

IN THE SINDH HIGH COURT, KARACHI
2014 MLD 615 (Sindh)

Before **FAROOQ ALI CHANNA, J**

Criminal Bail Application No.S-121/2013

Haji NASRULLAH Applicant

Versus

THE STATE Respondent

POLICE STATION : Hatri. FIR No.159/2012 Dated 17.9.2012
OFFENCE : Under Sections 295-B and 295-C of PPC
PETITION : Under Section 497 Cr.P.C. for grant of Post
arrest Bail.
DECISION : Bail refused on 28.10.2013

Criminal Procedure Code (V of 1898)---
---S.497---Penal Code (XLV of 1860), Ss.295-B & 295-C---Defiling etc.,
of the Holy Qur'an and use

stated that during the post-mortem examination, the injury No.1 found at the right side of the neck of the deceased was through and through and as such exit of the said injury was the injury No.2 observed on the left side of the neck. A

8. Under the above-mentioned situation, when as per alleged prosecution story, the present petitioner had caused injury at the left side of the neck of the deceased, but as per doctor, the said injury was exit of the injury No.1 as it was through and through, the case of the petitioner has become of further inquiry. Further it has been found that except the abovementioned injury, the status of which has been found as mentioned above, no injury to the deceased has been attributed to the present petitioner.

9. It has further been observed that co-accused of the present petitioner to whom injuries of Muhammad Tahir, Muhammad Tariq and Muhammad Arif have been attributed, have been admitted to bail by this Court. It has further been noticed that use of Chhuri has been alleged to the petitioner, but during the investigation a Chopper was been recovered from him which during the forensic analysis could not be found to be stained with blood of human origin.

10. As a result of above discussion, the instant petition is accepted and the petitioner is admitted to post arrest bail subject to his furnishing of bail-bonds in the sum of Rs.2,00,000 (Rupees two lac only) with two sureties each in the like amount to the satisfaction of learned Trial Court.

HBT/A-1/L

Bail granted.

2014 M L D 617

[Sindh]

Before Farooq Ali Channa, J

Haji NASARULLAH---Applicant

versus

The STATE---Respondent

Criminal Bail Application No.S-121 of 2013, decided on 28th October, 2013.

Criminal Procedure Code (V of 1898)---

---S.497---Penal Code (XLV of 1860), Ss.295-B & 295-C---Defiling

etc., of the Holy Qur'an and use of derogatory remarks, etc., in respect of the Holy Prophet---Bail, refusal of---Evidence, assessment of---Case falling in prohibitory clause of S.497, Cr.P.C.---Plea raised by accused was that he had been involved due to some personal grudge between complainant, prosecution witnesses and him---Validity---Grant or refusal of bail was necessarily a judicial exercise of discretion---Courts were bound to make tentative assessment of material collected by prosecution as well defence keeping in mind; firstly, the matter of accusation and prosecution evidence in support of it; secondly, severity of punishment; and thirdly, behavior or plea of defence---Tentative assessment of evidence collected by prosecution and defence of accused, prima facie, showed that there were reasonable grounds to believe that accused had been guilty of an offence punishable with death or imprisonment for life---Bail was refused in circumstances. [p. 621] A

Anwar Masih v. State 2005 PCr.LJ 1636; Muhammad Riaz v. State 2005 PCr.LJ 591; Muhammad Ehsan Ullah v. State 2006 MLD 1504; Habibulah v. State (Supreme Court of Pakistan) 1997 SD 442 and Muhammad Anwar v. State 1996 PCr.LJ 1633 distinguished.

Martha Bibi v. District Police Officer Kasur 2008 YLR 274 and 2001 YLR 484 rel.

Muhammad Yousuf Leghari and Ghulamullah Chang for Applicant.

Aijaz Shaikh for the Complainant.

Shahid Ahmed Shaikh, A.P.-G. for the State.

Date of hearing: 28th October, 2013.

ORDER

FAROOQ ALI CHANNA, J.---By this bail application, the applicant Haji Nasarullah seeks his release on bail in F.I.R. No.159 of 2012 lodged by complainant Kachkol Khan at Police Station Hatri for offences under sections 295-B and 295-C, P.P.C.

2. The facts of the case are that on 17-9-2012 the complainant lodged F.I.R. stating therein that on 16-9-2012 he and his neighbours Najeebullah, President of Shopkeepers Association, Hala Naka No.2, Abdullah, Feroze Khan, Hakeem Saeed, Hashim Khan, Saeed Khan, Maazullah Khan and Israel Khan along with other shopkeepers were available in the market, when a peaceful agitation, protesting against blasphemous film released by America, reached there and asked shopkeepers to close the shops under protest. At Maghreb Azaan time the applicant Nasarullah came to them and asked that why they have

closed the shops, to which the complainant and other shopkeepers told him that due to release of blasphemous film they have shutter down the shops under protest. The applicant Nasarullah Masood Pathan used filthy language, abused Hazrat Muhammad (PBUH) and Azwaj Mutharat publicly and told them not to shutter down the shops on petty matters. The complainant and other shopkeepers then went to offer Magrib prayer where they after consultation held meeting with Ulma-e-Kerams, who called the witnesses and after inquiring the facts from them, Ulma-e-Kerams suggested to lodge the case against the applicant Nasarullah. On the advice of Ulma-e-Kerams, the complainant went to police station and lodged F.I.R.

