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IN THE HONO'BLE ISLAMABAD HIGH COURT, ISLAMABAD.

(Criminal Misc. Application No. 321 /2024)

Muhammad Haseeb S/o Muhammad Sharif R/o Basti Arain, P/o Khakhi Darh Opla, Tehsil & District Dera Ghazi Khan. (*Presently confined in Adyala Jail, Rawalpindi*).

... Accused / Petitioner.

VERSUS

1. The State Examiner
2. Ms. Noor E. Hira D/o Abdul Qayyum, R/o House No.28, Street No.2, Ghazi Town, VIP Sector, Islamabad.

... Respondents

PETITION FOR BAIL AFTER ARREST UNDER SECTION 497 OF CODE OF CRIMINAL PROCEDURE, 1898.

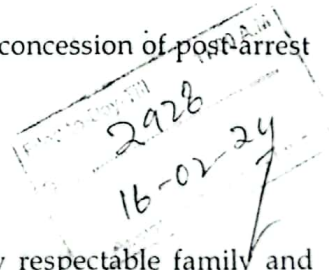
IN CASE OF FIR NO.256/2023 DATED 28-12-2023 OFFENCES U/S 21 & 24 OF PECA, 2016, FIA CYBER CRIME, ISLAMABAD.

The petitioner / accused humbly submits as under:

1. That the petitioner is accused in the above mentioned case which has been got lodged out of sheer *mala fide* and ulterior motives on the part of the complainant as well as the FIA. The local police has arrested the accused / petitioner without any just reason or cause.
2. That the accused / petitioner is entitled for concession of post-arrest bail inter alia on the following

GROUND

- a). That the petitioner belongs to a very respectable family and having a good reputation amongst the vicinity.



ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No.321-B of 2024

Muhammad Haseeb

Versus

The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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27.02.2024

Mr. Ghulam Qasim Bhatti, Advocate for the Petitioner.
Malik Muhammad Iqbal Kallue, learned AAG.
Ayaz Khan, Director, FIA.
Misbah Batool, S.I, FIA.
Abdul Qayyum / father of respondent No.2 in person.

Through the instant petition, the petitioner / accused seeks bail after arrest in case F.I.R. No.256, dated 28.12.2023, offence u/s 21 and 24 of Prevention of Electronic Crimes Act, 2016, registered at Police Station FIA Cybercrime Reporting Centre, Islamabad.

02. It is alleged that the petitioner / accused with malafide intentions and ulterior motives illegally and unauthorizedly, captured / recorded objectionable pictures of complainant Noor e Hira and further transmitted / disseminated / publicly projected the alleged objectionable pictures of the complainant by using WhatsApp accounts to her father and husband, thus disgraced and destroyed the modesty of the complainant among her family

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members and relatives, hence the instant FIR.

03. Learned counsel for the petitioner, inter alia, contends that the petitioner is innocent; no evidence is available against him; case has been registered with malafide intentions and ulterior motives by the complainant; the offences do not fall under the prohibitory clause of section 497 Cr.P.C.; investigation in the case has been completed; he is no more required by the police for investigation, hence is entitled for grant of post arrest bail.

04. On the other hand, learned Assistant Attorney General states that sufficient evidence is available against the petitioner / accused; he has committed a heinous crime which is against the society; he is nominated in the F.I.R., hence is not entitled for grant of bail after arrest.

05. Arguments advanced by learned counsel for the petitioner, learned AAG have been heard and record has been perused with their able assistance.

06. The petitioner has committed a heinous crime by sending the sexually explicit pictures of the complainant to her father, husband, friends etc. as well as by posting the same on the

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Facebook; F.I.A. collected sufficient incriminating evidence against him. Technical analysis expert report is available on record which shows that the petitioner has committed aforementioned crime.

07. This offence has become very common in the society where the boys and girls while they are in relation with each other, girls sent their objectionable pictures to boys / friends but when there is breakup, boys share those objectionable pictures to the family members / friends etc of the girls, post on Facebook etc. which is very heinous crime, as these pictures become stigma throughout the life of girls and in many cases their family life has destroyed; the girls have also committed suicide, hence the accused committing such offences are not entitled for any leniency.

08. As far as the argument regarding grant of bail in the cases not falling under the prohibitory clause is concerned, it is held by this Court in a case titled as "**Irfan Sarwar VS. The State**"

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(2022 PCr.LJ Note 71), that:

"with regard to the contention that the bail should always be granted in cases not falling within the domain of prohibition clause of proviso to section 497, Cr.P.C. it is observed that it is not a rule of universal application. Each

case has to be seen through its own facts and circumstances”.

The same principle has been laid down in a case titled as "Afzaal Ahmed VS. The State", 2003 SCMR 573 which states that:

"The mere fact that an offence did not fall within the prohibitory clause of section 497(1) of the Cr.P.C. did not mean that such an offence had become a bailable offence. The discretion still remained with the competent Court to consider whether a person accused of such an offence did or did not deserve the grant of bail in accordance with established norms governing the exercise of such a power.

It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled as "Muhammad Siddique VS. Imtiaz Begum and others", 2002 SCMR 442 that:

"none can claim bail as of right in non-bailable offences even though the same do not fall under the prohibitory clause 497 Cr.P.C".

On the same subject the guidance has also been taken from the law laid down in a case titled as "Haji Muhammad Nazir and others VS. The State", 2008 SCMR 807 wherein, it has been held that:

"It is true that offences for which petitioners have been charged entails

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punishment not more than five years, which also falls within the category of non-bailable offence, therefore, they are not entitled as a matter of right for release on bail, notwithstanding the fact that their case is covered under the non-prohibitory clause as defined under section 497, Cr.P.C. as it has been held in the case of Muhammad Siddique (ibid). As far as principle of law being relied upon by the learned counsel from the judgment in the case of Tariq Bashir (ibid) that the grant of bail in offence punishable with imprisonment for less than ten years is a rule and refusal is exception would not help to the petitioners in view of exceptional and extraordinary circumstances of the case".

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In different cases under the Prevention of Electronic Crimes Act, 2016 where the offences not falling under prohibitory clause of section 497 Cr.P.C, bail after arrest has been rejected by this Court vide judgment reported as 2020 PCr.LJ 1652 as well as by the Hon'ble Lahore High Court, Lahore in cases reported as 2018 PCr.LJ 408 and 2018 PCr.LJ 1667 and the Hon'ble Sindh High Court in a case reported as 2018 YLR 329.

09. As the sufficient evidence is available against the petitioner / accused; challan has been submitted in the learned trial Court. It has also

been laid down by the Hon'ble Supreme Court of Pakistan in a case titled as "Rehmat Ullah Vs. State" (2011 SCMR 1332), that:

"the Courts should not grant or cancel bail when the trial is in progress".

10. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out his case for grant of bail on the ground of further inquiry as envisaged under section 497(2) Cr.P.C, consequently, the instant bail petition stands **dismissed**.

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

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh

Application No. 6984
 Date of Presentation of Application 1-3-24
 Date of Deposit of Fee 1-3-24
 Name of Applicant 127
 Name of Advocate 127
 Name of Counsel 127
 Date of Receipt of Court Fee 1-3-24
 Name of Court 02/03/24

Approved For Reporting