

IN THE LAHORE HIGH COURT, LAHORE.

PLJ 1992 Cr.C.(Lahore) 423
1992 PCr.LJ 2346 (Lahore) 423

Before MIAN NAZIR AKHTAR, J

Crl. Misc. No.2162-B OF 1992

SARFRAZ AHMAD AND 7 OTHERS Petitioners

Versus

THE STATE Respondent

POLICE STATION : City Nankana, District Sheikhpura.

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

PETITION : Under Section 498 Cr.P.C. for grant of pre-arrest bail.

DECISION : Bail petition of petitioners No.4, 5 and 6 was dismissed and allowed to petitioners No.1, 2, 3, 7 and 8 on 02.8.1992.

Pre-arrest Bail---

----Offence under Sections 295-A, 295-C and 298-C of PPC—Pre-arrest bail—Grant of

1992

SARFRAZ AHMAD V. THE STATE
(Mian Nazir Akhtar)

Cr.C. 423

PLJ 1992 Cr.C.(Lahore) 423

Present: MIAN NAZIR AKHTAR, J
SARFRAZ AHMAD and 7 others--Petitioners
versus

THE STATE--Respondent

Criminal Misc. No.2162-B of 1992, decided on 2.8.1992.

Pre-arrest Bail--

---Offence under Sections 295-A, 295-C and 298-C of PPC--Pre-arrest bail--
Grant of--Prayer for--Cognizance of offence under Section 295-A of PPC is
not barred in Section 196 of Cr.P.C.--There is no force in contention that
Qadianis are only forbidden to use words specified in Section 298-B and they
are at liberty to use all other *Shi'air-e-Islam* and expressions commonly used by
Muslims--*Malafides* have neither been pleaded nor urged during arguments--
There is considerable force in arguments that followers of Mirza Ghulam
Ahmad are non-Muslims and constitute a separate community not forming
part of Muslim *Umma*--Held: Offence under Section 295-C of PPC being
punishable with death or imprisonment for life, falls within prohibition of
Section 497 Cr.P.C. and Petitioners No.4, 5 and 6 are not entitled to
concession of pre-arrest bail. [Pp.426&427]A,B,C&D

PLD 1985 FSC 8 and PLD 1992 Lahore 1 rel.

Mr. Mubashir Latif Ahmad, Advocate for Petitioners.

Mr. Nazir Ahmad Ghazi, A.A.G. for State.

Mr. Rashid Murtaza Qureshi, Advocate for Complainant.

Date of hearing: 15.7.1992.

JUDGMENT

The petitioners had applied for pre-arrest bail in a case registered against them and a few other persons for offences under Sections 295-A, 295-C and 298-C of the P.P.C. at P.S. City Nankana, District Sheikhupura. They were allowed ad-interim pre-arrest bail by my learned brother Rashid Aziz Khan, J. vide his order dated 10.6.1992.

2. During the course of arguments, the learned A.A.G. and the complainant's learned counsel stated in a fair manner that they did not oppose confirmation of bail of the two ladies namely Mrs. Sarfraz Ahmad and Mrs. Balqis Begum as their case was covered by the exception to Section 497 of the Cr.P.C. Hence the interim pre-arrest bail granted to them is confirmed.

3. Mr. Mubashir Latif, learned counsel for the petitioners contended that Sarfraz Ahmad petitioner No.1 and Ijaz Ahmad, petitioner No.3, were Muslims and not *Qadianis* and that they were falsely and maliciously roped in the case. The said petitioners were present in the Court and on Court question firmly stated that

they were not *Qadianis* and were true Muslims following the faith/*Fiqah* of *Ahl-e-Hadees* and considered followers of Mirza Ghulam Ahmad to be "wrong". They further stated that Mirza Ghulam Ahmad in his claim of prophethood was a "liar" and he as well as his followers belonging to *Qadiani* and *Lahori* groups were 'Kafirs' and outside the fold of Islam. During the course of investigation it was verified that Sarfraz Ahmad, petitioner No.1, his wife petitioner No.2 and Ijaz Ahmad, petitioner No.3 were Muslims. Therefore, interim bail granted to Sarfraz Ahmad and Ijaz Ahmad is also confirmed. I may however observe that the police finding that Mrs. Sarfraz Ahmad, petitioner No.2 is not a *Qadiani* is open to serious doubts because in reply to several Court questions she did not say a single word against Mirza Ghulam Ahmad or his followers. She has been allowed bail primarily on the ground of woman-hood and the further question whether or not she is a *Qadiani* and whether she has committed any offence is left to be decided by the trial Court.

