Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Criminal Misc. No. 1016-B of 2022

Muhammad Yasir

Versus

The State

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.09.2022.	Mr. Arshad Hussain Yousafzai, Advocate for the petitioner. Raja Muhammad Jawad Arsalan, AAG. Mr. Ilyas Khan, Inspector, FIA CRC Centre, Islamabad.

The petitioner is seeking post arrest bail in relation to charges brought against him pursuant to FIR No.108, dated 22.07.2022 registered under sections 21 and 22 of the Prevention of Electronic Crimes Act, 2016 **("PECA 2016")** read together with section 109 of PPC at Police Station FIA Cyber Crime Reporting Centre, Islamabad.

2. Learned counsel for the petitioner submitted that there was no private complainant in the matter and no victim had been identified. He submitted that the allegation against the petitioner was that he had shared material constituting child pornography and not that he was involved in making of pornographic videos involving

children. He submitted that punishment for offences under sections 21 and 22 of PECA, 2016 is seven years imprisonment or fine and where the fine is provided as an alternative punishment to a jail term the lesser punishment ought to be considered. He finally submitted that the petitioner was a student and first time offender and his career would be adversely affected if he was not released on bail pending trial.

3. The learned Assistant Attorney General opposed the bail. He stated that there was sufficient material available on record to establish that the petitioner was involved in sharing child pornography which was a serious offence.

4. In criminal matters there is no need for a victim to file a complaint as it is the State that prosecutes a citizen on behalf of society and the cognizance of the offence by the State does not constitute an infirmity that entitles the accused to be granted bail. Child pornography the world over is considered a very serious offence and merely because the identity of the victims who are the objects of the pornographic material remains to be verified is also no ground for grant of bail. A

constituent element of the offence that the petitioner is charged with involves sharing pornographic material and not the making or creation of such material. Just because the petitioner was not involved in making the videos featuring children in pornographic videos is therefore no ground for grant of bail. While considering an application for grant of bail, the court is not obliged to look at the alternative punishment provided for an offence in view of section 497(1) of Cr.P.C. but the higher sentence of punishment that is attracted in relation to the offence as explained by this Court in ***Majid Ali Vs. The State (2022 PCr.LJ 981).***

5. Learned counsel for the petitioner is, however, correct that maximum punishment for offences under sections 21 and 22 of PECA, 2016 is seven years which does not fall within the prohibitory clause of section 497(1) of Cr.P.C. It is settled law that where an offence does not fall within the prohibitory clause, bail is to be granted as a matter of right and withholding bail is an exception. The offence of sharing pornographic material involving a child is abhorrent and serious. But the material on the basis of which charges have been brought against the petitioner

reflects that the children featuring in such material may not be members of our society or the community within which the petitioner exists and consequently this Court is of the opinion that there is no imminent threat to members of the society in the event that the petitioner is released on bail pending trial.

6. In view of the facts and circumstances of this case, the considerations identified by the august Supreme for denial of bail in cases where offences do not fall within the prohibitory clause are non-existent in the present case. Consequently the instant petition is **allowed** and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one local surety in like amount to the satisfaction of the learned trial Court.

7. Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which ought not prejudice the proceedings before the learned trial court.

(BABAR SATTAR)
JUDGE

Saeed