3. The bail application of the present applicant was moved before the trial Court which was dismissed.

4. Mr. Muhammad Yousif Leghari, learned counsel for the applicant/accused, has argued that the case is false and fabricated and the applicant has been involved due to some personal grudge between the applicant and the complainant and some of the witnesses who are the tenants of Nasarullah market the property of applicant. Learned counsel further contended that a day before the F.I.R. was lodged, the applicant/accused had also lodged F.I.R. No.158 of 2012 against the complainant and other shopkeepers who had caused damage to his vehicles, otaq and fire shot injury to his brother Qamar Zaman with intention to commit his murder. The complainant has lodged this F.I.R. as counter blast to save themselves from the consequences of F.I.R. No.158 of 2012. He further contended that the allegations against the applicant were denied by him in a press release published in daily 'Juraat' dated 22-9-2012 and daily 'Ummat' dated 24-9-2012, wherein the applicant has categorically stated that he even cannot think about the use of derogatory words in the honour of Hazrat Muhammad (PBUH), his rival group has circulated pamphlet against him. Learned counsel further contended that F.I.R. was lodged after pre-consultation and afterthought, which is evident from "Fatwa" issued by Jamait-ul-Ullom Islamia Banori Town, Karachi. The learned counsel also emphasized the legal aspect of the case and contended that F.I.R. has been lodged by a person who was not authorized by the competent authority i.e. Federal Government or Provincial Government, as such, the entire proceedings against the applicant are null and void in the eye of law. Lastly, he argued that the applicant is behind the bars since 14 months and the trial Court has not yet examined even a single witness and it is settled law that no one can be detained in jail for indefinite period. Learned counsel prays that in view of the above facts and circumstances the applicant at least deserves the concession of bail. In support of his contentions, he has relied upon the cases of Anwar Masih v. State (2005 PCr.LJ 1636), Muhammad Riaz

v. State (2005 PCr.LJ 591), *Muhammad Eshan Ullah v. State* (2006 MLD 1504) and *Habibullah v. State (Supreme Court of Pakistan)* (1997 SD 442).

5. Conversely Mr. Aijaz Shaikh, learned counsel for the complainant has opposed the grant of bail to the applicant and has contended that filthy language used by the applicant was heard by a large number of people, some of them appeared at the police station so also before the Committee of Ulma-e-Kerams and made statements affirming the facts mentioned in F.I.R. Learned counsel further contended that at least seven witnesses are attending the trial Court regularly for recording their evidence, but each time they were returned unexamined due to adjournments sought by the defence counsel, as such, the delay in conclusion of trial, if any, is on the part of applicant/accused, therefore, he cannot claim that he is behind the bars since 14 months without progress in trial. Lastly, he prays that this bail application may be dismissed with the direction to the trial Court to discourage the adjournments and record the evidence of prosecution witnesses within a period of three months. In support of his contentions, he has relied upon the case of *Muhammad Anwar v. State* (1996 PCr.LJ 1633) and *Martha Bibi v. District Police Officer Kasur* (2008 YLR 274).

6. Learned A.P.C. has adopted the arguments advanced by the learned counsel for the complainant.

7. I have considered the arguments of respective parties and perused the record.

8. The words uttered and filthy language allegedly used by the applicant/accused as appears in the statements under section 161, Cr.P.C. of P.Ws. is highly insulting and intolerable, one cannot dare to reproduce the same in this order, as the honour of Hazrat Muhammad (PBUH), being so much sacred, rents my breast even to go through the statements of witnesses before police.

9. As per prosecution case, many people appeared before the Investigating Officer and Ulma's Committee and claimed that the said derogatory remarks were passed by the applicant in their presence. The delay in lodging of F.I.R. has been explained properly that the complainant before taking any step approached Ulma-e-Kerams for guidance under the principle of Islam. The applicant got published his press release denying the allegations, after one week of incident. The attack upon otaq of applicant reported in F.I.R. No.158 of 2012 appears to be the reaction of the derogatory remarks allegedly delivered by him. So far the legal aspect of the case regarding the authorization of complainant for lodging of F.I.R. required under section 196, Cr.P.C. is

concerned, in this respect I would like to refer to the case of MARTHA BIBI (supra) wherein the then honourable Chief Justice of Lahore High Court while sitting over on his own judgment reported as (2001 YLR 484) descended his earlier verdict and has observed that while accepting the said judgment he had taken one of the grounds relating to section 295-C, P.P.C. to which in fact he was not properly assisted and the same was overlooked. In the said judgment, it has also been observed that:--

"so far as the contention of learned counsel for the petitioner that section 295-C, P.P.C. should be read in continuity with sections 295-A and 295-B, P.P.C. is concerned, in fact three different offences have been mentioned in these three sections by the legislature. The wisdom of the legislature in this regard cannot be challenged, if the same is challenged it will tantamount to challenge the wisdom of Legislature. The Courts are to interpret the law and not to make deletions and additions in the same. To read section 295-C, P.P.C. as part of section 196, Cr.P.C. will amount to interfere in the spirit of Legislation. The judgments of honourable Supreme Court of Pakistan relied upon by the learned Additional Advocate-General are quite relevant on this proposition."

10. Grant or refusal of bail being necessarily a judicial exercise of discretion, it is incumbent upon Courts to make a tentative assessment of the material collected by prosecution as well defence keeping in mind, firstly, the matter of accusation and prosecution evidence in support of it; secondly, severity of punishment; thirdly, behaviour or plea of defence. From the tentative assessment of evidence collected by the prosecution in this case and defence of applicant/accused, prima facie, there appears reasonable ground for believing that the applicant/accused has been guilty of an offence punishable with death or imprisonment for life. A

11. The facts and circumstances of the cases relied upon by the learned counsel for the applicant are distinguishable from the facts and circumstances of the case in hand, therefore, the same are not applicable.

12. In view of foregoing reasons, I find no merit in this bail application. Accordingly, the same is dismissed.

13. The observations made herein above are tentative in nature and will not prejudice the case of either party. The trial Court shall not be influenced from the above observations and shall decide the case strictly on merits on the basis of evidence produce by both the parties.

MH/N-33/K

Bail refused.