

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

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Syed Mansoor Ali Shah

**Criminal Petition No. 883-L of 2022**

*(Against the order dated 12.05.2022 of the Lahore High Court, Lahore passed in CrI. Misc. No. 18600-B/2022)*

*Salamat Mansha Masih.* ... *Petitioner*

**Versus**

*The State and another.* ... *Respondents*

For the Petitioner: Mr. Abdul Hameed Rana, ASC.  
*(Through video-link from Lahore)*

For the State: Ch. Muhammad Sarwar Sidhu,  
Addl. Prosecutor-General, Punjab.  
Mr. Asim Iftikhar, IO/SP, Model Town, Lahore.  
Sohail Kazmi, DSP, Model Town, Lahore.

For the Complainant: Syed Rifaqat Hussain Shah, ASC.

Date of Hearing: 23.08.2022

**ORDER**

**Qazi Faez Isa, J.** Through this petition the petitioner seeks post-arrest bail in the case arising out of the FIR No. 61 dated 13 February 2021 registered under sections 295-A, 295-B and 295-C of the Pakistan Penal Code ('PPC') at Police Station Model Town, Lahore. Section 295-A sets out the offence of '*deliberate and malicious intention of outraging the religious feelings of any class of the citizens ...insults or attempts to insult the religion or religious beliefs of that class*'. Section 295-B makes it an offence to willfully defile, damage or desecrate a copy of the Holy Qur'an. And, a section 295-C offence is committed by one who '*defiles the sacred name of the Holy Prophet Muhammad (peace be upon him)*'. Section 295-A offence prescribes a maximum imprisonment of ten years, section 295-B an imprisonment for life and section 295-C the punishment of death.

2. The incident giving rise to the registration of the case was reported to the Police at 11:20 pm on 13 February 2021 and the FIR was registered soon after at 11.30 pm. The complainant (respondent No. 2), a student of Khawaja Rafiq Shaheed Intermediate College situated on Walton Road, Lahore ('**the College**'), stated that he along with three fellow students and

friends ('**the four friends**') had come to Model Town Park ('**Park**') where the petitioner and his companion were preaching and making blasphemous remarks. The petitioner was arrested on 1 April 2021 and ever since then has remained incarcerated. His bail was declined by the learned Sessions Judge and by the learned Judge of the High Court; in declining bail, both the learned Judges placed complete reliance on the contents of the FIR and the statements of the four friends.

3. The learned counsel representing the petitioner submits that the FIR refers to a publication '*Zindagi Ka Pani*', which has no blasphemous content; that the FIR was registered after an inordinate delay of about eight hours, even though the Model Town Police Station was in the vicinity of the Park; that the four friends, all of whom admittedly had mobile phones with them, did not record the incident on their mobile phones despite it lasting for about thirty minutes; that the four friends did not disclose what they had said during the said period of thirty minutes, and, it is most unlikely that they would idly stand by and listen to someone blaspheming for half an hour; the Model Town Society deploys round-the-clock security guards at the Park but neither any guard nor any other visitor to the Park complained or recorded their statements; and that two Christians would be foolhardy to say what was alleged before four young Muslim men and in a public Park in which the majority of persons, if not all, would be Muslims.

4. The learned Additional Prosecutor-General, Punjab ('**APG**') opposes bail and states that the police report<sup>1</sup> (*challan*) was submitted, charge framed, and Trial Court has recorded the statements of five witnesses while five prosecution witnesses remain to testify. Therefore, it would not be appropriate to extend the concession of bail to the petitioner at this stage, and according to the contents of the FIR and the statements of the four friends the petitioner appears to have committed the crimes for which he is charged. Syed Rifaqat Hussain Shah, the learned counsel representing the complainant, supports the contention of the learned APG and states that the petitioner is delaying the conclusion of the trial by not cross-examining the prosecution witnesses who have already been examined.

