

Addl Sessions Judge
New Delhi District N D

Bail Application no. 1228/22
FIR no.172/22; PS: Special Cell
State Vs. Mohammed Zubair

IN THE COURT OF SH. DEVENDER KUMAR JANGALA,
ASJ-05, NEW DELHI DISTRICT, PHC, NEW DELHI.

Bail Application no. 1228/22
FIR no.172/22
U/s: 153A/295A/201/120B IPC &
Section 35 FC(R)A
PS: Special Cell
State Vs. Mohammed Zubair

15.07.2022

Present: Ms. Vrinda Grover, Sh. Soutik Banerjee, Ms. Mannat Tipnis
and Ms. Devika Tulsiani, Ld.counsel for the applicant/accused
Mohammed Zubair.

This is an application under Section 439 Criminal Procedure Code (hereinafter referred as Cr. PC) moved on behalf of applicant/accused Mohammed Zubair for grant of bail.

Arguments advanced by Ms. Vrinda Grover, Ld.counsel for the accused and Sh. Atul Srivastav, Ld. Special Public Prosecutor for the state already heard on 14.07.2022.

Brief facts of the case are that the applicant/accused is alleged to have tweeted an image on 24.03.2018 which was tagged with Delhi Police by another twitter user 'Hanuman Bhakt' on 19.03.2022. The present FIR was registered on the statement of SI Arun Kumar posted in IFSCO/Special Cell. It is stated that during the social medial monitoring it was noticed that a twitter handle shared an over 4 years old tweet of the Mohammed Zubair in which it has been tweeted that "Before 2014 Honeymoon Hotel" "After 2014 Hanuman Hotel". The twitter handle tweeted that linking the God Hunmanji with honeymoon is direct insult of



Hindus as He is brahmchari. The police officials found the above tweet highly provocative and done deliberately, which are more than sufficient to incite feeling of hatred among people which can be detrimental for maintenance of public tranquility in the society. Accordingly the FIR was registered under Section 153A and 295 A IPC against the twitter handle of applicant/accused Mohd. Zubair @ zoo-bear.

Thereafter the notice under Section 41A Cr. PC was given to the accused and on his failure to cooperate in the investigation he was arrested on 27.06.2022. The accused was remanded to one day's police custody by the Ld. Duty Metropolitan Magistrate, New Delh District and further four days police remand by Ld. Chief Metropolitan Magistrate, New Delhi District. During investigation Section 201 IPC and Section 35 of the Foreign Contribution(Regulation) Act, 2010 (hereinafter referred to as FCRA) was also added. The applicant/accused was remanded to judicial custody on 02.07.2022.

In the bail application it is stated that the applicant is co-founder of India's Leading Fact Checking portal ALT News which was launched to combat the phenomenon of fake news, misinformation and disinformation. That the present FIR is untenable in the eyes of law and arrest is meant to malign, harass, intimidate and falsely implicate the applicant/accused as reprisal for doing his professional work as a Journalist. That the FIR has been registered under Section 153A, 295A, 201 and 120 B IPC and Section 35 FC(R)A but none of the offences are prima facie made out against the applicant/accused from the material



gathered during investigation. It is stated that there is no deliberate and malicious intent on the part of applicant by circulating the alleged image which was already in circulation since 1983. That the image tweeted by the applicant is an image from a classic bollywood film "Kisi se na kehna" released in the year 1983. That the film was released in India for "unrestricted Public Exhibition " in 1983 by the Central Board of Film Certification which is a statutory body of the Government of India. That the multiple twitter handles have shared the same image and referring the political parties, which have not been reported and no action has been taken by the police against such tweets. That the same photo was published by Indian Express on 24.03.2018. That in last four years no adverse impact on public tranquility is inferable.

It is further contended on behalf of accused that Section 35 FCRA is not made out as it is a blanket provision which penalizes the violation of any provision of FCRA and the state has failed to substantiate which provision of FCRA has been violated. That the company of the accused has not taken any foreign contribution from any source. That the Section 39(1) of the FCRA provides that a person can not be prosecuted if there is a due diligence on his part to not violate the provisions. That the applicant/accused has clearly mentioned on the website of ALT News that only the Indian Citizens with Indian Bank Accounts can donate as he does not hold FCRA certificate. That the website of Alt News requires every donor to make a declaration about their citizenship and provide necessary details including PAN number. That there was complete due diligence



exercised by the Directors that no foreigner is called upon to donate.

That the applicant has been targeted for exposing fake news. That in one matter the Hon'ble Supreme Court in SLP (Crl) o. 6138/22 vide order dated 08.07.2022 granted interim bail in the case filed under Section 153A and 295 A lodged by Khairabad police station.

