

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

MR. JUSTICE JAMAL KHAN MANDOKHAIL

Criminal Petition Nos.149-L & 150-L OF 2022

*(On appeal against the judgment dated
24.12.2021 passed by the Lahore High Court,
Lahore in CrI.Misc.Nos.27057-B of 2021)*

Zaheer Ahmad (CrI.P.149-L/22)

Shiraz Ahmad (CrI.P.150-L/22)

... Petitioner(s)

VERSUS

The State, etc. (in both cases)

... Respondent(s)

For the Petitioner(s)
(in both cases)

: Sh. Usman Karim-ud-Din, ASC
Miss Hina Jilani, ASC
Mr. Arshad Nazir Mirza, ASC
Mirza Mehmood Ahmed, ASC

For the State

: Syed Nayyab Hussain Gerdezi, DAG
Mehmood-ul-Hasan, D.D.(FIA)
Mudassar Shah, D.D. (FIA)
Navced Aslam, S.I. (FIA)

For the Complainant

: Mr. Muhammad Shahid Tasawar, ASC

Date of Hearing

: 21.04.2022

ORDER

Mazhar Alam Khan Miankhal, J. Petitioners Shiraz

Ahmad and Zaheer Ahmed have impugned the order dated 24.12.2021, whereby bail in case FIR No. 88 dated 20.06.2019, offence under sections 295-A, 298-C PPC and section 11 of the Prevention of Electronic Crimes Act, 2016, (sections 295-B, 295-C, 34 and 109 PPC added later on) was refused to them by the learned Lahore High Court, Lahore.

2. The allegation against the petitioners, as per contents of FIR, is that they in collusion with their co-accused formed a WhatsApp in the name of *Sindh Salamat* for propagation of Quadiani faith by forwarding material and translation of Holy Quran proscribed by the government. The complainant Muhammad Irfan alleged that the accused had added him up in that WhatsApp group with ulterior motive. On the basis of material shared by the petitioners and received by the complainant, the latter lodged a complaint with the FIA, whereupon an enquiry was ordered to be conducted into the matter. Per FIR, on 27.06.2019, the FIA raided the house of Mahmood Iqbal Hashmi, co-accused of the petitioners and arrested him while recovering his Cell No. 03009468153. It was found that proscribed translation of Holy Quran was uploaded to *Sindh Group* from that mobile. Petitioner Shiraz Ahmed was arrested from his village Chak Chatha, Tehsil and District Hafizabad, where he was allegedly busy in his propagation. A cell phone, laptop, proscribed books and certain other material was recovered from him. During investigation of Shiraz Ahmed, he disclosed that it was petitioner Zaheer Ahmed, who provided him banned content through WhatsApp No. 03218808063. Zaheer Ahmed was already confined in Camp Jail, Lahore in some other case. He was arrested in the instant case on 27.02.2021.

3. Learned counsel for the petitioners contend that the very antecedents of the complainant are not clean and he is used to of being an accomplice in cases against the persons belonging to Ahmedis. To substantiate the contention, they referred to case FIR No. 245 of 2017 dated 15.03.2017, wherein the complainant was a witness. They

contended that name of petitioner Shiraz Ahmed, though, mentioned in the FIR but no specific role has been assigned to him. According to them, the name of petitioner Zahir Ahmed has not at all been mentioned in the FIR and it seems that both the petitioners have been implicated in this case only due to their religious beliefs. On merits, the learned counsel argued that the enquiry into the matter started way back in 2019 and since then the personal cell phone of co-accused Mehmood Iqbal Hashmi remained in the custody of FIA and there was likelihood of its tampering in order to connect and book the petitioners in this case. According to them, *Sindh Salamat* Group was only meant for people belonging to Quadiani faith and there were almost forty other persons as members of the Group; that the petitioner Shiraz Ahmed was just one of the Administrators of the group and he had nothing to do with sharing of proscribed and banned material in that Group because every member of the Group was free to share whatever he wanted. They maintained that mischief of sections 295-A, 295-B and 295-C PPC and section 11 of PECA are not at all attracted to the facts and circumstances of the present case and those sections have been added in the FIR in order to bring the case of petitioners within prohibitory clause. It was further argued that at the most, section 9 of the Punjab Holy Quran (Printing and Recording) Act, 2011 is attracted to the case of petitioners.

