

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M No.43622 of 2017

Date of Decision: June 01, 2018

Arvinder Singh @ Ghoga

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. R.S.Bains, Advocate for the Petitioner.

Mr. Luvinder Sofat, A.A.G., Punjab.

SUDIP AHLUWALIA, J.

This is an Application filed under Section 439 of the Code of Criminal Procedure on behalf of Petitioner seeking regular bail in FIR No.0082 dated 24.05.2016, under Sections 121/121-A of the IPC and Section 10/13 of the Unlawful Activities (Prevention) Act, 1967 registered at Police Station Rahon, Distt. S.B.S.Nagar.

2. The Petitioner was arrested on 25.5.2016. Challan/Final Report was submitted on 19.11.2016 under Sections 121, 121-A of IPC and 10/13 of the Unlawful Activities (Prevention) Act, 1967.

3. The submissions/grievances raised on behalf of Petitioner are two fold, being -

(i) That the charges framed against him for the aforesaid offences are not established from the prosecution material collected during investigation, and,

(ii) That in any case, the Petitioner by now has already undergone detention in excess of two years till date, on account of which his further detention for an indefinite period is not justified.

4. Reliance from the Petitioner's side has been placed upon certain decision in support of the contention that the offences, for which he is facing trial are not made out. The first decision cited in this regard is '**Nazir Khan and others Vs. State of Delhi**' 2003 SCC (Cr1.) 2033. The endeavour of the Petitioner's side in this respect is to emphasize that the acts attributed to him, such as sharing of allegedly seditious/communally sensitive or hateful posts on Social Media do not disclose any ingredients to establish the offence of waging or attempting or abetting the waging of War against the Govt. of India within the meaning of Section 121 of the IPC, or the conspiracy to commit such offence as provided in Section 121-A of the IPC.

5. It has been emphasized that in **Nazir Khan (supra)**, the offence under Section 121-A IPC or for that matter, the lesser offence of Sedition under section 124-A of the IPC was established by the Supreme Court on account of very prominent and palpably visible violent acts clearly indicating a conspiracy to achieve the desire objectives against the Government of India, such as by kidnapping of Hostages with a view to securing release of the associates of the offenders, who had allegedly been already apprehended/detained for similar offences, of Hijacking of Air Craft with the same objective, killing of innocent passengers as well as collection of Arms and Ammunition in furtherance of such objectives, all of which are

missing qua the Petitioner in this case. It has been also contended that the acts of posting objectionable/allegedly Seditious material on Social Media, such as Face Book, or of having received some money from abroad, for distributing Pamphlets, or sending Booklets abroad meant to convey the objective of securing “purity” or “non-servility” of the 'Sikh Panth' cannot amount to waging or attempting or abetting or conspiring to wage war against the Govt. of India, nor render the Petitioner liable for any serious offences even under the Unlawful Activities (Prevention) Act, 1967.

6. The petitioner's side has also relied upon a decision of the Apex Court in '**Balwant Singh and another v. State of Punjab**' AIR 1995 SC 1785, in which the appellants, who had been convicted of the offences under sections 124-A and 153-A of the IPC for having raised the following Slogans in a crowded place -

1. Khalistan Zindabad
2. Raj Karega Khalsa, and
3. Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka
Aya Hai Raj Kayam Karan Da

7. Their conviction was set aside by the Supreme Court, which observed inter-alia -

“11. It is not the prosecution case that either of the appellants had shouted the slogan 'Hindustan Murdabad'. On what material did the learned Judge find that the appellants had shouted that particular slogan belies our comprehensions. Obviously, for convicting the appellants, the trial Judge also pressed into aid the allegation that the appellants had shouted 'Hindustan Murdabad', which is nobody's case. The learned trial Judge, to say the least,

seems to have drawn upon his imagination a course not permissible for a Court of Law.

12. It appears to us that the raising some slogan only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from any one in the public can neither attract the provisions of [Section 124A](#) or [Section 153A](#) IPC. Some more overt act was required to bring home the charge to the two appellants, who are Government servants. The police officials exhibited lack of maturity and more of sensitivity in arresting the appellants for raising the slogans - which arrest -and act the casual raising of one or two slogans - could have created a law and order situation, keeping in view the tense situation prevailing on the date of the assassination of Smt. Indira Gandhi. In situations like that, over sensitiveness some times is counter productive and can result in inviting trouble. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established not could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.”

