

Reserved on 02.07.2021

Delivered on 07.07.2021

Court No. - 9

Case :- MISC. BENCH No. - 13588 of 2021

Petitioner :- Mohd. Umar Gautam

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow & Ors. Counsel for Petitioner :- Vijay Vikram Singh, Ashma Izzat, Kumail Haider

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha, J.

Hon'ble Vikas Kunvar Srivastav, J.

(1) The Court has convened through Video Conferencing.

(2) The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner, Mohd Umar Gautam, who is claiming himself to be an Islamic Scholar and a religious preacher, with the following reliefs :

"A. Directing Respondent No. 1 and 2 not to leak any allegations pertaining to the Petitioner to the media pending investigation and thereafter during trial. Also, directing Respondent No.1 to withdraw all allegations contained in the Press Release dated 20.06.2021.

B. Directing Respondent Nos. 3, 4, 5, 6 and various other media agencies to take down the sensitive/confidential information leaked to them by the officials.

C. Issue guidelines on media reporting of ongoing criminal investigation.

D. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of the petitioners and thereby render justice."

(3) Heard Sri Vijay Vikram Singh and Ms. Ashma Izzat, learned Counsel for the petitioner and Sri Shiv Nath Tilhari, learned Counsel for the respondent no.1/State.

(4) It has been argued by the learned Counsel for the petitioner that vide notice dated 16.06.2021, the petitioner was instructed to join interrogation at Police Station Masoori, District Ghaziabad in relation to F.I.R., bearing No. 473 of 2021 and again on 19.06.2021, the petitioner was asked to join interrogation at Police Station Masoori, District Ghaziabad in relation to the aforesaid F.I.R. It has been alleged by the petitioner that while interrogation, sign of the petitioner was made

in blank papers. Thereafter, without informing the family members of the petitioner, respondent no.2-Uttar Pradesh Anti Terrorist Squad taken away the petitioner to Lucknow and on 20.06.2021, an

F.I.R. has been lodged by the respondent no.2/U.P. Anti Terrorist Squad against the petitioner, which has been registered as F.I.R. No. 009 of 2021, under Sections 420, 120-B, 153-A, 153-B, 295- A, 541 I.P.C. and Sections 3 and 5 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religious Act, 2021, at Police Station ATS Gomti Nagar, District Lucknow alleging therein that the petitioner did mass scale conversion of around 1000 persons especially deaf and mute students, women, children and those from weaker and vulnerable section through inducement such as marriage, job and money and mental pressure. The petitioner is currently in judicial custody in

pursuance of the aforesaid F.I.R. In this regard, a Press Note dated 20.06.2021 contained in Annexure No.4 has been released by the Investigating Agency/U.P. Anti Terrorist Squad. The petitioner was remanded to police custody in pursuance of the aforesaid F.I.R.

(5) Learned Counsel for the petitioner has argued that on placing reliance upon the said Press Note dated 20.06.2021, several news outlets, TV media outlets and social media handles have published and broadcasted highly sensitive/confidential information in connection with the ongoing criminal investigation in the aforesaid F.I.R. His submission is that the sole aim of such disclosures appears to be to vilify and severely prejudice the fair trial rights of the petitioner. The petitioner, in support of this contention, has annexed copies of news articles and screen shots of webpages broadcasting/airing such offending material dated 21.06.2021 to 26.06.2021 as annexure no.3 to the writ petition.

(6) Elaborating his submission, learned Counsel for the petitioner has submitted that news programme broadcasting/aired with offending material against the petitioner are in violation of the programming code as well as Sections 19 and 20 of the Cable Television Networks (Regulation) Act, 1995. His submission is that as the investigation in the aforesaid F.I.R. is yet to be completed and charge-sheet yet to be filed, the Investigating

Agency vide press release dated 20.06.2021 did not confine the information to the essential facts of the case and disclosed the facts to the media which are speculative, unconfirmed and judgmental towards the petitioner herein and caused irreversibly and irreparably prejudice to the petitioner in his attempts to secure his liberty and prove his innocence. His submission is that these attempts on the part of the Investigating Agency are in violation of guidelines of the Office Memorandum dated 01.04.2010 issued by the Ministry of Home Affairs, Government of India, a copy of which has been annexed as Annexure No.5 to the writ petition.