That police has fails to comply with the mandatory requirements laid down in **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273**, by serving a notice under Section 41A of Cr. PC. It is prayed that the applicant/accused may kindly be released on bail. In support of her submissions, Ld.counsel for the applicant has placed reliance upon the following judgments:

- (i) **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273**
- (ii) **Satender Kumar Antil Vs. Central Bureau of Investigation, Special Leave Petition (Crl) NO. 5191/21,**
- (iii) **Amish Devgan VS. Union of India & Others, (2021) 1 SCC 1**
- (iv) **Patricia Mukhim Vs. State of Meghalaya & Ors., 2021 SCC 258.**

On the other hand bail application is strongly opposed by Ld. Special Public Prosecutor for state. It is stated that the applicant/accused has tweeted on twitter an image in which the different scenario attempted to have been shown, emerged in the country after 2014. That the applicant/accused has tweeted an image which has caused the hatred among the different sections of society and punishable under Section 153A and 295 A of IPC. That during the course of investigation it is found that the applicant/accused has received foreign contribution/donation against



the provisions of FCRA and therefore, Section 35 of FCRA has been invoked. That the applicant/accused has fails to produce the relevant evidence i.e. mobile phone whereby the alleged tweet has been circulated. Hence, Section 201 IPC was added. It is stated that the applicant/accused has intentionally tweeted from his twitter handle to hurt religious feelings of Hindus by insulting their religion or religious beliefs. Ld. Special PP for the state has relied upon the judgments of Hon'ble **Supreme Court in Babu Rao Patel Vs. State(Delhi Administration), (1980) 2 SCC 402** and of Hon'ble **High Court in Dr. Ahish Nandy Vs. State of Gujarat & Anr, W. P. (Criminal) no.801/08.**

I have given my thoughtful consideration to the arguments of both the parties.

Democracy is a government by the people via open discussion. The democracy can neither work nor prosper unless people go out to share their views. Article 19(1)(a) of the Constitution of India gives freedom of speech and expression to its citizen. Undoubtedly free speech is the proper foundation of a democratic society. A free exchange of ideas, dissemination of information without restrains, dissemination of knowledge, airing of differing viewpoinets, debating and forming one's own views and expressing them, are the basic indicator of a free society. This freedom alone makes it possible for people to formulate their own views and opinions on a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. The liberty of speech and expression guaranteed by article 19(1)(a) brings within its



ambit, the corresponding duty and responsibility and puts limitations on the exercise of that liberty.

The present case relates to the tweet of an image alongwith two words "Before 2014" and "After 2014". It is stated by Ld. Addl. PP for the state that image tagged with tweet has hurt the sentiments of Hindu Community and sufficient to incite feeling of hatred among people which is punishable under Section 153A and 295A IPC. Ld. Special Addl. PP for the state has also pointed out that word "Before 2014" and "After 2014" is pointing towards the ruling political party to show the state of affairs in a prejudicial manner.

Hindu religion is one of the oldest religion and most tolerant. The followers of the Hindu religion are also tolerant. Hindu religion is so tolerant that its followers proudly names their institution/organization/facilities in the name of their Holy God or Goddess. A large number of Hindus proudly name their children in the name of their Holy God and Goddess. The website of Ministry of Corporate Affairs, Government of India reveals that number of companies are incorporated in the name of Holy Hindu God or Goddess. Therefore naming of an Institute, Facility or Organization or child in the name of Hindu Deity on the face of it, is not violative of Section 153A and 295A IPC unless the same is done with malice/guilty intention. The alleged act would come into the category of offence only when it is done with a guilty intention. My view in this regard is fortified by the judgment of Hon'ble Superme Court in **Bilal Ahmed Kaloo vs State of AP (1997) 7 SCC 431**



and Amish Devgan VS. Union of India & Others, (2021) 1 SCC.

In Bilal Ahmed Kaloo(supra) Hon'ble Supreme Court has held as under:

“Mens rea is a necessary ingredient for the offences under Section 153A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words” with intent to create or promote or which is likely to create or promote” as used in that sub-section. The common feature in both sections being promotion of feeling of enmity, hatred or ill will “between difference” religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections”.

In Amish Devgan(supra) Hon'ble Supreme Court has held:

“Import of Section 295A IPC, is to curb speech made with “malicious intent” and not “offensive Speech”. Criminality would not include insults to religion offered unwittingly, carelessly or without deliberate or malicious intent to outrage the religious feelings. Only aggravated form of insult to religion when it is perpetuated with deliberate and malicious intent to outrage the religious feelings of that group is punishable”.

Ld. Special Addl. PP for the state has also conceded that naming of an Institute, Facility or Organization in the name of Hindu Deity are not prohibited or punishable under the provisions of Section 153A and 295A IPC, unless it is done with malice or guilty intention.



