

IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLICATION NO. OF 2020

In the Matter of:

Dr. ZAFARUL-ISLAM KHAN

... PETITIONER

v.

GOVERNMENT OF NCT OF DELHI

THROUGH P.S. SPECIAL CELL (SB), LODI COLONY,

... RESPONDENT

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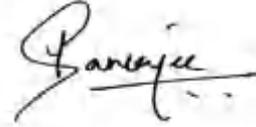
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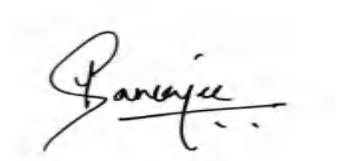
Dated: 08.05.2020

Yours Faithfully,

PETITIONER

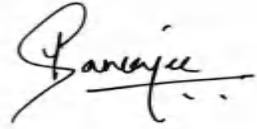
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LIST OF DATES AND EVENTS

DATE	EVENT
July 2017	The Petitioner was appointed Chairperson of the Delhi Minorities Commission.
March 2020	Widespread hate speech, abusive comments and fake news was circulated blaming the Muslim community for the spread of Coronavirus in India. As a consequence of this, several instances were reported of Muslim vendors being abused, physically assaulted, and of Muslim vendors being socially boycotted across India.
19 April 2020	Organisation of Islamic Cooperation issued a statement urging India to take urgent steps to protect rights of minorities.
19 April 2020	Prime Minister of India tweeted that "COVID-19 does not see race, religion..."

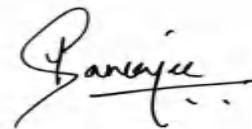
28 April 2020	Petitioner posted a message on social media in his capacity as Chairperson, Delhi Minorities Commission, appreciating Kuwait's earlier statement on the condition of Muslim minorities in India. On the same day, the Petitioner's post was maliciously distorted and falsely broadcast by certain sections of the electronic media.
29 April 2020	Petitioner posted on social media responding to distortion of his earlier post by the media
30 April 2020	One Mr. Ankit Gupta tweeted a photograph of a complaint filed by him against the Petitioner.
1 May 2020	Legal notice was sent on behalf of the Petitioner to a media house for the deliberate and maliciously distorted and false broadcast.
1 May 2020	Petitioner posted on social media clarifying his earlier post of 28 April 2020.
2 May 2020	News report in Hindustan Times wherein it is reported that an F.I.R has been registered against the Petition under S.124A, 153A IPC by Special Cell of Delhi Police.
6 May 2020 6:30 P.M.	Investigating Officer of F.I.R No.120/2020 P.S. Special Cell (SB) accompanied by policemen, including from P.S. Cyber Cell Dwarka came to the Petitioner's residence and directed him to come with them to the Police Station. The Petitioner expressed his willingness to cooperate with the

	<p>investigation but expressed his inability to leave his residence, being 72 years of age, and in view of medical ailments which made him vulnerable to COVID-19 infection. Petitioner repeatedly requested the Police authorities to give him a written notice in accordance with law. However, the Police did not give any written notice. The Petitioner then made an application citing Section 160 Cr.P.C. which mandates that a person above the age of 65 years cannot be compelled to appear in the police station, and that all proceedings may be carried out in his residence. The police authorities refused to formally receive this application. While leaving around 8:00 PM, the police officials directed the Petitioner to bring his laptop and mobile to Cyber Cell, Dwarka, on 8th May, 2020. The Petitioner again requested for a written Notice to that effect, but no notice was served on the Petitioner.</p>
07.05.2020	<p>Petitioner has a real, grave and imminent apprehension of his liberty being illegally curtailed and his fundamental rights and freedoms being violated. Hence the present petition</p>

PETITIONER

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... RESPONDENT

FIRST PETITION UNDER SECTION 438 R/W SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973, BEFORE THIS HON'BLE COURT SEEKING DIRECTIONS TO THE SHO/INVESTIGATING OFFICER TO RELEASE THE PETITIONER/ACCUSED ON BAIL IN THE EVENT OF HIS ARREST IN FIR NO. 120/2020, UNDER SECTIONS 124A, 153A INDIAN PENAL CODE, REGISTERED AT POLICE STATION SPECIAL CELL (SB), LODI COLONY, AND SEEKING DIRECTIONS TO PREVENT THE ABUSE OF LEGAL PROCESS AND TO SECURE THE ENDS OF JUSTICE

Most Respectfully Submitted:

1. That the Petitioner is a law-abiding senior citizen of India and a permanent resident of New Delhi. The Petitioner is a public servant presently appointed and serving as the Chairperson of the Delhi Minorities Commission. The Petitioner is a scholar, author of repute and a senior citizen aged about 72 years.

- 2.** That by this application, the Petitioner seeks to invoke the powers vested with this Hon'ble Court under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973, as he apprehends his arrest in a motivated, untenable and absolutely frivolous complaint which has been registered at Police Station Special Cell (SB), Lodi Colony, under Sections 124A/153A of the Indian Penal Code, as FIR No. 120 of 2020. A true copy of the operative portion of FIR No. 120/2020, dated 30.04.2020, registered at P.S. Special Cell (SB), is annexed herewith and marked as **Annexure A-1**.
- 3.** That in the present FIR, the crux of the allegations is that a social media post of the Petitioner, as Chairperson of the Delhi Minorities Commission, on 28.04.2020 on social media platforms, Twitter and Facebook, amounts to offences under Sections 124A and 153 A of the Indian Penal Code. A true copy of the social media post dated 28.04.2020 of the Petitioner is annexed herewith and marked as **Annexure A-2**.
- 4.** That the Petitioner submits that in order to appreciate the case in its correct perspective, it is essential to detail certain relevant facts which would clearly establish that the allegations contained in the FIR against the Petitioner are devoid of legal merit, distort facts, are frivolous and untenable. The facts and grounds demonstrate that the registration of the abovementioned FIR is a gross abuse of the process of law and also establish the innocence of the Petitioner, and the same have been enumerated as under:

 - (a)** The Petitioner has been serving as the Chairperson of the Delhi Minorities Commission since July 2017.

