

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION No.4819 OF 2020

BETWEEN:

Naveen P.,
S/o Pavan Kumar
Aged about 35 years
R/at No.48, 7th Cross,
Kaval Byrasandra
R.T. Nagara Post
Bengaluru-560 032. ...Petitioner

(By Smt.N.Padmavathi, Advocate)

AND:

State of Karnataka
By D.J.Halli Police Station
Bengaluru-560 032
Represented by Special Public Prosecutor
High Court Buildings
Bengaluru-560 001. ...Respondent

(By Sri P.Prasanna Kumar, Special Public Prosecutor)

This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.194/2020 of D.J.Halli Police Station, Bengaluru, for the offences punishable under Sections 153(A) and 295(A) of IPC and Section 67 of I.T. Act.

This Criminal Petition coming on for Orders this day, the Court made the following:-

ORDER

This petition has been filed by the petitioner-accused under Section 439 of Cr.P.C. to release him on bail in Crime No.194/2020 of D.J.Halli Police Station pending on the file of I Additional CMM Court, Bengaluru, for the offences punishable under Sections 153(A) and 295(A) of Indian Penal Code and also under Section 67 of the I.T.Act.

2. I have heard Smt.N.Padmavathi, learned counsel for petitioner-accused and Sri.P.Prasanna Kumar, learned Special Public Prosecutor for the respondent-State.

3. The gist of the complaint is that accused is a nephew of the sitting MLA of Pulikeshinagar constituency and had made certain derogatory comments on Prophet Mohammed in facebook post by referring to Quran. On the basis of the complaint a case has been registered.

4. It is the submission of the learned counsel for the petitioner that the derogatory comments posted in the facebook post from the mobile phone of the petitioner-accused is without there being any intention or *mens rea*. He has only downloaded the same which was available in the electronic media and has forwarded it and immediately after coming to know about the said fact, on the same day evening, he has withdrawn the same from the facebook. It is the further submission of the learned counsel for the petitioner that already investigation has been completed and charge sheet has been filed. No sanction under Section 196 of Cr.P.C. has been obtained prior to prosecuting the petitioner-accused under Sections 153(A) and 295(A) of IPC. It is her further submission that the maximum punishment prescribed for the alleged offences is not more than three years. The petitioner-accused is innocent and only with a political motive, false complaint has been registered against him. It is also submitted that in all the four cases registered against the petitioner-accused

with regard to real estate business, he has been acquitted and no criminal antecedents of similar nature is alleged against the petitioner-accused. He is ready to abide by any conditions to be imposed by this Court and is ready to offer sureties. On these grounds, he prayed to allow the petition and to release the petitioner-accused on bail.

5. *Per contra*, the learned Special Public Prosecutor has vehemently argued by supporting his objections that the petitioner-accused has posted derogatory remarks in his facebook on Prophet Mohammed to create unrest in the society. The act of petitioner-accused has created disturbance in the said locality. and unrest to the administrative wing and the society. Due to the said posting, there was commotion in which, two police stations and 57 police vehicles have been burnt and many more properties and vehicles have been damaged. It is his further submission that the derogatory remarks made as against Hindu God has also created problem in the

society. There are 7 cases registered against the petitioner-accused and he is a habitual offender. There is a threat to the life of the petitioner himself if he is released on bail. Investigation is still pending. It is his further submission that already Government has been moved for taking sanction under Section 196 of Cr.P.C. and even the charge sheet column also substantiate the same. Even during the course of trial after taking cognizance sanction can be obtained. There is prima facie material as against the petitioner-accused for having involved in a serious offence which may affect peace and tranquility of the society as a whole if he is released on bail. On these grounds, learned Special Public Prosecutor submits to reject the bail application.

6. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

7. The factual matrix of the case on hand is that some derogatory remarks have been posted in face book

account of the petitioner against Prophet Mohammed and the same has been withdrawn immediately after coming to know about the said fact. The said mobile has been seized and the facebook account has been retrieved which revealed that it had been posted in the facebook account of the petitioner. Whether petitioner-accused has committed the offence or not is a matter to be considered and appreciated during the course of trial. Though it is contended by the learned counsel for petitioner-accused that no sanction has been obtained under Section 196 of Cr.P.C. to prosecute him under Sections 153(A) and 295(A) of IPC, but on perusal of the charge sheet material it is seen that the Investigating Officer has requested the Government for according sanction as contemplated under law and has also mentioned that he will produce the same latter before the Court. In that light, the said aspect will have no force.

8. It is the specific contention of the learned counsel for petitioner that though some cases have been registered as against the petitioner-accused, subsequently, after holding trial, he has been acquitted in all the cases. In that light, it cannot be held that he is a habitual offender as alleged by the Special Public Prosecutor. The maximum punishment prescribed for the offences under Sections 153(A) and 295(A) of IPC is three years. Already investigation is completed and charge sheet has been filed. In the said facts and circumstances, I am of the considered opinion that the apprehension of the learned Special Public Prosecutor that if he is released on bail there is a threat to the life of petitioner himself and it may create unrest in the society can be taken care off by imposing some stringent conditions. Merely on the ground that there is threat to the life of petitioner if the bail application of the petitioner is rejected, it would indirectly affect the fundamental right of the petitioner, when the only allegation against the petitioner is that he has posted

some derogatory remarks against Prophet Mohammed in his facebook account and subsequently, the same has been withdrawn. Under such circumstances, by imposing some stringent conditions, if the petitioner-accused is ordered to be released on bail, it would meet the ends of justice.

9. In that light, this petition is **allowed**. The petitioner-accused is ordered to be released on bail in Crime No.194/2020 of D.J.Halli Police Station pending on the file of I Additional CMM Court, Bengaluru, for the offences punishable under Sections 153(A) and 295(A) of Indian Penal Code and also under Section 67 of the I.T.Act, subject to the following conditions:

- i) Petitioner-accused shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with two sureties for the likesum to the satisfaction of the trial Court.
- ii) He shall not tamper with the prosecution evidence directly or indirectly.

- iii) He shall not leave the jurisdiction of the Court without prior permission.
- iv) He shall mark his attendance before the jurisdictional police on 1st of every month in between 10.00 a.m. and 5.00 p.m. till the trial is completed.
- v) He shall not indulge in similar type of criminal activities. If he again indulged in similar type of criminal activities, the trial Court is at liberty to cancel the bail.

**Sd/-
JUDGE**

bkp