

IN THE HIGH COURT OF SINDH KARACHI

**Crl. Bail Application No. 937 of 2023**

APPLICANT : Ali Ahmed Tariq  
through M/s. Salahuddin Ahmed  
and Shahab Usto, Advocates

RESPONDENT : The State  
through Mr. Saleem Akhtar  
Buriro, Additional Advocate  
General Sindh and Mr. Talib Ali  
Memon, Assistant Advocate  
General Sindh along with  
M/s. Manzoor Ahmed Rajput and  
Ghulam Akbar Jatoi, Advocates  
for complainant.

Date of hearing : 22.05.2023

**ORDER**

**Omar Sial, J.**: The applicant is a 76 year old man who also happens to be an advocate of the Supreme Court of Pakistan. When he was born in the year 1947, his parents named him Syed Ali Ahmed Tariq. In the year 2023 i.e. 76 years later, another lawyer by the name of Muhammad Azhar Khan, Advocate claims that Tariq's name has deeply aggrieved and stressed him. He claims that his religious sentiments are hurt and that Tariq should be punished for using the word "*Syed*" in his name. He says that Tariq has committed an offence under section 295-B of the PPC. F.I.R. No. 54 of 2023 was registered under section 298-B P.P.C. at the City Court police station on 27.04.2023. This is the second, and most probably, the third, depends on how one looks at the third FIR registered against Tariq, on similar grounds, which the complainant has registered against Tariq. Tariq has approached this court directly seeking post arrest bail.

2. Mr. Salahuddin Ahmed, learned counsel for the applicant submitted that the powers of the trial court and the High Court in the grant of bail is a co-extensive and concurrent power and although the general rule is that the applicant should first approach the trial court, yet this rule can be deviated from in appropriate circumstances. Mr. Ahmed read out section 298-B P.P.C. and has argued that a bare reading of the F.I.R. in itself reveals that no offence under section 298-B P.P.C. has occurred. He argued that the punishment for the offence with which the applicant is charged, falls within the non-prohibitory clause of section 497 Cr.P.C. To the contrary, the learned Additional Prosecutor General argued that the applicant should have first approached the trial court. As far as the merits of the case were considered, learned Additional Prosecutor General was of the view that the applicant deserved no mercy and was guilty of an offence under section 298-B and 298-C P.P.C. Mr. Rajput, learned counsel for the complainant took the court through the history of section 298-B P.P.C. and further argued that it is strictly prohibited that a person from the Ahmaddya faith call himself a Muslim. He further submitted that the applicant was a repeat offender and that he knew very well about the existence of section 298-B P.P.C. Mr. Rajput also supported the argument by the State that the applicant should have first approached the trial court and that the Supreme Court of Pakistan had barred a person from seeking a post arrest bail directly from the High Court. Mr. Rajput argued that as the applicant used the word “*Syed*” in his name, he was guilty of an offence under section 298-B(c) P.P.C. I have heard the counsels. My observations and findings are as follows.

3. I will first address the technical issue raised by both, counsels for the State and the complainant i.e. the applicant could not have approached the High Court directly for seeking

post arrest bail. Mr. Buriro has relied upon judgments titled **Muhammad Siddique vs Imtiaz Begum (2002 SCMR 442)**, **Mukhtiar Ahmed vs The State (2016 YLR 40)** and **Mohammad Aslam vs Mohammad Feroze (2008 SCMR 806)** to show that grant of bail in an offence that carries a punishment that falls within the non-prohibitory clause of section 497 Cr.P.C. is not an absolute right. There is no cavil to this proposition hence no further discussion is required. Mr. Rajput, has relied upon **Muhammad Nawaz vs The State (PLD 2001 SC 809)** in support of his argument. Perhaps learned counsel has made an error in citing this judgment as the judgment does not hold that a post arrest bail application cannot be filed in the High Court directly. To the contrary, the judgment cited notes that *“The power of the High Court and the Court of Session, under section 497 Cr.P.C., to grant post arrest bail is thus co-extensive and concurrent with that of the trial court under section 497 Cr.P.C., while the power to grant pre-arrest bail under the said section is exclusive to them.”* Another case cited by Mr. Rajput is **Muhammad Ayoob vs Mohammad Yakooob (PLD 1966 SC 1003)**. With much respect I fail to see the connection of the case cited with the one at hand. In the case cited the question that came up for consideration before the Supreme Court was whether section 498 Cr.P.C. is ancillary and subsidiary to section 496 and 497 Cr.P.C. That is not an issue in the present proceedings. Mr. Rajput has next cited **Sabahat Ahmed vs The State (SBLR 2023 Sindh 746)**. This case was once again a case of pre-arrest bail in which the Court has made an observation, to which there is no cavil, that when two courts have co-extensive or concurrent jurisdiction then proprietary demands that the court of the first instance should be approached first. The last case cited was **Haq Nawaz vs The State (1969 SCMR 174)**. With much respect I fail to see how this citation is relevant. No further cases were cited in this regard.

