

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-3180 of 2016

Date of Decision: February 17, 2016

Baljit Singh Daduwal

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Gurvinder Singh Sidhu, Advocate
for the petitioner.

Mr. K.S. Nalwa, Addl.A.G., Punjab.

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M.M.S. BEDI, J.

Petitioner seeks the concession of regular bail in a case which was registered on the basis of report dated November 11, 2015 of SHO, Police Station, Chatiwind, Amritsar, to the effect that on November 10, 2015 one conference named 'Sarbat Khalsa-2015' was organized by Simranjit Singh Maan, Dhian Singh Mand, Jaskaran Singh Kahan Singh Wala, Mohkam Singh and Gurdeep Singh Bhatinda which was attended by the petitioner alongwith other leaders including Satnam Singh Mannawa, Wassan Singh Jaffarwal, Dr. Gurjinder Singh Daduwal, Amrik Singh

Ajnala, Surinder Singh Thekirwal, Joga Singh Moleke, Pappalpreet Singh Mardi, Resham Singh USA, Surjit Singh USA, Paramjit Singh UK, Gurbhej Singh USA, Harinder Singh USA, Baljinder Singh Italy and others. The organizers in connivance with each other made certain speeches in order to breach the unity and integrity of the country. In the said conference, a terrorist Jagtar Singh Hawara was declared as Jathedar of Shri Akal Takhat Sahib, Wadhawa Singh Babbar, head of terrorist organization Babbar Khalsa International in connivance with secret agencies of Pakistan, made an attempt to instigate the youth to commit the terrorist activities. Slogans were raised spreading hateful sentiments between communities. Flags were waived against the country. Learned Additional Sessions Judge, Amritsar has dismissed the application of the petitioner for regular bail.

Learned counsel for the petitioner has submitted that the petitioner is looking after the management of Damdama Sahib and he had no doubt participated in the congregation, and had delivered a speech which is not, in any manner, prejudicial to the unity of India and does not tantamount to attempting to wage war or abetting the waging of war against the Government of India. He has argued that if the content of the speech are carefully perused, the words used in the speech do not intend to be prejudicial to the maintenance of harmony as neither any feeling of enmity, hatred or ill-will between different religions is expressed therein nor it creates a feeling of insecurity against ambience of any religion. He has referred to the judgment of the Apex Court in **Kedar Nath Singh Vs. State**

of Bihar, AIR 1962 SC 955 and **Balwant Singh Vs. State of Punjab**, AIR 1995 SC 1785 to submit that no offence under Sections 124-A or Section 153 B IPC is made out. He has referred to the judgment in **Gurjatinder Pal Singh Vs. State of Punjab**, 2009 (3) RCR (Crl.) 224, wherein it was observed that simple comments criticizing Government action may fall within the ambit of freedom of speech and expression. He also relied upon the Full Bench judgment of Gujarat High Court in **Hardik Bharatbhai Patel thro. Hi father Bharatbhai Narsibhai Patel Vs. State of Gujarat and others**, 2016 (1) RCR (Crl.) 542 to contend that sine qua non for constitution of a crime under Sections 153 A and 153 B IPC would be promoting a feeling of enmity, hatred or ill-will between two different communities. Merely inciting the feeling of one community or group without any reference to any other community or group would not attract Section 153 A IPC.

Mr. K.S. Nalwa, learned counsel for the State has contended that as per the observations in the judgment of **Gurjatinder Pal Singh's** case (supra), if the words spoken have pernicious tendency or when there is intention of creating public disorder or disturbance of law and order, by the comments criticizing a Government the speech would fall within the ambit of an act prejudicial to the national integrity and would be punishable.

I have considered the contentions of learned counsel for the petitioner as well as State counsel and gone through the police record. The statements of few witnesses recorded under Section 161 Cr.P.C. have been

handed over to the Court in sealed cover. I have gone through the contents of speech delivered by the petitioner. The entire speech delivered by the petitioner has been placed on record as annexure P-2. As per the contents of the speech, the petitioner has stated that in the presence of sacred Guru Sri Guru Granth Sahib Ji, all the persons attending the congregation should forget about their individual grievances and all the sects of Akali Dal i.e. Shiromani Akali Dal (Amritsar), Shiromani Akali Dal, 1920 , Independent Akali Dal, United Akali Dal, Dal Khalsa are requested to work for the welfare of the Khalsa Panth and that he should be called as Bhai and not Sant or Baba. Not even a single word is an attempt for waging or abetting to wage war against Government of India or promoting enmity between different groups.

The statements of all the witnesses under Section 161 recorded on November 19, 2015 and December 5, 2015 have been gone through by me. Only one witness has allegedly got recorded that after the completion of the congregation, the petitioner alongwith 5/15 other Sikh youth persons came on the road with kirpans and raised slogans of khalistan. A line is attributed to the petitioner that he had stated that persons of one community should be finished. The impact of said statement is absolutely vague as per the material gathered by the prosecution and is still a debatable issue whether in view of judgments in **Balwant Singh's** case (supra) and **Gurjatinder Pal Singh's** case (supra), the speech of the petitioner would constitute an offence of waging of war and promoting enmity. The speech

given by the petitioner was in presence of sacred Guru Sri Guru Granth Sahib Ji.

Besides this, it is not out of place to observe here that petitioner deserves to be granted the concession of bail on the medical grounds also as he has undergone a mini Gastric Bypass in Kular Hospital and was having pain on account of leak or an ulcer as per certificate annexure P-3, dated February 12, 2016.

Without expression of any opinion on merits of the case, the petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds/ surety bonds to the satisfaction of CJM/ Duty Magistrate, Amritsar.

February 17, 2016
sanjay

(M.M.S.BEDI)
JUDGE