4. Learned counsel for the complainant and learned Deputy Attorney General, on the other hand, opposed the prayer of the petitioners for bail and contended that there was sufficient incriminating material in documentary shape available on record to connect the petitioners with the alleged offence; that forensic analysis of the cell

phones and material recovered from them was conducted and the report of the forensic lab fully endorses the case of prosecution against the petitioners; that the WhatsApp group formed by the petitioners was not confined to Ahmedis community only and the inclusion of complainant in that group shows that the group was being used for dissemination of proscribed and banned material of the Ahmedis community in public at large; that the contention of learned counsel for the petitioners that sections 295-A, 295-B, 295-C PPC and section 11 of PECA are not attracted in the present case and case of the petitioners is covered under section 9 of the Punjab Holy Quran (Printing and Recording) Act, 2011, being a special law, is totally misconceived because the object and purpose of latter law is obvious from its very preamble, wherein it is mentioned that the law was promulgated to ensure error-free publication of the Book and proper disposal of its damaged and worn out copies. He added that perusal of the whole Quran Act would lead us to a conclusion that it is meant for printers and publishers and not for ordinary accused. To sum up the arguments, learned counsel for the complainant and learned Law Officer stated that even otherwise all the contentions of learned counsel for the petitioners amount to deeper appreciation of evidence, which is not desirable at bail stage; that charge has already been framed and it would be more appropriate to let the trial court decide the case after scrutinizing evidence adduced by both the parties as any observation at this stage by this Court on the contentions raised by the petitioners would seriously prejudice the case of either of the party.

5. Heard the learned counsel for the parties and have perused the available record. Petitioner Shiraz Ahmed is nominated in the FIR. It

has not been denied by the petitioners' side that petitioner Shiraz Ahmed was one of the administrators of the WhatsApp Group *Sindh Salamat* along with co-accused Mehmood Iqbal Hashmi and forty other persons were also members of the Group. During the course of arguments, learned counsel for the complainant and learned Deputy Attorney General have pointed out the proscribed book *Rohani Khazain* and banned text and translation of Holy Quran shared in the Group *Sindh Salamat*. The learned Law Officer under instructions of the investigating officers present with record has confirmed that it was petitioner Zahir Ahmed, who in his capacity as Secretary *Wakalat-e-Tabsheer* disseminated banned material to petitioner Shiraz Ahmed and co-accused Mehmood Iqbal Hashmi for further sharing with public at large. He also used to provide derogatory books and guidelines to the petitioner Shiraz Ahmad through a WhatsApp number, registered in his name. According to the investigating officers, detailed forensic analysis of cell phones of both the petitioners and co-accused Mehmood Iqbal Hashmi was got conducted by the FIA and it was found that petitioner Shiraz Ahmed, being one of the administrator of the Group, used to add and remove persons not belonging to Ahmedis community in the group on the instructions of petitioner Zahir Ahmed. In these circumstances, we are of the view that apparently there is sufficient incriminating material available on record connecting the petitioners with the commission of alleged offence. So far as the other contentions of learned counsel for the petitioners are concerned, suffice it to observe that at bail stage we are not meant to dig deep into the evidence or to scrutinize factual aspects of the case, which certainly is the responsibility of the trial court and

requires evidence to be adduced from both sides. In case this Court enters into the realm of the trial court during bail stage, it would be disadvantageous for both sides and would certainly prejudice the case of either side. Therefore, we restrain ourselves from commenting on the merits of the case and find that the petitioners at this stage are not entitled for grant of bail.

6. For the foregoing, the instant criminal petitions having no merit are dismissed and leave to appeal is refused.

7. At this stage, it has been observed by us that there are certain observations in the impugned order, which have the tendency of prejudicing the case of petitioners before the trial Court. Therefore, we expect that trial of the case shall be conducted and concluded by the trial Court strictly in accordance with law, without being prejudiced/influenced by any observation contained in the impugned order of the learned High Court.

ANNOUNCED IN OPEN COURT ON 29/04/22

Islamabad,
NOT APPROVED FOR REPORTING
K. Anees/-