4. This Court has concurrent and co-extensive jurisdiction with the Sessions courts for the grant of post arrest bail. Indeed, the Supreme Court of Pakistan in **Muhammad Aslam vs The State and another (1990 SCMR 1290)** has held that “*both the courts have concurrent jurisdiction and while considering a grant of bail to an accused under section 497(2) Cr.P.C., the merits of the case have to be considered though such observations may be tentative in nature.*” It is now well settled that proprietary demands that the court of first instance be approached first for bail. However, if there are compelling reasons for a High Court to do so, it may hear a post-arrest bail application directly filed before it after recording its reasons for drifting from the rule of proprietary. My reasons for hearing this application filed directly before this Court are contained in the opinion below.

5. The argument raised by counsel for complainant is that section 298-B(c) P.P.C. requires that a person professing the Ahmadiya faith will have committed an offence if he or she refers to, or addresses, any person, other than a member of the family (*ahley-bait*) of the Holy Prophet Muhammad (peace be upon him), as *ahley-bait*; hence, learned counsel contends that the use of the word “*Syed*” makes the applicant liable under the criminal law. Most surprisingly, neither counsel attempted to explain as to what exactly did the phrase *ahley-bait* mean, who exactly fell within the ambit of *ahley-bait*, what are its historical origins, how many times has the phrase appeared in the Holy Quran, how has it been used in these verses, what have the Islamic scholars to say about it? Upon a specific query also having been made in this regard, counsel were not clear on it.

6. A little bit of research by the Court appears to show that the word *ahley-bait* has been referred to in 3 verses of the Holy Quran: verse 73 of Surah Hud, verse 12 of Surah Al

Qasas and verse 33 of Surah al Ahzab. Basic preliminary reading on the subject certainly reveals that who exactly is *ahley-bait* is not a simple question to answer. Indeed, historically, Islamic scholars from different schools of Islamic thought have only partially had a unanimous opinion on who falls within the ambit of *ahley-bait*. Different schools of religious thoughts have given different ambits of people who fall within *ahley-bait*. As a corollary, who is entitled to use the word *Syed* with his name and what exactly does that word mean, requires interpretation. The one, perhaps, cannot be decided without implications on the other. The true meaning and purport of the Arabic phrase *ahley-bait* and its applicability from a religious perspective, requires deep knowledge of Islam. One would be extremely delusional if one believes that this is an issue which can be answered after hearing counsels' arguments and then a few hours of research. This is not a run of the mill criminal case where the witnesses on the challan would be *ulema-e-deen*. A consensus or an opinion cannot be reached on the matter during hearing of a bail application. I would be most hesitant to even embark on that journey of discovery as I believe that this is an issue for a recognized body of learned *ulema-e-deen* to give an opinion on. It is the learned *ulema-e-deen* whose education, knowledge, experience and wisdom on such sensitive and complex issues, is simply imperative. Drawing an analogy, deciding what the meaning and ambit of the phrase *ahley-bait* is without the assistance of the learned *ulema-e-deen*, would tantamount to a court of law determining whether a surgeon operated negligently on removing a tumor - without the court having assistance of the opinions of medical boards comprising of seasoned doctors. This decision of the recognized body of learned *ulema-e-deen* should then be subject to review by Parliament and the Courts. Such is the importance of the issue at hand. This issue requires deep thought and Islamic knowledge and wisdom. The meaning

given to the phrase can have far reaching consequences for the country at the national and international level, hence, maximum care and caution has to be taken.

7. I wholeheartedly agree with the learned counsel for the complainant that no disrespect in the glory of Islam can be shown by any person. In fact, learned counsel for the applicant was also very clear about this in his argument. There is no argument to, or ambiguity in, the fact that no Muslim can, but be clear in this regard. This Court, however, is also under a constitutional duty to protect every citizens' fundamental rights. It cannot be denied that there is a thin line between prosecution and persecution. The High Court in compliance of its constitutional duties cannot and must not permit any action initiated against any citizen of Pakistan that could even remotely tantamount to persecution. **Article 20** guarantees that: (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions, subject of course to law, public order and morality. In this regard the learned counsel for the complainant has relied on a case titled **Majib-ur-Rehman and 3 others vs Federal Government of Pakistan and another (PLD 1985 FSC 8)**. This decision of the Federal Shariat Court interpreted the words "*khatam-un-Nabiyān*" and "*khatim-un-Nabiyin*" in this case and, in my opinion, rightly reiterated that belief in the finality of the Holy Prophet is a basic pillar of faith for a person who claims to be a Muslim. The *ratio decidendi* of the judgment however is that people of the Ahmaddya faith could not call themselves Muslims or to propagate Islam of their concept as true Islam and that laws enacted with regards to Ahmadis were not in violation of Article 20 of the Constitution. The Court held that they were not. In the case in hand, the applicant has not claimed that he is a Muslim. There is a fleeting mention of the phrase