(b) That the Petitioner is a distinguished scholar with a Master of Arts degree in Islamic Studies obtained from the Faculty of Dar Al-Uloom, Cairo University in 1978 and a PhD degree from the University of Manchester in 1987. The Petitioner being a proficient translator-editor, has worked in foreign countries including Libya and England. The Petitioner is a senior journalist, scholar and author of over 50 books in English, Urdu and Arabic. The Petitioner was the Chief Editor of The Milli Gazette from its inception in January 2000 to December 2016. He has served as President, for three terms, of the All India Muslim Majlis-e-Mushawarat (AIMMM), the umbrella body of Indian Muslim organizations. He is also the Chairman of Charity Alliance which works among some of the most disadvantaged people. The Petitioner has attended conferences across the world and has delivered keynote addresses in many Indian and foreign universities. The Petitioner organized a number of international conferences including the International Dialogue between Islam & Oriental Religions in February 2010 at Delhi which was inaugurated by the Hon'ble Vice-President, Mr. Hamid Ansari. A true copy of the Petitioner's educational degrees is annexed herewith and marked as **Annexure A-3 (Colly)**.

(c) That given the Petitioner's qualifications and experience, he was appointed Chairperson of the Delhi Minorities Commission, in July 2017, under the Delhi Minorities Commission Act 1999, to take care of the welfare and interests of the designated minorities in Delhi. The Petitioner, as the Chairperson of the Delhi Minorities Commission, is a public servant, in terms of law.

(d)The Petitioner, in consonance with the constitutional mandate of secularism, non-discrimination and equality has always taken a strong stand against communalism and targeting of Indian Muslims on the basis of their religious identity. In a recent article, The Guardian quoted the Petitioner as having said, *Dr Zafarul-Islam Khan, chairman of the Delhi Minorities Commission, said that while Tablighi Jamaat had been short sighted in holding the convention, there were “dozens of examples of government, political parties and other religious groups who also flouted the coronavirus restrictions and gathered in large numbers”*. He added: *“But the whole focus is being directed only on Muslims. In the past few days, we have noted a new wave of attacks on Muslims across the country. There is talk of social boycott of Muslims, harassment of Muslims by Hindutva groups and Muslims are even being harassed by police in various areas.”* The article is available at:

<https://www.theguardian.com/world/2020/apr/13/coronavirus-conspiracy-theories-targeting-muslims-spread-in-india>

(e)That the Petitioner has always publicly condemned terrorism and violence in the name of Islam. Even in 2014, the Petitioner was among the first to condemn and to speak against the terrorist groups known as ISIS, ISIL and IS and also against the terrorist groups Al-Qaeda and Boko Haram. The Petitioner has consistently taken a public position against the use of violence by terrorist groups in the name of religion.

(f) That since late March 2020, India has witnessed widespread hate speech and comments and in some cases physical attacks against members of the Muslim community, blaming the Muslim community

for spreading Coronavirus. On twitter, phrases, hashtags #CoronaJihad, #CrushTablighiSpitters, #MuslimMeaningTerrorist, and #BioJihad on platforms like Facebook and Twitter were commonplace. The Time Magazine reported that, *“Since March 28, tweets with the hashtag #CoronaJihad have appeared nearly 300,000 times and potentially seen by 165 million people on Twitter, according to data shared with TIME by Equality Labs, a digital human rights group. Equality Labs activists say that many of the posts are in clear violation of Twitter’s rules on hate speech and coronavirus, but have yet to be taken down.”*

Available at:

<https://time.com/5815264/coronavirus-india-islamophobia-coronajihad/>

i. An illustrative sample of such tweets and posts are below:



ii. Media reports from across the country showed how Muslim vendors/vegetable sellers were being verbally abused and attacked, and being accused of spreading corona virus. In Uttar Pradesh, a group of vegetable vendors filed a complaint, “The vendors in their complaint said they had gone to some villages to sell vegetables on April 11. Scores of people were buying from them, they allege, when a

group of men asked the buyers not to purchase vegetables as they were Muslims. The sellers were abused, and asked to leave the village, they said.”

Available at:

<https://www.ndtv.com/india-news/coronavirus-uttar-pradesh-abused-stopped-from-selling-vegetables-allege-muslim-vendors-in-up-2210963>

In Karnataka, Muslims were attacked and accused of spreading coronavirus. It was reported,

“You people (Muslims) are the ones who are spreading this disease,” shouted a group of men while attacking two Muslim men with sticks and irons rods in Karnataka’s Bagalkot district. This was one of the several attacks on Muslims reported in Karnataka over the past one week.”

Available at:

<https://www.thequint.com/videos/news-videos/attacks-blaming-muslims-for-covid-19-reported-across-karnataka>

iii. A substantial portion of the hate speech and attacks on the Muslim community was in the form of spreading fake and fabricated news that vilifies Muslims and portrays them as spreading Coronavirus. Misinformation was spread to target Muslims as carriers and spreaders of coronavirus. Such misinformation, including that members of the Tablighi Jamaat misbehaved with doctors was refuted by the local police on more than one instance. Further, fake news that Muslims

vegetable vendors were applying corona infected saliva on vegetables, that Muslims were spitting into food to spread corona were shared widely on social media and whatsapp before being declared to be fake and fabricated.

