

IN THE FEDERAL SHARIAT COURT  
( Revisional Jurisdiction )

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF

CRIMINAL REVISION NO.26/I OF 2003

Mst.Naheed Akhtar,d/o Ghulam Ahmed and wife Saeed Ahmad,resident of Village Raiya, Tehsil and District, Jhelum.	--	Petitioner
		Versus
Amjad Mahmood Akhtar and Others.	--	Respondents
Counsel for the petitioner	--	Ch.Naseer Ahmad Tahir, Advocate.
Counsel for the State	--	Mr.Muhammad Sharif Janjua, Advocate.
No.date of FIR and Police station	--	No.300 dt;27.9.2003 P.S.Saddar,Jhelum.
Date of the order of Trial Court	--	7.10.2003
Date of institution	--	8.11.2003
Date of hearing	--	8.1.2004
Date of decision	--	8.1.2004

JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This revision is directed against the order dated 7.10.2003 passed by the Additional Sessions Judge, Jhelum, whereby he has allowed bail to the respondents in the case registered, against them, under section 7 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (hereinafter referred to as "the Ordinance").

2. Facts of the case, in brief, are that on 27.5.2000, complaint was filed by one Mst.Naheed Akhtar in the Court of Sessions Judge, Jhelum wherein, it was alleged that on 18.4.2003 respondent No.1 Amjad Mahmood Akhtar, at the instigation of other respondents, had submitted an application before Nazim, Union Council Kotla Faqir and made allegation of illicit relations therein against the complainant. Subsequently, on 12.5.2003 during arguments in bail application No.110 of 2003 registered under section 337-FI, titled as The State vs. Arshad Mehmood etc. he reiterated the allegation in the Court of the Additional Sessions Judge, Jhelum. It was prayed that since the

respondents had wrongly accused the complainant for committing zina, therefore, in order to bring home their guilt, a case under section 7 of "the Ordinance" be registered against them. Consequently, FIR bearing No.300 dated 27.9.2003 was registered under section 7 of "the Ordinance" and respondents were arrested. They, however, on 29.6.2003 moved an application for bail which vide order dated 7.10.2003 was allowed.

3. Learned counsel for the petitioner has contended that the learned Court below has failed to take into consideration the fact that during arguments, in bail application, in the Court of Additional Sessions Judge, the respondents had made imputation of zina persistently in explicit terms which was on record and thus, they having committed the offence of Qazf liable to Hadd culpable by section 7 of "the Ordinance" were not entitled to bail because no further proof was required. However, having been questioned as to how, if the case was covered by section 7 of "the Ordinance" which provides for imposition of the sentence of stripes only and no other

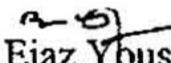
sentence including the sentence of imprisonment can be inflicted there under, the respondents, pending trial even, could have been imprisoned, if they were prepared to give surety for their appearance, the learned counsel for the petitioner candidly conceded that since the case fell within the ambit of section 7 of "the Ordinance" and as per his estimation section 11 of "the Ordinance" was not attracted, therefore, he would not press the petition. However, prayed that since the petitioner being a 'parda nasheen' lady, is facing much inconvenience due to delay in the trial, therefore, learned trial Judge may be directed to dispose of the matter, expeditiously.

4. Pre-admission notice was issued to the State, in response whereof Mr.Muhammad Sharif Janjua, Advocate is present. He states that since the instant the case was registered under section 7 of "the Ordinance" and it was yet, to be determined as to whether section 11 of "the Ordinance" was attracted or not his case fell within under section 11 of "the Ordinance", therefore, the learned trial Judge has rightly allowed bail to the respondents.

5. A perusal of the impugned order indicates that the reason primarily weighed with the learned trial Judge, in allowing the bail application was that since FIR was registered under section 7 of "the Ordinance" and it was, yet, to be determined as to whether the case was covered by section 7 or would fall within the ambit of section 11 of "the Ordinance", therefore, it being a case of further inquiry, prohibitory clause of section 497 Cr.P.C. was not attracted. It may be noted here that since section 7 of "the Ordinance" does not provide for imposition of any other kind of sentence, including the sentence of imprisonment, except the sentence of stripes, therefore, proper course for the learned trial Judge was to, pending trial of the case, release the respondents on bail because even if, there was likelihood of the case being turned out to be one under section 11 of "the Ordinance" even then it was not wise to detain the respondents because sentence cannot be inflicted in anticipation. Rather, withholding of the concession of bail, in the circumstances, would have been harsh because the respondents having been charged under section 7 of "the Ordinance"

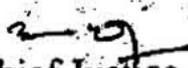
if ultimately were to be convicted thereunder then, at the most, the sentence of stripes could have been inflicted on them and the sentence of imprisonment having been excluded, if finally could not have been recorded as to how the respondents were to be imprisoned during trial, if they were prepared to give surety for their appearance.

6. The upshot of the above discussion is that the petition being misconceived and having not been pressed is hereby dismissed. However, the learned trial Judge is directed to dispose of the matter expeditiously.

  
( Ch. Ejaz Yousaf )  
Chief Justice

Islamabad,  
8<sup>th</sup> January, 2004.  
A.Rahman/\*\*

FIT FOR REPORTING

  
Chief Justice