“*ahley-bait*” in this judgment and it is said that the phrase *ahley-bait*, like the word “*sahabi*” is used by Muslims for companions and members of the family of the Holy Prophet respectively all of whom were the best of Muslims. It went on to say that “*use of such sacred expressions by Qadianis in respect of the wife, members of the family, companions and successors of Mirza Ghulam Ahmad, therefore amounts to defiling them.*” This is not the situation in the present case as the applicant has not made any attempt to call the *wife, members of the family, companions and successors of Mirza Ghulam Ahmad* as *ahley-bait*. Perhaps, the learned counsel for the complainant was impacted by the language in the headnote of the judgment, which confusion is justified, as the headnote is badly worded and tends to convey a thought that was not the thought of the Court, as is evident from a read of the judgment as a whole. **Article 15** guarantees that every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof. A 76 year old man is incarcerated at the moment, hence the reference to this right. In this particular case, it is however, the applicants right under **Article 10-A** of the Constitution i.e. for the determination of his in any criminal charge against him, he is entitled to a fair trial and due process. A reference in this regard may also be made to the order passed by this Court on 16.05.2023 in this case. The accused rights under Article 10-A will no doubt be impacted. Religious beliefs of nobody should be allowed to be violated. The dignity of each person must jealously be guarded. It should also be ensured that religion is not used as a ground for persecution of any citizen of Pakistan.

8. I am well cognizant that I am deciding a bail application. I am also cognizant that certain orders I will finally make herein may amount to going beyond the cause

before me. I have felt the necessity to do so solely because of the nature of case before me. It is a subject that has the potential to invoke extreme emotions and hence one which necessarily must be handled with due care and caution while respecting people's religious sensitivities at the same time. It is better that issues such as the present one are decided at the High Court level rather than shift the burden on the learned Sessions courts. Not because that the learned Sessions and Magistrates Courts lack in competency but solely because of the reason that what I have witnessed during the hearing of this case in the High Court makes me conclude that the burden and responsibility of addressing such issues should be of the High Court. A reference in this regard may also be made to the order passed by this Court on 16.05.2023 in this case. Learned Sessions and Magistrates Courts work in a more vulnerable environment with insufficient security. The bravery of the learned judges in the Sessions and Magistrates Courts to work in a difficult environment must be applauded. However, it would be unfair to impose the burden of handling extremely sensitive issues such as the present ones on the learned Sessions and Magistrates Courts. The High Court, being the top Court of this Province, must lead by example and take this responsibility even if it leads to the Court drifting towards a minor overreach.

9. The potential sentence for which the applicant is exposed is up to 3 years. Although not bailable, the punishment falls within the non-prohibitory clause of section 497 Cr.P.C. The applicant is a 76 year old man who has all his life lived and practiced in Karachi. He is not a flight risk. There is absolutely no chance of him tampering with the evidence. Keeping in mind the facts of the case in light of the principles enunciated in **Tariq Bashir and 5 others vs The State (PLD 1995 SC 34)**, I find no exceptional or extraordinary reasons to deny the applicant bail.



10. The above reasons are the basis of me to order as follows:

(i) the applicant is admitted to bail subject to furnishing a P.R. Bond in the sum of Rs.1,000/- (One Thousand) before the learned trial Court;

(ii) the criminal trial arising out of F.I.R. No. 54 of 2023 is stayed until such time that the investigating officer of the case puts on record an opinion on the meaning and ambit of the phrase "*ahley-bait*" as used in section 298-B(c) PPC (and elaborated upon in paragraph 6 of this opinion), together with a list of learned *ulema-e-deen* who will appear as witnesses;

(iii) two F.I.Rs have already been registered against the applicant on a similar issue, no further FIR should registered against the applicant under similar sections without the permission of this Court; and

(iv) I.G. Sindh shall review the service record of the SHO, City Courts police station to determine whether he is performing his duty of maintaining religious peace and harmony in his area in a neutral, professional, sensitive and capable manner.

**JUDGE**

**23.05.2023**