

IN THE SHARIAT COURT AZAD JAMMU & KASHMIR

2000 Y L R 907

[Shariat Court (AJ&K)]

Before **SARDAR MUHAMMAD NAWAZ KHAN and
SYED HUSSAIN MAZHAR KALEEM, JJ**

Criminal Revision No.89 of 1999

Prof. ZAHID HUSSAIN MIRZA Petitioner

Versus

THE STATE AND ANOTHER Respondents

OFFENCE : Under Section 295-A,298,298-A of APC

PETITION : The post arrest bail petition of the accused petitioner was dismissed by learned Trial court on 02.8.1999 and he challenged the legality of this judgment through revision petition.

DECISION : Revision petition dismissed on 29.9.1999

(a) Criminal Procedure Code (V of 1898)---

---S.497---Bail, grant of---Duty of Court---while deciding a bail application, Court had to make a

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Before Sardar Muhammad Nawaz Khan

and Syed Hussain Mazhar Kaleem, JJ

Prof. ZAHID HUSSAIN MIRZA---Petitioner

versus

THE STATE and another---Respondents

Criminal Revision No.89 of 1999, decided on 29th September, 1999.

(a) Criminal Procedure Code (V of 1898)---

---S.497---Bail, grant of---Duty of Court--While deciding a bail application, Court had to make a tentative assessment of the available record.

(b) Criminal Procedure Code (V of 1898)---

---S.497---Penal Code (XLV of 1860), Ss.295-A/298/298-A & 298-C---Bail, grant of---Book written by accused carried remarks about Holy Prophet (p.b.u.h.) and accused in the book had hurt feelings of followers of the Holy Prophet (p.b.u.h.)---Survey of the book and opinion of religious scholars with regard to contents of the book, had shown that case against accused was not fit for allowing him bail---Court below, in circumstances, had not committed any illegality in refusing bail to accused.

Nasir Ahmed v. The State 1993 SCMR 153 ref.

Raja Bashir Ahmad Khan for Petitioner.

Riaz Alain and Nazir Ahmad Ghori for the Complainant.

Shiraz Kayani, A.-G., Chaudar

Muhammad Mushtaq, A.A.-G. and Khalid Rashid, Public Prosecutor for the State.

ORDER

SYED HUSSAIN MAZHAR KALEEM, J.---This bail petition is directed against the order of the District Court of Criminal Jurisdiction, Mirpur, dated 2-8-1999; whereby the petitioner was refused bail.

Brief facts forming the background of the case are that an application was moved by Muhammad Bashir Mustafvi before Deputy Commissioner, Mirpur on June 25, 1999. According to the complainant a book carrying impudent remarks concerning the Holy Prophet, (peace be upon him) entitled as Muqam-e-Nabuwat (Status of the Prophet) is available in the market. In the said book the beliefs of the Sunni Muslim community are labelled as Hindu beliefs and condemnable effort is made at many places in the book to hurt the feelings of the followers of the Holy Prophet Muhammad (peace be upon him). In the present sensitive situation on the geographical borders, and that also in the month of Rabi-al-Awwal, a book like this is a conspirational effort to destroy the peaceful atmosphere of the city. He further demanded that the book ought to be seized immediately and the author Prof. Zahid Hussain Mirza may be arrested under the offence of committing impudence against the Prophet (peace be upon him) and should be punished.

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On this report a case under section 295-A/298/298-A of the A.P.C., was registered against the accused. During investigation section 295-C of the A.P.C., was added. An opinion from the prosecution agency against the author of the books provided at the back of the F. I. R.

After having been arrested, the accused petitioner moved an application for bail before the Trial Court and the same was dismissed on 2-8-1999. Now he has challenged the legality of the judgment through this revision petition.

Raja Bashir Ahmad Khan the learned counsel for the petitioner has stated that the petitioner did not commit impudence to the Prophet (peace be upon him), In fact he has always used 'peace be upon him' with his name which shows a great respect towards the Holy Prophet (peace be upon him) and is a proof of his being a faithful Muslim. He as written the said book to provide guidance to a newly converted Muslim in all sincerity and in accordance with the interpretations of the earlier writers in Islam- The learned counsel argued that many Ulema have approved of the aid book as appropriate. He claimed that the complainant has implicated the petitioner in a serious accusation only because of sectarianism. He made many references from the Holy Quran and the Hadith. He further stated that the book is neither blasphemous nor impudent. He submitted that in light of the contents of the book, section 295-C of the A. P. C., is not applicable; whereas considering the quantum of sentence provided in sections 295-A, 298 and 298-A of the A.P.C., the accused-petitioner cannot be deprived of the right of bail. He finally, submitted that the petitioner may be released on bail. He has cited 1993 SCMR 153 in support of his contention.

