

IN THE PESHAWAR HIGH COURT, PESHAWAR.

2019 YLR 721 (Peshawar)

Before **WAQAR AHMAD SETH, C.J.**

Crl. Misc. B.A. No.1472-P of 2018

TAHIR AHMAD NASEEM Petitioner
Versus
THE STATE AND ANOTHER..... Respondents

POLICE STATION : Sarband, Peshawar. FIR No.341
Dated 25.4.2018.

OFFENCE : Under Sections 153-A, 295-A, 295-B,
295-C and 298 PPC

PETITION : Under Section 497 Cr.P.C. for release on
bail after arrest.

DECISION : Bail refused on 28.9.2018

Criminal Procedure Code (V of 1898)---
---Ss. 497---Penal Code (XLV of 1860), Ss.153-A, 295-A, 295-B, 295-C &
298---promoting enmity.....

which is granted to him subject to his furnishing bail bonds in the sum of Rs.200,000/- with two sureties each in the like amount to the satisfaction of the learned trial court. File.

MQ/184/GB

Bail granted.

2019 Y L R 721

[Peshawar]

Before Waqar Ahmad Seth, C.J.

TAHIR AHMAD NASEEM---Petitioner

versus

The STATE and another---Respondents

Cr. Misc. B.A. No.1472-P of 2018,
decided on 28th September, 2018.*Criminal Procedure Code (V of 1898)---*

---S.497---Penal Code (XLV of 1860),
Ss.153-A, 295-A, 295-B, 295-C & 298---
Promoting enmity between different groups etc., deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs, defiling etc. of copy of Holy Qur'an, use of derogatory remark etc. in respect of Holy Prophet (P.B.U.H.), uttering words etc. with deliberate intent to wound religious feelings---Bail, refusal of---Record revealed that the accused in his statement recorded under S.161, Cr.P.C. not only repeated his alleged views but also in support of his version produced handwritten literature---During the investigation, police also took into possession certain audio recording and oral statements of the accused in the shape of USB and personal computer---

Disputed material had already been made viral on the internet through social media account of the accused---Recovered USB and computer were dispatched to the Forensic Science Laboratory---Report of Examiner (Digital Forensic/Audio Video Section) was in affirmative---Present case was unique and serious in its nature as the accused had challenged the chastity and respect of the Holy Prophet Muhammad (P.B.U.H.), therefore, he was liable to be dealt with iron hands---Accused deserved no leniency---Bail was refused to the accused in circumstances. [p. 724] A, B & C

Verse No. 40 Surah الاحزاب Parah No.22; Hadith No.3532,
صحيح بخارى (كتاب المناقب)
and Hadith No.3535, Chapter

ref. صحيح بخارى (كتاب المناقب)

Barrister Awais Babar for
Petitioner.

Shakeel Ahmad Khel for the
Complainant.

Rab Nawaz Khan, AAG for the
State.

Date of hearing: 28th September,
2018.

JUDGMENT

WAQAR AHMAD SETH, C.J.---

The accused/petitioner Tahir Ahmad Naseem son of Muhammad Maqbool Shah resident of Achini Bala, Peshawar charged in case FIR No. 341 dated 25.04.2018 under sections 153-A, 295 A, B, C, 298 P.P.C., P.S. Sarband, Peshawar seeks his release on bail after the refusal from the Court of learned Additional Sessions Judge-XI, Peshawar vide order dated 22.06.2018.

2. Brief but laconic facts of the case as per the contents of FIR are that complainant/respondent No. 1 Malik Awais charge the accused/petitioner directly in a case which is very heinous, serious and sensitive in its nature i.e. defiling the religion, the Holy Quran and using derogatory remarks etc in respect of the Holy Prophet Muhammad ﷺ. Background of the case in a glance of FIR is that complainant/respondent No. 1 who himself is a student of Jamia Madrasa Muhammadia at Islamabad, has developed friendly relations with the accused/petitioner on 15.02.2018 on Electronic Media i.e. Facebook (Having I.D tanaseem63@yahoo.com and www.facebook.com/tanaseem) and started chit chat with him. In furtherance accused/petitioner call the complainant for face to face meeting. Both met at Happer Mall and during meeting accused/petitioner disclosed that after 14th Mujadid Mirza Ghulam Ahmad Qadiym, he is "15th Mujadid" and he is "Maseel of Masih" and he has been discussed in Holy Quran. Conflict arose between them over the Islamic Ideology and faith that he/petitioner claimed himself to be a last "Maseel". Complainant reported that matter to the local Police of Police Station Sirband District, Peshawar, and case vide above referred FIR was registered against the accused/petitioner. Hence the instant bail petition.

3. Arguments of learned counsel for the parties as well as learned AAG heard and record gone through very anxiously and minutely and considered their submissions as well.

4. It is pertinent to note that bail petition in hand is not an ordinary in its

nature, rather, it is more sensitive and heinous one.

