

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Cr. Misc. Transit Bail No.3899-P/2021.

ORDER

Date of hearing : 19th November, 2021.

Petitioner (Sana Ullah) : By M/S Tariq Khan Hoti and Shah Hussain, Advocates.

Respondent(s) : Mr. Amir Javed,
Additional Attorney General for the Federation along with M/S Inam Gandapur, Additional Director, Rana Abid, Shahbaz Noor, Deputy Directors and Rana Wajid, Assistant Director, CTW, Islamabad.

Syed Sikandar Hayat Shah,
Additional Advocate General for the state.

QAISER RASHID KHAN, CJ:- The accused-petitioner namely Sana Ullah seeks post arrest transit bail in case FIR No.10/2021, dated 04.08.2021, under sections 295-C/298-A/34/109 PPC/ 7ATA read with section 20 of PECA, 2016, registered at police station FIA, CTW, Islamabad.

2. The learned counsel for the accused-petitioner contends that initially the latter had approached the learned Administrative Judge, Anti-Terrorism Courts, Peshawar for his release on bail in the case FIR ibid through a post arrest bail application but the same was returned to him for want of jurisdiction to entertain the same as the case FIR is registered

at Islamabad. Further contends that since the accused-petitioner has got no other adequate remedy, therefore, he may be allowed post arrest transit bail, so as to appear before the competent court of law at Islamabad.

3. As against that, the learned Additional Attorney General states that the learned Anti Terrorism Court Peshawar has ample power to entertain the post arrest bail application of the accused-petitioner in view of the notification No.8/12/2015-Law, dated 23.09.2015 issued by the Government of Pakistan, Ministry of Interior, Islamabad but astonishingly, the learned Anti Terrorism Court, Peshawar returned the bail application on the ground of lack of jurisdiction. Further states that after the arrest of the accused-petitioner on 5.8.2021, his physical custody was granted by the learned Anti-Terrorism Court at Peshawar and thereafter, sent him to the Central Jail, Peshawar under section 54 of the Criminal Procedure Code. In support of his contentions, the learned Additional Attorney General has produced order dated 3.11.2021, whereby bail has been granted by the learned Judge, Anti-Terrorism Court-1, Peshawar to Farhad Ullah accused involved in a similar case FIR No.34/2021, dated 30.10.2021 of police station FIA, CTW, Islamabad.

4. Arguments heard and the available record perused.

5. As per the FIR ibid, it was the complainant namely Suleman, who lodged a complaint against the accused-petitioner to the FIA Cyber Crime Islamabad on 23.2.2021 wherein he alleged that the accused-petitioner had shared blasphemous content from his cell number in a Whatsapp group known as "Ilhad Bamuqabala Islam". A proper inquiry was conducted by the FIA Authorities in the matter. After completion of the inquiry, they reached to the conclusion that the accused-petitioner had indeed shared blasphemous pictures of the Holy Prophet Hazrat Muhammad (PBUH) in the said whatsapp group and accordingly, the case FIR ibid was lodged against him.

6. At this stage, it would be more apt to refer to sections 4 & 5 of the Federal Investigation Agency Act, 1974 (VIII of 1975), which read as under :-

"Section-4. Superintendence and administration of the Agency:-

- (1) The Superintendence of the Agency shall vest in the Federal Government.
- (2) The administration of the Agency shall vest in the Director General who shall exercise in respect of the Agency such of the powers of an Inspector General of Police under the Police Act, 1861 (V of 1861), as may be prescribed by rules.

Section-5. Powers of the members of the Agency:-

- (1) Subject to any order which the Federal Government may make in this behalf, the members of the Agency shall, for the purpose of an inquiry or investigation under this Act, have throughout Pakistan such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to

the investigation of offences under the Code or any other law for the time being in force.

