

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.450 of 2015

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing

04.06.2015

Syed Tasawar Hussain Rizvi, Advocate for Applicant
Mr. Abrar Ali Khichi, A. P. G. Sindh

Through the instant bail application, applicant/accused Muhammad Azam Khan son of Sher Jan seeks bail after arrest in FIR No.189/2014, registered at police station Ittehad Town, Karachi West, under Sections 295-A/298-A PPC, however, in the challan police added offence under section 395-A PPC.

2. Applicant/accused approached the learned V Civil Judge/Judicial Magistrate, Karachi West, for post arrest bail, which was declined, then the applicant moved application for post arrest bail before the learned II Additional Sessions Judge Karachi West, the same was also dismissed vide order dated 02.02.2015. Thereafter, the applicant approached this Court for grant of post arrest bail.

3. Learned counsel for the applicant contended that the applicant is innocent; no offence as alleged or otherwise has been committed by him; he has been involved in this false case for ulterior motives. He further contended that the alleged offence comes within the ambit of Section 196 Cr.PC which mandatorily requires permission/sanction from the Provincial or Federal Government, which is lacking in this case. Learned counsel argued that confession allegedly made by an accused while in police custody is inadmissible evidence in view of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. He also argued that learned trial Court while relying upon the material, which is inadmissible in evidence, has declined the bail to the applicant. He lastly argued that the applicant is in custody since 04.04.2014 and the trial has still not been concluded, as such,

the applicant is entitled to concession of bail on the ground of statutory delay as well. In support of his contentions, he has relied upon the following reported cases:

1. 2012 SCMR 354 (Shabeer vs. The State)
2. 2001 YLR 774 (Ali Nawaz vs. The State)
3. 2001 MLD 807 (Muhammad Yar alias Yari vs. The State)
4. 2012 YLR 864 (Lalzada alias Lal Khan vs. The State)

4. On the contrary, learned Assistant Prosecutor General Sindh argued that the present applicant has committed the act of blasphemy and sufficient material has been recovered from the applicant, which connects him with the alleged offence. Keeping in view the heinousness of the offence the applicant is not entitled to the concession of bail. He opposed the bail application.

5. I have carefully heard the arguments of the learned counsel for the applicant as well as learned Assistant Prosecutor General Sindh, scanned the entire record and perused the case law referred to by the learned counsel for the applicant. Admittedly, compliance of sections 155 and 196 Cr.PC has not been made. Section 155 Cr.PC envisages that no police officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case. Whereas, section 196 Cr.PC envisages that no Court shall take cognizance of any offence punishable under Section 295-A PPC, unless upon complaint made by order of, or under authority from the Federal Government or the Provincial Government concerned, or some other officer empowered in this behalf by either of the two Governments. It is alleged that applicant has confessed his guilt while in police custody, such confession has no legal sanctity in the eyes of law. It is an admitted fact that accused is behind the bars since last more than one and the trial has not been concluded as yet. It is yet to be determined whether the appellant has committed the alleged offence or not?

6. In view of the above facts and on the strength of the case law relied upon by the learned counsel for the applicant, the applicant has made out a case of further inquiry. It is pertinent to mention here that yesterday (03.06.2015) prosecution was directed to assist the Court by showing a case

law to rebut the arguments of the applicant's counsel but nothing has been done in this regard.

7. For the above stated reasons, I am inclined to enlarge the applicant on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (*Rupees One Hundred Thousand*) and P.R bond in the like amount to the satisfaction of trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Gulsber/PA