Mr. Khalid Rashid Choudary, while replying to the arguments, stated that the complainant has intentionally hurt the feelings of the Sunni Muslim community by using an impudent style, inappropriate words and through misleading interpretations of the Quranic verses and the, Hadith. Therefore, he committed impudence to the Holy Prophet (peace be upon him), and his case is fully covered with section 295-C of the A.P.C. He finally, submitted that the punishment provided for the offence is death, therefore, the revision petition may please be dismissed.

Mr. Muhammad Nazir Ghori learned counsel for the complainant stated that the author has used the Hadith in support of his ideas out of their context and reference. According to him the said book is a calculated attempt to create a misunderstanding among different schools of thought and is a conspiracy against the integrity of Muslim Ummah.

Mr. Riaz Alam, Advocate, while supporting the arguments advanced by Mr. Muhammad Nazir Ghori learned counsel for the complainant, added that the name of the book is 'Muqaam-e-Nabuwat' (the Status of the Holy Prophet (peace be upon him) but we do not find a single word or sentence for the purpose of the definition of that status. In fact the whole content is intended to diminish that status (may God forbid it) ascertained by the Holy Quran.

During arguments Mr. Farooq Hussain Kashmiri, Advocate, Mr. Ashfaq Hussain Kayani, Advocate, Mulana Muhammad Yousaf Farooqi and Mulana Asmat-ullah requested the Court that in view of the sensitive nature of the case they may be allowed to assist the Court on certain points. The request was accepted.

Mr. Farooq Hussain Kashmiri, Advocate argued that it is clear from the contents of the book that it has not been written to ascertain the status of the Prophet (peace be upon him) but is a critical analysis of the Holy Prophet' (peace be upon him) life which is not permissible and is against the teachings of Islam. Another argument was that the author has denied and distorted certain Quranic injunctions.. Referring to page 32 of the book that "interpretation of Surah al-Maida, verse 15 maintains that the Holy Prophet (peace be upon him) is the guiding 'light' (noor) and not 'Noor' by creation. Otherwise, it has to be accepted that all the Muslims following the Holy Qur'an, the Bible, the Torah, and the moon etc., are all 'Noor' by creation". The learned counsel added that the Bible, the Torah, and the moon etc., have been declared 'Noor' in the Holy Qur'an and quoted Surah al-Maida, Verses 44, 46; Surah Al-Anam verse 122, Surah Al-Noor verse 35, Surah Younis Verse 15, and Surah Noah verse

16 in support of his argument. According to him, it is obligatory that all the Muslims accept it as such; and any deviation or distortion will be against the Quranic injunctions.

Mr. Ashfaq Kayani, Advocate stated that the contents of the book are impudent and the language used is blasphemous. He referred to pages 62, 63 and 64 of the book and maintained that captions Nos.42, 43 and 44 are blasphemous; whereas the writer's arguments and opinion in the said paragraphs distort the authentic facts and lead to misguided conclusions. He emphasised the point that the conclusion drawn by the author at the end of para.44 is highly objectionable and impertinent. He added that the intended meaning of this Hadith are that the Holy Prophet (peace be upon him) cannot commit a mistake because Almighty Allah is there to guide him and even in the presence of false evidence, or any misunderstanding God is there to protect His Prophet (peace be upon him) from being connected with any act of injustice. Therefore, the conclusion drawn by the author that "if the actual culprit had not confessed, an innocent person might have been stoned to death by the Prophet's (peace be upon him) order (may God forbid it)", is highly objectionable as well as sacrilegious to the status of the Prophet (peace be upon him). Another point raised by him is that on page 96 of the book it is stated by the author that he has written the book 'to emphasise the difference between God and the Prophet (peace be upon him): "One is eternity and infinite and the rest is finite; One is beyond time and space and the rest bound by these". etc.; and, thus, grouped the Prophet (peace be upon him) with all the rest which is again disrespectful and shows his ignorance of the Prophet's status. Moreover, by giving such weak explanations the author completely ignored many claims of the Holy Quran like the Prophet's (peace be upon him) 'Meraj' which is an example of his being above and beyond the limitations of so-called time and space.

