

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****M.CR.C.(A). No. 719 of 2018**

Kamal @ Kainhaiyalal Shukla S/o Late Laxmi Narayan Shukla, Aged About 50 Years R/o Near Shani Tempa, Kanker, District Kanker Chhattisgarh., District : Kanker, Chhattisgarh.

----Applicant

**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station Kanker, District Kanker Chhattisgarh.

---- Respondent

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| For Applicant        | : Mr. Kishore Narayan, Advocate |
| For Respondent/State | : Mr. Vinod Tekam, Panel Lawyer |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Order On Board****26/07/2018**

1. Apprehending arrest in connection with Crime No.156/2018, registered at Police Station – Kanker, District– Kanker (C.G.) for offence punishable under Section 124A of the Indian Penal Code and Section 66D of the IT Act, the applicant has preferred this application for grant of anticipatory bail.
2. It is submitted by the learned counsel for the applicant, that the applicant has been falsely implicated in this case. The offence under Section 124A of the IPC is not made out for the reason that the cartoons that was posted by this applicant in his facebook account was not created by him. He has simply posted it with his comments. There had been no intention to cause disaffection towards the lawfully established government of this Country. Reliance has been placed on the judgment of Supreme Court in the case of ***Kedar Nath vs. State of Bihar*** reported in ***AIR 1962 SC 955 (V 49 C 130)*** in which it has been held that intention to create

public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. Public law and order is necessary ingredients for commission of this offence. Reliance has been placed on the judgment of Supreme Court in ***Balwant Singh and Another vs. State of Punjab*** reported in ***(1995) 3 SCC 214***, in which it was held that for commission of offence under Section 124A or 153A of IPC, some overt act is also necessary. Reliance has also been placed on the judgment of Bombay High Court in case of ***Sanskar Marathe vs. State of Maharashtra*** reported in ***2015 SCC Online Bom 587***. Hence, it is prayed that the applicant may be enlarged on anticipatory bail.

3. Per contra learned State counsel opposes the application for grant of bail and the submissions made in this respect. It is submitted that posting of objectionable cartoons in facebook depicting senior leaders and other persons and adding comment by the applicant of his own is complete to constitute commission of offence under Section 124A of the IPC. Hence, no case is made out for grant of bail.
4. I have heard the learned counsel for the parties and perused the case diary and the documents placed on record.
5. The case against the applicant is briefly discussed herein-above.
6. The FIR has been lodged against the applicant for posting the objectionable cartoons alongwith comments in his facebook which has been circulated in the social media. It is alleged that post of this applicant has caused disaffection to the lawfully established government. Hence, this case.

7. Considered the submissions made and the contents of the case diary. It was held in *Kedarnath Singh vs. State of Bihar* (supra) merely by use of some words written or spoken causing disaffection against government, sedition could not be complete as that would be unconstitutional in view of the article 19(1) read with clause (2) of the Constitution. It is further held that 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 shall be regarded as sedition. This view has been further clarified in the case of *Balwant Singh vs. State of Punjab* (supra), which shows that overt act is also necessary. Hence, under these circumstances and according to the material present in the case-diary it appears that the allegation against this applicant amounts to sedition or not needs minute examination, for the present, I am of this opinion that present is a fit case, in which the applicant should be enlarged on anticipatory bail.
8. Accordingly, the anticipatory bail application filed under Section 438 of Cr.P.C. is allowed.
9. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :
  - (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;

- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge

Balram