

**LAHORE HIGH COURT**

**1987**

**Mr. Justice Muhammad Rafiq Tarar**



# LAHORE HIGH COURT

Mr. Justice Muhammad Rafiq Tarar, J

MALIK JAHANGIR M. JOYA — Petitioners

versus

THE STATE — Respondent

Criminal Miscellaneous No. 1592-B of 1987.

Mujeebur Rehman, Malik Mahmood Majid and Mirza  
Naseer Ahmad for Petitioner.

Khalilur Rehman Ramdey, A.-G. and  
Awais Nasim for the State.

Rashid Murtaza Qureshi for the Complainant.

Date of hearing: 28th June, 1987.

## JUDGMENT

MR. JUSTICE MUHAMMAD RAFIQ TARAR.-- This is a petition for bail on behalf of Malik Jahangir Muhammad Khan Joya, Advocate who is accused of offence u/s 298-C of the P.P.C.

2. The F.I.R. version is that on 18-3-1987 the petitioner and his co-accused who are Qadianis by faith displayed badges bearing "KALMA TAYYABA" on their persons and thus committed the offence u/s 298-C of the P.P.C.

3. The petitioner and his co-accused moved an application for bail in the Sessions Court, Sargodha. Co-accused were granted bail by the Additional Sessions Judge but this concession was denied to the petitioner because of this "adamant attitude" towards law and successive acts of abusing the concession of bail.

4. On 9-6-1987, Sh. Mujib-ur-Rehman Counsel for the petitioner had almost completed his arguments when Syed Riaz-ul-Hassan Gilani Advocate submitted that the offence falls u/s 295-C of the P.P.C. which is punishable with death or imprisonment for life. He maintained that Mirza Ghulam Ahmad Qadiani proclaimed himself as "Muhammad dur Rasul Ullah" and his followers believe him as such, therefore, when they wear "KALMA TAYYABA" on their persons they defile the sacred name of the Holy Prophet Muhammad (peace be upon him) because by Muhammad dur Rasulullah they mean Mirza Ghulam Ahmad Qadiani. In support of the contention he produced an extract from "Kalima-tul-Fasal by Mirza Bashir Ahmad which reads as under:

”پس مسیح موعود خود محمد رسول اللہ ﷺ ہے جو اشاعت اسلام کے لئے دوبارہ دنیا میں تشریف لائے۔ اس لئے ہم کو کسی نئے کلمہ کی ضرورت نہیں۔ ہاں اگر محمد رسول اللہ ﷺ کی جگہ کوئی اور آتا تو ضرورت پیش آتی۔“  
(کلمۃ الفضل ص 58 از مرزا بشیر احمد ایم اے)

Sh. Mujeeb-ur-Rehman did not controvert the contents of the above noted extract. He however stated that he does not want to discuss to the question pertaining to faith and requested that his statement to that effect be recorded.

5. The learned Advocate-General requested for adjournment as he had to attend the Provincial Assembly and case was adjourned to 14.6.1987. On the said date, Sh. Mujeeb-ur-Rehman, Malik Mahmood Majid and Mirza Naseer Ahmad Advocates submitted an application for withdrawal of the bail application. The grounds taken in this petition are that in the course of arguments the

petitioner's counsel (Sh. Mujeeb-ur-Rehman, Advocate) submitted that the arguments be restricted to the limited question of bail and that "he did not wish to enter into detailed arguments which might touch on the merits of the main case and findings whereupon may prejudice the case of the prosecution or the defence". It is further stated that the counsel also requested that his statement to this effect may be recorded but the same "could not be recorded" and the case was adjourned on the request of the learned Advocate-General who wanted to go to the Assembly Chambers. It was further submitted that "certain extraneous matters were brought under discussion and it appeared as if the Court was about to enter into a roving enquiry into matters which are not mentioned in the F.I.R. and which are, if at all, more appropriately a subject for investigation or trial" and "in the circumstances the petitioner feels that it will be better in the interest of justice to withdraw his bail application for the present".

The learned Advocate-General took strong exception to the contents of the application and the language used therein. He added that insinuations made amount to contempt of Court and as such he be given opportunity to make a reply statement in order to place on record the correct factual and legal position. The matter was adjourned to 22-6-1987 and then to 28-6-1987 on which date the learned Advocate-General addressed arguments and Mr. Rashid Murtaza Qureshi, Advocate filed a reply to the withdrawal application wherein it is stated that the withdrawal of the petition is being sought mala fide to avoid adjudication of the question of applicability of Section 295-C of the P.P.C. Quoting references from various religious books of the Qadiani community including Aik Ghalti Ka Azala, Auiena-i-Kamalat-e-Islam and Tabligh-i-Risalat written by Mirza Ghulam Ahmad it has been asserted therein that Mirza Ghulam Ahmad Qadiani proclaimed himself as "Muhammad dur Rasul-ullah"; he used most filthy language against all those who rejected his claim to Prophethood and, on his own showing, he was a product (خودکاشته پودا) of the British imperialism, therefore,

when he claims that he is "Muhammad dur Rasul-ullah" and his followers believe him as such they offer gravest contempt and insult to the Holy Prophet Muhammad (peace be upon him). Relying on the aforesaid references it is submitted that discussion on the question of faith is inevitable as the meaning which the Qadianis attach to the "KALMA TAYYABA" has to be gone into specially when they do not controvert writings of Mirza Ghulam Ahmad and other Qadianis containing the meaning which was assigned to the words "Muhammad dur Rasul-ullah". A copy of the aforesaid application was delivered to the counsel for the petitioner in Court and he was asked if he would like to make any submission in reply but- he stated that he would not add anything to his request for withdrawal.

6. The plea that Court was about to commence "a roving enquiry on the question of faith (so was stated in Court but in the withdrawal application the words "arguments which might touch on the merits and "matters which are not mentioned in F.I.R....." have been used) has been taken to avoid the question sought to be raised by the learned Advocate-General and the learned counsel for the complainant. It is pertinent to note that in the bail application it has been contended that "there is no definite law regarding Kalama Tayyaba relating to the Non-Muslims.....". I do not want to make a detailed comment on this assertion as the bail application has been withdrawn but in view of the insinuation made, it may be pointed out that for Non-Muslim Qadianis, the use of KALMA TAYYABA in the sense or with the meaning attributed by them becomes relevant for seeing whether the act complained of amounts to defiling the sacred name of the Holy Prophet Muhammad (peace be upon him).

7. I would not have incorporated the contents of the application and that of the reply, had a request simpliciter to withdraw the main application been made but the learned counsel for the petitioner chose to use improper language and to include uncalled for insinuation. The learned Advocate-General submitted that these remarks

amount to contempt. This situation necessitated the recording of contents of the withdrawal application and the reply in this order. As regards initiation of contempt proceedings, though the language used is intemperate and insinuation made is contemptuous but as the advocates who made the withdrawal application belong to minority community, this Court should show benevolence and decline to proceed further in the matter.

With these observations the bail application is dismissed as withdrawn.

Application dismissed

*(PLD 1987 LAHORE 458)*

