

Crl. Misc. No.64830-B of 2023

Khadija Shah

The State, etc.

11.10.2023 Mr. Sameer Khosa, Advocate for the petitioner.
Mr. Tariq Siddique, APG, and Rai Akhtar Hussain, APG,
with Zahid Inspector.

The petitioner-Khadija Shah, seeks post-arrest bail in the case F.I.R. No.1271/2023, dated 10.05.2023, registered under section 7 of the Anti-Terrorism Act, 1997 and sections 302, 324, 290, 291, 353, 186, 153, 153-A, 153-B, 152, 149, 148, 146, 147, 131, 121, 121-A, 120-A, 107, 109, 505, 452, 436, 427, 395, 120-B of the Pakistan Penal Code, 1860, at Police Station Gulberg, District Lahore.

2. Heard. Record perused.

3. In the instant case, initially, the case was registered under Sections 109, 120-B, 147, 148, 149, 186, 152, 153, 290, 291, 302, 324, 353, 395, 427, 436, 452, 505 of the Pakistan Penal Code, 1860, read with Section 7 of the Anti-Terrorism Act, 1997 on 10.05.2023. The complainant, Imran Sadiq, Inspector, alleged in the complaint that the protest took place on the arrest of Imran Khan in connection with the Al-Qadar Trust case on 09.05.2023 at 11:50 p.m. The complainant alleged that the protestors turned violent and attacked different public and private premises. In the said incident, one person engulfed in flames in the Askari Tower, lost his life, who was later identified as Hamza Imran, stated to be a worker of P.T.I. Admittedly, the petitioner was not named in the FIR as one of the protestors leading the protest rally of P.T.I. After that, Imran Sadiq, Inspector, made his statement under section 161 of Cr.P.C.,

which was recorded by the investigating officer after 10-minutes of the registration of the case on 10.05.2023, wherein he improved the contents of the FIR and introduced the petitioner as one of the accused leading the protest while raising slogans against the Government, Judiciary, and Army. The relevant portion of the FIR is reproduced hereunder: -

"بخدمت جناب ڈیوٹی افسر تھانہ گلبرگ لاہور اسلام و علیکم! بکار سرکار تحریر ہے کہ میں معہ اسد شہزاد SI، وسیم اقبال SI، آصف اقبال ASI، احسان اللہ C/16360، اشفاق C/8330، وسیم C/6660، گاڑی LEG/658، ڈرائیور انوار D/10441، امروز مورخہ 05.09.2023 بوقت 11:50 بحیرات بسلسلہ لاینڈ آرڈر ڈیوٹی لبرٹی گول چکر موجود تھا کہ اسی اثناء میں تحریک انصاف پاکستان کے لیڈر حماد انظہر مسلح اسلحہ آتشیں، اعجاز احمد چوہدری مسلح اسلحہ آتشیں اور عمر سرفراز چیمہ مسلح اسلحہ آتشیں کی قیادت میں 1000/1200 کارکنان PTI مسلح اسلحہ آتشیں و سوٹے و ڈنڈے اور پٹرول بمب عدلیہ اور پاک فوج کے خلاف نعرے بازی کر رہے تھے کہ یہ جو دہشت گردی ہے اس کے پیچھے وردی ہے۔ عمران کورہا کرو، عمران کورہا کرو، خان تیرے جان نثار بے شمار بے شمار کرتے ہوئے وہاں پر آئے اور ساتھ ہی عسکری ٹاور واقع لبرٹی چوک لاہور پر حملہ آور ہوئے اور توڑ پھوڑ شروع کر دی۔ بامداد ہماری ملازمان نے ان کو روکنے کی کوشش کی تو انھوں نے پولیس پارٹی پر حملہ کر دیا اور اس دوران متذکرہ بالا لیڈران اور مسلح کارکنان PTI لاکارے مارتے اور کہتے رہے کہ آج ان کو عمران خان چیئرمین PTI کو گرفتار کرنے کا مزہ چکھاتے ہیں۔"

In his (Imran Sadiq, Inspector) statement under section 161 of Cr.P.C., he stated that after collecting evidence from the place of occurrence, i.e., Askari Tower, and dealing with the law-and-order situation, the FIR was registered. On perusal of the contents of the FIR, it reveals that the petitioner's name was not mentioned therein, and the same was introduced in the statement of Imran Sadiq, Inspector under section 161 of Cr.P.C. The relevant portion of the statement under section 161 of Cr.P.C. is reproduced hereunder: -