(7) Learned Counsel for the petitioner has further submitted that the Investigating Agency has also disclosed certain confessions made by the petitioner during interrogation by means of press release dated 20.06.2021. He submits that the said press note was issued by the U.P. Anti Terrorist Squad in an attempt to prejudice the petitioner's right to a fair trial and, thus, violates Article 21 of

the Constitution of India. He also submitted that the said press note was issued for the purpose of destroying the presumption of petitioner's innocence. He also submitted that the said press note was published with a well thought out purpose to make selective leaks leading to trial by media and to establish the petitioner's guilt prior to his being tried. He submitted that by publishing the press note, the Investigating Agency had caused immense

damage to the petitioner's reputation and his fundamental right to a fair trial.

(8) In support of the aforesaid submissions, learned Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in *Rajinderan Chingaravelu v. Mr R.K. Mishra*, Additional Commissioner of I T & Ors: (2010) 1 SCC 457 and the judgment of Hon'ble Delhi High Court passed in the case *Devangana Kalita Vs. Delhi Police* [W.P. (crl.) 898 of 2020, dated 27.07.2020] and has argued that the respondents nos. 1 and 2 ought to be restrained from making such leaks till the conclusion of the trial and direction be issued to the respondent no.1 to withdraw all allegations contained in the Press release dated 20.06.2021.

(9) Learned AGA, on the other hand, opposed the submissions of the learned Counsel for the petitioner and has argued that there is no dispute with regard to principles as set out by the Apex Court as well as this Court with regard to role of media in pending investigation. He submitted that while issuing press note dated 20.06.2021, the Investigating Agency has no intention of causing any prejudice to the petitioner or with a view to attack his reputation but for the sole purpose of it to make awareness in public at large that some anti-social elements and terrorist group with connivance of ISI and some foreigners are trying to convert weaker sections of society to Muslim in order to disturb the peace and harmony of the Country. He submitted that some of

the messages circulated in social media that some anti-social elements and terrorist group with the connivance of foreigners and ISI had tried to convert some weaker section of Society to Muslim and this was at the behest of a religiously biased machinery. He submitted that such a campaign would have the effect of adversely affecting the reputation of the Police and public faith in the authorities. He contended that in such circumstances, it was necessary for the U.P. Police to issue the public note to inform the public that the petitioner was not being persecuted but prosecuted on the basis of investigation and evidence that he was involved in commission of offences.

(10) Elaborating his submission, learned AGA has submitted that in the press note dated 20.06.2021, only the version of the F.I.R., which was mentioned in the F.I.R. No. 473 of 2021 lodged at Police Station Masoori, District Ghaziabad against accused Vipul Vijayvargiya and Kashif, has been published and not any version or confession or any material relating to the F.I.R. No. 009 of 2021, which was lodged against the petitioner and one Jahagir at Police Station ATS Gomti Nagar, Lucknow. His submission that

U.P. Anti Terrorist Squad has not leaked any sensitive/confidential information relating to the FIR No. 009 of 2021 lodged against the petitioner and one Jahagir as the investigation of the case is still

pending. Therefore, the assertions of the petitioner that U.P. Anti Terrorist Squad/ Investigating Agency has leaked the sensitive/confidential information in the

ongoing criminal investigation in F.I.R. No. 009 of 2021, are absolutely bogus and false. He submits that the petitioner has made the bald allegations against the Investigating Agency with an oblique motive and just to pressurize it in the ongoing criminal investigation and for this purpose, the petitioner has filed the instant writ petition.

(11) Learned AGA has further submitted that the press note was not put out as any offensive measure against the petitioner but to defend the reputation and to maintain public trust in U.P. Police. It was not the intention of the Police to run a media trial, which is evident from the fact that the U.P. Police had issued only one note mentioning the petitioner's name. He further submitted that the language of the press note was also measured and only referred to the contents of the F.I.R. which was lodged at Police Station Masoori, District Ghaziabad and not a single word in respect of ongoing investigation in the F.I.R. No. 09 of 2021, which was lodged against the petitioner and one Jahagir by U.P.