5. We have heard the learned counsel for the parties and examined the documents on record and those produced by the learned APG. The investigation of the case was conducted by a Superintendent of Police ('**SP**').<sup>2</sup> On our query the learned APG and the SP state that the book

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<sup>1</sup> As per section 173 of the Code of Criminal Procedure, 1898.

<sup>2</sup> Section 156A of the Code of Criminal Procedure, 1898 stipulates that an offence under section 295-C of the PPC must be investigated by an officer not below the rank of a Superintendent of Police.

(*Zindagi Ka Pani*) mentioned in the FIR doesn't contain any blasphemous material. We then enquired from them whether any incriminating material was recovered from the petitioner, either at the time of his arrest or thereafter, and were informed that nothing incriminating was recovered. The SP informs us that the distance of the Park from the College, where the four friends study, and from where they had come to the Park, was about ten kilometers, but there is nothing on record to show how they got there. We were also informed that the petitioner is employed as a sweeper with the Lahore Waste Management Company.

6. We have read the FIR and the *challan*, which reproduces the contents of the FIR and does not bring forth any additional incriminating evidence against the accused. The charge was framed on 5 April 2022 by the learned Additional Sessions Judge, which is reproduced hereunder:

'That you accused alongwith you [*sic*] co-accused/Ayoub Masih (proclaimed offender) on 13.02.2021, at 03:35 pm, in Model Town Park, Lahore defiled Holy Quran and used derogatory remarks and defiled the sacred name of Holy Prophet Hazrat Muhammad ﷺ. Thus, you accused Salamat Masih and your co accused / Ayoub Masih (since P.O) have committed an offence punishable under section 295-A, 295-B & 295-C PPC, which is within the cognizance of this court.

And I hereby direct that you accused Salamat Masih be tried by this court on the above said charge.'

An examination of the charge reveals material deficiencies therein and it does not contain a number of prescribed requirements with regard to the framing of the charge.<sup>3</sup> A charge must give a brief description of the offence and a statement of essential facts which constitute the offence. The charge (as framed) combined three distinct offences into one. Each offence has separate ingredients, but the charge does not state this. The charge must convey to the accused the case he has to answer, and he must be able to properly defend the offence he is accused of having committed.<sup>4</sup> There was no allegation made (either in the FIR or *challan*) with regard to the defilement of the Holy Qur'an yet the petitioner was also charged under section 295-B.

7. The prosecution evidence against the petitioner comprises of the statements of the four friends. We have examined their testimony which commences by stating that the petitioner's co-accused produced the *Zindagi Ka Pani* book and that, '*both accused intentionally started preaching*

<sup>3</sup> Chapter XIX of the Code of Criminal Procedure, 1898 titled *Form of Charges*.

<sup>4</sup> *S. A. K. Rehmani v State* (2005 SCMR 364, para 20, pp. 381-382); *Muhammad Bux v State*, a decision of the Federal Shariat Court, (2021 MLD 1725, para. 7, p. 1730).

*Christianity*. Preaching of Christianity is not a crime nor can it be made into one because of the Fundamental Right 'to profess, practice and propagate his religion'.<sup>5</sup> They then state that both the accused spoke about the marital status of Prophet Muhammad (peace and blessings be upon him), compared it with that of Prophet Isa (peace and blessings be upon him), and made an insinuation and passed a remark about the Holy Qur'an and the Bible. We are not repeating the allegedly blasphemous allegations, which must be avoided, and also because they may needlessly hurt and enflame passions.<sup>6</sup>

8. Unfortunately, such cases receive wide publicity which has an adverse effect and may also jeopardize a fair trial. Irresponsible and sensational broadcasts and publications repeat what allegedly the accused had said or done; those repeating this may themselves be committing the same offence. Offences relating to religion are very serious offences and a section 295-C offence prescribes only the punishment of death. Therefore, utmost care must be exercised by all concerned that no injustice in the administration of justice takes place. Courts have taken notice of the fact that many a time false allegations are leveled to settle personal scores and cases are also registered for mischievous purposes or on account of ulterior motives.<sup>7</sup>