Available at:

<https://www.news18.com/news/buzz/muslims-spitting-on-food-hiding-in-mosques-to-spread-coronavirus-beware-of-these-8-fake-news-stories-2565483.html>

(g) That in view of the reports of Islamophobia and malicious targeting of Muslims, through communally charged news reporting and political speeches, blaming Muslims for spread of coronavirus and the earlier riots in the North East district of Delhi, many Arab countries issued statements expressing concern about the status of Muslim minority persons in India. A report, in Al Jazeera states, *“In the past couple of weeks, the Organisation of Islamic Cooperation (OIC), the Kuwait government, a royal princess of the United Arab Emirates (UAE), as well as a number of Arab activists have called out Islamophobic hate speech by Indians seen to be accusing the country's Muslims of spreading the novel coronavirus. A barrage of tweets and statements from individuals and institutions in the Gulf expressing their outrage over the hateful social media posts forced the Indian government to respond, including a Twitter post by Prime Minister Narendra Modi in which he stressed that “COVID-19 does not see race or religion.”* A true copy of the Al Jazeera report dated 30.04.2020 titled “Why Arabs are speaking out against Islamophobia in India” is annexed herewith and marked as **Annexure A-4**.

- (h) That regrettably at a time when unity is required for the country to meet the challenge of COVID19, social media and other media platforms witnessed a massive increase in instances of hate speech directed against Indian Muslims, specifically blaming Indian Muslims for spreading Coronavirus.
- (i) Messages of caution and concern were issued not only within the country, but also by political leaders and prominent persons from other countries. In response to these international concerns, the caution to maintain communal harmony was reiterated by the Indian Government, including the Indian Embassies in Qatar, UAE and Oman, as well as the Foreign Minister of India.



- (j) Taking note of this growing tide of hate speech targeting the Muslim community the Prime Minister too tweeted that,

“COVID-19 does not see race, religion, colour caste, creed, language or borders before striking.

Our response and conduct thereafter should attach primacy to unity and brotherhood.

We are in this together.PM@narendra modi

...”



(k) That on 28.04.2020, the Petitioner, in his capacity as Chairperson of The Delhi Minorities Commission, shared a post on social media platforms Facebook and Twitter. The Petitioner in his social media posts highlighted the targeting of Muslims by “bigots” in India and expressed his thanks to Kuwait, for expressing international concern on the issue of the Muslim minority in India. However, it is noteworthy that the Petitioner’s social media posts make it evident that while acknowledging the international community’s support, the Petitioner has emphatically stated that Indian Muslims do not seek or require external help in India. Despite offers of solidarity from foreign countries, the Petitioner has firmly taken the position of non-interference in India’s internal affairs. Moreover, it is relevant to emphasize that the social media posts of the Petitioner are addressed to “bigots”, who through their words and actions are destroying the

secular fabric, communal harmony within India and bringing disrepute to India abroad.

- (I) That the Petitioner's social media post was falsely reported, distorted and sensationalized out of context by certain sections of the media in order to embarrass the Petitioner and to tarnish the stellar work that the Petitioner has been doing as Chairman, Delhi Minorities Commission. Alarmed that his social media post was being maliciously and knowingly distorted and false meanings and motives attributed to his words, the Petitioner responded through his social media posts dated 29th April, 2020, and further on 1st May, 2020, the Petitioner elaborated on his original tweet and clarified the distortions and misrepresentations by sections of the media,

“The tweet issued by me on 28 April 2020 thanking Kuwait for taking note of the persecution of Indian Muslims, in the context of the North East district's violence, has pained some people which never was my intention.

I realise that my tweet was ill-timed and insensitive in view of our country facing a medical emergency and fighting an unseen enemy. I apologize to all whose sentiments were hurt.

Further, the limitation of a tweet, which has to be very short by its very nature, was also responsible that the whole narrative was not made out in plain language. The matter was blown out of all proportion by adding things into it which was neither my intention nor was meant. A section of media added lies into it, distorted and fabricated its content and attributed inflammatory opinion into it. I did

not say so nor intended such things as they have been attributed to my tweet.

I have already stated in my previous statement as to how I have defended India in the Arab world on crucial issues. I will continue to do so, far from complaining against my country to any other country or Arab or Muslim world. This is against our Constitution, against my own views, upbringing and against my religious belief which teaches me that 'love of homeland is part of Islam'.

I have taken serious note of a section of media which distorted my tweet and attributed to me things I never said. Appropriate legal notices have already been served on the news channel which championed in distorting my statement. If need be, further legal steps shall be taken.

I thank all my friends and well-wishers who stood by me in solidarity during this difficult time and I assure them that our struggle against bigotry and hate politics will continue within our institutions and within the framework of our Constitution which is the sole reference point of our polity.”

A true copy of the social media post dated 29.04.2020 is annexed herewith and marked as **Annexure A-5**; and a true copy of the social media post dated 01.05.2020 is annexed herewith and marked as **Annexure A-6**.

(m) Despite the Petitioner's clarifications, a communal and politically motivated misinformation campaign was orchestrated against the Petitioner to undermine the good work done by him over

the years. The Petitioner sent a legal notice in this regard to a media house on 01.05.2020. A true copy of the Legal Notice dated 01.05.2020 is annexed herewith and marked as **Annexure A-7**.

(n) That the false, inflammatory, malicious and distorted media coverage of the Petitioners' social media posts have already had the effect of inciting hatred against the Petitioner, and causing him to be held in contempt in the eyes of the public. This is evident from frivolous and malicious complaints that have been filed against the Petitioner following such media coverage. That on 02.05.2020, the Petitioner learnt from news reports that on receipt of a complaint by a resident of Delhi an FIR has been registered against the Petitioner at P.S. Special Cell (SB). True copy of the Hindustan Times report dated 02.05.2020 is annexed herewith and marked as **Annexure A-8**.

(o) That the complaints against the Petitioner have been filed with obtuse motive and malafide is evidenced by the use of social media to attract publicity to the complaints and persons who filed them. There are reports of further complaints filed against the Petitioner for his social media post dated 28.04.2020, and persons have taken to social media to declare that they have filed complaints with the police for registration of further FIRs against the Petitioner. A true copy of a tweet of a complaint filed by Mr. Ankit Gupta is annexed herewith and marked as **Annexure A-9**.

(p) That despite almost a week having lapsed since the registration of the said F.I.R, the Petitioner was not served any legal notice for interrogation. On 6th May, 2020, at about 6:30 P.M, post sunset and just as the Petitioner was settling down for Iftaar, a police team led by Inspector Parveen, the Investigating Officer from Delhi Police, Special

Cell, of the present F.I.R, along with other police personnel including from Cyber Cell, Dwarka and P.S. Shaheen Bagh, came to the Petitioner's residence and orally asked the Petitioner to accompany them to the Cyber Cell Police Station. The police did not give any written notice to the Petitioner as mandated under Section 41A Cr.P.C or Section 160 CrPC. Further, despite being informed that the Petitioner is aged at least 72 years and suffers from health ailments including hypertension, the police insisted that the Petitioner immediately accompany them to the police station. The Petitioner informed the police verbally and in writing that he was a senior citizen aged 72 years, a heart patient and suffers from hypertension, making him highly susceptible to COVID-19 infection. The Petitioner repeatedly informed the police that he was willing to cooperate with the investigation and the police can examine him at his residence. Further, the Petitioner requested the police to give him a written notice as per law. It is pertinent to note that though the police spent around 2 hours at the Petitioner's house, they did not conduct any investigation; they did not question the Petitioner or examine his laptop. Instead, while leaving, the police verbally asked the Petitioner to appear at the Cyber Cell, Dwarka, on 8th May 2020, with his laptop and mobile phone. The Petitioner repeatedly communicated to the IO that he was available and willing to cooperate with the investigation at his residence, however the police did not question him or examine his laptop or mobile phone. [A true copy of the application made by the Petitioner on 06.05.2020 is marked and annexed herein as **Annexure A-10**]

5. That in the facts and circumstances as stated above, the Petitioner apprehends his arrest in the FIR No. 120/2020 P.S. Special Cell(SB) or any new FIR that may be registered upon other complaints, and seeks the intervention of this Hon'ble Court, in exercise of its powers under Section 438 r/w Section 482 of the Code of Criminal Procedure, 1973, for grant of bail in the event of his arrest in the present case, on the following grounds:

GROUNDS

- A. That no offence has been committed by the Petitioner, and the present FIR has been registered with a *mala fide* intention to harass and intimidate the Petitioner.
- B. Because the FIR against the Petitioner is misconceived, being made on a misrepresentation of facts and an erroneous, untenable reading of the law. As such, it does not warrant the curtailment of liberty and dignity of the Petitioner, which is his guaranteed right under Articles 19 and 21 of the Constitution of India.
- C. Because the Petitioner herein is the Chairperson of The Delhi Minorities Commission, a statutory body set up under The Delhi Minorities Commission Act, 1999. As such, the actions undertaken by the Petitioner in his capacity as Chairperson of the Delhi Minorities Commission are governed by the provisions prescribed under the said Act *inter alia*.

01. The Delhi Minorities Commission Act was passed in 1999 to set up a Commission “*to provide for the establishment and functioning of a Minorities Commission to safeguard the rights*”

and interests of the Minority communities in the National Capital Territory of Delhi and for matters connected therewith or incidental there to.”

02. The functions of the Commission are provided for in Section 10 of the said Act, and it includes *inter-alia* that, “*The Commission shall serve as a Clearing House for information in respect of the Minority Communities in Delhi.*”

03. That a statutory duty is cast upon the Commission under the said Act to safeguard the rights and interests of minorities in the National Capital Territory of Delhi. In the context of the communalized targeting and communally charged news reporting against Muslims in view of the Tablighi Jamaat event held in New Delhi on March 13-14, 2020, as well as social media posts blaming Muslims for spread of coronavirus and calling for their social and economic boycott, the Commission has a statutory obligation to speak out against such communalisation and spread of disharmony in society to safeguard the rights of the Muslim minority community. In view of the same, acknowledgment of the concern for Muslim minorities from Arab countries or member nations of the United Nations promotes international solidarity and fraternity, as well as highlights the situation of Muslim minorities, and is an act squarely covered under the functions of the Commission, which serves as the source of divulging information qua minorities in New Delhi.

D. That the Petitioner as the Chairperson of the Delhi Minorities is a public servant in the eyes of the law and is afforded statutory protection by the said Act.

01. Section 13 of the Act provides that, *“The Chairperson, Members and officers authorized by the Commission to perform functions under this Act, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (45) of 1860.”*

02. Section 14 of the Act provides that, *“No civil, criminal or other legal proceedings shall lie against the Chairperson, Members or officers performing functions under this Act, or under authority of the Commission, in respect of anything which is done in good faith or intended to be done in pursuance of this Act by or under the authority of the Commission.”*

03. Thus, the FIR No. 120/2020 dated 30.04.2020, P.S. Special Cell (SB) and other similar proceedings against the Petitioner, if any, are illegal and unlawful being in grave breach of the statutory protection provided to the Chairperson of the Delhi Minorities Commission for actions undertaken in good faith in his official capacity under the authority of the said Act.

E. Because in the FIR No. 120/2020 dated 30.04.2020 registered at P.S. Special Cell (SB), no offence under Section 124A of the IPC is made out against the Petitioner. As such, the Petitioner’s liberty

deserves to be preserved and he is eligible for protection from arrest.

01. Section 124A of the IPC, which deals with sedition, states,

“Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.”

02. That the Hon’ble Supreme Court in ***Common Cause vs Union of India* 2016 SCC Online SC 903** has categorically stated that, *“the authorities while dealing with offences under Section 124 A of the India Penal Code shall be guided by the principles laid*

down by the Constitution Bench in Kedar Nath Singh vs State of Bihar (1962) Suppl. 3 SCR 769.”

It is pertinent to point out that the use of the term “authorities” by the Hon’ble Supreme Court includes the police, and not merely the Courts. The principles stipulated in the Kedar Nath Singh judgment are therefore binding and must guide police action at the stage of registration of F.I.R under S.124A IPC as well as during investigation.

03. That in *Kedar Nath Singh vs State of Bihar (1962) Suppl. 3 SCR 769* the Hon’ble Supreme Court upheld the constitutionality of Section 124A IPC by narrowly and strictly construing the ingredients of the offence. The Hon’ble Court held, *“Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not*

come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

“..The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual

fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.” (emphasis supplied)

04. That the curtailment of free speech by casting an overbroad net of penal statutes contrary to Article 19(2) of the Constitution has been specifically commented upon by the Hon’ble Supreme Court of India while striking down Section 66A of The Information Technology Act in its judgment in **Shreya Singhal vs Union of India (2015) 5 SCC 1**.

05. That in *Shreya Singhal vs Union of India (2015) 5 SCC 1*, the Constitution Bench of the Hon’ble Supreme Court, speaking through J. Nariman, has pointed out that for speech to not be protected under Article 19(1)(a), it must have an intimate connection to public disorder. Mere disaffection, or even tendency of the speech to cause public disorder is not enough for the speech to be penalized. The Hon’ble Court held, “*Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that*

Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder.” (Emphasis supplied)

06. That in **Javed Habib vs State of NCT of Delhi (2007) 96 DRJ 693**, the Hon’ble Delhi High Court held, *“It is settled law that under Section 124A, the Court must not look to a single sentence or isolated expression but take into consideration the article as a whole and give it a full, free and generous consideration and deal with it in a fair and liberal spirit. While considering offence under Section 124A or 505B, the court has to look to the real intention and spirit of the article. It has to see whether the general tendency of the article is such that the article is intended to excite the feelings of a section of the society or the article was a severe criticism of the acts of the government. Holding an opinion against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition under Section 124A of the IPC. The criticism of the government is the hallmark of democracy. As a matter of fact the essence of democracy is criticism of the Government. The democratic system which necessarily involves an advocacy of the replacement of one government by another, gives the right to the people to criticize the government. In our country, the parties are more known by the leaders. Some of the political parties in fact are like personal political groups of the*

leader. In such parties leader is an embodiment of the party and the party is known by the leader alone. Thus, any criticism of the party is bound to be the criticism of the leader of the party.

While considering offences under Section 124A and 505B of IPC, the Court has to keep in mind the distinction between criticism of the government and the criticism by a leader of a political party. Where the leader of a political party becomes the head of the government, any criticism of the person and his policies as head of the political party or Government can not be viewed as sedition. The leader of the political party who appeals to the people to vote for him and his party, who reaches out to the people on the basis of his party is also open for criticism by the people for the very policies. Such criticism may not be in polite language and the tendency of the article may be to excite people not to vote for the party or to support such leaders or to project the leader as anti to a section of the society, such a criticism of the leader cannot be considered as offence under Section 124A or under Section 505B IPC. Explanation 3 to Section 124A excludes such comments from preview of Section 124A, even if such comments amount to disapprobation of the actions of the Government." (Emphasis supplied)

07.The Petitioner's social media posts dated 28.04.2020 highlighted the plight of the minority population which had been targeted by certain elements in society, and further acknowledged the role of the international fraternity in raising concerns regarding the wellbeing of Indian Muslims. Viewed as

a whole, the statement does not allude to any tendency, leave alone incitement, of violence against the government or any section of the population. The social media post made by the Petitioner does not contain any reference to the Government, or the State, or even to any political party, or leader, but is only directed at “**Bigots**”, referring to persons in India and outside who have made hate speeches and posted hate speech on their social media accusing members of the Muslim community of spreading Coronavirus. The said social media posts of the Petitioner do not therefore constitute the offence of sedition, as defined and interpreted by the Hon’ble Supreme Court and High Courts.

08. The social media post does not constitute an offence under Section 153A IPC, as it requires promotion of feeling of hatred or ill-will “between different” religious or racial or linguistic or regional groups. The social media post however only refers to “Hindutva bigots”, which is not a religious group or community, but instead refers in this context to persons on social media posting hate speech and propagating communal disharmony. Propagation of hate speech is not a tenet of any religion.

09. The Petitioner also places reliance *inter-alia* on the judgments in **Bijoe Emmanuel vs State of Kerala (1986) 3 SCC 615**; **Bilal Ahmed Kaloo vs State of AP (1997) 7 SCC 431** and **S Rangarajan vs P Jagjivan Ram (1989) 2 SCC 574** to demonstrate that no offence has been made out against the Appellant under Section 124A of the IPC.