A.T.S. at Police Station ATS Gomti Nagar, District Lucknow.

(12) Learned AGA has further submitted that the judgments, which has been cited by the petitioner, are not applicable in the present case as the facts of the said case were not comparable to the facts of the present case.

(13) So far as news articles and screenshots of webpages broadcasting/airing as alleged by the petitioner is concerned,

learned AGA has submitted that the State has no concerned with the said articles/screeshots broadcasting/airing. However, it appears that the said article/screenshots are nothing but only a version of the F.I.R., which was lodged at Police Station Masoori, District Ghaziabad and also version of the F.I.R., which was lodged against the petitioner at Police Station A.T.S. Gomti Nagar, District Lucknow.

(14) We have minutely examined the submissions of the learned Counsel for the petitioner and learned AGA and also gone through the record.

(15) The question in the instant writ petition is that whether the press note dated 20.06.2021 violated the petitioner's right to a fair trial and whether the same was justified as it is the case of the petitioner that on the basis of the aforesaid press note dated 20.06.2021, news outlets i.e. print

media, social media and electronic media, have published/broadcasted the sensitive/ confidential information in connection with ongoing criminal investigation.

(16) Learned AGA has admitted the fact that the press note dated 20.06.2021 was issued by the U.P. Police only in respect of arrest of the petitioner and one Jahagir in pursuance of F.I.R. No. 009 of 2021 lodged at Police Station ATS Gomti Nagar, District Lucknow and the next page of the same indicated the version of the F.I.R. No. 0473 of 2021 registered against one Vipul

Vijayvargiya and Kashif at Police Station Masoori, District Ghaziabad.

(17) At this stage, it would be relevant to refer to the decisions relied upon by the petitioner. Learned Counsel for the petitioner has referred to the decision of the Supreme Court in Rajinderan Chingaravelu vs. Mr. R.K. Mishra, Additional Commissioner of IT & Ors (supra) and has drawn our attention to paragraph- 21 of the aforesaid decision, which is reproduced as under :-

"21. But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. There is a growing tendency among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. Even where a suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the investigating officers to represent to the media that the person was arrested with much effort after considerable investigation or a chase. Similarly, when someone voluntarily declares the money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or "leakage" to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law. Be that as it may."

(18) It would be relevant to note the factual context by which the Apex Court has made the aforesaid observations. In the aforesaid case, the appellant, who was employed in Hyderabad, wanted to buy a property in Chennai. He was advised that if he wanted to buy a good plot he must be willing to pay a considerable part of

the sale price in cash, and in advance, to the prospective seller. The appellant had identified a prospective buyer and wanted to go to Chennai with a large sum of money to finalize the deal. He contacted Reserve Bank of India, his bankers (ICICI Bank Ltd.) as well as the Airport Authorities to ascertain whether he could carry a large sum of money in cash while travelling by air. He was informed that there was no prohibition and therefore, he withdrew ₹65 lakhs from his bank. He disclosed the same at the ₹65 lakhs from his bank. He disclosed the same at the

Hyderabad Airport. He was also carrying a bank certificate certifying the source of his withdrawals. However, when he reached Chennai, some police officials and officers from the Income Tax Investigation Wing rushed into the aircraft and called out his name. The appellant identified himself

and thereafter, he was virtually pulled out from the aircraft and taken to an office on the first floor of the airport. He was thereafter subjected to questioning about the money that he was carrying. The officers then attempted to coerce him to admit that the amount being carried by him was for some illegal purposes. No such admission was made by him, nonetheless, the officers seized the entire amount and thereafter permitted him to leave. In the entire process, he was detained for fifteen hours. The Tax Intelligence Officers informed the newspapers and media that they had made a big haul of ₹65 lakhs from his bank. He disclosed the same at the 65 lakhs rupees in cash. Thus, making it appear

that the appellant was illegally and clandestinely carrying the said amount and they had caught him red handed. The appellant then filed a writ petition before the High Court of Andhra

