

2023 S C M R 679

[Supreme Court of Pakistan]

Present: Sardar Tariq Masood, Amin-ud-Din Khan and Syed Hasan Azhar Rizvi, JJ

SHAHZAD---Petitioner

Versus

The STATE and another---Respondents

Criminal Petition No. 1353 and Civil Miscellaneous Application No. 1831 of 2022, decided on 6th December, 2022.

(On appeal against the order dated 15.07.2022 passed by the Islamabad High Court, Islamabad in Criminal Miscellaneous No. 805-B of 2022)

(a) Criminal Procedure Code (V of 1898)---

---S. 497---Prevention of Electronic Crimes Act (XL of 2016), Ss. 21 & 24---Penal Code (XLV of 1860), Ss. 109 & 509---Constitution of Pakistan, Art. 185(3)---Transmitting objectionable photographs and videos through mobile phone---Bail, grant of---Rule of consistency---Although the petitioner was nominated in the FIR with the specific allegation of transmitting objectionable photographs and videos of the complainant but the record revealed that the sim used for the purpose of transmitting the said photographs and videos was owned by person "A", co-accused, and according to "A" he forgot his sim at the house of person "T", another co-accused---Both "A" and "T" were brother-in-law of the complainant---Although according to the investigation, the mobile phone in which the said objectionable photographs and videos were available, was recovered from the possession of the accused but according to the prosecution while transmitting the said objectionable photographs and videos the sim owned by "A" was used---Bail had already been granted to "A" and in such eventuality, the accused had become entitled to the concession of bail on the principle of rule of consistency---Even otherwise, the accused had no previous criminal record---Petition for leave to appeal was converted into appeal and allowed, and accused was granted bail.

(b) Criminal Procedure Code (V of 1898)---

---S. 497---Constitution of Pakistan, Art. 185(3)---Bail---Offences not falling within the prohibition contained in section 497, Cr.P.C.---In such like cases grant of bail is a rule and refusal is an exception.

Tariq Bashir and 5 others v. The State PLD 1995 SC 34 ref.

Arshad Hussain Yousafzai, Advocate Supreme Court for Petitioner.

Malik Javaid Iqbal, Additional Attorney General, Huma Khalil, SI and Waseem Sikandar, SI for the State.

Ch. Zafar Ali Warraich, Advocate Supreme Court along with Complainant in person.

Date of hearing: 6th December, 2022.

ORDER

SARDAR TARIQ MASOOD J.---

Criminal Miscellaneous Application No.1831/2022. For reasons set out in the application for condonation of delay, the same is allowed and the delay of 63 days in filing of the petition is condoned.

Criminal Petition No.1353/2022.

2. The petitioner has impugned the order dated 15.07.2022 of the Islamabad High Court, whereby post arrest bail was declined to him in case FIR No.58 dated 09.05.2022 registered at Police Station FIA/CCRC, Islamabad, under sections 21 and 24 of the Prevention of Electronic Crimes Act, 2016 read with sections 109 and 509 of the Pakistan Penal Code, 1860.

3. Although the petitioner was nominated in the above said FIR with the specific allegation of transmitting the objectionable photographs and videos of the complainant but the record reveals that the 'sim' used for the purpose of transmitting the said photographs and videos was owned by one Abid Mehmood, co-accused, and according to Abid Mehmood he forgot his 'sim' at the house of Tayyab, another co-accused. Abid Mehmood and Tayyab both are brothers-in-law of the complainant. Although according to the investigation, the mobile phone in which the said objectionable photographs and videos were available, was recovered from the possession of the petitioner but according to the prosecution while transmitting the said objectionable photographs and videos the 'sim' owned by Abid Mehmood was used. Bail has already been granted to Abid Mehmood and in that eventuality, the petitioner has become entitled to the concession of bail on the principle of rule of consistency. Even otherwise, the offences mentioned in the FIR are out of prohibition contained in section 497 of the Code of Criminal Procedure, 1898 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 and 5 others v. The State (PLD 1995 SC 34); besides, the petitioner has no previous criminal record.

4. For the forgoing, this petition is converted into an appeal and the same is allowed. The petitioner Shehzad is admitted to post-arrest bail subject to his furnishing bail bond in the sum of Rs.200,000/- (two hundred thousand only) with two sureties in the like amount to the satisfaction of the trial Court.

MWA/S-4/SC Bail granted.