F. Because in the FIR No. 120/2020 dated 30.04.2020 registered at P.S. Special Cell (SB), no offence under Section 153A of the IPC is made out against the Petitioner. As such, the Petitioner's liberty deserves to be preserved and he is eligible for protection from arrest.

01. Section 153A of the IPC pertains to the offence of "*promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.*"

02. That the locus classicus on Section 153A IPC is the judgment of the Hon'ble Supreme Court in **Balwant Singh vs State of Punjab (1995) 3 SCC 214** wherein slogans like "*Khalistan Zindabad*" and "*Raj Karega Khalsa*" were held by the Hon'ble Court to not amount to an offence under Section 153A IPC. The Hon'ble Court held, "*In so far as the offence under Section 153A Indian Penal Code is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religions, racial, language or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquility, that the law needs to step in to prevent such an activity.*"

“The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A Indian Penal Code and the prosecution has to prove the existence of mensrea in order to succeed.” (Emphasis supplied)

- 03.** That the Petitioner’s social media posts have no reference whatsoever to any intention to cause disorder or disturb public peace, instead it contains the opposite sentiment, it is an appeal to people to stop “hate campaigns and lynchings and riots”. It is an appeal to peace and communal harmony, to uphold the values and rights enshrined in the Constitution of India.
- 04.** The social media posts dated 28.04.2020 made by the Petitioner acknowledges that certain elements in society are falsely vilifying and targeting Muslims, and that the international Arab community has expressed concerns to protect the Muslim minorities by engaging in diplomatic channels. It further expresses that targeting and persecution of minority Muslims in India must be immediately discontinued, and that further such persecution could result in unfortunate outcomes, with the Arab community no longer staying silent towards the situation. Further, the social media posts are directed at “bigots” and caution them to refrain. Thus, a perusal of the statement made by the Petitioner, makes it plain that by no stretch of imagination does it intend to, or actually incite violence, or call for propagation of enmity between any groups. If anything, it calls for immediate cessation of communally targeted persecution of minority Muslims, and that does not constitute an offence under Section 153A IPC. In fact the post is in

furtherance of the duty of every Indian citizen under Article 51A (e) of the Constitution of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities.

- G.** That the registration of the abovementioned FIR, on the basis of the motivated, scurrilous and untenable complaint amounts to a gross abuse of the process of law. As detailed herein, no offence whatsoever is made out from the averments made in the complaint. The registration of the abovementioned FIR is against the settled position of the law and betrays a complete non-application of mind.
- H.** That the social media posts of the Petitioner have not had the effect of creating disorder or disturbance or disturbing public peace. In fact, it is the malicious and sensationalist media coverage, through fabrication and misrepresentation of his social media posts by some select media houses and sections of society which have resulted in large-scale verbal attacks against the Petitioner on social media, as well as motivated criminal complaints being filed against him.
- I.** That it is the constitutional duty of every citizen, particularly one who holds an important public office, like Chairperson of the Delhi Minorities Commission, to speak out and send a message against the propagation of enmity or hatred between religious groups. Ever since late March 2020, when the Tablighi Jamaat event has been used to spread hatred against the Muslim community, prominent government officials and political leaders have warned against the

communalisation of the coronavirus pandemic and attacks against Muslims.

On 6th April, the **Vice President of India, Mr. Venkaiah Naidu** “called for steering clear of untenable generalisations about communities and not viewing events from the prism of prejudices and biases.”

<https://vicepresidentofindia.nic.in/pressrelease/check-urgently-virus-misinformation-covid-19-vice-president>

It is reported that the **Chief Minister of Karnataka** in early April warned against this, “*BS Yediyurappa was speaking to a regional media channel when he said "Nobody should speak a word against Muslims. This is a warning. If anyone blames the entire Muslim community for some isolated incident, I'll take action against them also without a second thought. Will not allow that to happen."*

<https://www.indiatoday.in/india/story/karnataka-cm-yediyurappa-warns-against-communalising-coronavirus-pandemic-opposition-welcomes-remarks-1664490-2020-04-08>

J. That the F.I.R amounts to a malicious and motivated attempt to target the Petitioner who is well known for his public stand against religious communalism. Time and again Courts have cautioned against the misuse of penal provisions against freedom of speech and against the expression of views that may not be liked by certain individuals.

K. That since the outbreak of violence in North East Delhi, in February 2020, the Petitioner, as Chairperson of the Delhi

Minorities Commission, has in the discharge of his official duties been engaged in restoration of social harmony and ensuring justice for victims. The complaints and FIRs being lodged against the Petitioner are an attempt to overawe and obstruct a public servant from discharging his duty.

L. That it is also well known that the Petitioner, as a public spirited individual and a distinguished member of the Muslim community has consistently spoken out against attacks, persecution and discrimination against the Muslim community, whether by State or by non-state actors. The registration of an F.I.R on such a frivolous, unsubstantiated and ambiguous complaint for a tweet, reveals that the petitioner is being targeted for his views and his work.