Mulana Muhammad Yousaf Farooqi also supported all the points raised against the book and the author, whereas Mulana Asmatullah supported the contents of the book.

I have heard the learned counsel for the parties, religious scholars (Ulema) and have gone through the relevant record which includes the petitioner's statement placed before the Court by his counsel.

While deciding a bail application the Court has to make a tentative assessment of the record available. A survey of the book shows that it has been written in answer to the two questions raised by an Italian Muslim named Fadl Matteo Baltrami. The first question was 'what is the status of the Holy Prophet (peace be upon him)?'; and the second question was 'the knowledge of the unknown and omnipresence'. The book carries four chapters and many Hadith have been used by the author in support of his views.

It is obligatory for all the scholars and writers specially for the Muslims to be careful while stating or writing anything about the Holy Prophet (peace be upon him) It will be worth mentioning that the Holy Quran commands 'do not speak loudly in the presence of the Holy Prophet (peace be upon him)' (Surah Al-Haiaraat: verse 2) Again it is repeated in the Holy Quran that while addressing the Holy Prophet (peace be upon him) don't say raina say unzurra' (Sure Al-Bagara; verse 104) because-the first word has two meanings 'see here' and 'shepherd'. while the recommended word has one meaning 'see here' and this shows that God did not like His Prophet (peace be upon him) to be addressed even with a hint of disrespect These verses provide the best guideline to writers 'when attempting to write about the Holy Prophet (peace be upon him) In light of such commands it is clear that any attempt to diminish the status of the Holy Prophet (peace be upon him) is strictly disallowed by Almighty Allah.

While answering the question and using the Hadith the author has prima facie crossed above stated limits. The Hadith used by him in support of his views are found to be used out of context; for instance while discussing the topic 'Knowledge of unknown' the author quoted from a Hadith on page 51 of the book under number 18. According to him the angel Gabriel appeared in human form and asked the Holy Prophet (peace be upon him) "when will the Hour be established?". The Holy

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Prophet (peace be upon him) replied that "the answerer has better knowledge than the questioner".

I have gone through the original complete text of the said Hadith in Sahih Bukhari (chapter 38: pp: 41-2: Hadith given as:

Narrated Abu Huraira 'one day the Prophet (peace be upon him) was sitting in the company of some people (the angel) Gabriel came and asked "what is faith?". Allah's Apostle (peace be upon him) replied, "faith is to believe in Allah. His angels, (the) meeting with him, His Apostles, and to believe in Resurrection". Then he further asked 'what is Islam?' Allah's Apostle (peace be upon him) replied "to worship Allah alone and none else, to offer prayers perfectly, to pay the compulsory charity (Zakat), and to observe fasts during the month Ramadan." Then he further asked "What is Ihsan (perfection)?" Allah's Apostle (peace be upon him) replied, "To worship Allah as if you see him and if you cannot, achieve this State of denotation then you must consider that he is looking at you". Then he further asked, "when will the Hour be established?" Allah's Apostle (peace be upon him) replied "the answerer has no better knowledge than the questioner. But I will inform you about its potents. (1) When a slave (lady) gives birth to her master. (2) When the shepherds of black camels start boasting and competing' with others in the construction of higher buildings. And the Hour is one of the five things which nobody knows except Allah."

The Prophet (peace be upon him) then recited. "Verily, with Allah (alone) is the knowledge of the Hour". Then the man (Gabriel) left and the Prophet (peace be upon him) asked His companions to "call him back", but they could not see him. Then the Prophet (peace be upon him) said "that was Gabriel, who came to teach people their religion".

I found that this Hadith, like others, was misquoted and misinterpreted by the author. The said Hadith cannot be used to challenge the knowledge of the Prophet (peace be upon him) but shows the extent of his knowledge that he recognised Gabriel even in human disguise and responded accordingly; the Holy Prophet (peace be upon him) made it explicit after the departure of the inquirer that "it was the angel Gabriel who came to teach people their religion".