- (2) Subject to rules, if any, a member of the Agency not below the rank of a Sub-Inspector may, for the purposes of any inquiry or investigation under this Act, exercise any of the powers of an officer-in-charge of a Police Station in any area in which he is for the time being and, when so exercising such powers, shall be deemed to be an officer-in-charge of a Police Station discharging his functions as such within the limits of his station.
 - (3) Without prejudice to the generality of the provisions of the sub-section (1) and sub-section (2), any member of the Agency not below the rank of Sub-Inspector authorized by the Director General in this behalf may arrest without warrant any person who has committed, or against whom a reasonable suspicion exists that he has committed, any of the offences referred to sub-section (1) of Section 3.
 - (4) For the purpose of the exercise by the members of the Agency of the powers of an officer-in-charge of a Police Station, "Police Station" includes any place declared, generally or specially, by the Federal Government to be a Police Station within the meaning of the Code.
 - (5) If, in the opinion of a member of the Agency conducting an investigation, any property which is the subject-matter of the investigation is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such member may, by order in writing, direct the owner or any person who is, for the time being, possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that member and such order shall be subject to any order made by the Court having jurisdiction in the matter.
 - (6) Any contravention of an order made under sub-section (5) shall be punishable with rigorous imprisonment for a term which may be extend to one year, or with fine, or with both.
- 5-A. Certain Officers of the Agency deemed to be public Prosecutors: Notwithstanding anything contained in any order law for the time being in force the Assistant Directors (Legal) and the Deputy Directors (Law) of the Agency shall be deemed to be Public Prosecutors and shall be competent to institute and conduct any proceedings in cases sent up for trial by the Agency in the Special Courts constituted under any law and the courts

subordinate to the High Court. (Added through FIA (Amendment) Ordinance 2002)

7. In view of the above provisions of law, the Government of Pakistan, Ministry of Interior has issued a notification No.8/12/2015-Law, dated 23rd September, 2015, whereby, the office of the Director, Counter Terrorism Wing, FIA Headquarters, Islamabad has been declared as a Police Station for the purposes of the Code of Criminal Procedure (Act-V of 1898) and its jurisdiction extended to the whole of Pakistan to inquire, investigate and prosecute cases registered under Protection of Pakistan Act, 214, Anti-Terrorism Act, 1997, Anti Money Laundering Act, 2010 or any other relevant law related to terrorism, terrorist financing and cyber crimes/terrorism.

8. It is evident from the notification No.8/12/2015-Law, dated 23.09.2015 issued by the Government of Pakistan, Ministry of Interior that the Counter Terrorism Wing, FIA Headquarters, Islamabad being the police station for the purposes of Code of Criminal Procedure (Act-V of 1898) shall register the cases against the accused under the Acts mentioned therein and the same shall be tried by the competent court of law of the Province where the offence is committed.

9. Since the complainant Suleman had lodged a complaint to the FIA Cyber Crime Islamabad against the accused-petitioner for sharing blasphemous content through his

cell phone in a whatsapp group "Ilhad Bamuqabala Islam", therefore, the Federal Investigation Agency, Counter Terrorism Wing, Islamabad has accordingly lodged the ibid FIR against the accused-petitioner after conducting a proper inquiry being competent under the notification dated 23.09.2015.

10. Besides the other sections of law, the accused-petitioner has also been charged under section 7 of the Anti-Terrorism Act, 1997 in the FIR ibid, therefore, the learned Anti-Terrorism Court at Peshawar has the jurisdiction to try the case of the accused-petitioner against whom the FIR has been lodged by the Counter Terrorism Wing, FIA Headquarters, Islamabad. In this backdrop of the case, I hold that the learned Anti-Terrorism Court at Peshawar is competent to entertain the bail petition of the accused against whom the FIR has been lodged by the Counter Terrorism Wing, FIA Headquarters, Islamabad under the relevant provisions of law. Accordingly, the accused-petitioner is at liberty to file a fresh post arrest bail petition before the learned Anti-Terrorism Court, Peshawar which will of course, be decided on its own merits.

11. This petition stands disposed of in the above terms.

Announced.
Dated: 19.11.2021.



CHIEF JUSTICE