9. The offences affecting life and the human body,<sup>8</sup> before the transformation of the criminal justice system into one based on Islamic jurisprudence, were considered to be offences against the State. These offences are now primarily considered to be offences violating the rights of the victims or their heirs. A five-member Bench of the Shariat Appellate Bench of this Court<sup>9</sup> explained the said transformation:

'Under the Injunctions of Islam ... the individual victim or his heirs retain from the beginning to the end entire control over the matter including the crime and the criminal. They may not report it. They may not prosecute the offender. They may abandon prosecution of their free will. They may pardon the criminal at any stage before the execution of the sentence. They may accept monetary or other compensation to purge the crime and the criminal. They may compromise. They may accept Qisas from the criminal. The State cannot impede, but must, to its best, assist them in achieving their object and in appropriately exercising their rights.'

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<sup>5</sup> Article 20(a) of the Constitution of the Islamic Republic of Pakistan; see also the decision in *SMC No. 1 of 2014* (PLD 2014 Supreme Court 699, p. 718).

<sup>6</sup> *Punjab Religious Book Society v State*, a decision by a Bench of three learned Judges (PLD 1960 Lahore 629, 640).

<sup>7</sup> Also noted in *Muhammad Mahboob v State* (PLD 2002 Lahore 587, para 30, p. 601); *Ayub Masih v State* (PLD 2002 SC 1048).

<sup>8</sup> Chapter XVI of the Pakistan Penal Code.

<sup>9</sup> *Federation of Pakistan v Gul Hasan Khan* (PLD 1989 Supreme Court 633, pp. 684-685).

Section 345 (*compounding of offences*), and Schedule II of the Criminal Procedure Code, 1898 (**'the Code'**) were also amended and murder and most types of hurt<sup>10</sup> were made compoundable. However, no offence *relating to religion*<sup>11</sup> is compoundable (except the lesser offence of hurting the religious feelings of a person,<sup>12</sup> for which the maximum punishment that is prescribed is imprisonment for three years). With regard to the offences relating to religion the position of the State is predominant, and the State is responsible for prosecuting these offences. If in such cases a private complainant takes too keen an interest it may impinge on his credibility and may be indicative of mischief or an ulterior motive. However, in quite a few cases it has been noted that complainants grandstand and are joined in by others who try to pressurize the prosecution and the Courts. In the present case the complainant, who is a student, came to Islamabad from Lahore to oppose this bail petition; there was no need for him to do this because the case was to be attended to by the State and its law officers. And, when we were addressing queries to the learned APG and the SP, the complainant and his counsel kept providing answers to the learned APG and SP.

10. The petitioner has remained incarcerated for almost a year and a half and throughout this period (as stated above) no incriminating material was recovered from him. The SP and the learned APG state that the petitioner's mobile phone was also checked but that too did not reveal any incriminating material, or material to suggest that the petitioner had the propensity to do what he is alleged to have done. The FIR and the *challan* allege that the petitioner was preaching but there is no material to support this statement, and its veracity is undermined when admittedly, the petitioner is not stated to be a preacher, but is a simple sweeper. The entire prosecution case rests on the testimony of the four friends. However, there is nothing to corroborate their testimonies. Therefore, the question arises whether corroboration was required.

11. Corroboration means *support* or *confirmation* and corroborative evidence is some evidence other than the one it confirms.<sup>13</sup> Corroboration minimizes errors in judicial proceedings and is dictated by prudence. The object of corroboration is to ensure the conviction of the guilty and to prevent that of innocents. However, corroboratory evidence does not

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<sup>10</sup> Offences under Chapter XVI of the Pakistan Penal Code.

<sup>11</sup> Chapter XV of the Pakistan Penal Code.

<sup>12</sup> Section 298 of the Pakistan Penal Code.

