

SUNIL THOMAS, J.

Crl.M.A.No. 1 of 2020

in

B.A.No.8458 of 2018

Dated this the 23rd day of November 2020

ORDER

This is an application filed by the defacto complainant in Crime No.2405/2018 of Pathanamthitta Police station for cancellation of bail granted to the accused.

2. The prosecution allegation in the crime was that, the accused had uploaded in her Facebook account her photographs exposing herself in sexually implicit postures supplemented with derogatory materials referring to Lord Ayyappa of Sabarimala, which were purposefully intended to wound the religious feelings of the devotees of Lord Ayyappa. On the basis of the complaint lodged, crime was registered for offence punishable under section 295A of IPC. Apprehending arrest, petitioner approached this Court, seeking anticipatory bail by filing B.A.No.7320/2018. After detailed hearing of the accused and the prosecution, this Court concluded that the three photographs uploaded by her cumulatively and independently, prima facie appeared to have the propensity to wound the religious feelings of the devotees of Lord Ayyappa or to create confusion in their mind and thereby, to affect and hurt the religious feelings of the devotees.

It was also found that, prima facie, it did not appear to be unintentional or innocuous, since she herself had claimed to be a believer of Advaita system of faith. Consequently, the bail application was rejected.

3. Accused was arrested on 27/11/2018 and was later granted bail by the order of this court in B.A.No.8458/2018, inter alia, with condition No. (iii) which reads as follows:

“(iii). She shall not directly or indirectly or through any other person, through print, visual or other electronic media make, share, forward, disseminate or propagate any comment, which may affect or has the propensity to affect, the religious feelings or sentiments of any community or group of society.”

4. The present application is filed by the defacto complainant alleging that, recently the accused had uploaded video of a cookery show in a social media, in which she was shown cooking “Gomatha Ularth” (Gomatha roast – a semi dried spicy preparation). It was alleged that, in the course of preparation, she narrated the recipe and she repeatedly referred to the meat used as “Gomatha”, as if, it was the synonym of meat. In the complaint, it was further alleged that she intentionally and purposefully claimed that she was cooking the meat of Gomatha and repeatedly used the term “Gomatha” several

times, intentionally to hurt the religious feelings of Hindus, who consider cow mother as sacred and holy. Referring to relevant portions of Scriptures and Vedas, the defacto complainant contended that, cow itself is holier as the deities. According to the petitioner, several cases have been registered against the accused in various police stations in various parts of the Country. BSNL organisation, wherein she was employed, had terminated her services by compulsory retirement after she got embroiled in Crime No.2405/2018. Even after termination, she has been repeatedly indulging in such objectionable activities, it was contended. Contending that she had clearly violated the bail conditions imposed by this Court, defacto complainant sought to recall the order of bail granted by this Court. It was further contended that, the present issue has resulted in the registration of Crime No.334/2020 by the Ernakulam Town Police Station. Copy of the FIR was produced as Annexure A3.

5. Heard the learned counsel for the petitioner, the learned counsel for the accused and the senior Government Pleader.

6. Annexure-A3 is the FIR in Crime No.334/2020 of Ernakulam Town Police Station dated 4/5/2020, under section 153 of IPC. It was registered on the basis of a complaint that the above cookery show was intended to provoke the religious feelings of

devotees, knowing that it was likely to cause the offence of rioting.

7. Refuting the above allegations, the learned counsel for the accused contended that even from the materials placed before the Court and also from the FIS, the ingredients of Section 153 IPC was not made out. It was contended that cow slaughter was not banned in Kerala and consumption of beef as food in Kerala was not prohibited. According to the counsel, accused has not violated any of the conditions imposed by this court while granting bail. It was argued that, prosecution cannot be permitted to intimidate the accused to restrict her right of freedom of speech and expression. Yet another contention of the accused was that, Section 153 IPC itself was a bailable offence and hence it may not be justifiable to cancel the bail. A Writ Petition was filed to quash crime No.2405/2018, it was submitted.