Pradesh seeking various reliefs, including compensation for the illegal acts of the officials and quashing the proceedings initiated against him under the Income Tax, 1961. The said petition was dismissed by the Andhra Pradesh High Court on the ground that no part of the cause of action had arisen within the State of Andhra Pradesh. Aggrieved by the same, the appellant filed a Special Leave Petition before the Supreme Court. Insofar as the appellant's claim that actions of the officers were illegal is concerned, the Supreme Court did not accept the same and held that where the bonafide of a passenger carrying an unusually large sum and the source and legitimacy of the amount have to be verified, some delay and inconvenience is inevitable. The Court held that the actions of the Investigating Wing of the Income Tax Department in detaining the appellant for questioning and verification were bona fide and in discharge of their official duties. However, insofar as the officers rushing to the media and claiming that they had caught a huge haul of money is concerned, the Court found the said action unjustified. It is in that context the Supreme Court made the observations as quoted hereinbefore. In that case, the Department filed an affidavit expressing regret for the inconvenience caused to the appellant and the Court accepted the same.

(19) Learned Counsel has also relied upon the observations made by the Hon'ble Delhi High Court in paragraphs-23, 24 and 25 of

Devangana Kalita Vs. Delhi Police (supra), which are reproduced as under :-

“23. In the aforesaid contest, it is necessary to bear in mind that the petitioner has not been found guilty of any of the alleged offences. An affidavit affirming that the petitioner is guilty of the offences would clearly be inapposite. It is trite law that an accused is innocent until held guilty after a fair trial. The prosecution must meet the standards of proof and establish that an accused is guilty of the offence charged beyond reasonable doubt. The substratal rationale of following this principle is to eliminate the possibility of any innocent being punished or suffering any ignominy for a crime that he/she has not committed.

24. It is also necessary to bear in mind that human dignity is recognized as a constitutional value and a right to maintain one's reputation is a facet of human dignity. A person cannot be denuded of his or her dignity merely because he/she is an accused or is under trial.

25. It is also averred in the affidavit that the petitioner could not make any grievance of being subjected to a media trial since she and the members of her group had started a media campaign/trial in her favour to gain sympathy and generate public opinion against the respondent investigating agency. It is averred that she cannot now be heard to be aggrieved by a rebuttal and factual explanation of real and true facts. This averment is based on an erroneous premise that merely because the sympathizers of the petitioner have issued messages on social media that she is being maliciously persecuted or demanded her release, it would entitle or justify the investigating agencies to proclaim that the petitioner is guilty of offences even at the stage, where the investigation is not complete. There is a cardinal difference in attempting to influence formation of an opinion that an accused is not guilty and the State attempting to influence an opinion to the contrary. An expression of an opinion that an accused is not guilty does not destroy the presumption of innocence that must be maintained till an accused is tried and found guilty of an offence. A media campaign to pronounce a person guilty would certainly destroy the presumption of innocence. The approach that it would be justified to fuel a media trial merely

because the sympathizers of the accused are proclaiming his/her innocence, cannot be countenanced.”

(20) In the aforesaid case, the petitioner was involved in four F.I.Rs and a brief note was circulated by Delhi Police in various media agencies, disclosing the names of two girls including the petitioner and alleged that they belong to ‘Pinjra Tod’ Group and were actively involved in hatching a conspiracy to cause riots near Jafrabad Metro Station. In the said case, the impugned brief note does not indicate as to who has issued it and it was an unsigned note and did not even mention that it is issued by or on behalf of the Delhi Police. In this regard, the Court has called an affidavit to the effect whether the information as mentioned in the petition had been circulated by Delhi Police or not. In compliance thereof, an affidavit was filed by Delhi Police but on perusal of the said affidavit, the Court found that instead of addressing the said issue, the affidavit contained extensive averments declaring the petitioner guilty of several offences and some of the contents of the affidavit are not affirmations of truth but more a matter of opinion. The contents of the said affidavit were shared with the media, which, as per the opinion of the Court, is evident from the fact that the same were reported even prior to the date of hearing. In these backgrounds, the Hon’ble Delhi High Court has made observations in paragraphs 23, 24 and 25, as reproduced hereinabove.

(21) In the present case, it is a specific case of the State that the press note dated 20.06.2021 only reflects the arrest of the petitioner in

F.I.R. No. 09 of 2021 coupled with the contents of the F.I.R. No.

