

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2020

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.3273 OF 2020

BETWEEN:

SRI KUSUMADHARA KANIYOOR
@ KUSUMADHARA H.
S/O. MONAPPA GOWDA,
AGED ABOUT 32 YEARS,
RESIDING AT HOSALIGE HOUSE,
BELANDHURU VILLAGE,
SULLIA TALUK,
D.K. DISTRICT-574 239.

...PETITIONER

(BY SRI SACHIN B.S., ADV.)

AND:

STATE OF KARNATAKA
BY BELLARE POLICE STATION,
SULLIA TALUK, D.K. DISTRICT,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...RESPONDENT

(BY SRI MAHESH SHETTY, H.C.G.P.)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF THE CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CRIME NO.28 OF 2020 OF BELLARE POLICE STATION, D.K. DISTRICT, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 153A AND 505(2) OF THE IPC.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner/accused No.1 has filed this petition under Section 438 of the Cr.P.C. for granting anticipatory bail in Crime No.28 of 2020 of Bellare Police Station for the offences punishable under Sections 153A and 505(2) of the Indian Penal Code (for short, 'the IPC').

2. Heard the arguments of the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State.

3. The case of the prosecution is that, on the complaint of one Mahammed Saheer made to the Police alleging that on 4-4-2020 at 11:55 a.m., the petitioner

posted a message in his Facebook by comparing corona virus with holy Quran and thereby, insulted the holy Quran and caused hurt to the feelings of Muslim community, which has given scope for promoting communal disharmony in the society. After receipt of a complaint, the Police registered a case and are making efforts to arrest the petitioner. Hence, he has approached the Sessions Judge, Mangaluru, Sitting at Puttur, D.K., for granting anticipatory bail, which came to be dismissed. Hence, the petitioner is before this Court.

4. Learned counsel for the petitioner has contended that the petitioner is innocent of the alleged offences. A false case has been registered against petitioner even though there is no ingredient to attract the offences under Section 153A and 505(2) of the IPC. There is no element of *mens rea* to show that a *prima-facie* case to cause any enmity between different classes of the society. The

petitioner is a public servant and without obtaining permission, the question of filing the complaint and taking cognizance does not arise. The offences are not punishable with death or imprisonment for life and the maximum punishment is three years with fine. The petitioner is ready to abide any condition imposed by this Court. Hence, he prayed for granting bail. In support of his arguments, learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **MANZAR SAYEED KHAN v. STATE OF MAHARASHTRA AND ANOTHER** reported in **(2007) 5 SCC 1** and judgments of this Court in the case of **STATE OF KARNATAKA AND ANOTHER v. K. RAJASHEKARA AND ANOTHER** in **WRIT PEITITON NO.19255 OF 2007 decided on 1-6-2009** and in the case of **DR. MALLESHAPPA v. SRI KUMAR** reported in **ILR 2015 KAR 3734**.

5. Per contra, the learned High Court Government Pleader has objected the bail petition and contended that the petitioner posted a message in his Facebook stating that holy Quran is danger to India than corona, which is punishable under Sections 153A and 505(2) of the IPC. From the date of registration of the complaint, the petitioner is absconding and if bail is granted, he may abscond from the case. He is required for custodial interrogation. Hence, he prayed for dismissing the bail petition.

6. Upon hearing the arguments, on perusal of the record and the alleged message posted by the petitioner is that '*Quran is danger than corona to India due to Hubli incident*'. Except that, there is no other content made in the Facebook. The Hon'ble Supreme Court in **Manzar Sayeed Khan's** case (supra) has held as under:

“B. Penal Code, 1860-Ss. 153-A and 505(2)- Words or statements in question whether promote enmity or hatred between different groups on grounds of religion, etc. -Standard by which to be judged - Held, effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not of those of weak and vacillating minds, nor of those who scent danger in every hostile point of view - It is the standard of the ordinary reasonable man.”

7. The Co-ordinate Bench of this Court in **K. Rajashekara's** case (supra) has held for taking cognizance of Sections 153A, 295 and 295A of the IPC previous sanction of the State is required.

8. In **Dr. Malleshappa's** case (supra), the Co-ordinate Bench of this Court quashed the proceedings for the offence punishable under Section 295A of the IPC on the ground of not obtaining sanction.

9. Learned High Court Government Pleader has not produced any material to show, whether the Police have obtained permission to lodge criminal prosecution against the petitioner. The sanction is required for taking cognizance by the Magistrate. However, by looking to the facts and circumstances of the case, the principles laid down by the Hon'ble Supreme Court in **Manzar Sayeed Khan's** case (supra) and message posted by the petitioner, at this stage, it cannot be said that, there is *prima-facie* case made out against the petitioner for having committed any alleged offence, where it promotes the communal violence or tension between two groups of society. The alleged offences are not punishable with death or imprisonment for life. Therefore, considering the facts and circumstances of the case, if bail is granted by imposing certain conditions, no prejudice would be caused to the case of the prosecution. Hence, the petitioner is

entitled for grant of anticipatory bail. Accordingly, I proceed to pass the following

ORDER

Petition is ***allowed***.

The respondent-Bellare Police is directed to release the petitioner on bail in the event of his arrest in Crime No.28 of 2020 for the offences punishable under Section 153A and 505(2) of the IPC, subject to the following conditions:

- i. *Petitioner shall execute a personal bond in a sum of Rs.25,000/- (Rupees twenty-five thousand only) with a surety for the likesum to the satisfaction of the Investigation Officer;*
- ii. *Petitioner shall surrender himself before the Investigating Officer within fifteen days from the date of receipt of a certified copy of this order;*

- iii. *Petitioner shall not indulge in any similar offences;*
- iv. *Petitioner shall not tamper the prosecution witnesses directly or indirectly;*
- v. *Petitioner shall be in deemed custody for the purpose of any recovery under Section 27 of the Indian Evidence Act, 1872; and*
- vi. *Petitioner shall appear before the Investigating Officer as and when called for the purpose of investigation.*

**SD/-
JUDGE**

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