<sup>13</sup> *Irshad Ahmad v State* (1990 P Cr L J 374, 383A).

convert an unreliable witness, or evidence, into a reliable one.<sup>14</sup> In this case there is only the testimony of the four friends against the petitioners. We should bear in mind the seriousness of the offences and that in respect of a section 295-C offence the only prescribed punishment is death. Therefore, prudence requires that their statements, which at this stage appear improbable, be corroborated by other evidence, which could be circumstantial, documentary and/or scientific. Islamic jurisprudence also considers the necessity of corroboration in certain cases.<sup>15</sup>

12. An accused person's Fundamental Right to a fair trial and due process<sup>16</sup> must also be ensured, and all the more so in cases for which severe punishments are prescribed. There have been instances when tempers were provoked and enflamed by provocateurs, and a mob was collected and enraged to take the law into its own hands, to hurt and even kill the accused, before he was ever adjudged guilty. The law prohibits the taking of the law into one's hands, let alone to cause hurt or death, and this protection is also fully applicable to one who may be guilty. In Islamic jurisprudence even if a person has been found guilty and sentenced to death, the sentence cannot be executed by one who is not so authorized, and if he kills the convict, he is liable for the offence of *iftiyat* (wasting the right of the State) and is to be punished.<sup>17</sup>

13. Islamic jurisprudence<sup>18</sup> considers offences relating to religion to be offences against God; they pertain to the *rights of God* in the terminology of Islamic jurists who categorize these offences as *hadd* offences. To establish the guilt of an accused in a *hadd* offence, as per Islamic jurisprudence, requires the highest, or best, form of evidence, and any doubt exonerates

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<sup>14</sup> *Director of Public Prosecutions v Kilbourne* ([1973] Appeal Cases 729) where the House of Lords held (p.746) 'Corroboration can only be afforded to or by a witness who is otherwise to be believed. If a witness's testimony falls on its own inanity the question of his needing, or being capable of giving, corroboration does not arise.' And, in *Director of Public Prosecutions v Boardman* ([1975] Appeal Cases 421) the House of Lords held (p.455), that, '...unless a witness's evidence is intrinsically credible he could neither afford corroboration nor be thought to require it. In such cases, the witness's evidence is rejected before the question of corroboration arises.' *Irshad Ahmad v State* (1990 P Cr L J 374, 385B).

<sup>15</sup> Abu-Isa al-Tirmidhi (824-892), *Sunan*, Chapter 11, Hadith No. 1180; Abu Bakr al-Sarakhsi (1009-1090), *al-Mabsut*, published by Dar al-Kutub al-'Ilmiyyah, 1997, vol. 16, p. 122.

<sup>16</sup> Article 10A of the Constitution of the Islamic Republic of Pakistan; *Naveed Asghar v State* (PLD 2021 Supreme Court 600, 618H).

<sup>17</sup> Sarakhsi *al-Mabsut*, Vol. 9, p. 121; Ibn 'Abidin al-Shami (1784-1836), *Radd al-Muhtar*, published by Mustafa al-Babi, Cairo, Vol. 3, p. 176.; Ibn 'Abd al-Barr al-Andalusi (978-1071), *al-Tamhid*, published by Ministry of Awqaf and Islamic Affairs, Morocco, 1967, vol. 21, p. 256; Abu Ishaq al-Shirazi (1003-1083), *al-Muhadhdhab*, published by Dar al-Kutub al-'Ilmiyyah, Beirut, 2002, vol. 3, 258. For instance, if a war criminal after being captured has been held liable to death punishment and a person kills him without the permission of the State, he would face punishment for committing *iftiyat*. Sarakhsi, *Sharh al-Siyar al-Kabir*, published by Dar al-Kutub al-'Ilmiyyah, 1997, vol. 3, p. 126.

<sup>18</sup> However, not so stated in the Pakistan Penal Code.

the accused. A well-known authentic *hadith*<sup>19</sup> narrated by several companions of the Prophet (peace and blessings be upon him) states:<sup>20</sup>

ادْرَعُوا الْحُدُودَ بِالشُّبُهَاتِ

'Avoid punishments in case of doubt.'

