

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Muhammad Ali Mazhar  
Justice Musarrat Hilali

**Criminal Petition for Leave to Appeal No.1359 of 2023**

[Against the order dated 10.11.2023 passed by the Islamabad High Court, Islamabad in CrI. Misc. No.1627-B/2023]

*Zubair Saeed Sabri/Sain Zubair Shah* ...Petitioner

**Versus**

*The State thr. A.G. Islamabad and another* ...Respondents

For the Petitioner : Mr. Muhammad Ilyas Siddiqui, ASC  
For the State : Raja M Shafaqat Abbasi, DAG  
M/s Masood Bangash, SSP  
(Investigation) and Rukhsar Mehdi, SP  
(Investigation), Islamabad  
Ch. M. Razaqat Khokhar, Law Officer  
Mr. Muhammad Hanif, Inspector/IO  
For the Complainant: : In-person  
Date of Hearing : 14 February 2024

**ORDER**

**Qazi Faez Isa, CJ.** The petitioner seeks bail in case arising out of FIR No.153/2023 registered at Police Station Hummak, Islamabad, on 23 July 2023. The learned counsel for the petitioner submits that as per FIR itself, no offence as envisaged under section 295-C of the Pakistan Penal Code, 1860 ('PPC'), is made out and the complainant later himself submitted an application requiring that the petitioner be charged with sections 295-A and 298-B of the PPC. He, however, submits that the allegation which the complainant levelled does not attract even these offences. He further submits that the FIR was registered with a delay of twenty-eight hours and the investigation was not undertaken by a Superintendent of Police ('SP') as required by section 156-A of the Code of Criminal Procedure, 1898 ('the Code').

2. The complainant alleged (as per FIR) that he went to the petitioner, who was a *Pir*, to get *dum* and in his house he saw a

panaflex banner on which there were photographs, allegedly, of the Prophet and 12 Imams. The complainant does not disclose what took place between him and the petitioner in the petitioner's house. The complainant then went to the police station and asked the police to accompany him, and they entered into the petitioner's house, removed the panaflex from the wall and took it into possession.

3. Since proper assistance was not provided by the Law Officer and the *Investigation Officer*, a junior official, we sent for the concerned SP and the Deputy Attorney-General. The Senior Superintendent of Police ('SSP') accompanied them. We inquired from the SSP and the SP whether a search warrant was obtained before entering the petitioner's house and they stated that a warrant was not obtained. Since section 295-C of the PPC was mentioned as the only offence in the FIR we inquired whether the matter had been investigated by an officer of the rank of SP, as required by section 156-A of the Code, and were told that this too was not done.

4. An offence under section 295-C of the PPC must be investigated by an officer not below the rank of SP, as stipulated by section 156A of the Code, which is reproduced hereunder:

'156A. Investigation of offence under section 295C, Pakistan Penal Code.- Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295C of the Pakistan Penal Code, 1860 (Act XLV of 1860).'

Article 4(1) of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') mandates that individuals must be treated in accordance with law, which includes section 156A of the Code. And, Article 4(2)(a) states that '*no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law*'.

5. The police were required to obtain a search warrant before entering the house of the petitioner, but did not do so. The *privacy*

of home shall be inviolable mandates Article 14(1) of the Constitution, reproduced hereunder:

‘14(1). The dignity of man and, subject to law, the privacy of home, shall be inviolable.’

Without obtaining a search warrant the privacy of the petitioner’s home was violated. Article 8 of the Constitution gives paramountcy to the Fundamental Rights (including Article 14), which cannot be abridged, and if any law is made in contravention thereof it states that it shall to such extent be void.

6. Since we are dealing with offences under chapter XV of the PPC, that is, *offences relating to religion*, in this case relating to Islam, it would be appropriate to also consider relevant Islamic injunctions. Verse 27, chapter 24 (*An-Nur*) of the Holy Qur’an requires, that:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَيْهِ  
أَهْلِهَا<sup>1</sup>

‘Believers do not enter houses other than your own until you have asked permission...’

In this case the requisite *permission* was the search warrant, which was not obtained.

7. When the police itself do not abide by the law it is a matter of grave concern. And all the more so when a citizen’s liberty is involved. It is noted that in such cases the complainant, rather than the police, takes the lead, and also effectively takes over the investigation. This is done in complete derogation of the law and the Constitution. The SSP stated that he will ensure that in future the law is strictly followed. He further states that he will be examining whether disciplinary action is required to be initiated against the delinquent policemen.

8. Since the alleged offence is against religion matters have to be examined in that context. Article 2 of the Constitution stipulates that, ‘*Islam shall be the State religion of Pakistan*’ and Article 227(1) of the Constitution requires that:

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<sup>1</sup> Holy Qur’an, *An-Noor* (24), verse 27.

