

Form No:HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No Crl. Misc. No.106904-B/2017

Junaid Arshad

VS

The State & 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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05.12.2017

Mr. Babar Awan, Advocate with petitioner.

Mr. Sajjad Hussain Mian, Assistant Attorney General with Munam Bashir, Inspector, Mian Saqib Hafeez, Technical Expert, FIA.

Syed Muhammad Shah and Syed Ali Abbas Kirmani, Advocates for complainant.

Apprehending arrest in a case registered vide FIR No.59 dated 8-6-2017 under Sections 4, 16, 20, 21 & 24 of the Prevention of Electronic Crimes Act, 2016 read with Sections 500, 120 (B) & 109 of the Pakistan Penal Code, 1860 with Police Station F.I.A./CCC, NR3C, Lahore on the complaint of Ayesha Subhani, no other than his erstwhile wife, Syed Junaid Arshad, petitioner herein, seeks bail in anticipation thereto. According to the crime report, the petitioner, an officer in the Police Service of Pakistan with the rank of Deputy Inspector General, created a fake Facebook profile in complainant's name and thereby established digital communication with Danish Ghani co-accused on his profile, identified as "Salman" and through the cyber medium dispatched/uploaded material that included complainant's graphically explicit images; he induced the co-accused to establish liaison with the lady, surprised embarrassingly as the images went viral. The incident was reported to the Federal Investigating Agency; as the investigation progressed, petitioner's cell phone bearing No.0300-9424787 was identified as initial

transmitting source as well as cell phone numbers subscribed by Ahmad Raza, a Constable, detached with the petitioner at Gilgat as well as his business partner Saqib Sadiq, both examined by the Investigating Officer, besides an internet connection in petitioner father's name installed at house No.38 Street 60, Sector F-11/4 Islamabad, a family dwelling. Details of above sources were dispatched along with a court order to the Facebook Inc. United States of America through dossier F.I.A. NR3C for the provision of User Basic Subscriber Information and IP logs of each activity along with confirmation of URL; the response forensically confirmed culpability of the accused arrayed in the crime report.

2. Heard. Record perused.

3. Argument that the petitioner, still struggling to save the bond, could not conceivably upload graphic images of a lady, though estranged, nonetheless, mother of his four children to incur a perennial embarrassment, though ingeniously articulated, fades into insignificance in the face of formidable forensic evidence, inexorably pointed upon his culpability. Science does not perjure; similarly his status as a senior civil servant is beside the mark. There are no '*more equals*' in law and the office by itself does not confer respectability, "*.....There is no worse heresy than that the office sanctifies the holder of it.....I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is the other way against the holders of power, increasing as the power increases.*" **John Dalberg-Acton**. The wisdom is followed in the case of *Sakhawat Ali Vs. Khalid Mehmood & 7 others* (PLD 1994 Lahore 377) wherein it is held that "*.....Law does not make any distinction on the basis of*

caste, creed, colour or status of citizens and treats them equally. Even a street hawker or a labourer who earns his livelihood through honest work is highly respectable. Pre-arrest bail is not the privilege or prerogative of the high officials, politicians, landlords, businessmen or other persons enjoying worldly status or positions.”

Anticipatory bail is an extraordinary remedy; it is diversion of usual course of law, arrest in cognizable cases, an essential step towards investigation. Considerations for such a huge judicial protection are by now well identified/settled. Ever since the advent of Hidayat Ullah Khan’s case (PLD 1949 Lahore 121), this protection is extended only in cases actuated by malafide through abuse of process of law; the concession cannot be claimed in every run of the mill criminal case as a substitute for post arrest bail. This view has once again been vigorously reaffirmed in the cases of Malik Nazir Ahmad Vs. Syed Shamas-ul-Abbas and others (PLD 2016 Supreme Court 171) as well as Mukhtar Ahmad Vs. The State & others (2016 SCMR 2064). Learned counsel for the petitioner has not been able to point out a single circumstance to even obliquely suggest any malice lurking behind the intended arrest. Consequently, Crl. Misc. No.106904-B/2017 **fails**; ad interim pre-arrest bail granted vide order dated 17-11-2017 is recalled. Petition **dismissed**.

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting