

Addl Sessions Judge
New Delhi District

IN THE COURT OF SHRI ANIL ANTIL; ASJ 04, PHC, NEW
DELHI

Bail Application No.

FIR No. 152/2021

PS: Connaught Place

u/s 188/269/270/153-A/120-B/34 IPC

& 3 Epidemic Diseases Act & 51(b) DM Act.

State Vs. **Bhupinder Tomar**

21.08.2021 02:00p.m.

Matter taken up through Video Conferencing from
the Residence.

File taken up today on an application as filed u/s 438
Cr.P.C on behalf of applicant/accused **Bhupinder Tomar** for
seeking relief of pre arrest protection (Anticipatory bail), which is
fixed for today.

Present: Sh. S.K. Kain, Additional PP for the State (through
V/C).

IO SI Ramkesh Meena alongwith SHO/Insp. B.K. Jha
and ACP Rajender Dubey through V/C.

Sh. Sanket Katara, learned counsel for the
complainant through V/C.

Sh. Vishnu Shankar Jain, learned counsel for the
applicant/accused Bhupinder Tomar.

Reply to the anticipatory bail application, video
clippings and transcript copy filed by IO have been supplied to

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the learned counsel for the applicant/accused and now Pleadings are complete.

1. By virtue of filing the present application, the applicant/accused has sought pre arrest protection stating that he has apprehension of his arrest in a false, frivolous and fabricated case registered against him in connivance of the local police at the behest of the opponents by making false allegations to harm his reputation, prestige and status in the eyes of Indian people/society, with the intention to ruin the Social Welfare Organization being run by him under the name and style of Hindu Raksha Dal of which he is a national president.

2. It was argued that this is the first bail application moved on behalf of the applicant/accused and no such application has been filed earlier on his behalf before any court of law i.e. Hon'ble High Court or Hon'ble Supreme Court of India. It is stated that he is responsible citizen of this country, has deep roots in the society, has clean antecedents, has not been convicted, belongs to a respectable family and there is no chance of his absconding or fleeing from justice ; and/or he undertakes to join the investigation as and when required or directed to do so by the IO/SHO/arresting officer or any other officer related to the investigation of the present case.

3. Learned counsel for the applicant/accused further argued that he was not named in the present FIR ; he has not organized the event, nor was present in any protest as alleged, nor had given any hatred speech ; that the allegation that slogan/offensive words were used by some persons out of the



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crowd against a particular religion are not substantiated by any evidence, and there is a vague assertion that some persons have made slogans against a particular religion ; that from the perusal of the FIR and the interview, it is evident that applicant has not uttered any words against any religion and the investigating agencies are harassing the applicant and his family members by regularly visiting his work place and residence to put pressure upon him due to malign political reasons against the leaders of Hindu outfits.

4. It was further submitted that applicant/accused is a social worker, and in a democratic country, it is a fundamental right of every citizen to raise demands of public good before government authorities for the enactment of laws to bring uniformity in the society. And, keeping this aspect in mind and the scope of freedom of speech and expression guaranteed under Article 19(1)(a) of The Constitution of India, the applicant decided to join the celebrations of the Quit India Movement on Jantar Mantar on 08.08.2021, to raise the demands of public for enactment of some common laws ; and not with the intention to hamper the law and order situation or cause public unrest or ill will towards other community.

5. It was also argued that all the alleged offences except offence punishable under Section 153-A IPC are bailable in nature and the only question for consideration before the court is whether a case is made out against the applicant under section 153-A IPC on the basis of material gathered by the prosecution so far. It is stated that essential ingredients to make out a case under 153-A against the applicant are



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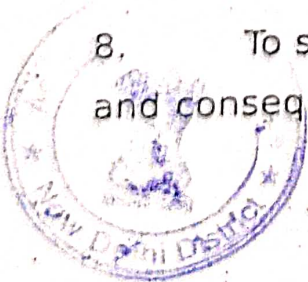
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completely found lacking. There was no intention on the part of the complainant to cause any enmity between two groups by his speech / interview.