'227. (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.'

Mention may also be made of Article 31(1) of the *Principles of Policy* chapter of the Constitution which requires that Muslims be enabled to lead an *Islamic way of life*:

'31. (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.'

No less a person than a rightly guided Caliph, Hazrat Umar bin Khattab (may Allah be pleased with him), dropped the charge of alcohol being consumed by Muslims in their house because the house was not legally entered.<sup>2</sup> And, '*To promote unity and the observance of the Islamic moral standards*' is prescribed by Article 31(2)(b) of the Constitution. The police, in entering the petitioner's house without a search warrant, violated the law, Islamic Injunctions and moral standards.

9. Every Muslim should aspire to the moral standards of Prophet Muhammad (peace and blessings of Allah be upon him), the last Messenger of Almighty Allah. The Holy Qur'an itself testifies to his great moral character:

وَأِنَّكَ لَعَلَىٰ خُلُقٍ عَظِيمٍ<sup>3</sup>

'And you have an excellent character.'

10. In Pakistan, which is an Islamic Republic, unfortunately at times for profit, vendetta or personal publicity Islamic Injunctions

<sup>2</sup> Abu 'Abdillah Muhammad bin Ahmad al-Qurtubi, *al-Jami' li-Ahkam al-Qur'an* (Beirut: Mu'assasat al-Risalah, 2006), vol. 19, pp. 400-401.

<sup>3</sup> Holy Qur'an, *Al-Qalam* (68), verse 4.

are negated. The Holy Qur'an requires Muslims to emulate the exemplary character of the Messenger of Allah:

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ<sup>4</sup>

'You have indeed in the Messenger of Allah an example of beautiful conduct.'

'Allama Ibn 'Abidin al-Shami,<sup>5</sup> a renowned Hanafi jurist, went to great lengths to state that Muslims should emulate the Prophet's example by following his teachings, and should not try hard to find wrongdoing. We must also strive to protect the excellent reputation of the Last Messenger of Almighty Allah and abide by what he did, accepting the repentance of one who repents:

'It is not for us to impose punishments and other means of deterrence on the basis of our personal inclinations. Rather, we are bound to act on what appears to be the law of our Prophet (peace and blessings of Allah be upon him)... We cannot say that our love for the Prophet (peace and blessings of Allah be upon him) demands of us to kill the one who used foul language against him even after he repents since the foremost prerequisite of love is to follow, not to innovate. We fear that on the Day of Resurrection the Prophet (peace and blessings of Allah be upon him) might be the first one to ask about the murder of such a person. Therefore, after the accused repents, we must refrain from punishing him and to leave his matter to his Master who knows all that lies in his heart, as the Prophet (peace and blessings of Allah be upon him) would accept from people their outward embracing of Islam and would leave their decision to the One Who knows all secrets.'<sup>6</sup>

11. Prophet Muhammad (peace and blessings of Allah be upon him) was not just a great blessing for Muslims but also for all creatures:

<sup>4</sup> Holy Qur'an, *Al-Ahzab* (33), verse 21.

<sup>5</sup> 1198 AH/1783 CE – 1252AH/1836 CE.

<sup>6</sup> Muhammad Amin Ibn 'Abidin al-Shami, *Tanbih al-Wulah wa al-Hukkam* (Cairo: Dar al-Athar, 2007), p. 90.

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ<sup>7</sup>

'We sent you not, but as a Mercy for all creatures.'

He called upon his followers to emulate the Kindness of the Creator:

إِنَّ اللَّهَ يُحِبُّ الرَّحْمَ فِي الْأَمْرِ كُلِّهِ<sup>8</sup>

'Allah loves kindness in all matters.'

إِنَّ اللَّهَ رَفِيقٌ يُحِبُّ الرَّحْمَ، وَيُعْطِي عَلَى الرَّحْمِ مَا لَا يُعْطِي عَلَى الْعُتْفِ<sup>9</sup>

'Allah is kind, He loves kindness, and He rewards kindness, but does not reward harshness.'

12. When the believers were in a very small minority and the Prophet and his companions were persecuted in Mecca they sought safety in Madina.<sup>10</sup> Mecca was conquered<sup>11</sup> but this was done without spilling a drop of blood. The Prophet issued a general amnesty to all, including his oppressors and to Islam's enemies.<sup>12</sup>

13. At the Battle of Badr<sup>13</sup> some of the bitterest enemies of Prophet Muhammad (peace and blessings of Allah be upon him) were captured. The Prophet showed mercy and clemency to all, even to Suhayl bin 'Amr who had vociferously denounced him. A companion suggested that a few of his teeth be pulled out to teach him a lesson. Ibn Ishaq, the first biographer of the Prophet, recorded the Prophet's response:

لَا أَمِثْلُ بِهِ فَيَمِثِلُ اللَّهُ بِي وَلَوْ كُنْتُ نَبِيًّا. إِنَّهُ عَسَى أَنْ يَفْؤَمَ مَقَامًا لَا تَذُمَّهُ.<sup>14</sup>

'Were I to do this, Allah would do the same to me, although I am His messenger. He may one day attain such a status that you will no longer condemn him.'

