

IN THE COURT OF SESSIONS JUDGE, MALIR KARACHI

Cr. Bail Application in S.C No. 2303/2023.

1. Muhammad Hammad Jameel son of Muhammad Jameel Ahmed,
2. Basharat Ali Shah son of Barkat Ali Shah.....Applicants/Accused.

Versus

The State

..... Respondent

F.I.R No. 13/2023
PS: FIA CCC Karachi.
U/S: 9, 10 & 11 of PECA 2016
R/w 295-A, 295-B, 295-C,
298-A & 34 PPC.

Mr. Aftab Ahmed, Advocate for Applicants/Accused.
Mr. Saifullah, Advocate for the complainant.
Mr. Aijaz Ali Kalwar, Learned A.D Legal FIA.

Cr. Bail Application in S.C No. 2303/2023

Faraz Ahmed Jafferi son of Laiq Ahmed Jafferi,.....Applicant/Accused.

Versus

The State

..... Respondent

F.I.R No. 13/2023
PS: FIA CCC Karachi.
U/S: 9, 10 & 11 of PECA 2016
R/w 295-A, 295-B, 295-C,
298-A & 34 PPC.

Mr. Faiz Muhammad Awan, Advocate for Applicant/Accused.
Mr. Saifullah, Advocate for the complainant.
Mr. Aijaz Ali Kalwar, Learned A.D Legal FIA.

Cr. Bail Application in S.C No. 2303/2023

Daniyal Agha Mazandurani s/o Agha Amjad
Mazandurani,.....Applicant/Accused.

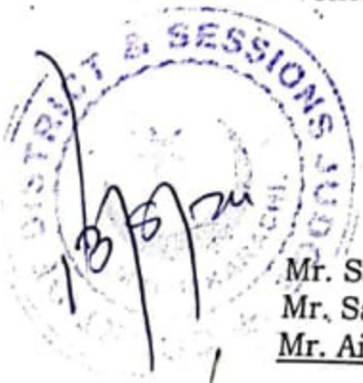
Versus

The State

..... Respondent.

F.I.R No. 13/2023.
PS: FIA CCC Karachi.
U/S: 9, 10 & 11 of PECA 2016
R/w 295-A, 295-B, 295-C,
298-A & 34 PPC.

Mr. Sathi Ishaque, Advocate for Applicant/Accused.
Mr. Saifullah, Advocate for the complainant.
Mr. Aijaz Ali Kalwar, Learned A.D Legal FIA.



Cr. Bail Application in S.C No. 2303/2023

Arshad son of Asghar Khan,

.....Applicant/Accused.

Versus

The State

Respondent

F.I.R No. 13/2023

PS: FIA CCC Karachi.

U/S: 9, 10 & 11 of PECA 2016

R/w 295-A , 295-B, 295-C,

298-A & 34 PPC.

Mr. Fayaz Samoor, Advocate for Applicant/Accused.

Mr. Saifullah, Advocate for the complainant.

Mr. Aijaz Ali Kalwar, Learned A.D Legal FIA.

Cr. Bail Application in S.C No. 2303/2023

Naveed Ahmed son of Naseem Khan,.....Applicant/Accused.

Versus

The State

Respondent.

F.I.R No. 13/2023

PS: FIA CCC Karachi.

U/S: 9, 10 & 11 of PECA 2016

R/w 295-A , 295-B, 295-C,

298-A & 34 PPC.

Mr. Rashid Hussain, Advocate for Applicant/Accused.

Mr. Saifullah, Advocate for the complainant.

Mr. Aijaz Ali Kalwar, Learned A.D Legal FIA.

Cr. Bail Application in S.C No. 2303/2023

Syed Noman Ali son of Anwar Ali,Applicant/Accused.

Versus

The State

Respondent.

F.I.R No. 13/2023

PS: FIA CCC Karachi.

U/S: 9, 10 & 11 of PECA 2016

R/w 295-A , 295-B, 295-C,

298-A & 34 PPC.

Mr. Sarfaraz Khatti, Advocate for Applicant/Accused.

Mr. Saifullah, Advocate for the complainant.

Mr. Aijaz Ali Kalwar, Learned A.D Legal FIA.

ORDER

22-07-2024

1. By this order, I intend to dispose of above post arrest bail applications moved on behalf of above-named applicants/accused, involved

in offences punishable under sections 9, 10 & 11 of PECA 2016 R/w 295-A, 295-B, 295-C, 298-A & 34 PPC of P.S FIA Cyber Crime Circle Karachi.