6. It is further submitted that one of the mandatory requirement qua applicability of Section 153-A IPC is "words alleged to be hatred speech must tantamount to or to actual violence and incite hatred or ill will towards other sections and which is completely missing in the present case. The authenticity of the alleged incriminating video is also disputed by the learned counsel for the applicant/accused and it was submitted that its veracity can only be tested during the course of evidence after the investigation is complete, which will take sufficient time. Even otherwise, though not admitting, for the sake of arguments the alleged incriminating clip/interview has taken to be true and correct but read as a whole no offence under section 153-A IPC is made out.

7. It was further argued that there is no tenable reason as to why custodial interrogation of the applicant would be required in the present case, and in such circumstances, the deprivation of liberty of the applicant is wholly unjustified, unreasonable and unnecessary; that the arrest and detention of the applicant in the present case would cause an irreparable loss to his reputation and put a stigma on him which can not be washed away even in case he is found innocent later on, and will also cause irreparable harm to his career and repute of his family members.

8. To support his contentions and to highlight the meaning and consequences of offence under section 153-A IPC, learned



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counsel for the applicant/accused has relied upon the following judgments ;

- i) Bilal Ahmed Kaloo Vs. State of AP. 1997(7) SCC page 431 ;
- ii) Ramesh s/o Chotalal Dalal Vs UOI 1988 (1) SCC page 668 ;
- iii) Patricia Mukhim Vs. State of Meghalaya & Ors 2021 SCC online SC 258 ;
- iv) Sunaina Holey Vs. State of Maharashtra 2021 SCC Online Bombay 1127 and
- v) Arnesh Kumar Vs. State of Bihar & Anr. 2014(8) SCC 273

9. Highlighting the law laid down in the above said judgments by the Hon'ble Supreme Court of India, it was canvassed that inalienable right in the form of freedom of speech of the applicant can not be curtailed by the illegal, unreasonable and arbitrary acts of the executive. The applicant/accused indefeasible right of speech of freedom, and they had gathered at Jantar Mantar to canvass and propagate their religion ; and it was not deliberate and intentional act on the part of the applicant to incite any hatred or violence towards other religion or community.

10. **Per contra** the pre-arrest protection/ anticipatory bail application is strongly opposed by the learned Addl. PP for the State and IO of the case. It was argued that from the investigations carried out so far, it is a clear case of commission



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of of ence under Section 153A IPC ; there is a video clippings and interview of applicant telecasted by Khabar India on youtube channel showing that hatred slogans were passed against the particular religion by the applicant/accused.

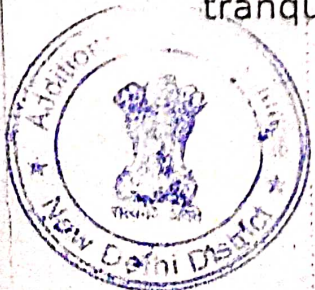
11. It was further argued by learned Addl. PP that applicant/accused reached Jantar Mantar on the alleged day of incident alongwith his Hindu outft and joined the procession as planned earlier with his other accomplices to use the platform to create communal disharmohy and to give communal colours to their plans, and accordingly they incited the youth to propagate against a particular religion, despite the sanction to gather refused by the competent authority.

12. Learned Addl. PP further urged that recovery of the mobile phone and other articles are yet to be effected from the possession of the applicant/accused ; one of the accusec is still absconding and there is apprehension that applicant/a accused may hamper the investigation and tamper the evidence of prosecution by threatening the prosecution witnesses.

13. Learned Addl. PP for the State further submitted that applicant is involved into number of similar offences ; investigation of the case is at initial stage, his custodial interrogation is required to identify the other accused persons and to unearth/the entire conspiracy ; and if the pre arrest protection is granted to the applicant/accused, he may create unruly situation in the area which will prejudicial to public tranquility, may create serious law and order situation and also

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it may lead to substantial injustice and hamper the investigation of the prosecution case.

14. Heard and record perused.

15. It is evident from the video in question played before the court during the proceedings, and the transcript submitted thereto, that the said clip depicting the interview of the applicant is impregnated with high octane communal barbs ; laced with inflammatory, insulting and threatening gestures, ex-facie is indicative of the calculative design on the part of the applicant to promote hatred and ill will amongst other sections of the community.

