

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.823 of 2023  
(Ali Murtaza .....V/s .....The State)

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<b>Date</b>	<b>Order with signature of Judge</b>
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For hearing of bail application

**12.7.2023**

Mr. Muhammad Azam Memon, advocate for the applicant.  
Mr. Khaleeq Ahmed, DAG along with Inspector Syed Faisal Ali (Assignee / I.O), Nouman Ali AD Technical, SI Iftikhar Ahmed SHO/ FIA CTW, ASI Shahrukh Shakeel FIA CTW and Aijaz Ali Kalwar Assistant Director Legal FIA CTW Karachi.

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Through this bail application, the applicant Ali Murtaza son of Nazar Muhammad seeks post-arrest bail in Crime No.01/2023, registered under Section 295A/295B/295C/109 PPC r/w Section 10/22 PECA 2016 at PS FIA CTW Karachi. Applicant's earlier Bail Application bearing No.1167/2023, was dismissed by the learned Sessions Judge Karachi East vide order dated 20.03.2023 on the premise that sufficient material in the shape of documentary evidence is available against the applicant to connect him with the alleged offenses under Sections 295A/295B/295C/109 PPC r/w Section 10/22 PECA 2016.

2. Learned counsel for the applicant contends that the very complaint is not clear about the allegations to book the applicant in the aforesaid crime. To substantiate the contention, he referred to the FIR, wherein the date and time of the alleged offense is not mentioned. He contended that the name of the applicant, though, mentioned in the FIR but no specific role has been assigned to him. According to him, the applicant has been implicated in this case only due to the personal grudge of FIA. On merits, the learned counsel argued that the inquiry into the matter started way back in the year 2022 and since then the personal cell phone of the applicant remained in the custody of FIA and there was a likelihood of its tampering at the hands of the FIA to connect and book the applicant in this case. According to him, the applicant had nothing to do with sharing proscribed and banned material in that Group because every member of the Group was free to share whatever he wanted. He maintained that mischief of sections 295-A, 295-B and 295-C, P.P.C., and sections 10 and 22 of the PECA are not at all attracted to the facts and circumstances of the present case and those sections have been added in the FIR to bring the case of the applicant within the prohibitory clause. He further submitted that there is no victim cited in the present case and no private person has come

forward to complain against the applicant, however, the FIA on its own accord has lodged the case after a considerable period. He further submitted that the applicant has not shared the blasphemous material to any social media i.e. Whatsapp / Facebook / Twitter / Instagram / Snapchat etc. and the story of the FIR is silent on this aspect. He further submitted that no inquiry has been conducted by the competent board of committee and the FIA lodged the instant FIR with mala fide intention. He lastly prayed for allowing the instant bail application.

3. Learned Deputy Attorney General, on the other hand, opposed the prayer of the applicant for bail and contended that there was/is sufficient incriminating material in documentary shape including WhatsApp data is available on record to connect the applicant with the alleged offenses of sharing blasphemous material including child pornography and sexual contents. He further submitted that forensic analysis of the cell phones and material recovered from him was conducted and the report of the forensic lab fully endorses the case of the prosecution against the applicant as the data from his WhatsApp account has been retrieved which connects him to the crime; that the WhatsApp group formed by the applicant was not confined to religious hatred only and the inclusion of the applicant in that group shows that the group was being used for dissemination of proscribed and banned material and child and sexual pornography; that the contention of learned counsel for the applicant that sections 295-A, 295-B, 295-C, P.P.C. and section 11 of PECA are not attracted in the present case, is misconceived because the object and purpose of law is obvious from its very preamble. He added that even otherwise all the contentions of learned counsel for the applicant amount to a deeper appreciation of evidence, which is not desirable at the bail stage; that 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 counsel for the applicant would seriously prejudice the case of either of the party.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. Offences relating to religion are very serious offenses and Section 295-A sets out the offense 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, Section 295-C offense is committed by one who

‘defiles the sacred name of the Holy Prophet Muhammad (Peace Be Upon Him)’. Section 295-A offense prescribes a maximum imprisonment of ten years, Section 295-B imprisonment for life, and Section 295-C the punishment of death.

6. To see whether the basic ingredients of the aforesaid offenses are attracted in the present case, it is expedient to have a glance at Sections 10 and 22 of the PECA 2016, which provide as under:-

*Section 10. Cyber terrorism. Whoever commits or threat to commit any of the offences under sections 6, 7, 8 or 9, where the commission or threat with intent to-*

*(a) coerce, intimidate, create a sense of fear, panic or insecurity in the (government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society ; or*

*(b) advance inter-faith, sectarian or ethnic hatred; or*

*(c) advance the objectives of organizations or individuals or groups proscribed under the law. shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine which may extent to fifty million rupees or with both.*

*Section 22. Spamming.-(1) A person commits the offence of spamming, who with intent transmits harmful, fraudulent, misleading, illegal or unsolicited information to any person without permission of the recipient or who causes any information system to show any such information for wrongful gain.*

*(2) A person including in institution or an organization engaged in direct marketing shall provide the option to the receipt of direct marketing to unsubscribe from such marketing.*