8. There is no dispute that the accused had uploaded a video on the social media captioned as "Gomatha Ularth" depicting herself preparing the above food item and that the term "Gomatha" was repeatedly used to refer to the meat used for preparing food. Though it was vehemently contended by the learned counsel for the petitioner that "Gomatha" was considered as holy and by uploading the above highly scurrilous matter on the social media, offence under section 153 IPC was made out, I am not inclined to go into that issue, since

that is a matter for consideration in Crime No.334/2020. It is also within the domain of the investigating agency and the court dealing with Crime No.334/2020 to consider whether the ingredients of section 153 IPC or any other offence are made out.

9. The only question that this court is called upon to consider is whether the accused by uploading the above material on the social media has violated condition No. (iii) of the order granting bail. There cannot be any dispute that the term "Gomatha" as is commonly understood is with reference to holy or sacred cow. Scriptures quoted by the complainant show that, since the vedic period, cow is revered as holy as deities, in India. If it is so believed by several Lakhs of Hindus through out the country, definitely, the use of the term Gomatha as a synonym for meat used in a cookery show, prima facie is likely to wound the religious feelings of those believers. There is absolutely no material before this Court to show that 'Gomatha' is used as synonym for meat anywhere in India. Choice of the word "Gomatha Ularth" prima facie appear to be ill-motivated and purposefully made and that uploading of such a highly objectionable video for public viewing may affect the Fundamental Right of the devotees. Considering the entire facts, I am satisfied that the petitioner has violated condition No.(iii) of the order granting bail.

10. The natural consequence of such a serious violation should

be to cancel the bail of the accused. She has not given any valid explanation to substantiate that she has not violated clause 3 of the order granting bail. However, few other factors are worth consideration. During the course of hearing, it was revealed that, she got embroiled in another crime recently in which she had uploaded video of her naked body being painted by her minor son. FIR was registered for offence under POCSO Act. This is not disputed. She was arrested in connection with the above crime and was in custody for few days, evidenced by the order of another bench of this Court in ***Fathima A.S. v. State of Kerala and Ors. - B.A.No.3861 of 2020 (2020(3) KLJ 810)***. It is also now revealed that, she has been terminated from service by BSNL, consequent to the registration of Crime No.2405/2018. The arrest and detention of the accused in two crimes has not improved the conduct of the accused. Still, on a firm belief that she will start recognizing the rights of others also and that exercise of one's Right to Freedom of speech and expression should not offend the Fundamental and statutory rights of others, I am inclined to give her one last opportunity. But, it is subject to strict condition partially restricting her tendency to misuse the social media. Considering these facts, I feel that, a lenient view can be taken having regard to the entire circumstances, at the same time by imposing strict conditions on her. It is clear that the accused has been

repeatedly using the social media for uploading her highly volatile comments. This needs to be restricted in the interest of justice. I feel that, stringent conditions need to be imposed in that regard, while retaining her right of freedom of movement.

In the above circumstances, Crl.M.A. is allowed-in-part, subject to further conditions on the accused as follows:

i). There shall be a direction to the accused to appear before the investigating officer in Crime No.2405 of 2018 of Pathanamthitta Police Station on all Mondays and Saturdays between 9 and 10 a.m. for a period of three months from today and thereafter on all Mondays for a period of further three months without fail. Since she is at Ernakulam, she shall sign before the investigating officer in Crime No.334 of 2020 of Town North Police Station, who shall make necessary arrangements. In case of breach, it shall be informed to the investigation officer in Crime No.2405 of 2018 of Pathanamthitta Police Station.

ii). Till the trial in Crime No.2405 of 2018 is over, accused shall not directly, indirectly or through any other person publish, transmit, share, upload or disseminate or publish any material or any of her comments through any visual and electronic media,

open to public.

iii) The petitioner will be free to move the investigating officer in Crime No.334 of 2020, Town North Police Station for taking necessary steps, if found required, to direct the service provider of the social media to remove the cookery show captioned "Gomatha Ularthu" from the social media, after recording the above cookery show in a hard disc for evidence purpose,.

These conditions are in addition to the conditions imposed already by order dated 14/12/2018 and the conditions which Courts may pass in Crime No.334 of 2020. It is made clear that, in case of breach of any of the conditions, bail is liable to be cancelled in accordance with law.

**Sd/-
SUNIL THOMAS
JUDGE**

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