The kindness and sagacity of the Prophet was proved right; Suhayl bin 'Amr helped conclude the peace treaty of Hdaybiyah at a time

<sup>7</sup> Holy Qur'an, *Al-Anbiya'* (21), verse 107.

<sup>8</sup> Sahih al-Bukhari, Kitab Istitabat al-Murtaddin, Hadith No. 6528.

<sup>9</sup> Sahih Muslim, Kitab al-Birr wa al-Silah wa al-Adab, Hadith No. 2593.

<sup>10</sup> 27 Safar, 14th Year of the Prophethood/12 September 622 CE.

<sup>11</sup> 17 Ramadan 8 AH/8 January 630 CE.

<sup>12</sup> 'Abd al-Malik Ibn Hisham al-Himyari, *as-Sirah an-Nabawiyah* (Cairo:Mustafa al-Babi, 1955), vol. 2, p. 412.

<sup>13</sup> 17 Ramadan 2 AH/13 March 624 CE.

<sup>14</sup> As reported by Ibn Ishaq's disciple Ibn Hisham. *Ibid*.

when he had not converted to Islam. After he embraced Islam he participated in many battles defending Muslims.<sup>15</sup>

14. Undoubtedly, it was the excellent character of the Prophet, emulated by the early Muslims that ensured Islam spreading throughout the world in a very short time. The miracle of its success lay in the conduct of its adherents; their honesty, love and empathy for all humanity. The ignorant and those inimical to Islam astounded by Islam's success retorted (without proof) that it was spread by the sword. Unlike the Christian European Empires the Muslim Ottoman Empire lasted the longest, for 600 years. The principle at its core and one which sustained it was inclusivity and tolerance; strict adherence to the Qur'anic command - '*there is no compulsion in religion*' - لَا إِكْرَاهَ فِي الدِّينِ<sup>16</sup> - Hatred, bitterness and violence rarely, if ever, brought anyone into Islam - *the abode of peace* - nor brought deviants on to the straight path - الصِّرَاطَ الْمُسْتَقِيمَ<sup>17</sup>. Instead all it does is to strengthen the resolve of Islam's detractors and those inimical towards Muslims.

15. Section 295-C of the PPC, for which the petitioner was initially charged, is a capital offence. If the complainant's allegations were accepted in their entirety, even then this offence was not made out. It is, therefore, surprising that the police mentioned this offence in the FIR, which can only mean that they did so under pressure of the complainant or for ulterior purposes. The only other explanation could be their gross incompetence. In all offences against religion the particulars of the offence must be clearly stated. Merely levelling such a charge attracts great odium because even if the accused is subsequently found to be not guilty, becomes inconsequential as his life has already been destroyed.

16. The offences levelled against the petitioner are those relating to the religion of Islam, therefore, it was necessary to consider some relevant Islamic injunctions. We now proceed to determine

<sup>15</sup> Abu al-Hasan 'Ali al-Jazari, *Usd al-Ghabah* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1993), vol. 2, p. 585.

<sup>16</sup> Holy Qur'an, *Al-Baqarah* (2), verse 256.

<sup>17</sup> The phrase 'straight path' appears in many verses of the Holy Qur'an, including the following: *Al-Fatiha* (1), verse 5; *Al-Hajj* (22), verse 54; *Ash-Shoora* (42), verse 52.

whether the petitioner should be given bail. The police entered the petitioner's house but did so without first obtaining a warrant; which is all the more surprising as the police was not rushing to prevent a murder or apprehend a suspect from fleeing. The illegal entry of the police into the petitioner's house also brings into question anything recovered by the police from his house, which is another legal transgression.

17. In this case the charge was also amended to sections 295-A and 298-B of the PPC. The petitioner has remained incarcerated for over seven months but his trial is nowhere near conclusion.

18. All the aforesaid factors entitle the petitioner to bail. Accordingly, the petitioner is admitted to bail in the subject case on furnishing bail bond and one surety in the sum of fifty thousand rupees to the satisfaction of the Trial Court. This petition is converted into an appeal and allowed by setting aside the impugned order in these terms.

Chief Justice

Judge

Judge

Islamabad  
14 February 2024  
*Syed Farhan Shah*

Approved for Reporting