09 of 2021 as well as the contents of the F.I.R. lodged at Police Station Masoori, District Ghaziabad. The submission of the learned AGA that on the basis of credible and incriminating evidence, which came out during the course of investigation in Case Crime No. 473 of 2021 lodged at Police Station Masoori, District Ghaziabad and after interrogation of the petitioner by the police, the Anti Terrorist Squad has arrested the petitioner and one Jahagir and lodged the F.I.R. No. 09 of 2021. The Office Memorandum dated 01.04.2010 issued by the Ministry of Home Affairs, Government of India lays

down the guidelines that are to be scrupulously adhered to while dealing with the media. The said guidelines, inter alia, stipulate that only the designated officer should disseminate information to the media on major crimes and law and order incidents, important detections, recoveries and other notable achievements of the police. The police officials should confine their briefings to the essential facts and not rush to the press with half baked, speculative or unconfirmed information about ongoing investigations. It is also stipulated that the briefing should normally be done only at the following stages of a case: (a) registration; (b) arrest of accused persons; (c) charge sheeting of the case; and (d) final outcome of the case such as conviction / acquittal etc. Further, due care should be taken to ensure that there is no violation of any legal,

privacy and human rights of the accused/victims. And, the police while briefing the media should not make any opinionated or judgmental statements.

(22) The clear object of including the above in the guidelines is to ensure that the identities of the persons, who are vulnerable, are not disclosed to the public so as to protect them and their families from any harm. The question whether the press note ought to be withdrawn, is required to be decided keeping the aforesaid in mind.

(23) It is an admitted case of the State that the press note dated 20.06.2021 has been released by an authorized officer. The fact that the petitioner has been arrested in F.I.R. No. 09 of 2021 has been published. Therefore, his name in the said press note cannot be considered to be prejudicial to a fair trial that may ensue. It has been alleged in the F.I.R. that the petitioner was involved actively in mass scale conversion of around 1000 persons especially deaf and mute students, women, children and those from weaker and vulnerable sections through inducement such as marriage, job, money and mental pressure.

(24) It transpires from the record that there is no material which indicates that any sensitive material(s) in respect of the F.I.R. No. 09 of 2021, which has been lodged against the petitioner, has been published by the respondent. It reflects from press note dated 20.06.2021 that the press note dated 20.06.2021 indicates

the reason for lodging the F.I.R. No. 09 of 2021 and name of persons and their photos arrested in pursuance of the aforesaid

F.I.R. The next page of the press note dated 20.06.2021 indicated that it is in respect of the F.I.R. No. 473 of 2021 registered at Police Station Masoori, District Ghaziabad. Therefore, the assertion of the petitioner that by means of press note dated 20.06.2021, some sensitive information has been leaked in the ongoing investigation against the petitioner is patently erroneous and is, accordingly, rejected.

(25) The judgments, which have been cited by the learned Counsel for the petitioner, is distinguishable in the facts and circumstances of the case and the same are not helpful for the petitioner.

(26) Now, the question before this Court is limited to examining whether such disclosure violates the right of the petitioner under Article 21 of the Constitution of India or offends any law. We are unable to accept that the said police communication violates the fundamental rights of the petitioner or provisions of any law. The question whether the respondent is eventually able to establish their allegations beyond any reasonable doubt is a matter for the Trial Court to consider after a due trial. As noticed above, the contention that the respondent felt necessary to defend its position that they were not persecuting the petitioner but had proceeded against him on the basis of the investigation carried out, is also not a matter on which this Court requires to express any opinion. The reasons that prompted the respondent to issue

the press note are not subject to judicial review provided they are bona fide and do not violate the petitioner's right.

(27) In view of the above, we are of the view that since nothing has been brought on record, which indicates that respondents have leaked any allegations pertaining to the petitioner to the media pending investigation or violated the norms as prescribed in the Office Memorandum dated 01.04.2010 issued by Ministry of Home Affairs, Government of India, therefore, no interference is called for by this Court in its extra-ordinary power under Article 226 of the Constitution of India in this writ petition.

(28) For the reasons aforesaid, the instant writ petition is devoid of merits and is, accordingly, dismissed.

(Vikas Kunvar Srivastav, J.)

(Ramesh Sinha, J.) Order Date : 07th July, 2021

Ajit/-