5. Perusal of record reveals that accused/petitioner is charged in ibid sections of law. Before embarking upon the matter, this Court deemed it necessary to reflect the above sections of law for ready reference:--

SECTION 153-A. PROMOTING ENMITY BETWEEN DIFFERENT GROUPS, ETC WHOEVER:

- a. by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or incites, or attempts to promote or incite on grounds of religion, race, place of birth, residence, language, caste or community or any other grounds whatsoever disharmony or feeling of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or
- b. commits, or incites any other person to commit, any act which is per-judicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities or any groups of person identifiable as such on any ground whatsoever and which disturbs or is likely to disturb public tranquility; or
- c. organizes, or incites any other person to organize, any exercise, movement, drill or other similar activity intending that the participants in any such activity

shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence, or participates, or incites any other person to participate, in any such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community or any group of person identifiable as such on any ground whatsoever and any such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community shall be punished with imprisonment for a term which may extend to five years and with fine.

SECTION 295, DELIBERATE AND MALICIOUS ACTS INTENDED TO OUTRAGE RELIGIOUS FEELINGS OF ANY CLASS BY INSULTING ITS RELIGION OR RELIGIOUS BELIEFS.

Whoever, with deliberate and malicious intention of outraging the religious feelings, of any class of the citizens of Pakistan, by words, either spoken or written or by visible representations insults or attempts to insult the religion or the religious beliefs of that class,

shall be punished with imprisonment of either description for a term which may extend to [ten] years, or with fine or with both.

295-B DEPILING ETC. OF COPY OF HOLY QUR'AN. - - - ?

Whoever will-fully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.

295-C. USE OF DEROGATORY REMARK ETC, IN RESPECT OF THE HOLY PROPHET;- - -

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.

298. UTTERING WORDS, ETC, WITH DELIBERATE INTENT TO WOUND RELIGIOUS FEELINGS. - - -

Whoever, with deliberate intention of wounding or outraging the religious feelings of any person or inciting religious, sectarian or ethnic hatred, utters any words by using loudspeaker or sound amplifier or any other device or makes any sound in the hearing of that person or makes any gesture in the sight of that person or persons, shall be

punished with imprisonment of either description of a term which may extend to three years, but shall not be less than one year, or with 0.5, Million fine, or with both.

6. It is evident from the record that accused/petitioner in his statement recorded under section 161, Cr.P.C. not only repeated his disputed views moderately, Albeit in support of his version he also produced documentary evidence/hand written literature consisting over 56 pages. During the investigation local Police also took into possession the audio recording and oral statements of the accused/petitioner in the shape of USB, personal computer, which has already been viral on internet through above mentioned accounts. The recovered articles were dispatched to the Forensic Science Laboratory, where it were analyzed/ examined and subjected to Forensic Tools and Spectrographic test. The report of Examiner, Digital Forensic/Audio Video Section, Peshawar is in affirmative.

7. If we look into the matter in the luminosity of Holy Qur'an it reveals in Verse No. 40 Surah الاحزاب Parah No. 22 that:--

مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِّن رِّجَالِكُمْ
وَلَكِن رَّسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ
وَكَانَ اللَّهُ بِحَسْرَتِ الْمُؤْمِنِينَ

ترجمہ۔ (لوگو) تمہارے مردوں میں کسی کے باپ محمد (صلی اللہ علیہ وسلم) نہیں لیکن آپ اللہ تعالیٰ کے رسول ہیں اور تمام نبیوں کے ختم کرنے والے اور اللہ تعالیٰ ہر چیز کا بخوبی جاننے والا ہے۔

8. In the light of above mentioned verse from Holy Quran if we look into the

matter in reference to Hadith No.3532, Chapter (کتاب المناقب) صحیح بخاری "میرے پانچ نام ہیں۔ میں محمد، احمد اور ماجی ہوں۔ (یعنی مٹانے والا ہوں) کہ اللہ تعالیٰ میرے ذریعہ کفر کو مٹائے گا اور میں حاشر ہوں کہ تمام انسانوں کا (قیامت کے دن) میرے بعد حشر ہوگا اور میں "عاقب" ہوں یعنی خاتم النبیین ہوں، میرے بعد کوئی نیا پیغمبر دنیا میں نہیں آئے۔"

Hadith No.3535, Chapter (کتاب المناقب) صحیح بخاری "میری اور مجھ سے پہلے کے تمام انبیاء کی مثال ایسی ہے جیسے ایک شخص نے ایک گھر بنایا اور اس میں ہر طرح کی زینت پیدا کی لیکن ایک کونے میں ایک اینٹ کی جگہ چھوٹ گئی۔ اب تمام لوگ آتے ہیں اور مکان کو چاروں طرف سے گھوم کر دیکھتے ہیں۔ اور تعجب میں پڑ جاتے ہیں لیکن یہ بھی کہتے جاتے ہیں کہ یہاں پر ایک اینٹ کیوں نہ رکھی گئی؟ تو میں ہی وہ اینٹ ہوں اور میں خاتم النبیین ہوں۔"

I found this case unique and serious in its nature as the petitioner has challenged the chastity and self-respect of Holy Prophet Muhammad ﷺ; therefore, in the light of above mentioned "Quran Verse" coupled with reference from "Hadiths" it is crystal clear that after the Holy Prophet Muhammad ﷺ there will be no one on the earth who "can" or "will" call himself "نبی" or "پیغمبر" therefore, the assertions made by the accused/petitioner is totally unbelievable/incredible and should be dealt with iron hands, rather he deserve more than that because he is found guilty of apostasy.

9. Thus, in view of the above discussion there is no room left for considering the request/application of accused/petitioner for the grant of bail. The sections of law are well imposed which contains major penalties, therefore accused/petitioner deserves no leniency,