16. There is no gainsaying that right to freedom of speech is a fundamental right, one of the most cherished natural right enshrined in the Constitution under Article 19(1)(a). But, in the same breath, I must state that 'IT' is not an unfettered right. It is not absolute. Nor can it be extended to transgress upon fundamental right of other people ; nor can it be expanded to the acts pre-judicial to maintenance of peace, harmony and public order ; nor can it be permitted to invade and erode the secular fabric of our society. In the garb of libertarian concept of free speech, the applicant/accused can not be allowed to trample the Constitutional principles, which promote inclusiveness and common brotherhood.

17. We are not a Taliban State. Rule of law is the sacrosanct governing principle in our plural and multi cultural society. While the whole of India is celebrating AZADI KA AMRUT MAHOTSAV, there are some minds still chained with intolerant



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and self centric beliefs. The complicity of the applicant/accused in the alleged case crime is prima facie apparent from the material placed before the court. The accusations are serious and the offence alleged is severe in nature ; History is not immune where such incidents have fared communal tensions leading to riots and causing loss to life and property of general public.

18. Further, investigation is at nascent stage ; persons acquainted with the facts of the case are yet to be identified and / or examined ; entire incriminating material is yet to be seized ; other persons involved in the incident are absconding and evading the process of law.

19. Additionally, the applicant is President of Hindu Raksha Dal ; taking note of the tone and tenure of a speech and the threatening words used therein via the alleged interview, and analyzed in the back drop of his stature and influence exerted, there is strong possibility, if released on bail, at this stage, the applicant/accused shall hamper the investigation, and shall influence and /or threaten the witnesses.

20. Nextly, the authorities relied upon by the learned counsel for the applicant noted above are distinguishable on factual aspects of the present case. In **Bilal Ahmed Kaloo (Supra)**, the Hon'ble court was considering the case where the allegations were levelled against Indian Army for perpetrating atrocities against Muslims in Kashmir and the Hon'ble Supreme Court has held that no offence is made out



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u/s 153-A IPC as there were no two communities involved, which definitely is not the case at hand.

a) In **Ramesh Dalal (Supra)**, the Hon'ble Supreme Court was considering the broad caste of a TV Serial '**Tamas**' allegedly depicting communal tension and violence during pre-partition era, and the Hon'ble Supreme Court has held that there was no reason to differ with the decision of the Censor Board which had cleared the film for exhibition from taking into consideration the view point of the **public acceptability**, amongst other reasons discussed therein.

b) Similarly, **Patricia Mukhim (Supra)** was concerning a facebook post where the appellant had agitated the issue of assault on non triable youths, with lethal weapons and the apathy shown by the State authorities including the Chief Minister.

c) And, **Sunaina Holey (Supra)** was considering an issue of tweet which was posted on Social Media where a member of the crowd was seen, blaming the Prime Minister of India for pandemic of Covid 19 and, there was no question of creating enmity between two different sections of the society.

Further, without adverting much to the merits of the case at this stage, since the court is considering the bail application only, suffice to state that Actual violence is not a 'sine qua non' to attract the offence u/s 153-A IPC.

21. Thus, in light of my above discussion, taking note of the nature of accusations, severity of the offence and the conduct of the applicant/accused, and additionally, the fact that



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investigation is at preliminary stage ; custodial interrogation shall serve the best interest of justice to unearth the entire conspiracy and the persons involved therein, I am not inclined to grant him pre arrest protection.

22. Accordingly, his application u/s 438 Cr.P.C stands disposed off as DISMISS.

23. Needless to say any observations made herein above while disposing of the pre arrest bail application of accused shall not tantamount to expression on the merits of the case.

24. Ordered Accordingly.

25. Copy of order be sent to all the concerned parties/ or their respective learned counsels and IO through electronic mode.

26. In addition copy of order be given dasti, as per rules .

The order be also uploaded on the official website of the court.

Proceedings were conducted through video conference and there was complaint of any technical glitches nor there was any grievance regarding the audio and video transmission.

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