The Second Rightly-Guided Caliph, Umar ibn al-Khattab (Allah be pleased with him), reiterated this principle in the following words:

ادْرَعُوا الْحُدُودَ مَا اسْتَطَعْتُمْ

'Avoid punishments as far as you can.'<sup>21</sup>

This Court in a case under section 295-C PPC recognized this principle by stating that 'It will not be out of place to mention here that this [*benefit of doubt*] rule occupies a pivotal place in Islamic law and is enforced rigorously in view of the saying of the Holy Prophet (p.b.u.h.) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".'<sup>22</sup>

Wael B. Hallaq (1955-), Professor in Islamic Law at the Institute of Islamic Studies of McGill University, aptly observes:

'The severe sanctions applied to *hudud* offences were intended to deter (*zajr*) and were thus infrequently implemented in practice. ... Their commission, when not punished in this world, landed the offender in eternal Hellfire, an eschatological notion that tended to engender moral compliance on a deep psychological level. The extreme economy with which *hudud* were invoked was motivated by the maxim, generated from a Prophetic *hadith*, that they had to be "averted at the existence of the slightest doubt".'<sup>23</sup>

14. Abiding by Islamic jurisprudential principles, applying the constitutionally guaranteed right to fair trial and due process, and acting prudently to ensure that an innocent is not convicted wrongly in respect of offences relating to religion, when there is only the improbable oral testimony of witnesses, then there must be corroboration. Oftentimes righteous zeal, moral outrage, and/or indignation also steers the prosecution to a pre-determined destination by eclipsing the general standard of proof in criminal cases; that is, *beyond reasonable doubt*.<sup>24</sup>

<sup>19</sup> Tradition of Prophet Muhammad, peace and blessing be upon him.

<sup>20</sup> Abu-Yusuf (729-798), *Kitab al-Kharaj*, published by Dar al-Ma'rifah, Beirut, 1979, pg. 152; 'Ala' al-Din al-Haskafi (1616-1677) *Musnad Abi-Hanifah, Kitab al-Hudood*, Hadith No. 4; Abu-'Isa al-Tirmidhi (824-892), *Sunan*, Ch. 15, Hadith No. 1424.

<sup>21</sup> Muhammad ibn al-Hassan (749-805), *Kitabl al-Asl*, published by Dar Ibn Hazm, Beirut, 214, Vol. 7, p. 150.

<sup>22</sup> *Ayub Masih v State* (PLD 2002 Supreme Court 1048, 1056B).

<sup>23</sup> *Sharia: Theory, Practice, Transformation*, Cambridge University Press 2009, part II, chapter 10, p. 246.

<sup>24</sup> *Naveed Asghar v State* (PLD 2021 Supreme Court 600, 617F); *Salman Rafique v National Accountability Bureau* (PLD 2020 Supreme Court 456); *Rahmat v State* (PLD 1977 Supreme Court 515, p. 527E).

Therefore, in all cases relating to religion, the State must also proceed with meticulousness and diligently investigate the alleged crime. This is also the clear intent of the Legislature which inserted section 156A into the Code. And, this is all the more necessary when the offence(s) are not self-evident (as in the present case).

15. The investigating SP appears to have accepted the word of the four friends against that of the two accused and no reason, let alone a valid one, is given for the preference. It is prohibited for an investigating officer to discriminate or give preference on religious grounds.<sup>25</sup> The defense version should also not be ignored.<sup>26</sup> It may not be out of place to mention that the Federal Shariat Court<sup>27</sup> had noted the views of a few eminent Islamic scholars who had opined that even in cases where blasphemy was committed, if the accused had repented, he should not be punished.<sup>28</sup>

16. We were informed that the profession of the petitioner is cleaning public places, which is commendable. The religion of Islam encourages and loves cleanliness of the mind, body, and of surroundings. The Holy Qur'an states that:

إِنَّ اللَّهَ يُحِبُّ الْمُتَّوِّبِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ

'Allah loves those who are constantly repentant and loves those who purify themselves.'<sup>29</sup>

Prophet Muhammad (peace and blessings be upon him) said:

الطُّهُورُ شَطْرُ الْإِيمَانِ

'Cleanliness is half of faith.'<sup>30</sup>

The companions of the Prophet Muhammad (peace and blessings be upon him) observed that he would himself perform menial household chores.<sup>31</sup> The First Rightly Guided Caliph, Abu-Bakr (Allah be pleased with him), used to visit the house of an old blind woman and remove her rubbish and excrement.<sup>32</sup>

17. We now proceed to consider whether the petitioner should be released on bail pending the conclusion of his trial. These are the facts of the case and the evidence on record which have helped us decide this bail petition. The four friends came to the Park from their College, which is situated at a distance of ten kilometers without offering an explanation why

<sup>25</sup> Articles 14, 20, 25(1) and 26(1) of the Constitution of the Islamic Republic of Pakistan.

<sup>26</sup> *Ubaidullah v State* (1991 SCMR 1734, 1736B).

<sup>27</sup> *Muhammad Ismail Qureshi v Pakistan* (PLD 1991 Federal Shariat Court 10).

<sup>28</sup> *Ibid*, Maulana Mufti Ghulam Sarwar Qadri para. 5, p. 17; Maulana Hafiz Salahuddin Yousuf, para. 6, p. 17 and Maulana Saeed-ud-Din Sherkoti, para. 10, p. 18.

<sup>29</sup> Al-Qur'an, *surat Al-Baqarah* (2), verse 222, also verse 151.

<sup>30</sup> Muslim bin al-Hajjaj al-Qushayri (815-875), *Sahih Muslim*, Chapter 2, Hadith No. 223.

<sup>31</sup> Muhammad bin Isma'il al-Bukhari, (810-870), *Sahih al-Bukhari*, Chapter 10, Hadith No. 676.

<sup>32</sup> Ibn 'Asakir (1106-1176), *Tarikh Dimashq*, published by Dar al-Fikr, Beirut, 1995, vol. 30, p. 322.

they chose this distant Park or how they got to it from their College. Significantly, others who would be present in the Park and guards posted at the Park did not raise their accusing finger at the petitioner, nor were they associated with the investigation. The four friends testified that the petitioner was *intentionally preaching Christianity* suggesting thereby that they considered this to constitute a crime (which it is not, as stated above). Evidence of the petitioner being a preacher was also not produced which also undermines their testimony. Then the complainant took about eight hours to inform the Police, even though the police station was in the immediate vicinity of the purported crime scene. Admittedly, the petitioner who works as a sweeper is also far less educated than the four friends, making it difficult to accept that they would not have rebutted his purported assertions, and stood by silently for thirty minutes. Moreover, no incriminating material was recovered from the petitioner. All these factors make this a case for further inquiry and entitle the petitioner to bail.

18. Therefore, the petitioner is admitted to bail, subject to furnishing bail bond in the sum of fifty thousand rupees with one surety in the like amount to the satisfaction of the Trial Court. This petition is converted into an appeal and allowed by setting aside the impugned order in the said terms.

19. We have exercised extreme care not to say anything on the merits of the case which may adversely affect the case of the petitioner or the State except what was necessary to decide this bail petition. However, since the trial of the petitioner was not proceeding in accordance with the law and the Constitution, we would have failed in our duty if we had not pointed out the above-mentioned discrepancies. We expect the learned Judge of the Trial Court will attend to the same.

20. Copy of this order be sent to the Prosecution Department of all the four provinces and of the Islamabad Capital Territory for information and compliance to ensure that the investigation of offences relating to religion, under Chapter XV of the Pakistan Penal Code, are conducted in accordance with the law and Constitution of the Islamic Republic of Pakistan as highlighted and explained herein.

Judge

Judge

Islamabad  
23.08.2022  
(M. Tauseef)

Approved for reporting.