4. So far as Babar Ahmad petitioner No.8 is concerned, his name does not appear on the disputed invitation Cards and there is no material to connect him with the commission of the Offences alleged in the FIR. Hence the interim bail allowed to him is also confirmed.

5. As regards the other petitioners namely Bashir Ahmad, Muhammad Yousaf and Ijaz Ahmad son of Siraj Din, the petitioners' learned counsel contended as under:--

- (i) In view of the provisions of Section 196 of the Cr.P.C., the FIR (which includes the offence under 295-A of the PPC) lodged by a private person is non-existent.
- (ii) The offence under Section 298-C of the PPC does not fall within the prohibition of Section 497 of the Cr.P.C. There being no defiling of the name of the Holy Prophet, the Offence Under Section 295-C was not made out.
- (iii) The mere use of the words

السلام و علیکم انشاء اللہ بسم اللہ الرحمن الرحیم
نکاح مستونہ نموده و نعلی علی رسولہ الکریم

did not constitute any offence and that *Qadianis* had the right to use the same.

- (iv) Law merely prohibits the *Qadianis* to use the words specified in Section 298-B of the PPC and not the other expressions used in the invitation cards.
- (v) The invitation cards were got published by Sarfraz Ahmad, who was not a *Qadiani*. He placed on the record a photo copy of the receipt to show

that payment for printing of the 50 invitation cards was made by Sarfraz Ahmad.

6. On the other hand, Mr. Nazir Ahmad Ghazi, the learned Assistant Advocate General, strenuously opposed the prayer for bail in respect of Bashir Ahmad, Muhammad Yousuf, and Ijaz Ahmad son of Siraj Din and urged that there was nothing to show that the police was actuated with *mala fide* intentions to arrest them. He pointed out that the petitioners neither pleaded *mala fides* in the petition nor any argument was raised to show that arrest would be *mala fide*. He further submitted that the *Qadiani* and *Lahori* followers of Mirza Ghulam Ahmad cannot use Shair-e-Islam so as to pose themselves as Muslims. He added that *Qadianis* were a separate community which had nothing to do with Islam and the Muslim *Ummah* because Mirza Ghulam Ahmad had falsely proclaimed himself to be a prophet in clear violation of the teachings of Islam and had declared that all those who did not believe in him were *Kafirs*. He even went to the extent of laying a claim that he was Adam, Ibrahim, Moosa, Isa and even Muhammad, the Holy Prophet (ﷺ). He had ventured to attribute to himself the verses of the Holy Quran, which were revealed entirely in relation to the Prophet Hazrat Muhammad (ﷺ). While, reciting "ﷺ" when the *Mirzais* utter the word "Muhammad", they predominantly visualize Mirza Ghulam Ahmad *Qadiani*. Likewise, they send *Darood* on Mirza Ghulam Ahmad *Qadiani*. Thus while reciting the "*Kalma Tayyaba*" and "*Darood*", they have in their mind Mirza Ghulam Ahmad *Qadiani* and by so doing they defile the fair name of the Holy Prophet (ﷺ). In support of his contentions he referred to some passages from the following books:

- (1) Hakeeqat-ul-Vahi (2) Ruhani Khazain Vol:18 and 19 (3) Tuhfa Golarvia (4) Tariaq-ul-Qaloob (5) Zamima Anjaam-e-Athum (6) Aik Ghalati Ka Azala (7) Tazkira (8) Dafi-ul-Bala (9) Durr-e-Sameen (10) Kashti-e-Nooh (11) Tabligh-e-Rasalat (12) Nazool-e-Masih

He also placed reliance on the following judgments:--

1. *Murad Khan v. Fazal-e-Subhan and another* (PLD 1983 SC 82);
2. *Mujibur Rahman and 3 others v. Federal Government of Pakistan and another* (PLD 1985 FSC 8);
3. *Malik Jehangir M. Joya v. The State* (PLD 1987 Lah. 458) and
4. *Mirza Khurshid Ahmad and another v. Government of Punjab and others* (PLD 1992 Lahore 1).

