

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6061 of 2016****Judgement / Order served on 4-10-2016****Judgment / Order delivered on 10-2016**

- Tausif Ahmed Bhat S/O Shri Ghulam Ahmed Aged About 25 Years R/O Gund Brath, Tahsil Bomai, District Baramula, State Jammu & Kashmir.

**---- Applicant****Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Kotwali Durg, District Durg, Chhattisgarh.

**---- Respondent**

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For Applicant : Mr. Arshad Khan Advocate

For Respondent/State : Mr. Anant Bajpai, Panel Lawyer.

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**Hon'ble Shri Justice Goutam Bhaduri****CAV Order****( Passed on 25-10-2016)**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested on 3-8-2016 in connection with Crime No. 551 of 2016, registered at Police Station Kotwali, District Durg (CG) for the offence punishable under Section 124-A of IPC and Section 2 of Prevention of Insults to National Honor Act, 1971.
2. Case of the prosecution, in brief, is that the applicant on his face book has liked and shared the page containing the words "*get out from Kashmir*" and in the picture Indian National Flag was shown to be in the form of "Mouse". It was further shown that the mouse is being

swept away by a broom. It is further alleged that the applicant enticed the several persons to work against India and support independence of Kashmir. It is further case of the prosecution that the applicant also tried to spit-hatred between the communities by his act, therefore, the aforesaid offence has been committed. The applicant was arrested by police of Police Station Kotwali, District Durg .

3. Learned counsel appearing for the applicant would submit that the applicant is not the author of such face book page and he had just liked that page, therefore, in any case it cannot be said that the applicant has originated and invented such idea of the picture and slogan. It is further contended that the applicant had all the rights of freedom of expression and he had only liked the page which in turn have not rendered incitement in the society, therefore, the offence is not made out. It is further submitted that in any case, the evidence which has been seized is documentary in nature as required and charge-sheet has been filed in this case, the applicant is in jail since 3-8-2016 and no further investigation is required, therefore, he may be released on bail.
4. On the other hand, learned State counsel opposes the prayer for grant of bail.
5. I have heard learned counsel for the parties, perused the case diary and documents.
6. Case diary contains the various face book pages of the applicant. *Prima facie*, it shows that he had liked some posts which contained the words "Get out from Kashmir" and the mouse was shown in form

of National Flag and further was shown being swept away by a broom. It also contains different face book pages which were forwarded to him by some other persons wherein protest was made about killing at Kashmir. Face book also contains one photograph of Prime Minister Narendra Modi, picture of Amitabh Bachhan, Sonia Gandhi and Shahrukh Khan and were shown that all have sustained injuries on their faces and all the pictures were shown to be blind folded and protest was made. Few of the witnesses were also examined who have stated that the applicant tried to entice the local people against Indian Government advocating independence and freedom of Kashmir supporting Pakistan.

7. Taking into consideration the facts and documents of the case diary, it suggests that the applicant was not the author of the said face book pages. Case diary does not suggest any enticement in community took place. As the matter is at the stage of bail, it is settled principle that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course and at the stage of granting bail, detailed examination of evidence and elaborate documentation of the merit of the case, is not called for. In order to grant bail, the nature of accusation, severity of punishment in case of conviction, nature of supporting evidence, reasonable apprehension of tampering the witnesses, making threat to the complainant and *prima facie* satisfaction of the court in support of the charge, are considered.
8. Admittedly, in this case the applicant is not the originator of such face book post. The law cited by the applicant that of **Kanhaiya Kumar**

**Vs. State of NCT of Delhi, reported in LAWS (DLH) -2016-3-6**, High Court of Delhi, decided on March 2, 2016 in W.P. (Cri) 558/2016, Cri. M.A.Nos. 3237/2016 and 3262 of 2016 and the principles laid down in case of **Kedar Nath Singh vs. State of Bihar, reported in AIR 1962 SC 955** were examined. The constitution Bench of Supreme Court while explaining sedition has laid down that the act can be said to be penal if the activities are intended or have tendency to create disorder or disturbance of public place by resort to violence. Applying the said principles at this stage would render the case to give a final verdict about application of offence of sedition under Section 124-A of IPC or not. Like-wise, to give a finding on freedom of expression at this stage that the applicant had the right to make such face book post would also amount to giving finality to the case in principles. The statements of the witnesses have to be tested and can be evaluated when the witnesses are examined and cross-examined in detail.

9. Admittedly, the case diary does not suggest that any disorder or disturbance of public place took place. The argument that the applicant had only liked the face book wall and has a right of freedom of expression cannot be appreciated. It cannot be ignored that the applicant is able to study and live a life of freedom in this country only. It cannot also be ignored that applicant is caring his livelihood in this very soil and is working for gain and is born and brought up here only. Had there been any suppression the applicant could not have procured his qualifications for livelihood and an easy life. This country has nourished and protected the applicant to become an able citizen

to earn his livelihood. This soil and country has provided food for survival to applicant like that of other citizen and therefore, is often called a mother-land. It is but expected that if any one abuses his parents on face book in such case, he would not have shared it with a liking. Consequently, the applicant has to introspect himself and act accordingly. Had there been any heavy breach of peace after the incident, the applicant would have gone to local Police for help or the local administration would have served him.

10. Taking into consideration the facts and circumstances of the case, considering the degree of the allegations made by the prosecution and further considering the fact that the applicant is not author of the face book page and slogan and he had only liked and further interpretation is to be made after evidence is recorded and further taking into fact that till charge-sheet filed it did not led to any serious law and order problem and further taking into fact that charge-sheet in this case has been filed and the applicant is in jail since 3-8-2016 and as appears no further custodial interrogation is required, in these facts, this court is inclined to release the applicant on bail.
11. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed and it is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.50,,000/- with one local surety in the like sum to the satisfaction of the concerned trial Court for his appearance as and when directed.

Certified copy as per rules.

Sd/-

**(Goutam Bhaduri)**  
Judge

Raju