2. Brief facts of the prosecution case in nutshell are that on the basis of a complaint made by Muhammad Ali Siddiqui regarding dissemination/displaying blasphemous contents i.e. images, sketches, graphics, pictures and videos on social media, thereby the accused persons defiled the sacred name of the Holy Prophet Hazrat Muhammad (ﷺ), and the holy personalities Umhatul Momenen. Ahle-Bait. By virtual images, the accused persons have also allegedly defiled the texts from the Holy Quran and used the name of Allah, Hazrat Muhammad (ﷺ) and other holy personalities in derogatory manner and by such malicious acts insulted the religion feelings of all sects of Muslims. After receipt of the complaint, an enquiry was conducted by FIA Cyber Crime Karachi, in which unspecified numbers of accounts on WhatsApp running in hundreds were identified being used by thousands of peoples for spreading such contents on social media. FIA identified and arraigned 47 accused in 11 different FIRs registered by FIA Karachi. The accused persons were arrested, and it was discovered in the investigation apparently carried out by Deputy Director FIA, that accused by using their mobile phones from which either these images, sacrilegious in nature, were edited and made viral on social media such as FB messengers etc., and/or forwarded after receipt of the same to and from other cell phones. From the applicants/accused, the mobile phones were recovered which were sent to Forensic examination and the report is stated to be in positive.

3. Learned counsels for the applicants/accused, besides argued on the grounds taken in respective bail applications, emphasized that co-accused (1) Muhammad Mugheez, (2) Haseeb Jarwar, (3) Hafiz Khawaja Ammar Ahmed and (4) Wahid Gul have already been granted bail from the Honorable High Court vide order dated 05.06.2024, thus the cases of present applicants/accused are identical even stand on better footings, therefore, following the **rule of consistency**, the applicants/accused may be admitted on bail in the circumstance.

4. On the other hand, the AD-legal for FIA, accompanied with the learned counsel for the complainant, strongly opposed these bail applications and stated that offences are serious, outraging the feelings of Muslims, adding that the examination in chief of the complainant was recorded and cross-examination was reserved. However, the counsels

¹ Indeed conducted by a sub-inspector

intentionally chose not to cross-examine the complainant on the pretext or the other and the rule of consistency does not apply in this case, as the case of each individual has to be seen from the peculiar facts and circumstances, relevant to that accused, therefore, the bail of the applicants/accused may be dismissed. he however, acknowledges, that all accused persons have been implicated and the modus operandi to collect forensic evidence in respect of each accused is same and alike. He conceded that the enlarged accused persons have been succeeded to get bail after dismissal of their applications from this court. He relied on case law reported in 2024 S C M R 1071. The learned counsel for the complainant has, supported the arguments.

6. I have heard the arguments of both the side and for forming my tentative view perused the record. I have come by the two orders recently passed by the two different single benches of the Hon'ble Sindh High Court, in the similar circumstances prevailed in this matter, which I am bound to follow in letter and spirit, as ordained in the Article 189 of the Constitution of Pakistan, which reads as follows;

"Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan."

7. Although in the bail matters, each case builds separate sets of facts and circumstances, nevertheless, while keeping the matter in hand, on the yardstick of that orders, I found the same obtrusive and blatant despoliation, committed by the FIA, during investigation, leaving inexplicable lacunas, bracketing the case of applicant as of further inquiry. These lacunas as concisely pointed in those two Bail Orders, also permeated in this case, are being relied, and bullet points as extracted are highlighted as under.

8. First is the order in CrI. Bail Application No. 2264/2023 (The Samiullah Vs The State) in which the bail was granted, and the **Supreme Court of Pakistan** maintained it, when the complainant approached for the cancellation of bail.

- The violation of section 156 Cr. PC (also flatteringly detectible in the instant case)

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SINDH
12/07/2024

- The violation of section 196 of the Criminal Procedure Code. (In the present case too, no complaint has been made by order of or under authority from either government).
- No record from the cellular service provider to find out the subscriber of the SIM. (the same lacuna also appeared here).
- The record is vague as how the applicant was apprehended and then arrested. (in this case, the arrest seems precedes the FIR).
- The phone has been changing hand freely. (In this case, seizure memo even does not does disclose, whether the phone was sealed or not).
- No call data record of the applicant has been obtained to corroborate dissemination. (the same wanting finds here).
- The 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 scrutiny, obtained a call data record, and obtained official ownership documents. (The like anomalies also stumbling in this case).
- The WhatsApp snap shots show that other persons might be receiving images, which should have been brought within the ambit of investigation. (the investigation in this case too is silent on that aspect).

