

IN THE HIGH COURT OF SINDH AT KARACHI**Crl. Bail Application No. 2264 of 2023**

Applicant : Samiullah
through Mr. Deedam Gul Phulpoto, Advocate

Respondent : The State
through Mr. Altaf Ahmed Sahar,
Assistant Attorney General along with Mr. Aijaz Ali
Kalwar, Assistant Director (Legal), FIA and P.I.
Wazir Ahmed Bhutto

Complainant : Ehtesham Ahmed
through Sardar Abdul Hameed, Advocate

Date of short order: 22nd November, 2023

Date of reasons : 22nd December, 2023

ORDER

OMAR SIAL, J.: On 16.01.2023, Hafiz Ehtesham Ahmed wrote a letter to the F.I.A. stating that he became aware that a Facebook page promotes blasphemous content through a WhatsApp group. Hafiz first joined the Facebook page with a pseudo-name and then joined the WhatsApp group. His motive to join the page and group as a member was allegedly noble. According to him, he aimed to catch hold of people engaged in blasphemy. On the WhatsApp group, he conversed with an anonymous person, who subsequently—forwarded him blasphemous content on his phone.

2. Upon the complaint made by Hafiz Ehtesham, F.I.R. No. 4 of 2023 was registered under sections 9, 10 and 11 of the Prevention of Corruption Act, 2016 and sections 295-A, 295-B, 295-C, 298-A and 109 P.P.C. at the F.I.A.'s Cyber Crime Unit.

3. I have heard the learned counsels and the learned Assistant Attorney General.

4. Section 156-A of the Criminal Procedure Code requires that 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 295 C of the Pakistan Penal Code, 1860 (Act XLV of 1860). In this case, the investigation was done by an inspector, although it seems that a deputy director may have been involved in the investigation later. Be that as it may, the entire inquiry and investigation was done by an inspector. A deputy director was asked to investigate after realising that a law had been breached. The “investigation”, if one can even term it as such, by the deputy director was restricted to re-recording what the F.I.A. personnel had told the inspector earlier. There was a reason why the Code stipulated that for offences under section 295-C P.P.C., a senior officer must conduct the investigation. The legislature realised the importance of the offence and its potential to arouse emotions. A senior officer is expected to look at the case more wholly, professionally and with greater wisdom. In the present case, the deputy director rubber-stamped everything the inspector had done. The entire investigation was conducted stereo-typically and mechanically without an element of professionalism. The stipulation in law might have been followed in word but certainly not in spirit. The F.I.A. took an extremely casual approach without realising the issue's sensitivity and gravity. At this stage, however, in my opinion, whether or not a duly-empowered officer conducted the investigation will be equivalent to a deeper analysis of evidence. However, section 196 of the Code provides that no Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Pakistan Penal Code (XLV of 1860) (except section 127) or punishable under section 108A or section 153A or section 294-A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Federal Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments. In the present case, no complaint has been made by order of or under authority from either government. Once again, it was realizing the issue's sensitivity that this safeguard was built into the law.

5. In this case, no record from the cellular service provider, Telenor, has yet been obtained to confirm that the applicant is the person in whose name the company issued the SIM. While the F.I.A. claims that the phone with the SIM was recovered from the applicant's possession, a bare look at the memo of arrest and recovery shows that they leave much to be desired. F.I.A.'s casual approach is apparent. The seizure has been made during an inquiry. The record is vague on how the applicant was apprehended and then arrested. The only seizure witness who has recorded a section 161 Cr.P.C. statement does not identify the person from whom recovery was made. The seizure memo, the statements of the witnesses to the seizure, nor any other document show that the phone allegedly recovered from the applicant was sealed on the spot on 19.01.2023. On the contrary, from the seizure onwards, it seems that the phone has been changing hands freely. Whatever little evidence is on file regarding forensic analysis also does not reveal that the laboratory received the phone in a sealed condition. No call data record of the applicant has been obtained to corroborate dissemination. As a matter of prudence, a person with information about an offence committed should report it to law enforcement agencies rather than proceed to conduct a sting operation on their own, pretending to be a woman, as was the position in this case.