Mr. Rashid Murtaza Qureshi, learned counsel for the complainant reiterated the arguments raised by the learned AAG and added that the petitioners had committed the offence mentioned in the FIR and deserved maximum punishment under the law. They were non-Muslims but lent their names to be published on an invitation card which on the face of it shows that the invitation was from Muslims.

He further urged that the cards were got published by Nasir Ahmad and not by Mirza Ahmad as claimed by the petitioner's learned counsel. He further submitted that the Mirzais were repeatedly committing the offence under the above referred sections and deserved to be severely dealt with.

7. The first argument of the petitioners' learned counsel that the FIR is incompetent as a whole because it includes an offence under Section 295-A of the PPC, cognizance whereof is barred without the order of the authorities specified in Section 196 of the Cr.P.C., has no force. The bar contained in Section 196 of the Cr.P.C. is relatable to cognizance of an offence by the Court and not to the power of a private person to report the matter to the police. Even otherwise, the FIR includes offences under Sections 295-C and 298-C of the PPC and the bar regarding cognizance by a Court without the order of the competent authority does not extend to the said offences.

8. There is no force in the contention of the petitioners' learned counsel that Qadianis are only forbidden to use the words specified in Section 298-B of the PPC and that they were at liberty to use all other *Shi'air-e-Islam* and expressions commonly used by Muslims including those printed on the invitation cards. The use of the words specified in Section 298-B of the PPC (by the followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups) would constitute an offence under the said section and the use of the other *Shi'air-e-Islam* by the Qadianis including those printed in the invitation cards, *prima facie*, would constitute an offence under Section 298-C of the PPC. A bare reading of the card creates an irresistible impression that the persons who have extended the invitation or lent their names to be published for *Takeed-i-Mazeed* or further reminder to attend, are Muslims. The mere fact that the offence under Section 298-C of the PPC does not fall within the prohibition of Section 497 of the Cr.P.C. does not entitle petitioners No. 4, 5 and 6, to claim bail particularly when there is nothing to show that they were sought to be arrested with *mala fide* intentions and ulterior motives. *Mala fides* have neither been pleaded nor urged during arguments.

9. There is considerable force in the arguments of the learned A.A.G. and the complainant's learned counsel that the followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups are non-Muslims and constitute a separate community not forming a part of the "Muslim Umma". This view finds full support from the judgments in the cases of *Mujeeb-ur-Rehman* and *Khurshid Ahmad* referred to by the learned A.A.G. The followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups have been declared to be Non-Muslims under Article 260(3)(b) of the Constitution of Pakistan. Mirza Ghulam Ahmad had laid a claim that he was Ahmad and Muhammad and that he possessed all the qualities of Hazrat Muhammad ﷺ and all other prophets. He claimed that finality of prophethood of Hazrat Muhammad ﷺ

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was not affected due to his prophethood because he was none else but Hazrat Muhammad ﷺ (in Zilli or Broozi form). The Qadianis who believe in the teachings of Mirza Ghulam Ahmad recite "Darood-o-Salam" for him, which according to Muslims is the entitlement of the Holy Prophet, Hazrat Muhammad (ﷺ). By sending "Darood" on Mirza Ghulam Ahmad the Qadianis treat him equal to Hazrat Muhammad (ﷺ) and thereby relegate the Holy Prophet to the position of Mirza Sahib. This act of the Qadianis, *prima facie*, amounts to defiling the sacred and exalted name of the Holy Prophet Hazrat Muhammad (ﷺ) which is punishable under Section 295-C of the PPC. It was vociferously urged by Mr. Nazir Ahmad Ghazi, the learned A.A.G. that the "Darood" in the form of (مُرُوْدُ سَلَامٍ عَلَى رَسُوْلِ الْكَرِيْمِ) printed on the disputed invitation cards was meant for Mirza Ghulam Ahmad but the said assertion was not controverted by the petitioners' learned counsel. The offence under Section 295-C of the PPC is punishable with death or imprisonment for life and fine and falls within the prohibition of Section 497 of the Cr.P.C.

10. For the fore-going discussion, Bashir Ahmad, Yousaf and Ijaz Ahmad, petitioners No.4, 5 and 6 respectively are not entitled to the concession of pre-arrest bail. The interim bail order dated 10.6.1992 qua them is, therefore, recalled and their bail petition dismissed. The petition in respect of the petitioners No.1, 2, 3, 7 and 8 is allowed and the interim bail order qua them is confirmed. D

(MBC)