8. The above submissions from the Petitioner's side have been countered by the State, which has drawn attention of the Court to the offence u/s 122 of the IPC, which is also contained in Chapter VI alongwith the offences u/ss 121 and 121-A of the IPC, for which the Petitioner has been actually charged. The aforesaid offence u/s 122 IPC is set out as below -

“Collecting arms, etc., with intention of waging war against the Government of India.—Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the [Government of India], shall be punished with [imprisonment for life] or, imprisonment of either description for a term not exceeding ten years, [and shall also be liable to fine].

Classification of Offence-- The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.”

9. In this regard, the submission of the State is that even collecting men, and not necessarily Arms and Ammunition themselves, or otherwise preparing in any manner to wage war with the intention of either waging or being prepared to wage war against the Government of India without any actual violence itself is an offence. Of course, the Petitioner has not been charged for the offence u/s 122, but perusal of the punishment prescribed for the same would go to show that it happens to be exactly identical with that prescribed for the offence u/s 121- A of the IPC. Consequently, he can be convicted of the same if the material on record so indicates.

10. From its side, the State has placed a large number of documents running into almost 3000 Pages to show that the Petitioner is not only involved in propaganda and inciting people to resort to violence with the objective of waging war against the Govt. of India with a view to establish an independent State/Nation by the name “Khalistan” by way of liberating the Sikhs from India or Indian Rule, and for this purpose, there is direct incitement to violence especially by way of targeted killing of the members of particular religious community, and that such incitement was not only done by the Petitioner personally by pasting Pamphlets encouraging Sikh youths to join the Organization for formation of “Khalistan” in the month of March in the City of Sri Anandpur Sahib, Distt. Rupnagar on the eve of Hola-Mohalla Festival, but also by reproducing similarly provocative and incendiary messages from the Leaders of designated Terrorist Groups based

in Pakistan on Social Media/Face Book Account, which is accessible to innumerable people both in India and Worldwide, and which is actually a fake account of the Petitioner himself under the Pseudonym 'Mitha Singh', that also reveals his direct contact and connections with the concerned Leaders of the designated Terrorist Organizations based outside India.

11. Some of the relevant posts attributed to the Petitioner's aforesaid Account undoubtedly reveal overt incitement to violence for the purpose of establishing the State of "Khalistan". It is also seen from some of the coloured printouts of the Screen Shots of the alleged Face Book Account that several persons are active on the Social Media with the same objective simultaneously. Perusal of the material highlighted by the State from the Plethora of documents drawn up by way of Cyber Tracking of Petitioner's alleged communication with the head of Terrorist Organization indisputably indicate positive incitement for resorting to violence meant for achieving the aforesaid objective of creating the State of "Khalistan". The reliance on the **Balwant Singh (supra)** therefore, in the present case would not appear to be helpful to the Petitioner, since here the incitement is on Social Media directly accessible all over the World simultaneously, and not just in a limited crowded place, such as the one in which the Slogans were shouted by the Appellants in the said case. Similarly, the response of innumerable people associated with or monitoring/participating in the Social Media interaction can also not be directly verified as was possible in the case of **Balwant Singh (Supra)**, where it was held that Slogans shouting did not evoke any reaction from the crowd, but the same is not the case here, as the

posts of several other persons, as seen in the Social Media Screen Shots would go to indicate. It can therefore, be safely held that the Petitioner by way of collecting 'men', with the intention of either waging or being prepared to wage war against the Government of India, would be liable under section 122 of the IPC, which is punishable at par with section 121-A of IPC itself, for which he is already facing trial. The punishment in such event can extend to imprisonment for life. For these reasons therefore, the Petitioner would not appear to be entitled for immediate release on bail at this stage.

12. Regarding the delay in the trial, it has transpired that by now, nine out of the total 24 challaned witnesses have already been examined, and all the remaining witnesses have been summoned for their evidence on 7.6.2018, which date is within a week from today. In the given circumstances, completion of the trial would not appear to be very far at this stage and, therefore, considering the gravity of the offences, for which the Petitioner has been charged, and the punishment prescribed for the same, this does not appear to be a fit case to release him forthwith.

13. The petition is therefore, dismissed. However, the Ld. Trial Court is directed to complete the pending trial as expeditiously as possible, and preferably within three months from the date of communication of this Order.

June 01, 2018
AS

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No