The applicant/accused has posted the image of the scene of a movie "Kisi se na kehna" released in the year 1983. This movie was certified by the Central Board of Film Certification, which is a statutory body of the Government of India and is available for public view since then. No complaint is stated to have been filed till today that the said scene of movie has hurt the feelings of particular community of society.

The applicant/accused is also stated to have used the words "Before 2014 and After 2014" to point out towards a political party. In Indian democracy the political parties are open for their criticism. The political parties are not shying away from public to face the criticism of its policies. The voice of dissent is necessary for healthy democracy. Therefore, merely for the criticism of any political parties it is not justified to invoke section 153A and 295A IPC.

In the present case the FIR was registered on 20.06.2022 and the accused was arrested on 27.06.2022. The FIR was registered when a twitter user has tagged Delhi Police complaining that his feelings have been hurt by the tweet of accused. I have perused the police file brought by the Investigating Officer, which reveals that till today during the investigation the police has fails to establish the identity of said twitter user who felt offended by the tweet of the accused. The statement of this aggrieved person/witness under Section 161 Cr.PC is not yet recorded. The police has fails to record the statement under Section 161 CR. PC of any other person who has felt offended by the tweet of the accused. The investigation to the offence of Indian Penal Code are governed by the



principle laid down in Criminal Procedure Code, 1973. Police authorities are bound to proceed in the investigation as per provisions of Cr.PC.

It is also not out of place to mention that the alleged tweet of the accused was made in the year 2018 but till the date of registration of present FIR in 2022 no other complaint was received that the tweet of the accused is offensive to the Hindu community or showing disrespect to Lord Hanumana.

The prosecution has also invoked Section 35 of the FCRA against the applicant/accused, however, the applicant/accused has placed on record that on its website it has been specifically mentioned that only Indian citizens with Indian Bank accounts should contribute. It is stated that the accused has taken all the safeguard to prevent the receipt of any foreign contribution. The material placed on record by the accused prima facie shows due diligence taken by him as per Section 39 of FCRA.

In the present case all the evidence are documentary in nature. The applicant/accused has already been taken in police custody for five days and now lodged in judicial custody. Therefore, no further interrogation is required. Recovery has already been effected, therefore, no useful purpose is going to be served by keeping the applicant/accused behind the bars.

Hon'ble Apex Court in **Sanjay Chandra Vs. CBI, CRIMINAL APPEAL NO.2178 OF 2011 (Arising out of SLP (CrI.) No. 5650 of 2011)** has held that "the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a



punishment, unless it can be required to ensure that an accused person will stand his trial when called upon".

Ld.counsel for the accused has raised the contention that proper notice under Section 41(A) of CR. PC was not given and the notice given under Section 41A was contrary to the law laid down by Hon'ble Supreme Court in **Arnesh Kumar and Satender Antil (supra)**.

On the other hand it is argued by Ld. Special PP that the applicant/accused has already challenged the order of remand passed by Ld. Chief Metropolitan Magistrate, New Delhi District before Hon'ble Delhi High Court therefore this contention is not tenable before this court.

It is admitted by Ld.counsel for applicant/accused that non compliance of Section 41A has already been challenged before Hon'ble Delhi High Court by the applicant/accused. The Hon'ble High Court is already seized of matter with regard to this issue, therefore I refrain from considering this contention raised by Ld. Counsel for applicant/accused.

In view of aforesaid discussions, considering the facts and circumstances of the case and the fact that the accused is not required for any custodial interrogation, I am inclined to allow the present bail application under Section 439 Cr. PC moved on behalf of applicant/accused Mohammed Zubair. The applicant/accused **Mohammed Zubair** is admitted to bail on furnishing bail bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Ld.Chief Metropolitan Magistrate/Metropolitan Magistrate/Duty Magistrate and subject to the following conditions:

(a)The applicant shall furnish to the Investigating Officer/



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S.H.O., a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(b)The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending matter;

(c) The applicant shall not leave the country without prior permission of the court and will surrender his passport with the Investigating Agency within 3 days of his release from jail.

(d) That the applicant/accused shall not repeat the offence and shall ensure that his tweet or re tweet or any material on social media is not even touching boundaries of the offence punishable under Section 153A and 295A IPC.

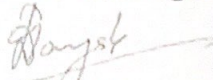
(e) The applicant/accused will join the investigation as and when called by the SHO/IO to do so.

With these observations the bail application moved on behalf of applicant/accused **Mohammed Zubair** is disposed off.

It is made clear that nothing stated herein above shall tantamount to an expression of opinion on the merits of the case.

Copy of this order be given dasti to Ld.counsel for applicant/accused. Police file be returned to the Investigating Officer.




(Devender Kumar Jangala)
Add. Sessions Judge
New Delhi District
PHC, New Delhi/15.07.2022