M. That as recently as 24th April, 2020, the Hon'ble Supreme Court directed that no coercive steps shall be taken against a journalist against whom multiple F.I.R's *inter-alia* under S.153A IPC had been registered, holding that, such matters involving freedom of speech and expression, must be considered keeping in mind certain principles, including,

(i) The need to ensure that the criminal process does not assume the character of a vexatious exercise by the institution of multifarious complaints founded on the same cause in multiple States

(Para 12 (i) of the Order dated 24.4.2020 of the Hon'ble Supreme Court in Arnab Ranjan Goswami v. Union of India W.P. Crl Diary No. 11006/2020)

- N. That anticipatory bail ought to be granted to the Petitioner as custodial interrogation is not required in the present case. All material relevant to the case is documentary in nature and already available in the public domain. There are no recoveries to be effected from the Petitioner, nor is there any information in the Petitioner's sole custody which is relevant to the case. Thus, no purpose will be served by taking the Petitioner in custody, other than inflicting harassment, suffering and humiliation on a 72 year old man with high standing in national and international society.
- O. That in repeated judgments, the Hon'ble Supreme Court has held that personal liberty of a person is very precious and it should only be curtailed when it is imperative. In this regard, reliance is placed *inter-alia* on **Siddharam Satlingappa Mhetre v. State of Maharashtra; (2011) 1 SCC 694** and **Arnesh Kumar v. State of Bihar; (2014) 8 SCC 273**.
- P. That in **Siddharam Satlingappa Mhetre v. State of Maharashtra; (2011) 1 SCC 694**, the Hon'ble Supreme Court has held, "*Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*"
- Q. That in **Arnesh Kumar v. State of Bihar; (2014) 8 SCC 273**, the Hon'ble Supreme Court has held, "*... no arrest should be made only because the offence is non-bailable and cognizable and*

therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.”

Thus, arrest can only be made after the police officer has reached some conclusion as to the genuineness of the allegation. In the present case, the allegations themselves are demonstrably not with regard to any offence in which the Petitioner could be accused to have been guilty. Thus, no arrest ought to be permitted in the present case.

R. That the Petitioner states that it is the natural right of every individual to be entitled to his liberty and freedom and further that no such individual should be denied the equal protection of the law. That is why Article 14 and Article 21 of the Constitution of India provide for equality before the law and that no person shall be deprived of his personal liberty except in accordance with the procedure established by law. That, in view of this constitutional protection, the Petitioner herein states that he should be accorded protection against arrest, as no offence whatsoever is made out against him.

- S. That the allegations against the Petitioner are manifestly untenable, unsustainable in law and on facts and even if taken on their face value, they do not make out any case against the Petitioner herein. Such frivolous allegations cannot be allowed to be a ground for proceeding against the Petitioner and harass him by curtailing his liberty and further injuring his reputation and good standing in national and international society. Arrest and incarceration of the Petitioner in the present case would thus tantamount to a gross abuse of the process of law and a grave miscarriage of justice.
- T. That the Petitioner has no criminal antecedents. No case has ever been filed against him all these 72 years of his life. He is a respectable person in the national and international society and a public servant serving as Chairperson of the Delhi Minorities Commission. The Petitioner has deep roots in society and there is no possibility of the Petitioner fleeing from the legal process.
- U. That to check arbitrary and malafide actions by the police during investigation, the rights of an accused person were stipulated by the Hon'ble Supreme Court in its judgment in *DK Basu vs State of West Bengal (1997) 1 SCC 416*, which were codified in the Cr.P.C. vide amendments made through Act 5 of 2009.
- 01.** Section 41A of the Cr.P.C. mandates that an accused in a cognizable offence be served a notice for appearance before the police for the purposes of investigation. Section 41A(3) provides that if such a person complies with the said Notice, then no arrest is to be made. In the present case, the police

failed to serve any written notice on the Petitioner despite repeated requests, yet insisted on taking the Petitioner to PS Cyber Cell, Dwarka. These actions of the police militate against the letter and spirit of Section 41A Cr.P.C. and no arrest of the Petitioner ought to be permitted in brazen violation of the mandate of the said provisions. It bears repetition here that the Petitioner is a public servant holding a statutory post, available and willing to cooperate with the investigation.

02. That the Petitioner, being a 72 year old senior citizen, comes within the ambit of Section 160 Cr.P.C. which mandates that for the purposes of investigation, the Petitioner shall be examined at his residence and not be compelled to appear at a police station. The relevant extract of Section 160 CrPC reads:

160. Police officer's power to require attendance of witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or above the age of sixty five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such person resides.

V. That after almost two hours in the evening of 6th May 2020, the police officials while leaving the residence of the Petitioner at

around 8:00 P.M., orally directed the Petitioner to bring his laptop and mobile phone to Cyber Cell, Dwarka on 8th May, 2020. It is undisputed that the said social media post of the Petitioner dated 28 April, 2020, on Facebook and Twitter is available in the public domain, and the Petitioner has not denied the same. The Petitioner's personal laptop and mobile phone are not germane to and have no bearing on the present investigation. The Petitioner's devices contain personal information relating to his privacy and he apprehends misuse of the same. This appears to be a fishing and roving exercise extraneous to the needs of the present investigation.

- W.** That the Petitioner is a senior citizen aged 72 years. He is a heart-patient and suffers from hypertension requiring specific diet and medicines on a timely basis. His old age and related ailments make him susceptible and vulnerable to the Covid-19 coronavirus, and in such conditions it is against the ends of justice to compel his appearance in a police station or to take him into custody.
- X.** That the Petitioner is ready to abide with all and any condition that may be imposed upon him in the event of grant of anticipatory bail. The Petitioner undertakes to cooperate with the investigating agency as and when called for, and will join the investigation as directed.
- Y.** That the Petitioner states that he has detailed special circumstances which entitle him to the relief as prayed for which is necessary to prevent miscarriage of justice and the abuse of legal process.

Z. That the Petitioner holds a real apprehension of his arrest on the basis of a motivated and absolutely untenable FIR and hence is seeking protection from this Ld. Court against his arrest, to secure the ends of justice and prevent abuse of legal process.

AA. That this is the first petition under Section 438 of the Code of Criminal Procedure filed by the Petitioner before this Hon'ble Court, in the present case.

AB. That the Petitioner craves leave of this Hon'ble Court to add, alter or amend any ground, with the permission of this court during oral arguments.

AC. That no similar petition has been filed before this Hon'ble Court or the Hon'ble Supreme Court of India, or any other judicial forum.

PRAYER

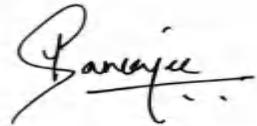
In view of the facts and circumstances stated above, as well as the legal grounds relied on by the Petitioner, it is most humbly prayed that this Hon'ble Court may be pleased to:

- i.** Direct the SHO/Investigating Officer, that in the event of arrest of the present Petitioner in FIR No. 120/2020 dated 30.04.2020 registered at Police Station Special Cell (SB) under Sections 124A/153A of the Indian Penal Code, he be immediately released on bail; and
- ii.** Direct that no coercive measures be taken against the Petitioner; and
- iii.** Direct that the laptop and mobile of the Petitioner not be seized; and/or
- iv.** Pass any such other or further order(s) as it may deem fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN
DUTY BOUND FOREVER PRAY

PETITIONER
Dr. ZAFARUL-ISLAM KHAN

Through



**Vrinda Grover, Ratna Appender
and Soutik Banerjee
Advocates
N- 14 A, Saket,
New Delhi - 110017
9810806181
vrindagrover@gmail.com**

**New Delhi
Dated: 08.05.2020**

12. F.I.R. Contents (attach separate sheet, if required) (प्रथम सूचना रिपोर्ट तथ्य):

To, the Duty Officer, PS Spl. Cell, Delhi Sir, A Complaint of Sh. Kaushal Kant Mishra S/o Zeeshan Diwan r/o 729 Sector - A , Pocket B & C, Vasant Kunj, North Delhi was received through ACP/Safdarjung Enclave, Delhi alleging that on 28-04-2020. Dr. Zafarul Islam Khan, Chairperson, Delhi Minority commission has made a social media post on Twitter and facebook and the contents of the post are provocative, intended to cause disharmony and creat rift in the society. It is also mentioned in the complaint that taking into consideration the sensitive environment, the comments are deliberate and seditious with malicious intent to further hurt sentiments. On the basis of the contents of the complaint and screenshots attached, prima facia offence u/s 124A/153A IPC is made out. Kindly register a case u/s 124A/153A IPC and further investigation may be handed over to me. Ruqqa is being sent through Ct. Rakesh No. 954/Spl Cell. Delhi. Date and time of offence - 28 April 2020 onwards Place of offence Delhi area including internet Date and time of sending ruqqa- 30-04-2020 at 09.20 PM Sd English 30/04/2020 (Parveen Kumar) Insp. Cyber Crime Unit - CyPAD, Special Cell No. D-1/860, PIS No. 16940054 30/04/2020 कार्यवाही पुलिस अज थाना तहरीर की मौसुलगी पर मन DO ने मुकद्मा हजा बगर्ज जुर्म मजकूर U/S 124A/153A IPC का दर्ज CCTNS Computer पर किया जाकर असल तहरीर मय CCTNS Computer FIR Copy SHO/Special Cell 1,की सील से सर्वमोहर करके बदस्त Ct. Rakesh No. 954/Spl Cell हवाले Insp. Parveen Kumar No. D-1/860, PIS No. 16940054 साहब को भिजवाई गई। जो आईन्दा तपतीश अमल मे लायेगे। दीगर नकुलात व कागजात बजरिये डाक अफसरान वाला की खिदमत मे अरसाल होंगे। Type by operator in the presence of Do and Checked by Do.

13. Action Taken Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2: (की गयी कार्यवाही : चूँकि उपरोक्त जानकारी से पता चलता है कि किया गया अपराध मद सं. 2. में उल्लेख धारा के तहत है) :

(I) Registered the case and took up the investigation:

(प्रकरण दर्ज किया गया और जांच के लिए लिया गया):

(II) Directed (Name of the I.O.)(जांच अधिकारी का नाम) : PARVEEN KUMAR
Rank (पद) : (INSPECTOR) No. (सं.) : 16940054

to take up the investigation or

(III) Refused investigation due to (जांच के लिए):

OR

(IV) Transferred to P.S. (Name) (थाना):

District (जिला) :

on point of jurisdiction (को क्षेत्रधिकार के कारण हस्तांतरित)

F.I.R read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant free of cost : (शिकायतकर्ता/सूचनाकर्ता को प्राथमिकी पढ कर सुनाई गयी, सही दर्ज हुई माना और एक कॉपी निशुल्क शिकायतकर्ता को दी गयी):

R.O.A.C.(आर. ओ. ए.सी):



Zafarul-Islam Khan 

www.facebook.com/khan.zafarul

Chairman, Delhi Minorities Commission
Govt of NCT of Delhi

Thank you Kuwait for standing with the Indian Muslims! The Hindutva bigots calculated that given the huge economic stakes involved the Muslim and Arab world will not care about the persecution of Muslims in India.

The bigots forgot that Indian Muslims enjoy huge goodwill in the eyes of the Arab and Muslim world for their services over centuries to Islamic causes, excellence in Islamic and Arabic scholarship, cultural and civilisational gifts to world heritage. Names like Shah Waliullah Dehlavi, Iqbal, Abul Hasan Nadwi, Wahiduddin Khan, Zakir Naik and many others are respected household names in the Arab and Muslim world.

Mind you, bigots, Indian Muslims have opted until now not to complain to the Arab and Muslim world about your hate campaigns and lynchings and riots. The day they are pushed to do that, bigots will face an avalanche.

Dr Zafarul-Islam Khan
Chairman, Delhi Minorities Commission
28 April 2020