6. No one stops the F.I.A. from proceeding against any offence. But its choices cannot be selective. In the present case, it is the F.I.A.'s version that the whole story originates from a WhatsApp group operated by unidentified operators from a country that we have, at the state level, always considered hostile to us. The content on these groups is outright horrendous and not restricted solely to blasphemous material. There are also indications of dissemination of child pornography. The F.I.A. should investigate the blasphemy allegations, but it is not expected that a law enforcement agency be overwhelmed with emotion, not look at a potential crime wholly and professionally, and restrict their investigation to just one aspect when there are other serious ones in the situation. It should have been looked into if there is even the remotest possibility that an attempt to destabilise Pakistan is being made. If the slogans chanted inside the courtroom, abuse, hostility, and intimidation meted out to the Bench by

the complainant and his lawyer, blatant breach of all forms of etiquette and court decorum, publishing pamphlets against the Judge and circulating it to all and sundry, attempting to prevent the Court from its sincere effort to protect the fundamental rights of all citizens, is any indication, then a small step towards destabilisation has already been taken. The Court has shown immense judicial restraint in view of the clear and blatant contempt demonstrated by the complainant and his counsel. It must not be forgotten, however, that Islam teaches peace, love, respect, equality, justice and harmony. It does not support belligerence. The complainant and his counsel should introspect.

7. The F.I.A. has taken the correct step in putting the name of the applicant on the stop list at the airports. Such a move mitigates any possibility of his being a flight risk. The actors in this crime have to be closely investigated. The applicant cannot tamper with the evidence as all the evidence is already with the F.I.A. It is a matter of concern, though, that the material that Hafiz Ehtesham has received is indeed despicable and disgusting. The issue at this stage is whether the applicant created and disseminated the blasphemous content. This doubt would have been significantly mitigated if the investigation officer documented his investigation well, sealed the phone when recovered, collected evidence which would stand the test of legal scrutiny, obtained a call data record, and obtained official ownership documents. The WhatsApp snapshots show that other persons might be receiving the images, which should have been brought within the ambit of investigation, too. Why was no investigation done on the WhatsApp group and the Facebook page from where the issue arises and when, according to the F.I.A., unidentified persons from a hostile country are the operators? It is a question that completely eludes a person. Cases such as the present one have the potential to arouse a lot of emotion and create instability. It is, therefore, imperative that the investigation is professional, complete and watertight. More effort needs to be taken at all levels to uphold and protect the honour of our religion but, at the same time, also prevent false accusations and the use of religion as a pretext to create instability in the country. Enemies of the country would then succeed in their nefarious designs.

8. While admitting the applicant to post-arrest bail, on the ground that the evidence collected and how it has been collected does not permit suspending the applicant's fundamental rights and makes his case one of further inquiry, looking at the gravity of this case (apart from blasphemy, there are other aspects of extreme concern), as an exception, it would be appropriate to direct the F.I.A. to expand its investigation, seek the requisite approvals required by law, and use its best efforts to bring a watertight case to court. One good thing that has come out of Hafiz Ehtesham's efforts is that he has exposed a group of people engaged in a crime of a morally and religiously despicable nature that must not only be condemned in the strongest of words but also be ensured that every such person who is involved in these acts is taken to task. Hafiz Ehtesham's noble work in this regard is appreciated. Law enforcement agencies should, however, ensure that due process is complied with. They must understand that solving a case is very different to proving a case in court. Assistance should be sought from the offices of the learned Attorney General or the learned Prosecutor General provincial, as the case may be, to see whether the evidence collected against such persons will uphold the test of legal scrutiny. The material collected till now suggests that this is not the doing of an individual. A group is behind it, and that entire group needs to be taken down. The Director-General of F.I.A., Director General of the Intelligence Bureau and Director General of I.S.I. are requested to look at this case closely from the perspective of national security and organised crime. Let the office of the Court send a copy of this order to the officials mentioned above.

9. Above are the reasons for the short order of 22.11.2023.

JUDGE