate after the offence as well as another brother-in-law of her elder sister has shot his wife after viewing such objectionable pictures. All these tragic events have emerged from the actions of the applicant / accused. The act of

forwarding obscene videos to the family members of the complainant by the applicant / accused brought the complainant into perennial embracement within the family. The growing trend of people being blackmailed and harassed the women / girls on the basis of unauthorized audio and video recordings is increasing harshly and has become very common in the society and such practice of sharing objectionable pictures to the family members / friends is very heinous crime, as these pictures become stigma throughout the life of girls and in many cases their family life is destroyed; the girls have also committed suicide, hence the accused committing such offences are not entitled for any leniency.

The Supreme Court of Pakistan in case of Abdul Rehman v. The State and another [2022 SCMR 526] while deciding somewhat identical issue has observed as under :-

“3. Ordinarily, upon conclusion of investigation in criminal cases falling outside the remit of "prohibition" motions for release on bail are favourably received, nonetheless, the practice is not without limitations. In the present case, privacy of a young lady has grievously been intruded to the utter embarrassment of her family; even her marriage went into peril. The incident was reported by her father-in-law and, thus, in the facts and circumstances of the case, we do not feel persuaded, in our discretion, by the submission made at the bar so as to take a different view than concurrently taken by the Courts below. Petition fails. Leave declined”

The apex Court has repeatedly held that the mere fact that an offence does not fall within the prohibitory clause of section 497(1), Cr.P.C., would not mean that such an offence had become aailable offence. The discretion still remains with the competent Court to consider whether a person accused of such an offence does or does not deserve the grant of bail in accordance with the established norms governing the exercise of such a power.¹ Furthermore, the legislature had intentionally kept this offence as non-ailable and it has consistently been held by this Court as well as the Supreme Court of Pakistan that in non-ailable offences grant of bail is not the right of an accused and it is a concession. Reference may be made to the case of *Shameel Ahmed Vs. The State* [2009 SCMR 174] wherein the Hon’ble Supreme Court of Pakistan has held that:-

“4.....Bail in a case not falling within the prohibitory clause of S. 497, Cr.P.C. --- Principles--- Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr.P.C. is not a rule of universal application---Each case has to be seen through its own facts and circumstances---Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse.”

¹ Afzaal Ahmed v. The State [2003 SCMR 573], Muhammad Afzal v. The State [1997 SCMR 278] and Imtiaz Ahmed v. The State [PLD 1997 SC 545].

In another case of *Mehmood Siddique Vs. Imtiaz Begum and two others* [2002 SCMR 442] wherein the Supreme Court of Pakistan held that:-

“4.....None can claim that bail as of right is non-bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”

Insofar as the case laws relied upon by the learned counsel for applicant are concerned, the same are distinguishable from the facts and circumstances of this case, as such, are not applicable.

In the peculiar facts and circumstances of the case, I am of the view that the applicant is not entitled to grant of bail at this stage, hence instant Bail Application is dismissed. However, the trial Court is directed to conclude the trial expeditiously and deliver judgment / order preferably within a period of four (04) months from the date of receipt of this order.

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.

Bail application stands disposed of accordingly.

J U D G E