"بیان کیا ہے کہ میں بطور SHO تھانہ گلبرگ لاہور میں تعینات ہوں۔ مورخہ 09.05.2023 بوقت قریب - /3 بجیدن بسلسلہ ڈیوٹی لاء اینڈ آرڈر ہمراہ اسد شہزاد SI، وسیم اقبال SI، آصف اقبال ASI، احسان اللہ C/16360، اشفاق C/8330، وسیم C/6660۔ سواری گاڑی سرکاری LEG/658، ڈرائیور محمد انوار C/1044 لبرٹی گول چکر موجود تھا کہ حماد ظہر مسلح اسلحہ آتشیں، اعجاز چوہدری مسلح اسلحہ آتشیں، عمر سرفراز چیمہ مسلح اسلحہ آتشیں۔ ڈاکٹر یاسمین راشد۔ خدیجہ شاہ اور عندلیب عباس کی قیادت میں 1200/1000 کے قریب PTI کارکنان مسلح اسلحہ

ڈنڈے۔۔۔۔۔۔۔۔۔۔"

The complainant has not specifically named the witnesses who disclosed the petitioner's name and role during the protest before him. Asad Shahzad, S.I, Waseem Iqbal S.I, Asif Iqbal A.S.I, Ehsan Ullah 16360/C, and Muhammad Waseem 6660/C, prosecution witnesses, in their statements under Section 161 Cr.P.C. did not state a single word that they informed to the complainant about the involvement of the petitioner in the instant case. Instead, the statements of these witnesses were verbatim of the statement of the complainant under section 161 of Cr.P.C. regarding the role of the petitioner. During the investigation, statements under section 161 of Cr.P.C. of Muhammad Boota son of Abdul Aziz, Gulsher son of Laal Badshah, and Muhammad Islam son of Muhammad Suleman, security guards of Askari Tower, were recorded. They had not stated that the petitioner was among one of the protestors who set Askari Tower on fire or she was leading the protest. Admittedly, the petitioner has not entered the Askari Tower premises, nor is it the case of the prosecution that she set on fire Askari Tower. However, as mentioned above, the role of raising slogans was attributed by the complainant to the other accused, who were named in the FIR.

4. During the investigation, on 13.06.2023, Muhammad Mubashar 27626/C Operator, C.R.O investigation, produced U.S.B and six pages of script before the investigation officer, who took the same into possession. On 14.06.2023, the petitioner was joined in the investigation, and on 19.06.2023, the request for her physical remand was turned down by the trial court. After that, on 06.09.2023, offenses under sections 107, 120, 121, 121-A, 131, 146, 153-A, and 153-B PPC were added, and physical remand was allowed by the trial court on 09.09.2023. On 11.09.2023, Muhammad Mubashar 27626/C, Operator C.R.O. (Inv), also produced two U.S.Bs and eight pages of script before the investigating officer, who took the same into possession. On 16.06.2023, Sr. Superintendent of Police Investigation, Lahore, through letter No.592/05-SSP-Inv, sent the audio/video transcripts of the petitioner in USB and written form to the Additional Director Operations, Cyber Crime Islamabad, for verification of the social media account (Instagram) of the accused petitioner, and whether the videos were uploaded from her account or same are fake. The request for CCTV potages made to Safe City Lahore is also available. However, the reports are not available.

5. As far as the contention of learned Additional Prosecutor Generals that the petitioner, alongwith others, enticed and motivated the general public against the Pakistan Army, State Institutions, and anti-state activities, leading to a devastating impact on the country, is concerned, the reports whether she made such tweets and same were uploaded from her social media accounts or not is still awaited. She admitted that one controversial tweet was uploaded which was subsequently deleted through her

Twitter message. She tweeted and deleted it by admitting her wrongdoing. The petitioner, in her other Tweet after deleting the objectionable tweet, tendered apology through her tweet. The state is like a mother; one should be given a chance if she/he commits a mistake and apologizes. In these circumstances, prima facie prosecution case against the petitioner falls under the ambit of further inquiry into her guilt under Section 497(2), Cr.P.C. The learned law officer submitted that the prosecution case against the petitioner is of vicarious liability. In this regard, it is relevant to mention here that the learned trial court would see the vicarious liability of the petitioner after recording the parties' evidence.

6. For the reasons supra, we hold that the case against the petitioner is of further inquiry as contemplated under Section 497 (2) of Cr.P.C. Therefore, this petition is accepted, and the petitioner is admitted to post-arrest bail subject to her furnishing bail bonds in the sum of Rs.5,00,000/- with two sureties in the like amount to the satisfaction of the trial court.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Judge

Announced in open Court on _____

Judge

Judge

Approved for Reporting

*This order has been
dictated, pronounced,
prepared, and signed
on 18.10.2023*

*Ikram**