*(3) Whoever commits the offence of spamming as described in sub-section (1) by transmitting harmful, fraudulent, misleading or illegal information, shall be punished with imprisonment for a term which may, extend to three months or with fine of rupees fifty thousand which may extend upto rupees five Million or with both."*

*(4) Whoever commits the offence of spamming as described in sub-section (1) by transmitting unsolicited information, or engages in direct marketing in violation of sub-section (2), for the first time, shall be punished with fine not exceeding fifty thousand rupees, and for every subsequent violation shall be punished with fine not less than fifty thousand rupees that may extend up to one million rupees.*

7. The above brings the act making and posting the pictures/videos under PECA and the relevant sections are reproduced as under:-

*20. Offences against dignity of natural person---(1) whoever intentionally and publically exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three*

years or with fine which may extend to one million rupees or with both: provided that nothing under this sub-Section shall apply to anything aired by a broadcast media or distribution service licensed under the Pakistan Electric Media Regulatory Authority Ordinance, 2002 (XIII of 2002)

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction for blocking access to such information referred to in sub-Section (1) and the authority on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

21. Offences against modesty of a natural person and minor (1) Whoever intentionally and publically exhibits or displays or transmits any information which---

(a) superimposes a photograph of the face of a natural person over any sexually explicit image or video, or

(b) includes a photograph or a video of a natural person in sexually explicit conduct; or

(c) intimidates a natural person with any sexual act, or any sexually explicit image or video of a natural person: or

(d) cultivates, entices, or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge. Or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

(2) Whoever commits an offence under sub-Section (1) with respect to a minor shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees. Provided that in case a person who has been previously convicted of an offence under sub-Section (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-Section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

24. Cyberstalking.-(1) A person commits the offence of cyberstalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the internet, website, electronic mail or any other similar means of communication to---

- (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person.
- (b) Monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication.
- (c) Watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) Take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.

(2) Whoever commits the offence specified in sub-Section (1) shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both.

Whoever intentionally and publically exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both.

Provided that nothing under this sub-Section shall apply to anything aired by a broadcast media or distribution service licensed under the Pakistan Electro.

7. Tentative assessment of record reflects the following aspect of the case: -

- i. Several social media accounts have been involved in disseminating blasphemous and sectarian material on social media. During cyber patrolling, it transpired that Mobile No.0312-3311961 was active on social media including WhatsApp groups and further involved in disseminating blasphemous and sectarian material. The aforesaid mobile number was used as one of the active members of the WhatsApp group namely "Mazhabi Lazzat" and further publicizing blasphemous material in pictorial form.
- ii. The said mobile i.e. OPPO A7 (Android Phone) IMEI No.867813041862853/867813041862846 SIMs No.0312-3311961 and 0325-8315880 was seized under seizure memo.
- iii. The pictures extracted from the WhatsApp group from the aforesaid mobile number have been placed on record.
- iv. The aforesaid mobile number was sent to Cyber Crime Wing (CCW) FIA Islamabad to obtain subscriber information.
- v. CCW provided credible information including the CNIC of the applicant who was allegedly using the aforesaid cell number.

- vi. The NADRA has also verified the CNIC of the applicant.
- vii. During forensic analysis, the FIA found blasphemous material about the religion Islam, the Holy Quran, and the Holy Prophet (PBUH), suspect artifacts are found in Whatsapp Business sent folder of the evidentiary item.
- viii. Child pornography material has been found in the evidentiary item.
- ix. Gmail account configured namely 'memonmurtaza969@gmail.com' in the evidentiary item.
- x. Whatsapp business social media application appears to be deleted.
- xi. Not found Pictures and Videos created/recorded/made by the accused person himself through the camera of the mobile phone regarding blasphemous material about the Holy Quran.
- xii. FIR was lodged on 28.2.2023 based on Inquiry No.57/2022 dated 29.4.2022 regarding disseminating blasphemous material on WhatsApp.
- xiii. During the inquiry, the personal mobile (Android Phone) OPPO A7 with active two SIMs No.0312-3311961 and 0325-8315880 was recovered from the applicant.
- xiv. The above material prima facie connects the applicant in outraging religious feelings through the disseminating of blasphemous material against religion besides the applicant has also been allegedly involved in keeping material/contents of child pornography in his mobile phone and attempted to destroy the same by way of deleting all above data from his mobile phone which has now been recovered from his mobile phone by forensic export of the FIA Cyber Crime Karachi.
- xv. The applicant was arrested on 28.2.2023 by the FIA and his original CNIC was also recovered.
- xvi. PWs have supported the prosecution case.
- xvii. There is no ill will alleged against the FIA officials.
- xviii. The accused disclosed that upon receipt of FIA's Call notice u/s 160 Cr.PC deleted all his mobile data and various Android applications including WhatsApp business, Facebook and Facebook Messenger, etc. through which he was disseminating all the offensive material as was assured that the same could not be retrieved.
- xix. Accused further disclosed that at first, he created Facebook ID in his name against his Mobile No.0312-3311961 which was blocked by Facebook due to sharing offensive material. Later on, he created another Facebook ID titled "Zalim Mard" which was again blocked by Facebook. Thereafter he created another Facebook ID titled "Mazhabi Hindu Pandit" against his other number 0316-3632373 which was also blocked by Facebook for violating its policies.
- xx. After blacklisting his mobile SIM numbers, he created another Facebook ID titled "Bibi Syeda Mazhabi" by taking the mobile phone of his sister-in-law without her consent and knowledge. His sister-in-law "Heer Firdous" was using SIM No.0317-1351119 which was registered in her husband's name i.e. Mujahid Memon. Mujahid Memon during his examination stated