On page 52 of the said book, under number 20, titled Hazrat Aisha Siddiq's (R.A.) missing necklace. He quotes Hazrat Aisha Siddiq (R.A.) as saying that a necklace of her's was lost during a journey. The Holy Prophet (peace be upon him) stopped there to have it searched but, it could not be found, and they stayed there for the night. There was no water. Hazrat Abu Bakat Siddique (R.A.) was angry that they had to stay at such a place because of Hazrat Aisha Siddiq (R.A.). Next morning they found the same necklace lying under Hazrat Aisha Siddiq's (R.A.) camel. The author has quoted it in support of his view regarding the Holy Prophet's (peace be upon him; 'knowledge of the unknown', implying that Allah's Apostle (peace be upon him) had no knowledge of the whereabouts of the necklace.

Two points need to be made explicit here. First no Hadith can be interpreted on of its original complete text and context Second, each act and event of the Prophet; (peace be upon him) life is educative in nature and has a specific background to it.

The original complete text of the said Hadith in Sahih Al-Bukhari (in Chap: The Book of Tayammum; pp.198-9; Hadith number 330) is as under:

"Narrated Aisha, the wife of the Prophet (peace be upon him): we set out with Allah's Apostle (peace be upon him) on one of his journeys till we reached Al-Baida or DhatulJaish, a necklace of mine was broken (and lost). Allah's Apostle (peace be upon him) stayed there to search for it and so did the people alongwith him. There was no water at that place so the people went to Abu Bakar As-Siddiq and said. 'don't you see what Aisha has 'done? She has made Allah's Apostle (peace be upon

him) and the people stay where there is no water with them'. Abu Bakar came while Allah's Apostle (peace be upon him) was sleeping with his head on my thigh. He said, to me: 'you have detained Allah's Apostle (peace be upon him) and the people where there is no water and they have no water with them. "

So, he admonished me and said what Allah wished him to say and hit me on my flank with his hand. Nothing prevented me from moving (because of pain) but the position of Allah's Apostle (peace be upon him) on my thigh. Allah's Apostle (peace be upon him) got up when dawn broke and there was no water. So, Allah revealed the divine verses of tayammum. So, they all performed tayammum. Usaid bin Hudair said, the family of Abu Bakari this is not the first blessing of yours. Then the camel on which I was riding was caused to move from its place and the necklace was found beneath it."

It becomes clear from the complete text that the whole episode was ordained by Almighty Allah to create a needs context for Tayammum and then to reveal the relevant divine verses; therefore, this Hadith cannot be availed for any other purpose.

Again on page 63 of the book under number 44, the author has stated that the Holy Prophet (peace be upon him) ordered a

not-guilty person to be stoned to death. In the meantime the actual culprit stood up and admitted the offence. Then the Holy Prophet (peace be upon him) transferred the sentence to him. The author has drawn the conclusion: "if the actual culprit had not confessed, an innocent person might have been stoned to death by the Prophet's (peace be upon him) order (may God forbid it)". This Hadith relates to 'Tawba, (repented and begged for Almighty Allah's forgiveness) as is clear from the original text on pages 548-R-549 in, Jama Al-Tarmazi. In the last para. of this Hadith, it is stated by the Holy Prophet; (peace be upon him) that no doubt he begged such for Tawba, (repented and begged for Almighty Allah's forgiveness) that if the whole city begged like that it would be granted.

After having given a careful consideration to the points listed above, I am of the view that it will not be proper to go into any deep appreciation and to conduct a detailed examination of the material made available by the prosecution and the statement of the accused petitioner at bail stage, because any expression of opinion at this stage may prejudice the case of either party. Only a tentative view is to be taken of the material available. I, in view of the facts listed above find that it is not a fit case for allow a; this stage and the lower Court has not committed any illegality while refusing bail to the petitioner.

The observation made in the case titled Nasir Ahmed v. The State (1993 SCMR 153) is not relevant to this case. Every case has to be decided in light of its own facts.

Before parting with the case, I, however, would like to make it clear that any observation made by this Court at this stage be taken only as tentative. The Trial Court shall be free to have an independent view of the case while deciding it on merit. The petition having no force, therefore, stands dismissed.

H.B.T/95/Sh.C. (AJK) Revision petition dismissed.