

IN THE LAHORE HIGH COURT, LAHORE.
1996 PCr.LJ 1633 (Lahore)

Before **ZAHID HUSSAIN BOKHARI, J**

Crl. Misc. No.373-B/1996

MUHAMMAD ANWAR Petitioner

Versus

THE STATE Respondent

POLICE STATION : Dajal, District Rajanpur. FIR No.38
Dated 28.01.1996

OFFENCE : Under Sections 295-C & 298-C of PPC
PETITION : Under Section 497 Cr.P.C. for grant of Post
arrest Bail.

DECISION : Bail refused on 19.3.1996

Criminal Procedure Code (V of 1898)---
..Ss. 497--Penal Code (XLV of 1860). Ss.295-C & 298-C—Bail---
Complainant was not shown to have

others. In case the petitioner is released on bail at this stage he is likely to terrorise to Mst. Dani and other prosecution witnesses. It will not be in the interest of justice to release the accused on bail at this stage as the challan has already been submitted in Court and the accused has already used his influences regarding delay in submission of challan to trial Court. B

8. In view of the above, I am not inclined to release the petitioner on bail at this stage. Since the challan as stated by the Police Officer is pending in the Court of Mr. Zia-ur-Rehman Khan, Additional Sessions Judge, Arifwala, he is directed to conclude the trial of the case expeditiously within a period of three months from today. C

9. However, the petitioner may apply for grant of bail after the evidence of public witnesses has been recorded by the trial Court. With this observation this petition is dismissed.

N.H.Q./M-70/L

Bail refused.

1996 P Cr. L J 1633

[Lahore]

Before Zahid Hussain Bokhari, J

MUHAMMAD ANWAR---Petitioner

versus

THE STATE---Respondent

Criminal Miscellaneous No.373/B of 1996, decided on 19th March, 1996.

Criminal Procedure Code (V of 1898)---

---S. 497---Penal Code (XLV of 1860), Ss.295-C & 298-C---Bail---
Complainant was not shown to have an animus for false implication of accused in any manner whatsoever---Accused had by spoken words defiled the sacred name of Holy Prophet (peace be upon him) and used derogatory remarks and had, prima facie, committed an offence under S.295-C, P.P.C. punishable with death or imprisonment for life which fell within the prohibitory clause of S.497(1), Cr.P.C.---Delivery of Quadianiat literature by the accused to complainant had also, prima facie, made out a case against him under S.298-C, P.P.C. which was described as non-bailable in the Second Schedule of the Code of Criminal Procedure wherein bail could not be claimed as a right---Bail was declined to accused in circumstances. [pp. 1634, 1635] A, B, C, D & E

Naseer Ahmad v. The State 1993 SCMR 153 ref.

Sharif Ahmad Khan for Petitioner.

Mian Habib Ahmad Ansari for the State.

ORDER

Petitioner Muhammad Anwar sought bail after arrest in case F.I.R. No.38, dated 28-1-1996 under section 295-C and 298-C registered at Police Station Dajal, District Rajanpur on the statement of Rasool Bakhsh recorded by Riaz Ahmad S.-I. Incharge Police Post, Hajipur against the petitioner for an occurrence which took place in the area of village Hajipur situated at a distance of 27 Km. from the police station.

2. The allegations levelled in the F.I.R. against Muhammad Anwar petitioner who belongs to Qadiani sect are that he preached and propagated his faith and invited complainant not to profess Islam but to accept his religion (Qadianiat) and that the petitioner also delivered literature to the complainant including a book titled "Silsala-e-Ahmadia", on this complainant told the petitioner that according to Prophet Hazrat Muhammad (peace be upon him), no prophet has to come after him and anyone claiming himself to be a prophet would be Kafir, Kazib and Dajjaal, whereupon the petitioner rebutted it by saying "it is non sense". (یہ بکواس ہے) and also passed derogatory remarks against Holy Prophet (peace be upon him). The occurrence was witnessed by Sana Ullah and Abdul Hamid.

3. Learned petitioner's counsel argued that the petitioner has been falsely involved on account of a civil litigation which was pending between the petitioner and his rival group of the village who are hands in glove with Riaz Ahmad, S.-I., Incharge Police Post Hajipur, that the petitioner had filed a Writ Petition No.7038 of 1995 against Riaz Ahmad, S.-I and others who fabricated this false case against the petitioner. Further argued that from the perusal of contents of the F.I.R., at the best a case under section 298-C would be made out which does not fall within the prohibitory clause of section 497, Cr.P.C. and that the petitioner was entitled to the grant of bail in view of the principle laid down in *Naseer Ahmad v. The State* 1993 SCMR 153.

4. Learned State Counsel vehemently argued that complainant had no enmity whatsoever with the petitioner and the complainant had no connection or relationship with Riaz Ahmad, S.-I. Incharge of Police Post and that the petitioner committed an offence which falls within the prohibitory clause of section 497, Cr.P.C. and that during the investigation certain books were recovered from the petitioner which preach "Qadianiat".

5. I have heard the learned counsel for the parties and have gone through the record.

6. It is true that there existed some litigation between the petitioner and others but the learned counsel could not point out any case in which the

complainant was a party. Even the details of enmity and litigation described in the bail petition do not prima facie show that the complainant had any connection whatsoever with the said litigation. Similarly from the record, it is not borne out that the complainant had any relationship/friendship with Riaz Ahmad, S.-I. which would be sufficient to prompt the complainant to play in the hands of the S.-I. A

7. There is no force in the contentions of the learned counsel for the petitioner that from the contents of the F.I.R. no offence under section 295-C, P.P.C. is made out, against the petitioner, because in the F.I.R. it is clearly stated that the petitioner rebutted the saying of Holy Prophet (peace be upon him) by saying "یہ بکواس ہے". Prima facie it is a case of blasphemy which falls within the ambit of section 295-C which reads:--

"Whoever, by words, either spoken, or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine."

8. The delivery of literature of Qadianiat by the petitioner to the complainant, prima facie makes out a case under section 298-C, P.P.C. Merely because the offence under section 298-C, P.P.C., is liable to be punished with imprisonment of either description for a term which may extend to three years, would not entitle the petitioner to the grant of bail as a right. The Courts have to see the attending circumstances of the case. B

9. Column 5 of Schedule Second annexed with the Code of Criminal Procedure, 1898 describes the offence under section 298-C, P.P.C. as non-bailable. In a non-bailable case, bail cannot be claimed as a right. The Court has to examine the allegations levelled and the circumstances in which the occurrence took place.

9-A. The facts of the case reported in 1993 SCMR 153 are quite different from the facts of the present case and the dictum laid down by the Honourable Supreme Court of Pakistan is not applicable to the facts of this case.

10. The petitioner by spoken words defiled the sacred name of Holy Prophet (peace be upon him) and used derogatory remarks and thereby, prima facie committed offence under section 295-C, P.P.C. which is punishable with death or imprisonment for life which falls within the prohibitory clause of section 497-C, Cr.P.C. C

In view of what has been discussed above, this petition lacks merits which is accordingly dismissed. D

N.H.Q./M-64/L

Bail refused.