that the accused is his family relative and the husband of his sister-in-law. He further stated that her wife is using the above SIM in a simple mobile phone (None an Android/keypad phone) and the fact of creating a Facebook ID by the accused against their number came to his knowledge when the accused called him (during FIA remand) and asked to share One Time Permission (OTP) code against his above number and disclosed that he has created a Facebook ID against the above number and disclosed that he has created a Facebook ID against the above number. Till the time of the seizure of the mobile phone of the accused, he was using his Facebook ID "Bibi Syeda Mazhabi" which was found active and retrieved on the plantation of accused Ali Murtaza.

- xxi. The above-mentioned recovered Facebook account/ID with a password against sent to FIA Cyber Crime's Forensic Lab for further examination and extraction of incriminating content/data and the forensic expert after scientific examination of the said Facebook ID retrieved/extracted a huge garb of blasphemous contents/material comprising upon 64 GB.

9. Although, the offenses with which the applicant is charged do not fall within the ambit of the prohibitory clause he is involved in a heinous offense and committed the crime against society. Primarily in every case which does not fall within the ambit of the prohibitory clause bail cannot be claimed as a matter of right, and in exceptional circumstances, the same can be withheld. In this case, prima-facie, the applicant by his act is spreading obnoxious evil in the society and such an act must be discouraged and devastated with iron hands to make the society peaceful.

10. During the investigation, a technical analysis of the applicant's phone was also conducted according to which alleged picture and others obnoxious material including sexual contents were found available. Prima facie sufficient material is available on the file to connect the applicant with the heinous offenses.

11. The guiding principles governing bail are clear in its terms. Section 497(1) Cr. P.C provides that an accused shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment for ten years. This part of Section 497(1) Cr. P.C which prohibits the grant of bail in certain offenses is popularly known as the prohibitory clause of Section 497(1) Cr. P.C. The exceptions for refusing bail in offenses that do not fall within the prohibitory clause of Section 497(1) Cr. P.C are, therefore, also applicable to the accused who pray for bail under the first proviso to Section 497(1) Cr. P.C in an offense falling within the prohibitory clause. The exceptions provided in the aforesaid Section are well-settled by several judgments of the Supreme Court . There is a likelihood of the accused i.e. (qa) absconding to escape trial: (b) tampering with the prosecution evidence or influencing the prosecution witnesses to

obstruct the course of justice; or (c) repeating the offense keeping in view his conduct, nature of the offense or the desperate manner in which he has prima facie acted in the commission of the offense.

12. I am cognizant of the fact that the persons involved in the commission of white-color offenses are usually professional and there is a likelihood that they would repeat the offence if enlarged on bail. In this case, the accused used his cell phone which was full of blasphemous and sexual contents, however, the accused managed to delete all the data from his cell phone and the FIA personnel apprehended him, and his cell phone was sent to the Cyber Crime Wing of the FIA and the deleted data was retrieved which prima facie connects the applicant with the alleged crime and all the aforesaid aspects of the case shall be dealt with by the trial Court when the evidence of the Investigating Officer is recorded.

13. I have examined the record of the case carefully and do find sufficient material that would attract the above exceptions to decline the request of the applicant to enlarge him on post-arrest bail at this stage for the reason that all the P.Ws have supported the version of the complainant as such prima facie sufficient material in the shape of recovery of data of blasphemous material and sexual contents from his cell phone is available on the record against the applicant to connect him with the alleged offense.

14. Primarily at the bail stage only tentative assessment is to be made and nothing has been brought on record to show any ill-will or malafide on the part of the complainant to book the applicant in the aforesaid crime.

15. In the present case, the allegations against the applicant are supported by technical evidence thus, I do not feel persuaded to receive the applicant's bail plea with favor in discretionary jurisdiction so far as the allegations against the applicant are concerned.

16. In view of the above learned counsel for the applicant has failed to make out a good case for the grant of post-arrest bail in light of Section 497 Cr.P.C. In such circumstances, the instant Criminal bail Application stands dismissed.

17. The learned trial Court is directed to expedite the trial and examine the Investigating Officer and material witnesses within one month, at least the complainant must be examined in the intervening period. In case of non-compliance strong reasons shall be furnished, thereafter the applicant would be at liberty to repeat the bail, and the tentative observation



recorded hereinabove will not come in his way so far as a fresh bail application is concerned.

18. These are the reasons for my short order dated 12.7.2023 whereby the bail application was dismissed.

JUDGE

Shahzad  
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