Below are the extracts from **Cr. Bail Applications 2752/2023** along with three other bail applications. These are more relevant being directly in connection with this case and if the role of applicants/accused compared with the enlarged accused following similarity is also detected.

- However, the question whether the data extracted from the phones was edited by the applicants or simply forwarded after receipt or the fact whether such data is fake or genuine has not been dilated upon in the report, and same is yet to be determined in trial. (The investigation on that aspect of the matter is still awaiting).
- The applicants were arrested in May 2023.
- The entire evidence, as agreed by all the present, is based on documents, such as forensic lab report, the phones etc. Therefore, there is not chance that such evidence is likely to be tempered. (same prevails here).
- I also rely the paragraph No. 4 of that order in the said Cr. B.A No. 2752/2023, which I have already stated that it relates to the same session case in which the other accused persons are now also claiming bail. The relevant part of the order is reproduced as under: -

DISTRICT & SESSIONS JUDGE
[Signature]

21/05/23

"The case is already posted for evidence and it is reported that the forensic expert who examined the alleged phones **retrieved from the applicants has not been made witness in this case due to bar under section 510 Cr.P.C. But the question whether in the peculiar circumstances of the case where the only incriminating piece of evidence has genesis in his report, his examination as a witness is relevant or not needs to be replied. More so, applicability of Section 510 Cr.P.C. In this case, when the relevant forensic Lab pertains to FIA itself and one of its officials has issued the lab report would be a circumstance before the trial Court to determine first before determining culpability of the applicants in this case.**"

9. Having relied on the above case-law indeed of assimilating events, the present applicants may also claim, to be enlarged on bail, as **'Rule of Consistency'** predominates in the matters of applicants, besides it is also against the **'Rule of Propriety'** and the Article 10-A of the Constitution of Pakistan, that on the same offences and in the similar circumstances, one set of the applicants-accused would face trial on the same charge of allegations, while enjoying freedom and the bail to the other set of the accused persons would deny, merely on unsustainable resistance of the prosecution, failing to distinguish the circumstances of the case in respect of the present applicants. The case law relied by the learned A.D Legal for FIA bears distinguishable facts as in that case the accused, who were granted bail in murder case, on the ground that they were not present on the spot and applicants/accused whose bail was declined by the Honorable Lahore High Court and thereafter, maintained by the Honorable Supreme Court of Pakistan was found present at the spot, however, perusal of the record of this case, it is much transpired that the cases of the present applicants/accused are at par with the accused persons enlarged in bail. Needless to say that what has been discussed above, there are also sufficient grounds for further inquiry into their guilt. Accordingly, they are admitted to bail subject to furnish solvent sureties in the sum of Rs.200,000/- (Rupees Two lacs) each and P.R bond in the like amount to the satisfaction of this Court.

18/8/24
21/8/24

10. Adhering to the order passed in the Cr. B.A No. 2752/2023 the applicants are also required to surrender their passports and the FIA is directed to ensure that the names of the applicants be placed ECL/stop list at the airports. The prosecution will also be at liberty to move for the cancellation of bail in case if the applicants misuse such concession in the manner which might expose them within the mischief of section 497(5) Cr.P.C.

11. Before parting with, I must appreciate the role of the complainant, who made a sincere effort not only to unearth such a sacrilegious and impious crimes, which would not only helpful to bring to book the villainy characters involved, and running rackets on social media groups with nefarious schemes, profoundly injuring our religious feelings which indeed is excruciating. The complainant has performed his religious, moral and patriotic role as a true Muslim and a assiduous Pakistani. It is now up to FIA, and other concerns investigation agencies, to seriously perform its responsibility, for accomplishing the goal of carrying out impeccable and unimpeachable investigation, and do not base their cases on peripheral material, tending to be shattered in evidence. These are my tentative observations and without prejudice to the trial.

Date of Application 13/8/24

Fees Estimate: £100

ANNOUNCED IN OPEN COURT

Given under my hand & seal of this Court
This 22nd day of July, 2024.

(ABDUL RAZZAQ)

Sessions Judge, Malir Karachi

Completed by _____

CERTIFIED TO BE TRUE COPY

13/8/24
Sd/- JUDGE
District Court
Madr. Natchi.